# SUPREME COURT OF INDIA

Bangalore City Cooperative Housing Society Ltd.

Vs.

State of Karnataka

C.A.Nos.7425-26 of 2002

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

02.02.2012

## JUDGMENT

**G. S. SINGHVI, J.**

1. These appeals are directed against two sets of judgments and orders passed by the Division Benches of the Karnataka High Court whereby the acquisition of lands by the State Government for the benefit of the appellant was quashed. Civil Appeal Nos. 7425-26/2002 are directed against judgment dated 16.03.1998 passed by the High Court in Writ Appeal No. 9913/1996 and order dated 09.07.1999 passed in Civil Petition No. 366/1998. Civil Appeal Nos. 774-78/2005 are directed against judgment dated 06.02.2004 passed in Writ Appeal No. 4246/1998, C/W W.A. No. 6039/1998 and orders dated 11.02.2004 and 15.09.2004 passed in I.A. No. 1 for rectification in Writ Appeal No. 4246/1998, C/W W.A. No. 6039/1998 and Review Petition Nos. 166 and 170 of 2004, respectively.

2. Although, the High Court quashed the acquisition proceedings mainly on the grounds of violation of the provisions of the Land Acquisition Act, 1894 (for short, `the 1894 Act') and the manipulations made by the appellant through the Estate Agent for acquiring the land, during the pendency of these appeals the parties filed voluminous papers and arguments were advanced by both the sides by relying upon those documents as also the records summoned by the Court from the State Government.

3. For appreciating the contentions of the parties in a correct perspective, it will be useful to notice the events which culminated in the acquisition of the lands belonging to the private respondents and others.

3.1 Bangalore Development Authority (BDA) was constituted by the State Government under Section 3 of the Bangalore Development Authority Act, 1976, (for short, `the 1976 Act'), which was enacted by the State legislature for ensuring planned development of the City of Bangalore and areas adjacent thereto. In terms of Section 15 of the 1976 Act, the BDA is empowered to draw up detailed schemes for the development of the Bangalore Metropolitan Area and with the previous approval of the Government, undertake works for the development of the Bangalore Metropolitan Area and incur expenditure therefor. Under Section 15(2), the BDA can take up new or additional development schemes either on its own or on the recommendations of the Local Authority or as per the directions of the State Government. Section 16 lays down that every development scheme shall, within the limits of the area comprised in the scheme, provide among other things for the acquisition of any land necessary for or affected by the execution of the scheme. Section 16(3) lays down that the scheme may provide for construction of houses. Sections 17 and 18 contain the procedure for finalization and sanction of the scheme. Section 19 provides for the acquisition of land for the purposes of the Scheme.

3.2 In exercise of the powers vested in it under Section 15 and other relevant provisions of Chapter III of the 1976 Act, the BDA has been preparing the development schemes and forming layouts for the purpose of allotment of houses/plots to various sections of the society.

3.3 Due to unprecedented increase in the population of Bangalore City (by 1981, the population of the Bangalore City had swelled to 29.13 lakhs), the State Government realized that it may not be possible for the BDA to meet the demand of developed residential sites and, therefore, it was decided to encourage formation of private layouts which is permissible under Section 32 of the 1976 Act, by the house building cooperative societies (for short, `the housing societies'). For this purpose the existing guidelines, which were being followed by the erstwhile City Improvement Trust Board and the BDA for the approval of private layouts were revised vide Circular No. HUD 260 MNX 82 dated 3.3.1983, the relevant portions of which are extracted below:

> 1. The area proposed for a layout should be within the residential zone of the Outline Development Plan/Comprehensive Development Plan approved by Government. In special cases where lands are reserved for purposes other than green belt and which are suitable for

residential purpose, layouts may be considered after obtaining prior approval of Government for the change in land use.

2. The Co-operation Department shall register the names of the Housing Societies only after getting the opinion of the planning Authority (BDA) which shall verify whether the lands proposed for the societies are in the residential zone or are suitable for residential purpose as indicated in para 1, or whether they are required by Bangalore Development Authority.

3. If the Housing Society has purchased land, no objection certificate from the competent authority, Urban land ceiling should be produced.

4. The Housing Societies/Private developers should produce the title deeds to prove ownership of the land.

5. The Bangalore City Corporation, the HAL Sanitary Board, ITI., Notification area, Yelahanka and Kengeri Municipal authorities and such other authorities shall not approve any bifurcation of land into plots or any private layout. Such approval should be done only by the planning Authority (BDA) according to the Karnataka Town Country Planning Act, 1961.

6. Khatha shall not be issued by the Revenue Section of the Bangalore City Corporation and the Bangalore Development Authority HAL Sanitary Board, I.T.I. Notified area, Yelahanka Town Municipality, Kengeri Town Municipality/ Panchayaths and such other authorities, unless the layout is approved by the Bangalore Development Authority.

7. The following minimum land allocations shall be insisted in the approval of private layouts by the Bangalore Development Authority.

Residential Not Exceeding 50% Parks Playgrounds 15% Roads 25% to 30% Civic amenities 50% to 10%

8. (a) Except in case of layouts for economically weaker sections standard road width shall be enforced line 12 metre (40 feet) 18.5 metres (60 feet), 24.5 metres (80 feet) and 30.5 metres (100'). (b) While working out the road pattern of the private layouts, major road

pattern of the outline Development Plan/Comprehensive Development Plan should not be affected. Minor roads may be designed suitable within the framework of roads approved in the Outline Development Plan/Comprehensive Development Plan.

The civic amenity sites earmarked should be for specific purposes determined by Bangalore Development Authority. In cases where it is found necessary to allot sites for other purpose, proper justification will have to be furnished.

10. The purpose for which the sites are proposed shall not be violated by the housing societies/private developers.

11. Underground drainage and electricity works in private layouts shall be carried out only by the Bangalore Water Supply Sewerage Board and Karnataka Electricity Board. Bangalore Development Authority may permit the Housing societies to carry out the civil works only in case of societies getting the work done by Civil Engineers of the required competence.

12. After the formation of sites, allotment of sites to individual members of the housing societies must be in accordance with the eligibility conditions of allotment of the Bangalore Development Authority which are in force including the lease-cum-sale conditions.

13. Conditions shall be enforced in the approval of layouts in favour of housing societies that the sites should be allotted only to the members of the societies and not to other individuals for purposes of land speculation. A list of members shall be submitted by the societies along with the application for approval of private layouts.

3.4 The aforesaid decision of the State Government was misused by the housing societies which started purchasing lands directly from the landlords for forming the layouts resulting in uncontrolled, unplanned and haphazard development of the city. It also created acute problem of providing civic amenities, transport facilities etc. Therefore, by an order dated 18.6.1985, the State Government abandoned the existing policy of acquiring land through the Revenue Department and entrusted this task to the BDA for the Bangalore Metropolitan Area. The State Government also stopped registration of the housing societies and conversion of agricultural lands in

favour of the existing societies. Simultaneously, the State Government constituted a Three Men Committee (TMC) consisting of the Registrar of Cooperative Societies, Karnataka, T. Thimme Gowda, Secretary, BDA and the Special Deputy Development Commissioner to scrutinize the land requirements of the housing societies which had already been registered and also fixed 30.6.1984 as the cut off date for consideration of the applications made by the housing societies for the acquisition of land. The constitution of the committee was made known to the public vide Order No. HUD 113 MNXA 85 dated 23.6.1986. It was also made clear that only those persons will be eligible for allotment of sites who had been enrolled as members of the housing societies before the cutoff date. Subsequently, the cutoff date was extended to 30.6.1987.

3.5 The Executive Director of the appellant submitted representation dated 7.12.1984 to the Minister for Revenue, Government of Karnataka for the acquisition of 238 acres 27 guntas land at Vajarahalli and Raghuvanahalli villages for formation of a layout for its members. The relevant portions thereof are extracted below:

> 1. We are happy to inform you that our society was registered under Section 7 of the Mysore Cooperative Societies Act, 1959 by the Registrar of Cooperative Societies, Bangalore, during the year 1927 vide No. 1737 C.S. dated 12.9.1927.
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> 2. The object of the society is to provide house sites to its members who belong to working class and other backward class people belonging to weaker sections of the society. The members are poor people and they are siteless. They are residents of Bangalore City for several decades.
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> 3. Because of the restrictions imposed by Land Reforms Act and other enactments, the activities of our society have come to stand still, with the result the society is not in a position to discharge its primary obligations entrusted as per the bye-laws.
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> 4. Your Hon'ble authority is fully aware that it is humbly impossible to secure residential sites in these days of soaring prices of lands and sites which have gone up beyond all proportions.

5. The lands which are now requested by the society for acquisition are not fit for agricultural purposes and they are laying in the vicinity of residential layout abutting Bangalore City and there are no proposals for acquisition of these survey numbers by the Bangalore Development Authority for any of its developmental activities, as per endorsement issued by B.D.A.

6. Due to our sincere efforts we are able to locate suitable land in the village Vajarahalli and Raghuvanahalli, Uttarahalli Hobli, Bangalore south Taluk to an extent of 250 acres. A list showing the sy. numbers and extent of lands is enclosed.

7. We request your kindself to acquire these lands in favour of our society and handover possession to form layout to distribute sites to the members who are in great need of sites to construct their own houses.

8. We have collected sital amounts from the members. The cost of acquisition will be met by the society. Necessary amount towards compensation will be deposited with the acquisition authorities on receipt of intimation and after obtaining approval of Government.

It is submitted that the society is agreeable to abide by all terms and conditions to be laid down by the Government in the matter.

3.6 The Revenue Department of the State Government vide its letter dated 29.12.1984 forwarded the aforesaid representation to Special Deputy Commissioner, Bangalore for being placed before the TMC constituted vide letter No. RD- 109 AQB 84 dated 26.7.1984.

3.7 Between January, 1985 and 1987 the appellant's application made several rounds before the TMC, the State Level Coordination Committee (SLCC), constituted by the State Government and the officers of the Cooperative Department. The Assistant Registrar, Cooperative Societies issued several notices to the appellant to furnish the details of its members and supply other particulars along with copy of the agreement entered with the Estate Agent engaged for formation of the layout, but the needful was not done. After lapse of long time, the President of the appellant submitted memorandum dated 17.9.1987 to the Joint Registrar, Cooperative Societies (for short, `the Joint Registrar') stating therein that the appellant had engaged

M/s. Manasa Enterprises (Estate Agent) for procuring 250 acres land from the landowners. The copies of agreements dated 1.6.1984 and 4.12.1984 executed with M/s. Manasa Enterprises were also submitted along with the memorandum. Along with letter dated 26.3.1987, the appellant furnished additional information to the Joint Registrar.

3.8 The appellant's application was considered in the meeting of the TMC held on 5.10.1987 and the Joint Registrar was asked to conduct verification of the information supplied by the appellant. After conducting the necessary inquiry, the Joint Registrar sent report dated 9.10.1987, of which the salient features were as follows:

> i. The appellant had neither collected sital deposit from the members nor it had paid any advance to the Estate Agent or the landowners upto 30.6.1984.
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> ii. During 1984-85, the appellant collected Rs.20,72,500/- from the members and paid Rs.3,50,000/- to the Estate Agent as an advance for procurement of the land from the landowners.
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> iii. During 1985-86, another sum of Rs.5,45,500/- was collected from the members towards sital deposit and Rs.10,00,000/- were paid to the Estate Agent.
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> iv. Upto 30.6.1986, the total amount collected from the members was Rs.26,18,000/- and the total amount paid to the Estate Agent was Rs.13,50,000/- for procurement of 235 acres land in Vajarahally.
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> v. Letter dated 24.10.1986 of the Estate Agent revealed that it had made advance payment of Rs.16,70,000/- to 17 landowners.

3.9 In its meeting on 17.10.1987, the TMC directed the Joint Registrar to conduct an investigation about the land available with the appellant before the cut off date. This was done in the wake of the information supplied by the appellant about the death of the proprietor of M/s. Manasa Enterprises in a car accident on 28.2.1987. However, before the Joint Registrar could make the necessary investigation, the appellant's application was considered in the meeting of the SLCC held on 24.10.1987 and the following proceedings were recorded:

The Deputy Commissioner, Bangalore raised a question as to whether the entitlement for acquisition would depend upon the number of enrolled members as of the cut off date of 30.4.1984 or the number of enrolled members who had paid the sital value by that date. The Revenue Commissioner clarified that as per the GO, the entitlement depended on the total number of enrolled members irrespective of whether they had applied for a site. The Secretary, HUD also agreed with this and stated that as per the bye-laws of these societies, all members would be eligible for grant of sites so long as they had paid the membership fees prior to the cutoff date. The Deputy Commissioner however pointed out that the previous and even the present Three Member Committee had based its recommendations disregarding those members who had not paid the sital value. The SLCC decided that as it would not be equitable or fair to follow two different sets of principles for determining extent of land entitlement for acquisition, the number of members who had paid required sital fee would be the sole guiding factor in determining land to be cleared for acquisition in the 1st stage. But the Secretary, Cooperation may keep the Chief Minister informed of this decision and report back to the SLCC before pending cases are taken up for 2 nd stage of scrutiny as per GO dt. 30.4.1987. (underlining is ours) 3.10 The appellant's case was again considered in the meeting of the TMC held on 27.11.1987 and the following points were recorded:

> a. Society had 3821 members as on 30.6.1987 and sital value had been paid by 1362 as per which the Society's land requirement is 184 acres 11 guntas. If the SLCC decides that the Society is eligible for entitlement on this basis the Society will have to be allowed to select lands to this extent and furnish survey number-wise details.
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> b. The question of survey numbers and violation of various Acts does not arise as the Three Man Committee considers that the Society is not eligible for any entitlement as there are no agreements and also no member had paid the sital value as on 30.6.1984.
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> c. The JRCS reported that the Society had, in pursuance of an agreement, paid Rs. 13.5 lakhs to the estate agent who died in a car crash. But even this amount was paid after the cutoff date.

3.11 In its 14th meeting held on 28.11.1987, the SLCC considered the cases of various societies and opined that the appellant was not eligible for acquisition of land in 1st and 2nd stages of scrutiny because it did not have

valid agreements as on the cutoff date i.e., 30.6.1984. However, in the next meeting of the SLCC held on 22.12.1987 cognizance was taken of the clarification given by the Chief Minister of the State that eligibility of the housing societies should be considered on the strength of the members enrolled as on 30.06.1984 in respect of the 1st stage of scrutiny and as on 30.6.1987 in respect of the 2nd stage of scrutiny, irrespective of the fact whether the enrolled members had paid sital fee or not and, accordingly, decided that the appellant's case be examined by taking note of the members enrolled by it.

3.12 On 21.2.1988, the appellant entered into an agreement with M/s. Rajendra Enterprises whereby the latter promised to secure the acquisition of land on payment of the specific amount. Paragraphs 1 to 8 of the agreement, which have bearing on consideration of one of the issues arising in these appeals read as under:

> 1. THIS AGREEMENT entered into on this the 21st (Twenty first) day of February 1988 between The Bangalore City Co-operative Housing Society Limited, No.2, Seethapathi Agrahara, Bangalore-560002, a Cooperative Societies Act, represented by its President and the Executive Director and hereinafter referred to as the `FIRST PARTY', which term shall mean and include its successors, assigns in office, administrators etc. and M/s. Shri Rajendra Enterprises, No.4507, 5th Floor, High Point-IV, 4, Palace Road, Bangalore-560 001, represented by its Managing Partner M. Krishnappa, Estate Agent and Engineering Contractor, hereinafter called the Agent of the `SECOND PARTY' which term shall mean and include its successors in interest and successors in office, assigns, administrators etc., witnesseth:-
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> 2. WHEREAS THE FIRST PARTY has selected about 228 acres land as detailed in the schedule, in Vajarahalli village and Raghuvanahalli village, Uttarahalli Hobli, Bangalore South Taluk, more fully described in the schedule hereunder and hereinafter, referred to as the `Schedule Land' for making house sites for the benefit of its members for the construction of dwelling houses with various amenities including road, water supply, sewerage facilities, street lighting, etc.
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> 3. WHEREAS the Second Party has offered his services to the First Party to negotiate and complete the acquisition and development of

schedule land for the said purpose to form a layout, make sites in accordance with the rules and regulations in force and hand over the said sites to the First Party.

4. WHEREAS NOW that the Managing Partner of M/s. Manasa Enterprises, First Party's earlier promoters died of an accident and as such work could not be continued and subsequently M/s. Landscape, Layout promoters agreed to take over the entire project with all its advanced to M/s. Manasa Enterprises i.e. Rs.13,50,000/- (Rupees Thirteen Lakhs Fifty Thousand only) for procuring lands from the agriculturists in favour of the First Party, at the time of the agreement. The said Agreement dated 31.12.87 was signed between the First Party and M/s. Landscape. But this Agreement was cancelled with effect from 1.2.1988 as M/s. Landscape failed to furnish the agreed Bank Guarantee of Rs.13,50,000/-.

5. NOW the Second Party, M/s. Rajendra Enterprises have come forward and agreed to take over the entire project for the formation of the proposed layout and start the work `ab initio' with all its previous liabilities and have furnished the required Bank Guarantee No.4/88 dated 8.2.1988 from Syndicate Bank, Vijaynagar Branch, Bangalore-560 040 of Rs.13,50,000/- (Rupees Thirteen Lakhs Fifty Thousand only) already advanced to previous promoters M/s. Manasa Enterprises (for procuring lands from the agriculturists).

6. WHEREAS the Second Party has agreed to provide all the required services towards the acquisition of scheduled land for the First Party, obtain all necessary approvals for forming the layout, roads, water lines, electric lines, drainage, sewerage connection, etc., and to carry out on the said land the items of work such as laying of roads with culverts, drainages, etc., provision of bore- wells, ground level and overhead tanks, water lines, etc., for the provision of water laying of electrical lines, sewerage lines, etc., and in accordance with the details approved by the respective Statutory and Government authorities on the schedule lands in consideration of the amount to be paid by the First Party as per the B.D.A. rate prevailing at the time of execution of the above specified works.

7. WHEREAS the Second Party at the behest of the First Party is taking action to move various Government and Statutory authorities

towards the publication of Notification in the Official Gazette under Section 4(1) of the Land Acquisition Act, for the acquisition of the schedule lands.

8. NOW the First Party and the Second Party agree to undertake the above works as detailed below: - SECOND PARTY FIRST PARTY PROCUREMENT OF LANDS

1) To get Notification under 1) At the time of execution of Section 4(1) of the LAR within the Agreement of Rs. 1.5 four months lakhs and upto issue of 4(1) Notification Rs. 15/- per Sq.

Yd. against Bank

Guarantee.

2) Issue of Notification under

2) Rs. 25/- per Sq. Yd. Section 4(1) and subsequent including the award amount enquiry under Section 5(1) paid to Government. completed within 4 months

3) Issue of Notification under

3) Rs. 26/- per Sq. Yd. Section 6(1) within 3 months of the completion of enquiry under Section 5(1)

4) Submission of layout plan to 4) Rs. 5/- per Sq. Yd. BDA within 4 months after the issue of notification under Section 6(1)

5) Sanction of layout plan within 5) Rs. 4/- per Sq. Yd. 3 months of its submission.

The Second Party has agreed to complete the above mentioned works within 18 months from the day of the agreement subject to any delay caused at the BDA and other authorities in procuring land sanctioning or issuing of layout plan. (The amount which the appellant had agreed to pay to the Estate

> Agent for securing the acquisition of 228 acres land and submission and sanction of layout plan by the BDA was Rs.5,42,37,652/-).

3.13 Within five days of the execution of the aforesaid agreement, the SLCC reconsidered the appellant's case in its 20th meeting held on 26.2.1988 and declared that it is eligible for the acquisition of 208 acres 18 guntas land. The relevant portion of the minutes of that meeting are reproduced below:

7) BANGALORE CITY HBCS:

The Society is eligible for acquisition of 208 acres 18 guntas in stage I/III. As against this they have given survey number-wise details for 250 acres. They should therefore be given time upto 15th March, 1988 to select the specific lands to be acquired on their behalf to the extent of 208 acres. 3.14 In furtherance of the recommendations made by the SLCC, the State Government sent letter dated 21.5.1988 to Deputy Commissioner, Bangalore and directed him to initiate proceedings for the acquisition of 207 acres 29 guntas land in Vajarahalli and Raghuvanahalli for the appellant by issuing notification under Section 4(1) of the 1894 Act. The contents of that letter are reproduced below:

The Deputy Commissioner,

Bangalore.

Sub: Acquisition of land in Vajarahalli and Raghuvanahalli villages of Uttarahalli hobli, Bangalore South Taluk in favour of the Bangalore City Co-operative, Housing Society Ltd., Bangalore. I am directed to state that the State Level Coordination Committee has recommended for acquisition of 208 acres 18 guntas of land in Ist/IIIrd stage in favour of Bangalore City Cooperative Housing Soceity. As against this the society has furnished S.No. wise details for 207 acres 29 guntas (list enclosed) which is within the extent recommended by State Level Coordination Committee. Hence you are directed to initiate acquisition proceedings by issue of notification under Section 4(1) for an extent of 207 acres 29 guntas of land as recommended by S.L.C.C. in the village of Vajarahalli and Raghuvanahalli in favour of Bangalore City House Building Cooperative Society Ltd., Bangalore subject to the following conditions:

i) The extent involved (if any) under Section 79(A) and B may be excluded while issue of 4(1) notification for the present, which can be notified after the pending proceedings under the said Act are finalised.

(ii) Move the Spl. Deputy Commissioner, ULC to finalise the proceedings pending under ULC Act before 31.5.1988.

Yours faithfully,

(MAHDI HUSSAINA)

Under Secretary to Government

Revenue Department.

3.15 On 7.8.1988, the Executive Director of the appellant entered into an agreement with the State Government, the relevant portions of which are extracted hereunder: AGREEMENT

An Agreement made on this Eighth day of July, One Thousand Nine Hundred Eighty Eight between the Executive Director, The Bangalore City Co-operative Housing Society Limited, No.2, Seethapathi Agrahara, Bangalore-560002 (hereinafter called the Society which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns) of the ONF PART and the GOVERNOR OF KARNATAKA on the OTHER PART.

AND WHEREAS the Society has applied the Government of Karnataka (hereinafter referred to as THE GOVERNMENT) that certain land more particularly described in the schedule hereto annexed and hereinafter referred to as THE SAID LAND should be acquired under the provisions of LAND ACQUISITION ACT, 1894 (I of 1894) hereinafter referred to as THE SAID ACT, for the following purpose namely:-

Formation of Sites and Construction of Houses to the members of the Bangalore City Co-operative Housing Society Ltd., No.2, Seethapatha Agrahara, Bangalore-560002.

AND WHEREAS The Government, having caused an enquiry be made in conformity with the provisions of the SAID ACT and being satisfied as a result of such inquiry that the acquisition of the SAID LAND is needed for the purpose referred to above, has consented to the provisions of the SAID ACT, being put in force in order to acquire the SAID LAND for the benefit of the Society Members, to enter into an agreement hereinafter contained with the GOVERNMENT. How, these presents witness and it is hereby agreed that GOVERNMENT shall put in force the provisions of the said Act, in order to acquire the SAID LAND for the benefit of the Society Members on the following conditions namely:

1. The Society shall pay to the GOVERNMENT the entire costs as determined by the GOVERNMENT of the acquisition of the SAID LAND including all compensation damages, costs, charges and other expenses whatsoever, which have been OR may be paid OR incurred in respect of OR on account of such acquisition OR in connection with any litigation arising put of such acquisition either in the original or APPELLATE COURTS, and including costs on account of any establishment and salary of any Officer OR officers of the GOVERNOR who the GOVERNMENT may think it necessary to employ OR deputation Special duty for the purpose of such acquisition and also including the percentage charges on the total amount of compensation awarded as prescribed by GOVERNMENT. The monies which shall be payable by the Society under this clause shall be paid to the Special Deputy Commissioner of Bangalore (hereinafter called the SPECIAL DEPUTY COMMISSIONER) within fourteen days after demand by the SPECIAL DEPUTY COMMISSIONER in writing of such amount or amounts as the SPECIAL DEPUTY COMMISSIONER shall from time to time estimate to be required for the purpose of paying OR disbursing any compensation, damages, costs, charges, OR expenses herein before referred to, for which the COMPANY has made provision in their finance.

2. On payment of the entire cost of the acquisition of the SAID LAND as hereinabove referred to the whole of the said land shall as soon as conveniently may be transferred to the SOCIETY as to vest in the COMPANY subject to the provision of the Karnataka Land Revenue Act (hereinafter called the SAID ACT) and the rules made thereunder subject also to the provisions of this agreement as to the terms on which the land shall be held by the Society.

3. The SAID LAND when so transferred to and vested in the SOCIETY shall be held by the SOCIETY if its property to be used only in furtherance of the and for purpose for which it is acquired, subject nevertheless to the payment or agricultural, non-agricultural OR other assessment if and so far as the said land is OR may from time to time be liable to such assessment under the provisions of the SAID ACT and the rules made thereunder, and the local fund cess, as the case may be, THE SOCIETY shall :-

(i) not use the SAID LAND for any purpose other than that for what it is acquired.

(ii) Undertake the work of construction of the building within three years from the date on which possession of the land handed to the Society and complete the same within three years from the aforesaid date;

(iii) AT ALL TIMES, KEEP AND MAINTAIN the said land and the building OR buildings effected thereon in good order and condition, maintain all records of the SOCIETY properly to the satisfaction of the DEPUTY COMMISSIONER and supply to the GOVERNMENT punctually such.

(iv) Returns and other information as may from time to time be required by the GOVERNMENT.

(v) Not use the SAID LAND or any building that may be erected upon it for any purpose which in the opinion of GOVERNMENT is objectionable.

5. The Society shall from time to time and at all times permit the GOVERNMENT or any officer or officers authorised by the GOVERNMENT in that behalf to inspect the SAID LAND any works of the SOCIETY upon the SAID LAND whether in the course of construction or otherwise and shall furnish to the Government from time to time on demand correct statements of the monies spend by SOCIETY upon its said land.

6. In case the SAID LAND is not used for the purpose which it is acquired as herein refers recited or is used for any other purpose 01 in case the SOCIETY commits a breach of any of conditions thereof, the SAID LAND together with the buildings, if any erected thereon shall be liable to

resumption by the Government subject however to the conditions that the amount spent by the SOCIETY for the acquisition of the SAID LAND or its value as undeveloped land at the time of resumption, whichever is less (but excluding the cost of value of any improvements made by the SOCIETY to the SAID LAND or on any structure standing on the SAID LAND shall be paid as compensation to the SOCIETY.

Provided that the SAID LAND and the buildings, if any, erected thereon shall not be so resumed unless due notice of the breaches complained of the been given to the Company and the Society has failed to make good the break or to comply with any directions issued by the GOVERNMENT in this behalf, within the time specified in the said notice for compliance therewith.

7. If at any time or times, the whole or any part of the SAID LAND is required by GOVERNMENT or for the purpose of making any new public road or for any purpose connected with public health, safety, utility or necessary the Company on being required by the GOVERNMENT in writing shall transfer to the GOVERNMENT the whole or part of the SAID LAND as the GOVERNMENT shall specify to the necessary for any of the aforesaid purposes the SOCIETY A SUM equal to the amount of the compensation awarded under the said Act, and paid by the SOCIETY IN respect of the land to transferred including the percentages awarded under Section 23(2) of the SAID ACT, together with such amount as shall be estimated by the SOCIETY whose decision in the matter shall be final as to the cost of the development of the land so transferred which shall include the value at the date of transfer of any structures standing thereon and when part of a building is on the land so transferred and part is on an adjoining land, reasonable compensation for the injuries effected of the part of the building on the adjoining land.

8. All the cost and expenses incidental to the preparation and execution of these presents shall be paid by the SOCIETY.

9. (a) The Deputy Commissioner/Special Deputy Commissioner should make a token contribution towards the compensation framed by Assistant Commissioner/Special Land Acquisition Officer at the rate of Rs. 100.00 in respect of each Land Acquisition Case of the Society.

(b) The Special Deputy Commissioner shall after taking over possession of the land U/s. 16(1) Land Acquisition to the Society should report to the Government the fact of having taken physical possession of the land for clearance of the Government. The Society should agree unconditional to pay the compensation as awarded or if enhanced by the Court decides in favour of land owners.

(c) The Society shall not from the layouts without getting the plan duly approved by the Town Planning Wing of Bangalore Development Authority keeping in view the zoning regulations. In respect of places other than Bangalore, the approval of Planning Authority, Municipality as the case may shall be obtained.

(d) In case the violation of any of the conditions Government will be competent to resume the lands acquired in favour of Societies.

(e) The expenditure incurred in this behalf shall be debited to the Head of the Account - 253 + District Administration-5, Other expenditure-E. Acquisition of land on behalf of other acquiring bodies (Non-Plan).

3.16. In furtherance of the direction given by the State Government, Deputy Commissioner, Bangalore issued notification dated 23.8.1988, which was published in the Official Gazette on 1.9.1988, under Section 4(1) of the 1894 Act for the acquisition of 201 acres 17 guntas land including the land comprised in Survey Nos. 49 and 50/1 belonging to Smt. Geetha Devi Shah, who shall hereinafter be referred to as respondent No. 3 and Survey Nos. 7/1 and 8/1 belonging to the predecessor of P. Ramaiah, Munikrishna, Keshava Murthy, Smt. Nagaveni and Smt. Chikkathayamma (respondent Nos. 3 to 7 in Civil Appeal Nos. 774-778/2005).

3.17 Respondent No. 3 filed detailed objections against the proposed acquisition of her land and pointed out that the same were garden lands; that she and her predecessor had planted 165 fruit bearing mango trees, 75 coconut plants, 15 lime plants, 15 guava trees, 100 papaya trees, 40 eucalyptus trees, 6 custard apple trees, 100 teakwood trees, 3 neem trees, one big tamarind tree, 2 gulmohar trees, 10 firewood trees and 10 banana plants. She also pointed out that there was a residential house and a pump house with electric connection and the area had been fenced by barbed wires and stone pillars. Shri P. Ramaiah also filed objections dated 6.9.1988 and

claimed that the proposed acquisition was contrary to the provisions of the 1894 Act and that the lands comprised in Survey Nos. 7/1 and 8/1 were the only source of livelihood of his family.

3.18 The objections filed by respondent No. 3 were considered by the Special Land Acquisition Officer along with the reply of the acquiring body and the following recommendation was made:

> There are AC Sheet houses and since there are good number of Malkies: Mango, etc, Government may take suitable decision.

3.19 The objections raised by Shri P. Ramaiah were also considered and the following recommendation was made: There are no valid ground in the objections raised, the lands may be acquired.

3.20 Thereafter, the Special Land Acquisition Officer issued declaration under Section 6(1) which was published in the Official Gazette dated 25.9.1989.

3.21 During the currency of the acquisition proceedings, Shri G.V.K. Rao, Controller of Weights and Measures and Recovery Officer was asked to conduct an inquiry into the membership of the appellant. He submitted report dated 7.11.1988 with the finding that the appellant had admitted 40 persons who were not residing within its jurisdiction and recommended that their names be removed from the rolls of the appellant and the committee of the management, which is responsible for admitting such ineligible persons should be proceeded against.

3.22 It appears that similar reports had been received by the Government in respect of other societies. After considering these reports, Joint Secretary to the Government, Housing and Urban Development Department prepared a note on the basis of the decision taken by the Executive Council in its meeting held on 31.5.1989. The name of the appellant was shown in Annexure 3B of the note which contained the list of housing societies responsible for admitting ineligible persons as their members.

3.23 Before publication of the declaration issued under Section 6(1) of the 1894 Act, the State Government vide its letter dated 23.6.1989 informed Respondent No. 3 to remain present for spot inspection of her land. After publication of the declaration issued under Section 6(1), notices dated

6.1.1990 and 7.3.1990 were issued to Respondent No. 3 and others that the Special Deputy Commissioner would conduct spot inspection. A memo dated 11.5.1990 was issued to Respondent No. 3 that Special Deputy Commissioner would inspect Survey Nos. 49 and 50/2 on 14.5.1990. However, no one appears to have gone for inspection and to this effect letter dated 16.5.1990 was sent by Respondent No. 3. 3.24 Special Land Acquisition Officer, Bangalore passed award dated 23.6.1990 and determined market value of the acquired land. The award was approved by the State Government on 11.3.1991. However, before the possession of the acquired land could be taken, the State Government issued notification dated 3.8.1991 under Section 48(1) of the 1894 Act and withdrew the acquisition proceedings in respect of land comprised in Survey No. 50/2. Vide letter dated 9.10.1991, the Revenue Department requested Special Deputy Commissioner, Bangalore to examine the representation made by Respondent No. 3 for withdrawal of the acquisition of Survey No. 49. To the same effect letter dated 29.1.1992 was sent by the Secretary, Revenue Department to the Special Deputy Commissioner. However, no final decision appears to have been taken on these communications.

3.25 After one year and over six months of the passing of the award, the State Government issued Notification dated 7.1.1992 under Section 16(2) in respect of various parcels of lands including Survey No. 49. The possession of 150 acres 9= guntas of land of Vajarahalli and Raghuvanahalli is said to have been handed over by the Special Land Acquisition Officer to the Secretary of the appellant-Society. However, as will be seen hereinafter, the entire exercise showing taking over of possession of the respondents' land and transfer thereof to the appellant was only on papers and physical possession continued with them.

THE DETAILS OF THE LITIGATION BEFORE THE HIGH COURT

A. Smt. Geetha Devi Shah's case.

4.1 Respondent No. 3 challenged the acquisition of her land comprised in Survey No. 49 in Writ Petition No. 16419/1992. The appellant also filed Writ Petition No.29603/1994 questioning the legality of notification issued under Section 48(1). By two separate orders dated 18.11.1996, the learned Single Judge dismissed both the writ petitions. The writ petition filed by respondent No. 3 was dismissed only on the ground of 2= years' delay between the issue of the declaration under Section 6(1) of the 1894 Act and filing of the writ petition. The explanation given by

Respondent No. 3 that on her representations, the Government had withdrawn the acquisition of land comprised in Survey No. 50/2 and she was awaiting the Government's decision in respect of other parcel of land, was not considered satisfactory by the learned Single Judge. The writ petition of the appellant was dismissed by the learned Single Judge by observing that the State Government has absolute power to withdraw the acquisition before the possession of the acquired land can be taken.

> 4.2 Respondent No. 3 challenged the order of the learned Single Judge in Writ Appeal No. 9913/1996. The Division Bench of the High Court first considered the question whether the learned Single Judge was right in dismissing the writ petition only on the ground of delay and answered the same in negative by making the following observations: After hearing the rival contentions of the appellant and contesting respondent and perusing the pleadings of both the parties, we are of the opinion that the learned Single Judge has erred in taking into consideration the delay of 2 = years from the date of final notification. The learned Single Judge has not considered the explanation given by the petitioner at paragraphs 12 to 15 wherein, he has explained regarding delay. The State Government has issued notice dated 6.1.1990 of inspection of lands proposed to be held at 10.30 a.m. on 16.8.1990 and the Land Acquisition Officer conducted spot inspection and satisfied that the lands could be deleted and further another notice dated 6.2.1990 of fixing the inspection of the spot on 9.2.1990 was received in pursuance of the same spot inspection was held and one more notice dated 7.3.1990, 11.5.1990 on those days inspection was not made. Thereafterwards, he submitted the petition to the Revenue Secretary. His enquiries with the Revenue Secretary revealed the proceedings bearing No. RD 294 AQB 90 dated 5.10.1991 one Mr. N. Lokraj, Under Secretary to the Government called for reports on the matter vide Notification dated 29.1.1992. Therefore, the grievance of the petitioner was pending consideration before the Government under Section 15A of the Land Acquisition Act as on 29th January, 1992. In this regard, we have perused the record produced by the Government. These facts with reference to the denotification of the acquisition in respect of the land in question along with other lands are reflected therein. Further the explanation offered by the appellant at paragraph 15 in the writ petition clearly show the bonafides on the part of the appellant in the matter of challenging the acquisition proceedings, as he had submitted the representation to the Revenue Department seeking for denotification of the land in question. In our opinion the delay with regard to the challenge of the proceedings has been

satisfactorily explained by the appellant. Therefore, non-consideration of the explanation and rejection of the petition by the learned Single Judge solely on the ground of delay and latches cannot be sustained. Moreover relief cannot be denied to a party merely on the ground of delay. In fact, in view of the subsequent events after the final notification, it cannot be said that the appellant has approached this Court belatedly.

4.3 The Division Bench then scrutinized records relating to the acquisition of land, relied upon the judgment in H.M.T. House Building Cooperative Society v. Syed Khader and others (1995) 2 SCC 677 (hereinafter described as `Ist HMT Case') and held:

It is a mandatory requirement in law, since no prior approval of the scheme has been obtained by the second respondent from the State Government first respondent herein, the acquisition by the first respondent cannot be held to be for public purpose as the mandatory requirement as contemplated under Section 3(f)(VI) has not been complied with. Hence the acquisition proceedings have to be held as invalid, and on this ground the acquisition proceedings are liable to be quashed. In its counter at paragraph it has not positively stated with regard to the fact of prior approval of the scheme as required under Section 3(f)(VI) of the Act is granted by the Government. On the other hand, what is stated by the second respondent at paragraph 5 of the counter is that the said society had submitted necessary scheme to the first respondent for the purpose of initiating acquisition proceedings under Section 4(1) of the Act. The acquisition proceedings were to be initiated after fully satisfying the requirement under Section 3(f)(VI) of the Act. Therefore, the contention of the learned Counsel for the respondent that the acquisition proceedings are in accordance with law which cannot be accepted in the absence of specific, positive assertion and proof in this regard. The burden is on the first and second respondents to show that there is prior approval of the housing scheme to initiate the acquisition proceedings in respect of the land in question. The same is not established. In this view of the matter and in view of the law declared by the Apex court in H.M.T. case supra, we have no option but to hold that there is no housing scheme approved by the State Government. Hence on this ground the acquisition proceedings are liable to be quashed.

The Division Bench also opined that the Special Land Acquisition Officer had submitted report without giving opportunity of hearing to respondent No. 3 and this was sufficient to nullify the acquisition of her land.

4.4 Civil Petition No. 366/1998 filed by the appellant for review of judgment dated 16.3.1998 was dismissed by the Division Bench by observing that once the Government had issued notification under Section 48(1) nothing survives for consideration.

4.5 Writ Appeal No. 1459/1997 filed by appellant against the negation of its challenge to notification issued under Section 48(1) was dismissed by the Division Bench vide judgment dated 12.3.1998 along with other similar writ appeals and writ petition.

B. Shri P. Ramaiah and others case.

5.1 Shri P. Ramaiah and others also challenged the acquisition proceedings in Writ Petition No.10406/1991. The learned Single Judge allowed the writ petition by relying upon order dated 15.6.1998 passed by the Division Bench of the High Court in Writ Petition Nos. 3539-42/1996 wherein it was held that after the amendment of the 1894 Act by Act No. 68 of 1984, the Deputy Commissioner did not have the authority to issue notification under Section 4(1) of the 1894 Act.

5.2 The appellant challenged the order of the learned Single Judge in Writ Appeal No. 4246/1998. The State of Karnataka and the Special Land Acquisition Officer also filed Writ Appeal No. 6039/1998. The Division Bench of the High Court dismissed both the appeals by common judgment dated 6.2.2004. The Division Bench referred to the judgment of this Court in 1st H.M.T. case and held that the acquisition was vitiated due to adoption of corrupt practice by the appellant, which had engaged an agent for ensuring the acquisition of land and large amounts of money changed hands in the process.

5.3 When the learned counsel for Shri P. Ramaiah and other respondents pointed out that there were certain errors in judgment dated 6.2.2004 inasmuch as Smt. Geetha Devi Shah's case has been referred to instead of the citation of H.M.T. House Building Cooperative Society v. Syed Khader and others (supra), the Division Bench suo motu corrected the errors vide order dated 11.2.2004.

5.4 Review Petition Nos. 166 and 170 of 2004 filed by the appellant were dismissed by another Division Bench of the High Court which declined to entertain the appellant's plea that the issues raised by Shri P. Ramaiah and

others are covered by the judgment of the High Court in Subramani v. Union of India ILR 1995 KAR 3139 and that in view of the dismissal of SLP(C) Nos. 12012-17/1997 filed against the order passed in Writ Appeal Nos. 7953-62/1996 - Byanna and others v. State of Karnataka, the order passed by the Division Bench was liable to be set aside. The Division Bench held that the judgment in P. Ramaiah's case does not suffer from any error apparent requiring its review.

6. Before proceeding further, we consider it appropriate to mention that in furtherance of the directions contained in judgments in Writ Appeal No. 9913/1996 filed by respondent No.3 and Writ Petition No. 10406/1991 filed by Shri P. Ramaiah and others, the State Government issued notification under Section 48(1) dated 25.6.1999 for release of the lands comprised in Survey Nos. 49, 7/1 and 8/1. However, when the appellant filed Contempt Petition No. 946/1999, the Government vide its order dated 15.11.1999 withdrew Notification dated 25.6.1999.

The grounds of challenge and the arguments.

7.1 The appellant has challenged the impugned judgments on several grounds most of which relate to the case of respondent No. 3. Therefore, we shall first deal with those grounds. Shri Dushyant Dave and Shri P. Vishwanatha Shetty, learned senior counsel for the appellant argued that the writ petition filed by respondent No. 3 was highly belated and the Division Bench of the High Court committed serious error by interfering with the discretion exercised by the learned Single Judge not to entertain her challenge to the acquisition of land on the ground of delay of more than 2-1/2 years. In support of this argument, learned senior counsel relied upon the judgments of this Court in Ajodhya Bhagat v. State of Bihar (1974) 2 SCC 501, State of Mysore v. V.K. Kangan (1976) 2 SCC 895, Pt. Girdharan Prasad Missir v. State of Bihar (1980) 2 SCC 83, Hari Singh v. State of U.P. (1984) 2 SCC 624, Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd. (1996) 11 SCC 501, Urban Improvement Trust, Udaipur v. Bheru Lal (2002) 7 SCC 712 and Swaika Properties (P) Ltd. v. State of Rajasthan (2008) 4 SCC 695.

7.2 Shri P.P. Rao, learned senior counsel appearing for the private respondents argued that respondent No. 3 was not guilty of delay and laches and the Division Bench rightly accepted the explanation given by her. Shri Rao submitted that respondent No. 3 had represented to the State Government and its functionaries to withdraw the acquisition of her land and

> as the State Government accepted her plea in respect of Survey No. 50/2 and issued Notification dated 3.8.1991, she was very hopeful that the acquisition in respect of the remaining land will also be withdrawn and this was the reason why she did not approach the Court soon after the issue of declaration under Section 6(1) of the 1894 Act. Learned senior counsel pointed out that vide letters dated 5.10.1991 and 29.1.1992, the Revenue Department had asked Special Deputy Commissioner, Bangalore to submit report regarding Survey No. 49 and this gave rise to a legitimate hope that the State Government would withdraw the acquisition in respect of that parcel of land. Learned senior counsel relied upon the judgments in Sheikhupura Transport Co. Ltd. v. Northern India Transport Insurance Company (1971) 1 SCC 785 and C.K. Prahalada v. State of Karnataka (2008) 15 SCC 577 and argued that in exercise of power under Article 136 of the Constitution, this Court will not interfere with the discretion exercised by the High Court in the matter of condonation of delay.

8. We have considered the respective arguments. The framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution and it is only one of the several rules of self-imposed restraint evolved by the superior Courts that the jurisdiction of the High Court under Article 226 of the Constitution, which is essentially an equity jurisdiction, should not be exercised in favour of a person who approaches the Court after long lapse of time and no cogent explanation is given for the delay. In Tilokchand Motichand v. H.B. Munshi (1969) 1 SCC 110, the Constitution Bench considered the question whether the writ petition filed under Article 32 of the Constitution for refund of the amount forfeited by the Sales Tax Officer under Section 21(4) of the Bombay Sales Tax Act, which, according to the petitioner, was ultra vires the powers of the State legislature should be entertained ignoring the delay of almost nine years. Sikri and Hedge, JJ. were of the view that even though the petitioner had approached the Court with considerable delay, the writ petition filed by it should be allowed because Section 12(a)(4) of the Bombay Sales Tax Act was declared unconstitutional by the Division Bench of the High Court. Bachawat and Mitter, JJ. opined that the writ petition should be dismissed on the ground of delay. Chief Justice Hidayatullah who agreed with Bachawat and Mitter, JJ. noted that no period of limitation has been prescribed for filing a petition under Article 32 of the Constitution and proceeded to observe:

> Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some article but this Court

> need not necessarily give the total time to the litigant to move this Court under Article 32. Similarly in a suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental Right and the remedy claimed are when and how the delay arose.

9. The ratio of the aforesaid decision is that even though there is no period of limitation for filing petitions under Articles 32 and 226 of the Constitution, the petitioner should approach the Court without loss of time and if there is delay, then cogent explanation should be offered for the same. However, no hard and fast rule can be laid down or a straight-jacket formula can be adopted for deciding whether or not this Court or the High Court should entertain a belated petition under filed under Article 32 or Article 226 of the Constitution and each case must be decided on its own facts.

10. In the light of the above, we shall now consider whether respondent No.3 had satisfactorily explained the delay. In paragraphs 12, 13 and 14 of the writ petition filed by her, respondent No. 3 made the following averments.

> 12. ENQUIRY REGARDING DELETION
>
> > Annexure L dated 6.1.1990 is a notice of inspection of lands proposed to be held at 10.30a.m. on 16.8.1990. On 16.1.1990, Shri Harish Gowda, the then Land Acquisition Officer was pleased to hold an inspection and was also satisfied that the lands could be deleted since the same comprised a well-maintained orchard, though on a very uneven land also for reasons that they were situated on one extreme end of the area proposed to be acquired. Strange to say, the said officer was transferred, the petitioner is at Serial No. 5 among the addressee of the said notice.
>
> 13. ANNEXURE `M' dated 6.2.1990 is yet another notice of inspection fixed for 10.00 AM on 2.2.1990. No inspection have been held on that day, the petitioner received ANNEXURE `N' dated 7.5.1990 intimating that an inspection will be held at 11.30AM on 14.3.1990. The petitioner submits that nobody turned up on that day also. The petitioner once again complained to the Revenue Secretary. Thereupon the petitioner received ANNEXURE `O' dated 11.5.1990 intimating that the inspection will be held at 11.00 AM on 14.5.1990. However, the Land Acquisition Officer did not visit the lands on 14.5.1990 or on the following day as orally stated. On the

> very next day, i.e., 16th May, 1990, the petitioner submitted ANNEXURE `P' to the Special Land Acquisition Officer with a copy to the Revenue Secretary, requesting for an inspection on a fixed time and date. The petitioner submits that to this day no inspection has been held by any of the officers who had succeeded Shri Harish Gowda in pursuance of notices mentioned above at Annexures `L', `M', `N', `O' respectively. The petitioner was given to understand that she will be informed in due course. However, the petitioner has not received any such notice.
>
> 14. The plaintiff submits that recent enquiries show that the Secretariat (Revenue Department) had addressed two communications to the Special Deputy Commissioner, Krishi Bhavan, Bangalore, bearing No. RD 294 AQB 90 dated 5.10.1991 and 22.1.1992 under the signature of Sri. M. Lokraj, Under Secretary to Government, Revenue Department calling for reports on the matter immediately. ANNEXURE `Q' and `R' are Xerox copies of the said communications dated 5.10.1991 and 29.1.1992. These clearly go to show that the petitioner's grievances regarding the legality and propriety of the proceedings and the question of deletion had been taken up for consideration under Section 15(A) of the Land Acquisition Act and that the enquiry was still pending even as late as 29th January, 1992, which is the date of Annexure `R'.

11. Paragraph 15 of the writ petition in which respondent No. 3 spelt out the reasons for her seeking intervention of the High Court reads as under:

> 15. However, a couple of days ago, the petitioner's son received an anonymous telephone call informing that the office of the Special Land Acquisition Officer at the instance of the 2nd respondent is about to create documents for having taken possession of the petitioner's lands on the basis of an ante-dated Award. The petitioner submits that she immediately took legal advice and was advised that no award having been passed within 2 years of Section 6(1) declaration, the proceedings had lapsed. She was also advised that in the light of the latest decision of this Hon'ble Court reported in ILR 1991 KAR 2248, the notifications are vitiated in law and a writ petition may be filed seeking appropriate reliefs including stay of all further proceedings and injunction against unlawful dispossession. Hence this writ on the following among other grounds.

12. The aforesaid averments were not controverted by respondent Nos. 1 and 2 herein. Notwithstanding this, the learned Single Judge refused to accept the

explanation given by respondent No. 3 that she was hopeful that after having withdrawn the acquisition in respect of one parcel of land, i.e., Survey No. 50/2, the State Government will accept her prayer for withdrawal of the acquisition in respect of Survey No. 49 as well. Unfortunately, the learned Single Judge altogether ignored the fact that soon after the issue of the declaration under Section 6(1) of the 1894 Act and notices under Sections 9 and 10 of the said Act, the writ petitioner received letter dated 6.1.1990 that she should make herself available for inspection of the land and on 16.1.1990 Shri Harish Gowda, the then Land Acquisition Officer inspected the site and felt satisfied that the same could be deleted because it was an orchard and was at the end of the area proposed to be acquired. The learned Single Judge also omitted to consider the following:

> (i) notices dated 6.2.1990 and 7.5.1990 were issued to respondent No.3 informing her about the proposed inspection of the site;
>
> (ii) she made a complaint to the Revenue Secretary that no one had come for inspection;
>
> (iii) yet another notice dated 11.5.1990 was received by respondent No.3 for inspection will be held on 14.5.1990 but the concerned officer did not turn up;
>
> (iv) letters dated 5.10.1991 and 22.1.1992 were sent by the Revenue Department to Special Deputy Commissioner, Bangalore requiring him to submit report in the matter of withdrawal of acquisition; and
>
> (v) in paragraph 15 of the writ petition, she had disclosed the cause for her filing the writ petition in May 1992.

In our view, non-consideration of these vital facts and documents by the learned Single Judge resulted in miscarriage of justice. The Division Bench did not commit any error by holding that respondent No.3 was not guilty of laches.

13. The judgments relied upon by learned counsel for the parties turned on their own facts and the same do not contain any binding proposition of law. However, we may briefly notice the reasons which influenced the Court in declining relief to the petitioner(s) in those cases on the ground of delay. In Ajodhya Bhagat's case, this Court noted that the writ petition had been filed after 6 years of finalization of the acquisition proceedings and held that the High Court was justified in declining

relief to the petitioner on the ground that he was guilty of laches. In V.K. Kangan's case, the Court held the delay of 2 years in challenging the acquisition proceedings was unreasonable because it came to the conclusion that the respondents' primary challenge to the acquisition proceedings was legally untenable. In Pt. Girdharan Prasad Missir's case, this Court approved the view taken by the High Court that unexplained delay of 17 months in challenging the award was sufficient to non-suit the writ petitioner. In Hari Singh's case, the Court held that even though the High Court had summarily dismissed the writ petition without assigning reasons, the appellants' challenge to the acquisition proceedings cannot be entertained because co-owners had not challenged the acquisition proceedings, disputed questions of fact were involved and there was delay of 2= years. In Municipal Corporation of Greater Bombay's case, this Court reversed the order of the Bombay High Court which had quashed the acquisition proceedings ignoring the fact that the respondent had approached the Court after substantial delay calculated with reference to the date of award and, in the meanwhile, several steps had been taken by the Corporation for implementing the scheme. In Bheru Lal's case, this Court set aside the order of the High Court which had quashed the acquisition proceedings and observed that the writ petition should have been dismissed because the respondent had not offered any explanation for the delay of two years. In Swaika Properties' case, the Court noted that the appellant had first challenged the acquisition of land situated in Rajasthan by filing a petition in the Calcutta High Court and after three years, it filed writ petition in the Rajasthan High Court and concluded that the delay in challenging the acquisition was sufficient to deny relief to the petitioner.

14. The second ground on which judgment dated 16.3.1998 has been questioned is that the Division Bench of the High Court committed an error by nullifying the acquisition on the ground of non-compliance of Section 3(f)(vi) of the 1894 Act. Shri Dushyant Dave and Shri Vishwanatha Shetty, learned counsel for the appellant and Shri S.R. Hegde, learned counsel for the State pointed out that in the writ petition filed by her, respondent No.3 had not taken a specific plea that the acquisition was contrary to Section 3(f)(vi) of the 1894 Act and that the factual foundation having not been laid by respondent No.3, the Division Bench of the High Court did not have the jurisdiction to declare that the acquisition was not for a public purpose. Learned senior counsel relied upon the judgments in M/s. Tulasidas Khimji v. Their Workmen (1963) 1 SCR 675, Third Income-tax Officer, Mangalore v. M. Damodar Bhat (1969) 2 SCR 29, Ram Sarup v. Land Acquisition Officer (1973) 2 SCC 56, Sockieting Tea Co. (P) Ltd. v. Under Secy. to the Govt. of Assam (1973) 3 SCC 729, Bharat Singh v. State of Haryana, (1988) 4 SCC 534, Umashanker Pandey v. B.K. Uppal, (1991) 2 SCC 408, M/s. Jindal Industries Ltd.

v. State of Haryana 1991 Supp (2) SCC 587, D.S. Parvathamma v. A. Srinivasan (2003) 4 SCC 705, Shipping Corpn. of India Ltd. v. Machado Bros. (2004) 11 SCC 168, J.P. Srivastava Sons (P) Ltd. v. Gwalior Sugar Co. Ltd., (2005) 1 SCC 172 and Shakti Tubes Ltd. v. State of Bihar (2009) 7 SCC 673 and submitted that the Division Bench of the High Court should not have entertained an altogether new plea raised for the first time.

15. Shri Dushyant Dave also relied upon order dated 12.4.1996 passed by the High Court in Writ Petition Nos. 28577-586/1995 - Byanna and others v. State of Karnataka, order dated 3.12.1996 passed by the Division Bench in Writ Appeal No. 7953/1996 and connected matters, order dated 23.7.1997 passed by this Court in SLP(C) Nos. 12012-17/1997, order dated 22.11.1995 passed by the learned Single Judge in Writ Petition No. 17603/1989 - Smt. Sumitramma and another v. State of Karnataka and others, order dated 1.1.1996 passed by the Division Bench of the High Court in Writ Appeal No. 5081/1995 with the same title and order dated 4.10.1996 passed in SLP (C) No. 10270/1996, Kanaka Gruha Nirmana Sahakara Sangha v. Narayanamma (2003) 1 SCC 228, referred to the recommendations made by SLCC in its 20th meeting held on 26.2.1988 and letter dated 21.5.1988 sent by State Government to Deputy Commissioner, Bangalore and argued that the direction given by the State Government to Deputy Commissioner, Bangalore for initiating the acquisition proceedings should be treated as approval of the housing scheme framed by the appellant.

16. Shri Vishwanatha Shetty argued that even if there was no express approval by the State Government to the acquisition of land of the appellant, the required approval will be deemed to have been granted because the State Government had contributed Rs.100 towards the acquisition of land. In support of this argument, Shri Shetty relied upon the judgments of this Court in Smt. Somavanti and others v. The State of Punjab and others (1963) 2 SCR 774: AIR 1963 SC 151 and Pratibha Nema v. State of M.P. (2003) 10 SCC 626 and agreement dated 8.7.1988 executed between the appellant and the State Government.

17. Shri P.P. Rao pointed out that in paragraph 2 of the writ petition, respondent No. 3 had specifically pleaded that the acquisition of land for carrying out any educational, housing, health or slum clearance scheme by the appellant had to be with the prior approval of the appropriate Government in terms of Section 3(f)(vi) and argued that the averments contained in that paragraph were sufficient to enable the High Court to make an inquiry whether the acquisition of the land in question was preceded by the State Government's approval to the housing scheme framed by the appellant. Learned senior counsel submitted that the Division Bench of the

High Court did not commit any error by recording a finding that the acquisition of the land belonging to respondent No. 3 cannot be treated as one made for public purpose because the appellant had not prepared any housing scheme.

18. The question whether the acquisition of the land in question can be treated as one made for public purpose as defined in Section 3(f) needs to be prefaced by making a reference to the following provisions of the 1894 Act: Section 3(cc) as amended by Act No.68 of 1984 3.(cc) the expression corporation owned or controlled by the State means any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty-one per centum of the paid-up share capital is held by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;

> Section 3(e) as amended by Act No.68 of 1984 3.(e) the expression Company means-(i) a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), other than a Government company referred to in clause (cc); (ii) a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc); (iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co- operative society referred to in clause (cc); Section 3(f) as amended by Act No.68 of 1984 (f) the expression public purpose includes-
>
> (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;
>
> (ii) the provision of land for town or rural planning;
>
> (iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies;

Section 39 as amended by Act No.68 of 1984

39. Previous consent of appropriate Government and execution of agreement necessary. - The provisions of sections 6 to 16 (both inclusive) and sections 18 to 37 (both inclusive) shall not be put in force in order to acquire land for any company under this Part, unless with the previous consent of the appropriate Government, not unless the Company shall have executed the agreement hereinafter mentioned.

40. Previous enquiry. –

> (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under section 5A, sub-section (2), or by an enquiry held as hereinafter provided, -

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 (5 of 1908) in the case of Civil Court.

41. Agreement with appropriate Government. - If the appropriate Government is satisfied after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40 that the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40, it shall require the Company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely:-

(1) the payment to the appropriate Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time

within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;

(4A) where the acquisition is for the construction of any building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, and the conditions on which, the building or work shall be constructed or executed; and

(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work.

42. Publication of agreement. - Every such agreement shall, as soon as may be after its execution, be published in the Official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

(3) the terms on which the land shall be held by the Company;

(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;

(4A) where the acquisition is for the construction of any building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, and the conditions on which, the building or work shall be constructed or executed; and

(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work.

42. Publication of agreement. - Every such agreement shall, as soon as may be after its execution, be published in the Official Gazette, and shall

> thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

19. An analysis of the definitions noted hereinabove shows that all the cooperative societies have been classified into two categories. The first category consists of the cooperative societies in which not less than 51% of the paid-up share capital is held by the Central Government or any State Government or partly by the Central Government and partly by one or more State Governments. The second category consists of the cooperative societies other than those falling within the definition of the expression `corporation owned or controlled by the State' [Section 3(cc)]. The definition of the term `company' contained in Section 3(e) takes within its fold a company as defined in Section 3 of the Companies Act, 1956 other than a government company referred to in clause (cc), a society registered under the Societies Registration Act or under any corresponding law framed by the State legislature, other than a society referred to in clause (cc) and a cooperative society defined as such in any law relating to cooperative societies for the time being in force in any State, other than a cooperative society referred to in clause (cc). The definition of the expression `public purpose' contained in Section 3(f) is inclusive. As per clause (vi) of the definition, the expression `public purpose' includes the provision of land for carrying out any educational, housing health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a Local Authority, or a society registered under the Societies Registration Act, 1860 or any corresponding law in force in a State or a cooperative society as defined in any law relating to cooperative societies for the time being in force in any State. To put it differently, the acquisition of land for carrying out any education, housing, health or slum clearance scheme by a registered society or a cooperative society can be regarded as an acquisition for public purpose only if the scheme has been approved by the appropriate Government before initiation of the acquisition proceedings. If the acquisition of land for a cooperative society, which is covered by the definition of the term `company' is for any purpose other than public purpose as defined in Section 3(f), then the provisions of Part VII would be attracted and mandate thereof will have to be complied with.

20. In our view, there is no merit in the argument of learned senior counsel for the appellant and learned counsel for the State that the Division Bench of the High Court committed an error by recording a finding on the issue of violation of Section 3(f)(vi) of the 1894 Act because respondent No. 3 had not raised any such plea in the writ petition. In paragraph 2 of the writ petition, respondent No. 3 made

the following averments: The acquisition of any land under the Act for the benefit of the 2nd respondent will not be for a public purpose and will have to be in accordance with the provisions contained in Part VII of the Act. In any case, even if the acquisition is for carrying out any educational, housing, health or slum clearance scheme of the 2nd respondent, the same shall be with the prior approval of the appropriate Government (Vide Sec. 3(f)(vi) of the Act). The appellant neither controverted the above-extracted averments nor produced any document before the High Court to show that it had prepared a housing scheme and the same had been approved by the State Government before the issue of notification under Section 4(1) of the 1894 Act. Therefore, the Division Bench of the High Court rightly held that the acquisition in question was not for a public purpose as defined in Section 3(f)(vi) of the 1894 Act.

21. We shall now examine whether the appellant had, in fact, framed a housing scheme and the same had been approved by the State Government. The first of these documents is representation dated 7.12.1984 made by the Executive Director of the appellant to the Minister of Revenue, Government of Karnataka. The other two documents are letter dated 21.5.1988 sent by the State Government to Deputy Commissioner, Bangalore to issue notification under Section 4(1) of the 1894 Act and agreement dated 7.8.1988 entered into between the Executive Director of the appellant and the State Government. A close and careful reading of these documents reveals that although, in the representation made by him to the Revenue Minister, the Executive Director of the appellant did make a mention that the object of the society is to provide house sites to its members who belong to working class and other backward class people belonging to weaker class of society and the members are poor and siteless people, there was not even a whisper about any housing scheme. The direction issued by the State Government to Deputy Commissioner, Bangalore to issue the preliminary notification for an extent of 207 acres 29 guntas land also does not speak of any housing scheme. The agreement entered into between the appellant through its Executive Director and the State Government does not contain any inkling about the housing scheme framed by the appellant. It merely mentions about the proposed formation of sites and construction of houses for the members of the appellant and payment of cost for the acquired land. The agreement also speaks of an inquiry having been got made by the State Government in conformity with the provisions of the 1894 Act and the grant of consent for the acquisition of land for the benefit of society's members. The agreement then goes on to say that the appellant shall pay to the Government the entire costs of the acquisition of land and expenses. Paragraph 2 of the conditions incorporated in the agreement speaks of transfer of land to the society as to vest in the company. Clause 9(a) of the agreement did provide for

token contribution of Rs.100 by the Deputy Commissioner / Special Deputy Commissioner towards the compensation to be determined by the Assistant Commissioner/Special Land Acquisition Officer, but that is not relatable to any housing scheme framed by the appellant. It is, thus, evident that the appellant had not framed any housing scheme and obtained its approval before the issue of notification under Section 4(1) of the 1894 Act.

22. The 1976 Act does provide for framing of various schemes including housing scheme. Section 15 of that Act empowers the BDA to undertake works and incur expenditure for development. In terms of Section 15(1)(a), the BDA is entitled to draw up detailed schemes for the development of the Bangalore Metropolitan Area and in terms of clause (b), the BDA can with the previous approval of the Government undertake any work for the development of the Bangalore Metropolitan Area and incur expenditure therefor and also for the framing and execution of development schemes. Sub-sections (2) and (3) empower the BDA to make and take up any new or additional development scheme either on its own or on the recommendations of the Local Authority or as per the direction of the State Government. Section 16 of the 1976 Act lays down that every development scheme shall provide for the acquisition of any land which is considered necessary for or affected by the execution of the scheme; laying and re-laying out all or any land including the construction and reconstruction of buildings and formation and alternation of scheme, drainage, water supply and electricity. Sub-section (3) of Section 16 envisages construction of houses by the BDA as part of the development scheme. Section 32 which contains a non obstante clause postulates forming of new extensions or layouts by private persons. Though, sub- section (1) thereof is couched in negative form, it clearly provides for formation of any extension or layout by a private person with the written sanction of the BDA and subject to the terms and conditions which it may specify. Sub-section (2) of Section 32 provides for making of written application along with plans and sections showing various matters enumerated in clauses (a) to (d). Similar provisions are contained in Section 18 of the Karnataka Housing Board Act.

23. Although, the appellant may not have been required to frame a scheme in strict conformity with the provisions of the 1976 Act and the Housing Board Act, but it was bound to frame scheme disclosing the total number of members eligible for allotment of sites, the requirement of land including the size of the plots and broad indication of the mode and manner of development of the land as a layout. The State Government could then apply mind whether or not the housing scheme framed by the appellant should be approved. However, as mentioned above, the appellant did not produce any evidence before the High Court to show that it had

framed a housing scheme and the same was approved by the State Government before the issue of notification under Section 4(1) of the 1894 Act. Even before this Court, no material has been produced to show that, in fact, such a scheme had been framed and approved by the State Government. Therefore, the Division Bench of the High Court rightly referred to Section 3(f)(vi) and held that in the absence of a housing scheme having been framed by the appellant, the acquisition of land belonging to respondent No. 3 was not for a public purpose as defined in Section 3(f)(vi).

24. In Narayana Reddy v. State of Karnataka ILR 1991 (3) KAR 2248, the Division Bench of the High Court considered whether the acquisition of land made on behalf of 7 house building cooperative societies including H.M.T. Employees' Cooperative Society and Vyalikaval House Building Cooperative Society was for a public purpose as defined in Section 3(f)(vi) or the same was colourable exercise of power by the State Government. A reading of the judgment shows that when the writ petitions questioning the acquisition of land were placed before the learned Single Judge, he felt that the points which were raised by the petitioners had not been considered in the earlier judgment of the Division Bench in Narayana Raju v. State of Karnataka ILR 1989 KAR 376, which was confirmed by this Court in Narayana Raju v. State of Karnataka ILR 1989 KAR 406 and referred the matter to the Division Bench under Section 9 of the Karnataka High Court Act. The Division Bench first considered whether the acquisition of land on behalf of house building cooperative societies was for a public purpose. After noticing the relevant statutory provisions, the Division Bench referred to the judgments of this Court in State of Gujarat v. Chaturbhai Narsibhai AIR 1975 SC 629, General Government Servants Cooperative Housing Society Limited v. Kedar Nath (1981) 2 SCC 352 and M/s. Fomento Resorts and Hotels Limited v. Gustavo Ranato Da Cruz Pinto AIR 1985 SC 736 and held that the earlier decisions support the writ petitioners' plea that they were entitled to be heard before the Government could grant approval for the acquisition of land on behalf of cooperative societies, but their plea cannot be accepted in view of the latter judgment. The Division Bench further held that the aggrieved person can raise all points during the course of an inquiry held under Section 5A of the 1894 Act. The Division Bench then referred to the averments contained in Writ Petition Nos.7683-7699/1988 in which the acquisition of land for various House Building Cooperative Societies was challenged, the advertisement issued by the society, agreement entered into between HMT Cooperative Society and the Estate Agent who assured that he will get the acquisition approved at an early date subject to payment of the specified amount, various reports including the one prepared by G.V.K.Rao, order dated 14.1.1991 passed by the State Government and quashed the acquisition.

25. The Division Bench of the High Court held that the whole acquisition was vitiated due to malafides and manipulations done by the House Building Cooperative Societies through the Estate Agent. The Division Bench also referred to Section 23 of the Contract Act, judgment of this Court in Rattan Chand Hira Chand v. Askar Nawaz Jung JT 1991 (1) SC 433 and held as under: Applying the ratio of the above judgment, there can be no doubt that the Agreements entered into between the six respondent- Societies and their respective agents in which one of the condition was payment of huge sums of money by the Society to the agent in consideration of which the agent had to get the Preliminary and Final Notifications issued by the Government, was for the purpose of influencing the Government and to secure approval for acquisition of the lands and therefore opposed to public policy.

> The question however, for our consideration is, whether the impugned Notifications are liable to be quashed. In our opinion, once it is clear that the Agreement entered into between the Societies and the agents concerned, under which the purport of one of the clauses was that the agent should influence the Government and to procure Preliminary and Final Notifications under Sections 4 and 6 of the Act respectively are opposed to public policy, the impugned Notifications being the product or fruits of such an agreement are injurious to public interest and detrimental to purity of administration and therefore cannot be allowed to stand. As seen from the findings of G.V.K. Rao Inquiry Report, in respect of five respondent-Societies and the report of the Joint Registrar in respect of Vyalikaval House Building Cooperative Society, these Societies had indulged in enrolling large number of members illegally inclusive of ineligible members and had also indulged in enrolling large number of bogus members. The only inference that is possible from this is that the office bearers of the Societies had entered into unholy alliance with the respective agents for the purpose of making money, as submitted for the petitioners. Otherwise, there is no reason as to why such an Agreement should have been brought about by the office bearers of the Society and the agents. Unless these persons had the intention of making huge profits as alleged by the petitioners, they would not have indulged in entering into such Agreements and would not have indulged in enrolment of ineligible and bogus members. The circumstance that without considering all these relevant materials the Government had accorded its approval, is sufficient to hold that the agents had prevailed upon the Government to take a decision to acquire the lands without going into all those relevant facts. The irresistible inference flowing from the facts and

> circumstances of these cases is, whereas the power conferred under the Land Acquisition Act is for acquiring lands for carrying out housing scheme by a housing society, in each of the cases the acquisition of lands is not for a bona fide Housing Scheme but is substantially for the purpose of enabling the concerned office bearers of respondent-Societies and their agents to indulge in sale of sites in the guise of allotment of sites to the Members/Associate Members of the Society and to make money as alleged by the petitioners and therefore it is a clear case of colourable exercise of power. Thus the decision of the Government to acquire the lands suffers from legal mala fides and therefore the impugned Notifications are liable to be struck down.

26. In the 1st H.M.T. Case, this Court approved the judgment of the Division Bench of the High Court. The three-Judge Bench considered questions similar to those raised in these appeals, referred to the agreement entered into between the appellant and the State Government whereby the former agreed to abide by the conditions specified in Sections 39 and 40 of Part VII of the 1894 Act and held:

> 12. There is no dispute that the society with which we are concerned shall not be covered by the expression corporation owned or controlled by the State, because the said expression shall include a cooperative society, being a cooperative society in which not less than 51 per centum of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.
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> 13. The substituted definition of the expression `company' in Section 3(e)(iii) will certainly include the appellant-Society. The substituted definition of the expression `company' shall include cooperative society, within the meaning of any law relating to cooperative societies other than those referred to in clause (cc) of Section 3 of the Act. Such cooperative society shall be deemed to be a company, to which provisions of Chapter VII relating to acquisition of land for company shall be applicable.
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> 14. In view of the substituted definition of the expression public purpose, in Section 3(f)(vi), the provision for carrying out any housing scheme sponsored by the Government or by any authority established by Government for carrying out any such scheme shall be deemed to be a public purpose. It further says that the provision of land for carrying out any housing scheme with prior approval of the State Government by a cooperative society within the meaning of any law relating to cooperative

societies for the time being in force in any State, shall be deemed to be a public purpose. As such for any housing cooperative society lands can be acquired by the appropriate Government, treating the same as acquisition for the public purpose. But, in that event, there has to be a prior approval of such scheme by the appropriate Government. When the lands are acquired for any cooperative society with prior approval of the scheme by the State Government, there is no question of application of the provisions of Part VII of the Act. Such acquisition shall be on the mode of acquisition by the appropriate Government for any public purpose.

18. Now the question which is to be answered is as to whether in view of the definition of public purpose introduced by the aforesaid Amending Act 68 of 1984 in Section 3(f)(vi), is it open to the appropriate Government to acquire land for cooperative society for housing scheme without making proper enquiry about the members of the society and without putting such housing cooperative society to term in respect of nature of construction, the area to be allotted to the members and restrictions on transfer thereof?

19. According to us, in Section 3(f)(vi) the expression `housing' has been used along with educational and health schemes. As such the housing scheme contemplated by Section 3(f)(vi) shall be such housing scheme which shall serve the maximum number of members of the society. Such housing scheme should prove to be useful to the public. That is why Parliament while introducing a new definition of public purpose, said that any scheme submitted by any cooperative society relating to housing, must receive prior approval of the appropriate Government and then only the acquisition of the land for such scheme can be held to be for public purpose. If requirement of Section 3(f)(vi) is not strictly enforced, every housing cooperative society shall approach the appropriate Government for acquisition by applying Section 3(f) (vi) instead of pursuing the acquisition under Part VII of the Act which has become more rigorous and restrictive. In this background, it has to be held that the prior approval, required by Section 3(f)(vi), of the appropriate Government is not just a formality; it is a condition precedent to the exercise of the power of acquisition by the appropriate Government for a housing scheme of a cooperative society.

20. In the present case, a hybrid procedure appears to have been followed. Initially, the appellant- Society through M/s S.R. Constructions purported to acquire the lands by negotiation and sale by the landholders. Then from terms of the agreement dated 17-3-1988, it appears that the procedure

> prescribed in Part VII was to be followed and the lands were to be acquired at the cost of the appellant-Society treating it to be a `company'. The allegation made on behalf of the appellant-Society that the housing scheme had been approved by the appropriate Government on 7-11-1984 shall not be deemed to be a prior approval within the meaning of Section 3(f)(vi) but an order giving previous consent as required by Section 39 of Part VII of the Act. In the agreement dated 17-3-1988 it has been specifically stated:
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> And whereas the Government having caused inquiry to be made in conformity with the provisions of the said Act and being satisfied as a result of such inquiry that the acquisition of the said land is needed for the purpose referred to above has consented to the provisions of the said Act being in force in order to acquire the said land for the benefit of the society members to enter in the agreement hereinafter contained with the Government. But, ultimately, the lands have been acquired on behalf of the appropriate Government treating the requirement of the appellant-Society as for a public purpose within the meaning of Section 3(f)(vi). It is surprising as to how respondent M/s S.R. Constructions entered into agreement with the appellant-Society assuring it that the lands, details of which were given in the agreement itself, shall be acquired by the State Government by following the procedure of Sections 4(1) and 6(1) and for this, more than one crore of rupees was paid to M/s S.R. Constructions (Respondent 11).

27. The three Judge Bench also approved the view taken by the High Court that the acquisition of land was vitiated because the decision of the State Government was influenced by the Estate Agent with whom the appellant had entered into an agreement. Paragraphs 21 and 22 of the judgment, which contain discussion on this issue are extracted hereunder:

> 21. Mr G. Ramaswamy, learned Senior Counsel appearing on behalf of the appellant, submitted that merely because the appellant- Society had entered into an agreement with Respondent 11, M/s S.R. Constructions, in which the latter for the consideration paid to it had assured that the lands in question shall be acquired by the State Government, no adverse inference should be drawn because that may amount to a tall claim made on behalf of M/s S.R. Constructions in the agreement. He pointed out that the notifications under Sections 4(1) and 6(1) have been issued beyond the time stipulated in the agreement and as such, it should be held that the State Government has exercised its statutory power for acquisition of the lands in normal course, only after taking all facts and circumstances into consideration. There is no

dispute that in terms of agreement dated 1-2- 1985 payments have been made by the appellant-Society to M/s S.R. Constructions. This circumstance alone goes a long way to support the contention of the writ petitioners that their lands have not been acquired in the normal course or for any public purpose. In spite of the repeated query, the learned counsel appearing for the appellant-Society could not point out or produce any order of the State Government under Section 3(f)(vi) of the Act granting prior approval and prescribing conditions and restrictions in respect of the use of the lands which were to be acquired for a public purpose. There is no restriction or bar on the part of the appellant-Society on carving out the size of the plots or the manner of allotment or in respect of construction over the same. That is why the framers of the Act have required the appropriate Government to grant prior approval of any housing scheme presented by any cooperative society before the lands are acquired treating such requirement and acquisition for public purpose. It is incumbent on the part of the appropriate Government while granting approval to examine different aspects of the matter so that it may serve the public interest and not the interest of few who can as well afford to acquire such lands by negotiation in open market. According to us, the State Government has not granted the prior approval in terms of Section 3(f)(vi) of the Act to the housing scheme in question. The power under Sections 4(1) and 6(1) of the Act has been exercised for extraneous consideration and at the instance of the persons who had no role in the decision- making process -- whether the acquisition of the lands in question shall be for a public purpose. This itself is enough to vitiate the whole acquisition proceeding and render the same invalid.

22. In the present case there has been contravention of Section 3(f)(vi) of the Act inasmuch as there was no prior approval of the State Government as required by the said section before steps for acquisition of the lands were taken. The report of Shri G.K.V. Rao points out as to how the appellant-Society admitted large number of persons as members who cannot be held to be genuine members, the sole object being to transfer the lands acquired for public purpose, to outsiders as part of commercial venture, undertaken by the office-bearer of the appellant-Society. We are in agreement with the finding of the High Court that the statutory notifications issued under Sections 4(1) and 6(1) of the Act have been issued due to the role played by M/s S.R. Constructions, Respondent 11. On the materials on record, the High Court was justified in coming to the conclusion that the proceedings for acquisition of the lands had not been initiated because the State Government was satisfied about the existence of the public purpose but at

> the instance of agent who had collected more than a crore of rupees for getting the lands acquired by the State Government.

28. The view taken by this Court in 1st H.M.T. case was reiterated by another three Judge Bench in the case titled as H.M.T. House Building Cooperative Society v. M. Venkataswamappa (1995) 3 SCC 128 and by a two Judge Bench in Vyalikawal House Building Cooperative Society v. V. Chandrappa (2007) 9 SCC 304. In the last mentioned judgment, this Court declined to accept the argument of the appellant's counsel that the respondents have accepted the amount and observed:

> Learned counsel for the appellant tried to persuade us that as the amount in question has been accepted by the respondents, it is not open for them now to wriggle out from that agreement. It may be that the appellant might have tried to settle out the acquisition but when the whole acquisition emanates from the aforesaid tainted notification any settlement on the basis of that notification cannot be validated. The fact remains that when the basic notification under which the present land is sought to be acquired stood vitiated then whatever money that the appellant has paid, is at its own risk. Once the notification goes no benefit could be derived by the appellant. We are satisfied that issue of notification was mala fide and it was not for public purpose, as has been observed by this Court, nothing turns on the question of delay and acquiescence.

29. As noticed earlier, in this case also no housing scheme was framed by the appellant which is sine qua non for treating the acquisition of land for a cooperative society as an acquisition for public purpose within the meaning of Section 3(f). Not only this, the appellant executed agreement dated 21.2.1988 for facilitating the acquisition of land in lieu of payment of a sum of rupees more than 5 crores. This agreement was similar to the agreement executed by H.M.T. Employees' House Building Society with M/s. S.R. Constructions. The Estate Agent engaged by the appellant had promised that it will get the notifications issued under Sections 4(1) and 6(1) within four months and three months respectively. The huge amount which the appellant had agreed to pay to the Estate Agent had no co-relation with the services provided by it. Rather, the amount was charged by the Estate Agent for manipulating the State apparatus and facilitating the acquisition of land and sanction of layout etc. without any obstruction. Such an agreement is clearly violative of Section 23 of the Contract Act.

30. The stage has now reached for taking note of the orders passed by the High Court and this Court in other cases as also the judgment in Kanaka Gruha Nirmana

Sahakara Sangha v. Narayanamma (2003) 1 SCC 228, which have been relied upon by the learned senior counsel for the appellant in support of their argument that the H.M.T.'s case has not been followed in other similar cases. We have also taken note of some other orders, copies of which have been produced by the appellant.

> (i) Writ Petition Nos. 28577-86/1995 - Byanna and others v. State of Karnataka and others were dismissed by the learned Single Judge vide order dated 12.4.1996. The only contention raised in that case was that the acquisition was tainted by fraud. The learned Single Judge briefly adverted to the averments contained in writ petitions and the counter affidavits and negatived challenge to the acquisition proceeding. Paragraphs 3 to 6 of that order are extracted below:
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> 3. The contention of the learned counsel for the petitioner is that the acquisition was made fraudulently and there were some mediators, which clearly shows that the entire acquisition proceedings are fraudulent. He, therefore, relies on the Judgment of the Supreme Court in H.M.T. House Building Cooperative Society Vs. Syed Khader (ILR 1995 Kar. 1962). He further submits that the petitioners being villagers, were not aware of their rights, and they did not approach this Court earlier.
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> 4. On being issued notice, the respondents 1 and 2 have filed their statement of objections. The various dates mentioned above are furnished to the Court, stating the various steps taken during the acquisition proceedings. It was further stated, there was no middle man and that the General Power of Attorney was given only after the issuance of Notification under Section 6(1) Notification. It was, therefore, contended that there was no fraud played at any stage.
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> 5. Based on the decision mentioned above and the facts stated in the objections, it is clear that there was no fraud in the acquisition proceedings. The purpose of acquisition being for a society has to be held to be for a public purpose.
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> 6. The petitioners have not explained the long delay in approaching this Court. The dates mentioned above clearly show that the petitioners have approached this Court after nearly six years. The contention of the learned Counsel for the petitioners that the petitioners being villagers were unaware of their rights, cannot be accepted. No other reason is given explaining the

laches. Apart from there being no merits in the case, the writ petitions are to be dismissed on the ground of long laches, which is not explained. The writ petitions are dismissed. Writ Appeal No. 7953/1996 - Byanna and others v. State of Karnataka and others and batch was dismissed by the Division Bench by relying upon the observations made by the learned Single Judge that no middlemen was involved in the transaction; that the acquisition was for a public purpose within the meaning of the 1894 Act and the appellants had failed to explain inordinate delay. SLP (C) Nos. 12012- 12017/1997 titled Byanna and others v. State of Karnataka and others were dismissed by this Court by recording the following order:

The SLPs are dismissed.

(ii) Writ Petition No. 35837/1994 - Subramani and others v. the Union of India and others and batch, in which large number of Judges of (sitting and retired) were impleaded as party respondents was disposed of by the Division Bench of the High Court - Subramani v. Union of India ILR 1995 KAR 3139. The Division Bench rejected the plea that the acquisition of land for Karnataka State Judicial Department Employees' House Building Cooperative Society was vitiated because the middlemen were responsible for the acquisition of land as had happened in H.M.T.'s case. The Division Bench noted that the terms of the agreement entered into between the Society and M/s. Devatha Builders was not for the acquisition of land but only for development of the acquired land. The Division Bench also noted that the agreement was entered into between the Society and the owners in 1985, whereas the Government gave approval for acquisition in 1985 and the agreement with the developer was of 1986. The Division Bench also noted that no stranger had been inducted as a member of the society. However, the acquisition which was under challenge in Writ Petition No.28707 of 1995 was declared illegal because the concerned House Building Cooperative Society has not framed any housing scheme and obtained approval thereof from the State Government. The Division Bench also expressed the view that remedy under Article 226 was discretionary and it was not inclined to nullify the acquisition made for the society because the petitioners had approached the Court after long lapse of time and there was no explanation for the delay.

(iii) Writ Appeal No. 2074/1994 - Sh. Ramchandrappa v. State of Karnataka and connected cases were dismissed by the Division Bench of the High Court mainly on the ground that award had already been passed and the

appellants had participated in the award proceedings and further that the appellants had approached the Court at the instance of some rival developers. The Division Bench further held that the disputed acquisition cannot be termed as colourable exercise of power. SLP (C) Nos.9088-9097/1997 with the same title were summarily dismissed by this Court on 1.5.1997 (iv) Writ Petition No. 15508/1998 - Bachappa v. State of Karnataka was dismissed by the learned Single Judge vide order dated 9.7.1998 by observing that the acquisition cannot be nullified by entertaining writ petitions filed after three years simply because in H.M.T.'s case the acquisition proceedings were quashed. Writ Appeal Nos. 3810-12/1998 filed against the order of the learned Single Judge were dismissed by the Division Bench vide order dated 24.8.1998 albeit without assigning reasons. SLP (C) .... CC Nos. 1764-69/1999 were dismissed by this Court on 14.5.1999 by recording the following order:

Special Leave Petitions are dismissed.' (v) Writ Petition Nos. 7287-7300/1993 were dismissed by the learned Single Judge on 3.1.1996 on the ground of delay of four years. Writ Appeal Nos. 920-925/1996 and batch filed against the aforesaid order was dismissed by the Division Bench vide order dated 7.7.1997 on the ground that the appellants had failed to explain the delay. SLP(C) Nos. 15337-38/1997 were dismissed by this Court by the usual one line order. (vi) Writ Petition Nos. 30868-70/1996 were dismissed by the learned Single Judge vide order dated 29.11.1996 on the ground that in the earlier round they had failed to convince the Court on the issue of invalidity of acquisition. Writ Appeal No.146/1997 and connected matters were dismissed by the Division Bench on 2.6.1997 by recording its agreement with the learned Single Judge. SLP(C) .....CC Nos. 189-191/1998 were dismissed by this Court on 20.1.1998.

(vii) Writ Petition No. 586/1991 Muniyappa v. State of Karnataka, in which the petitioner had challenged the acquisition on the ground that no scheme had been framed under Section 3(f)(vi) of the 1894 Act, was dismissed by the learned Single Judge on 24.11.1994 by relying upon the judgments in Narayana Raju v. State of Karnataka ILR 1989 KAR 376 and Narayana Reddy v. State of Karnataka ILR 1991 KAR 2248. Writ Appeal No. 281/1995 filed against the order of the learned Single Judge was dismissed by the Division Bench vide judgment dated 14.2.1995. The Division Bench held that framing of Rules is not a condition precedent for the acquisition of land for the purpose of a cooperative society. SLP(C)...CC No. 14581/1995

Muniyappa v. State of Karnataka was dismissed by this Court on 4.10.1996 by recording the following order:

We have heard the learned counsel for the parties. The contention that has been raised by the learned counsel for the petitioner on the basis of the decision of this Court of HMT House Building Co- operative Ors. (1995) 2 SCC 677, cannot be accepted in view of the fact that a scheme had been prepared in the present case and it had been approved by the State Government and there is nothing to show that the said approval is vitiated. The special leave petition is, therefore dismissed.

(viii) Writ Petition No. 41397/1995 and batch were dismissed by the learned Single Judge on 21.6.1996 by relying upon the judgment in Subramani v. Union of India ILR 1995 KAR 3139. The learned Single Judge held that the petitioners had approached the Court after almost seven years of finalization of the acquisition proceedings and there was no cogent explanation for the delay. Writ Appeal Nos. 7057- 72/1996 Smt. Akkayamma v. State of Karnataka were dismissed by the Division Bench vide order dated 12.8.1996 on the ground that the appellants had already received compensation more than four years ago and they had entered into an agreement for sale of the property. SLP(C) Nos. 18239-18254/1996 were summarily dismissed by this Court on 20.9.1996. (ix) Writ Petition No. 17603/1989 Smt. Sumitramma v. State of Karnataka was dismissed by the learned Single Judge on 22.11.1995 by relying upon the averment contained in the counter affidavit of respondent No. 4 that it had submitted a scheme to the State Government and the acquisition was made after approval of the scheme. The learned Single Judge also relied upon the judgment in Narayana Raju's case in support of his conclusion that if the Government decides to acquire the land for a cooperative society on its being satisfied that the land was to put up houses after forming layout, etc., the approval to such a scheme can be inferred from the very fact that the Government was a party to an agreement which ensured that the lands will be utililised for implementing the purpose of the acquisition. Writ Appeal No. 5081/1995 filed against the order of the learned Single Judge was dismissed by the Division Bench on 1.1.1996 by one word order Dismissed.. SLP(C) No. 10270/1996 was dismissed by this Court on 4.10.1996 by recording the following order: Strong reliance is placed by the learned counsel for the petitioner on this Court's decision H.M.T. House Building Cooperative Society v. Syed Khader and others (1995) 2 SCC 677. The submission is that in the case cited above the Enquiry committee had submitted a report on the basis whereof a provision

was made in the agreement dated 17.3.88 which recited that the Government having caused enquiry to be made in conformity with the provisions of the Act and being satisfied with the result of such enquiry that the acquisition of such land is needed for the purpose referred to above and the Government having consented to acquire the said land for the benefit of the society members they have entered into an agreement with the Government. While this recital indeed is found in the agreement dated 17.3.88 no separate order was made by the Government granting approval as in the present case. In the present case a separate order dated 14.10.1985 was passed by the Government and under the signatures of the Under Secretary to the Government, Revenue Department, conveying the approval of the Government in the issuance of the Notification dated 21.1.86 under Section 4 of the Land Acquisition Act to acquire certain parcels of land in favour of L.R.D.E. Employees Housing Co-operative Society, Bangalore. Therefore, there is a separate specific order made by the Government on the basis of the recommendation of the Committee unlike in the H.M.T. case. We, therefore, do not see any merit in this petition and dismiss the same. No orders in I.A. No. 2.

(x) Writ Petition No. 38745/1995 - A.K. Erappa v. State of Karnataka was dismissed by the learned Single Judge mainly on the ground that the writ petitioners had participated in the award proceedings and agreed that the compensation be disbursed to his power of attorney and also approached the society for allotment of a site. Writ Appeal No. 6914/1996 filed by the appellant was dismissed by the Division Bench on 7.10.1996. SLP (C) No. 1528/1997 was summarily dismissed by this Court on 3.2.1997.

(xi) Writ Appeal Nos. 7122-34/1996 - Smt. Hanumakka v. State of Karnataka were dismissed by the Division Bench of the High Court vide order dated 12.9.1996 on the ground of delay and also on the ground that the appellant had not approached the Court with clean hands. SLP (C) Nos. 23256-68/1996 were summarily dismissed by this Court on 9.12.1996.

31. In Kanaka Gruha Nirmana Sahakara Sangha's case, two questions were considered by this Court. The first question was whether there was any inconsistency between the Land Acquisition (Mysore Extension and Amendment) Act, 1961 and the 1894 Act. After examining the relevant constitutional provisions and the two enactments, this Court answered the question in negative. The second question considered by the Court was whether the Government had approved the housing scheme framed by the appellant. The Court noted that Assistant Registrar

of Cooperative Societies, Three Men Committee and the State Level Committee had recommended the acquisition of land on behalf of the appellant and the Government had directed Special Deputy Commissioner, Bangalore to initiate acquisition proceedings by issuing Section 4(1) Notification and proceeded to observe:

> Considering the fact that the State Government directed the Assistant Registrar of Cooperative Societies of Bangalore to verify the requirement of the members of the Society and also the fact that the matter was placed before the Committee of three members for scrutiny and thereafter the State Government has conveyed its approval for initiating the proceedings for acquisition of the land in question by letter dated 14-11-1985, it cannot be said that there is lapse in observing the procedure prescribed under Section 3(f)(vi). Prior approval is granted after due verification and scrutiny.

32. In our view, none of the orders and judgments referred to hereinabove can be relied upon for holding that even though the appellant had not framed any housing scheme, the acquisition in question should be deemed to have been made for a public purpose as defined in Section 3(f)(vi) simply because in the representation made by him to the Revenue Minister of the State, the Executive Director of the appellant had indicated that the land will be used for providing sites to poor and people belonging to backward class and on receipt of the recommendations of SLCC the State Government had directed Special Deputy Commissioner to issue notification under Section 4(1) of the 1894 Act and that too by ignoring the ratio of the judgments of three Judge Benches in 1st and 2nd H.M.T. cases and the judgment of two Judge Bench in Vyalikawal House Building Cooperative Society's case. In majority of the cases decided by the High Court to which reference has been made hereinabove, the petitioners were non-suited on the ground of delay and laches or participation in the award proceedings. In Muniyappa's case, the judgment in 1st H.M.T. case was distinguished on the premise that a scheme had been framed and the same had been approved by the State Government and further that the petitioner had failed to show that the approval was vitiated due to intervention of the extraneous consideration. In Sumitramma's case, this Court noted that in 1st H.M.T. case, no separate order was made by the Government for grant of approval whereas in Sumitramma's case an order has been passed on 14.10.1985 conveying the Government's approval for the issuance of Notification dated 21.1.86 under Section 4 of the 1894 Act. In Kanaka Gruha's case also, this Court treated the direction contained in letter dated 14.11.1985 of the Revenue Commissioner and Secretary to Government to Special Deputy Commissioner, Bangalore to initiate the acquisition proceedings by issuing Notification under

Section 4(1) as an approval within the meaning of Section 3(f)(vi). In none of the three cases, this Court was called upon to consider whether the decision taken by the Government to sanction the acquisition of land in the backdrop of an agreement executed by the society with a third party, as had happened in the H.M.T. cases and the present case whereby the Estate Agent agreed to ensure the acquisition of land within a specified time frame subject to payment of huge money and the fact that agreement entered into between the society and the Government was in the nature of an agreement contemplated by Part VII. While in 1st H.M.T.'s case, the amount paid to M/s. S. R. Constructions was rupees one crore, in the present case, the appellant had agreed to pay more than rupees five crores for facilitating issue of Notifications under Sections 4(1) and 6(1) and sanction of the layouts and plans by the BDA within a period of less than one year. Therefore, we have no hesitation to hold that the appellant's case is squarely covered by the ratio of the H.M.T. cases and the High Court did not commit any error by relying upon the judgment in 1st H.M.T case for declaring that the acquisition was not for a public purpose.

33. Another facet of the appellant's challenge to the judgment in the case of respondent No. 3 is that even if there was no express approval by the State Government to the acquisition of land, the approval will be deemed to have been granted because the State Government had contributed Rs.100 towards the acquisition of land. Shri Vishwanatha Shetty relied upon the judgments of this Court in Smt. Somavanti and others v. The State of Punjab and others (1963) 2 SCR 774, Pratibha Nema v. State of M.P. (2003) 10 SCC 626 and agreement dated 8.7.1988 and argued that the decision of the State Government to execute an agreement with the appellant should be construed as its approval of the proposal made for the acquisition of land. In our view, this argument of the learned senior counsel lacks merit. At the cost of repetition, we consider it appropriate to mention that the agreement was signed by the Executive Director of the appellant and the State Government in compliance of Section 41, which finds place in Part VII of the 1894 Act. Therefore, a nominal contribution of Rs.100 by the Special Deputy Commissioner cannot be construed as the State Government's implicit approval of the housing scheme which had never been prepared. In Smt. Somavanti's case, the appellants had challenged the acquisition of their land by the State Government on the ground that the provisions of the 1894 Act could not be invoked for the benefit of respondent No. 6, who was interested in setting up an industry over the acquired land. The majority of the Constitution Bench held that the declaration made by the State Government that the land is required for a public purpose is conclusive and the same was not open to be challenged. The argument made on behalf of the petitioners that there could be no acquisition for a public purpose unless the Government had made a contribution for the acquisition at public expense and that

the contribution of Rs.100 was insignificant was rejected and it was held that a small quantum of contribution by the State Government cannot lead to an inference that the acquisition was made in colourable exercise of power. In Pratibha Nema's case, the challenge was to the acquisition of 73.3 hectares dry land situated at Rangwasa village of Indore district for establishment of a diamond park by Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd. It was argued that the Nigam did not have sufficient amount for payment of compensation. While dealing with the argument, this Court observed:

> It seems to be fairly clear, as contended by the learned counsel for the appellants, that the amount paid by the Company was utilized towards payment of a part of interim compensation amount determined by the Land Acquisition Officer on 7-6- 1996 and in the absence of this amount, the Nigam was not having sufficient cash balance to make such payment. We may even go to the extent of inferring that in all probability, the Nigam would have advised or persuaded the Company to make advance payment towards lease amount as per the terms of the MOU on a rough-and-ready basis, so that the said amount could be utilized by the Nigam for making payment on account of interim compensation. Therefore, it could have been within the contemplation of both the parties that the amount paid by the Company will go towards the discharge of the obligation of the Nigam to make payment towards interim compensation. Even then, it does not in any way support the appellants' stand that the compensation amount had not come out of public revenues. Once the amount paid towards advance lease premium, maybe on a rough-and- ready basis, is credited to the account of the Nigam, obviously, it becomes the fund of the Nigam. Such fund, when utilized for the purpose of payment of compensation, wholly or in part, satisfies the requirements of the second proviso to Section 6(1) read with Explanation 2. The genesis of the fund is not the determinative factor, but its ownership in praesenti that matters.

34. Neither of the aforesaid decisions has any bearing on the issues arising in these appeals, i.e., whether the acquisition of land was for a public purpose within the meaning of Section 3(f)(vi) and whether the acquisition was vitiated due to manipulations, malafides and extraneous considerations.

35. The following are the three ancillary grounds of challenge:

> i. The finding recorded by the Division Bench that respondent No. 3 had not been given opportunity of hearing under Section 5A is ex facie incorrect and

is liable to be set aside because her son Sandip Shah had appeared before the Special Land Acquisition Officer along with Shri S.V. Ramamurthy, Advocate and he was given opportunity of personal hearing.

ii. The judgment in P. Ramaiah's case is vitiated by an error apparent because the Division Bench relied upon the judgment of this Court in 1st H.M.T. case without taking note of the fact that no evidence was produced to show that the Estate Agent had indulged in malpractices for facilitating the acquisition of land on behalf of the appellant and, in any case, such a finding could not have been recorded without impleading the Estate Agent as a party respondent and giving him opportunity to controvert the allegation.

iii. In view of the provisions contained in Sections 17, 18 and 19 of the Mysore High Court, 1884 and Sections 4, 9 and 10 of the Karnataka High Court Act, 1961, the Division Bench did not have the jurisdiction to decide the appeal by relying upon the judgment in 1st H.M.T. case because that was not the ground on which the learned Single Judge had quashed the acquisition proceedings. Shri Vishwanatha Shetty argued that if the Division Bench was of the view that the order of the learned Single Judge should be sustained on a new ground by relying upon the judgment of this Court in 1st H.M.T. case, then it should have remitted the matter to the learned Single Judge for fresh disposal of the writ petition. Shri Shetty relied upon the judgment of the larger Bench of the Karnataka High Court in State of Karnataka v. B. Krishna Bhat 2001 (2) [Karnataka Law Journal 1] to show that the approach adopted by the learned Presiding Officer of the Division Bench in taking up the cases, which are required to be heard by the Single Bench was not approved by the larger Bench.

36. We shall first take up the last ground, which, in our considered view, deserves outright rejection because the Division Bench had decided the writ appeal preferred by the appellant by relying upon the judgment in 1st H.M.T. case because learned counsel appearing for the parties had agreed for that course. This is evident from the following extracts of the opening paragraph of the judgment:

When the appeal came up for hearing before us, all the learned counsel submitted that by virtue of the subsequent decision of the Supreme court, that the order of the learned Single Judge would no longer survive and that consequently, the writ petition itself would have to be heard on merits. A request was conveyed to the Court that instead of remanding the case to the

> learned Single Judge at this late stage for a haring on merits, and depending on the view taken the matter once again coming up to the appeal court that it was far from desirable that the appeal court itself should hear the parties on merits and dispose of the writ petition.

37. It is nobody's case that the advocate who appeared on behalf of the appellant had not made a request that instead of remanding the case to the Single Bench, the Division Bench should hear the parties on merits and dispose of the matter. Therefore, it is not open for the appellant to make a grievance that the Division Bench had acted in violation of the provisions of the Mysore High Court Act, 1884 and the Karnataka High Court Act, 1961.

38. The appellant's challenge to the finding recorded by the Division Bench that respondent No. 3 had not been given opportunity of hearing under Section 5A is well-founded. We have carefully gone through the proceedings of the Special Land Acquisition Officer and find that Shri Sandip Shah (son of respondent No. 3), had appeared along with his Advocate and after hearing him along with other objectors, the concerned officers submitted report to the State Government. However, this error in the impugned judgment of the Division Bench is not sufficient for nullifying the conclusion that the acquisition of land was not for a public purpose and that the exercise undertaken by the State Government was vitiated due to the influence of the extraneous considerations. The appellant's challenge to the judgment in P. Ramaiah's case on the ground that no evidence had been produced by the writ petitioner to show that the Estate Agent had indulged in malpractices deserves to be rejected in view of the conclusion recorded by us in relation to the case of respondent No.3.

39. Shri Vishwanatha Shetty also criticized the decision of the State Government to entertain the representation made by respondent No. 3 for withdrawal of the notification and argued that notification under Section 48 could not have been issued without hearing the beneficiary, i.e., the appellant. He supported this argument by relying upon the judgments in Larsen Toubro Ltd. v. State of Gujarat (1998) 4 SCC 387 and State Government Houseless Harijan Employees' Association v. State of Karnataka, (2001) 1 SCC 610. This argument of the learned senior counsel appears to have substance, but we do not consider it necessary to examine the same in detail because the appellant's challenge to notification dated 3.9.1991, vide which the acquisition of land comprised in Survey No. 50/2 was withdrawn, was negatived by the learned Single Judge and the Division Bench of the High Court and the appellant is not shown to have challenged the judgment of

the Division Bench and insofar as notification dated 25.6.1999 is concerned, the State Government had withdrawn the same on 15.11.1999.

40. In the end, Shri Dave and Shri Shetty referred to the additional affidavit of Shri A.C. Dharanendraiah, filed on behalf of the appellant, to show that the appellant has already spent Rs. 18.73 crores for formation of the layouts and 1791 plots were allotted to the members, out of which, 200 have already constructed their houses. They pointed out that 50% of the land has been given to the BDA for providing civil amenities and 16154 sq. ft. has been given to Karnataka Power Transmission Corporation. Learned counsel submitted that this is a fit case for invoking the doctrine of prospective overruling so that those who have already constructed houses may not suffer incalculable harm. In support of this submission, the learned counsel relied upon the judgments in ECIL v. B. Karunakar, (1993) 4 SCC 727, Abhey Ram v. Union of India, (1997) 5 SCC 421, Baburam v. C.C. Jacob, (1999) 3 SCC 362, Somaiya Organics (India) Ltd. v. State of U.P., (2001) 5 SCC 519, Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, Sarwan Kumar v. Madan Lal Aggarwal, (2003) 4 SCC 147, Girias Investment Private Limited v. State of Karnataka, (2008) 7 SCC 53, G. Mallikarjunappa v. Shamanur Shivashankarappa, (2001) 4 SCC 428, Uday Shankar Triyar v. Ram Kalewar Prasad Singh, (2006) 1 SCC 75.

41. We have given serious thought to the submission of the learned counsel but have not felt convinced that this is a fit case for invoking the doctrine of prospective overruling, which was first invoked by the larger Bench in I.C. Golak Nath v. State of Punjab AIR 1967 SC 1643 : (1967) 2 SCR 762 while examining the challenge to the constitutionality of Constitution (Seventeenth Amendment) Act, 1964. That doctrine has been applied in the cases relied upon by learned counsel for the appellant but, in our opinion, the present one is not a fit case for invoking the doctrine of prospective overruling because that would result in conferring legitimacy to the influence of money power over the rule of law, which is the edifice of our Constitution. The finding recorded by the Division Bench of the High Court in Narayana Reddy's case that money had played an important role in facilitating the acquisition of land, which was substantially approved by this Court in three cases, is an illustration of how unscrupulous elements in the society use money and other extraneous factors for influencing the decision making process by the Executive. In this case also the Estate Agent, namely, M/s. Rejendra Enterprises with whom the appellant had entered into an agreement dated 21.2.1988 had played crucial role in the acquisition of land. The tenor of that agreement does not leave any manner of doubt that the Estate Agent has charged huge money from the appellant for getting the notifications issued under Sections

4(1) and 6(1) of the 1894 Act and sanction of layout plan by the BDA. The respondents could not have produced any direct evidence that the Estate Agent had paid money for facilitating the acquisition of land but it is not too difficult for any person of reasonable prudence to presume that the appellant had parted with crores of rupees knowing fully well that a substantial portion thereof will be used by the Estate Agent for manipulating the State apparatus. Therefore, we do not find any justification to invoke the doctrine of prospective overruling and legitimize what has been found by the Division Bench of the High Court to be ex-facie illegal.

42. Before concluding we consider it necessary to observe that in view of the law laid down in the 1st H.M.T. case (paragraphs 19, 21 and 22), which was followed in 2nd H.M.T. case and Vyalikawal House Building Cooperative Society's case, the view taken by the Division Bench of the High Court in Narayana Raju's case that the framing of scheme and approval thereof can be presumed from the direction given by the State Government to the Special Deputy Commissioner to take steps for issue of notification under Section 4(1) cannot be treated as good law and the mere fact that this Court had revoked the certificate granted by the High Court cannot be interpreted as this Court's approval of the view expressed by the High Court on the validity of the acquisition.

43. In the result, the appeals are dismissed. However, keeping in view the fact that some of the members of the appellant may have built their houses on the sites allotted to them, we give liberty to the appellant to negotiate with the respondents for purchase of their land at the prevailing market price and hope that the landowners will, notwithstanding the judgments of the High Court and this Court, agree to accept the market price so that those who have built the houses may not suffer. At the same time, we make it clear that the appellant must return the vacant land to the respondents irrespective of the fact that it may have carved out the sites and allotted the same to its members. This must be done within a period of three months from today and during that period the appellant shall not change the present status of the vacant area/sites. The members of the appellant who may have been allotted the sites shall also not change the present status/character of the land. The parties are left to bear their own costs.