SUPREME COURT OF INDIA

K.B. Ramachandra Raje Urs.

Vs.

State of Karnataka & Ors.

C.A. No. 453 of 2007

(Ranjan Gogoi and N.V. Ramana, JJ.)

16.12.2015

JUDGMENT

Ranjan Gogoi, J.

1. The appellant is the writ petitioner who had instituted Writ Petition No.14726 of 1994 before the HighCourt of Karnataka challenging therein the preliminary notification dated 21st June, 1985 issued under Section 16(1) of the City of Mysore Improvement Act, 1903 (hereinafter referred to as 'the 1903 Act") for proposing to acquire a total area of 94 acres 28 gunthas of land located in Vijayashreepura village, adjoining the 'Vijayanagar Extension', as Mentioned in the Schedule thereto for improvement of Mysore city.

2. The final notification dated 29th April, 1988 issued in exercise of powers conferred under Section 18(1) and (2) of the 1903 Act; the awards relating to the acquisition of land in question as well as the Government approval dated 28th May, 1988 for allotment of 55 acres of land to the respondent No.28 – J.S.S. Mahavidyapeetha [for short "respondent No.28-Society] was also challenged in the Writ Petition No.14726 of 1994 filed by the appellant.

3. The appellant as the writ petitioner had filed a second writ petition i.e. Writ Petition No.31449 of 1994 by which the public notice dated 27th June, 1994 inviting applications for regularization of unauthorized constructions made in several villages including in the Vijayashreepura village was challenged.

4. The learned single judge by judgment and order dated 22nd February, 2001 held that the impugned acquisition of 94 acres and 28 gunthas was illegal and bad and so was the allotment dated 2 6 th September, 1988 of 55 acres of land made in favor of the respondent No.28 -Society. However, in view of the long eclipse of time and taking into account the interim order dated 13th September, 1994 passed in Writ Petition No.14726 of 1994, wherein it was observed that any construction raised by Respondent No. 28 will be at his risk and cost

and all other relevant facts and circumstances of the case, the learned single judge thought it proper to mould the relief in the present case by refusing to quash and set aside the acquisition notifications though holding the acquisition itself to be untenable in law. However, the order of allotment of 55 acres of land in favor of the= respondent No.28 made out of the acquired land was interfered with and the said respondent was directed to handover the land to the Mysore Urban Development Authority ("MUDA' for short). So far as the appellant is concerned, it was held that he would be liable for compensation under the Land Acquisition Act, 1894. As for the reliefs sought in Writ Petition No.31449 of 1994 the same was allowed holding that the MUDA was not authorized either under the provisions of the 1903 Act or under the provisions of the Karnataka (Regularization of Unauthorized Constructions in Urban Areas) Act, 1991 to regularize the unauthorized constructions upon the land in question.

5. Appeals were filed against the said order by the appellant – writ petitioner as well as a group of persons who were shown as occupancy tenants of a part of the land in the impugned preliminary notification issued under the provisions of the 1903 Act. Some of the subsequent purchasers of the plots from such occupancy tenants had also moved the Division Bench of the High Court. The Division Bench of the High Court by the impugned common judgment and order dated 08.04.2004 reversed the findings of the learned single judge as to the legality and validity of the acquisition as well as allotment of the land to the respondent No.28-Society is concerned and the consequential directions.

6. Aggrieved, these appeals have been filed by the writ petitioners.

7. We have heard Shri A.K. Ganguli, learned Senior Counsel appearing for the appellants, Shri Basavaprabhu S. Patil, learned Senior Counsel appearing for the State of Karnataka, Shri P. Vishwanatha Shetty, learned Senior Counsel appearing for the MUDA and Shri Huzefa Ahmadi, learned Senior Counsel appearing for the respondent No.28-Society and the learned counsels for rest of the contesting respondents.

8. Shri A.K. Ganguli, learned Senior Counsel appearing for the appellants has placed before the Court the Scheme underm the 1903 Act to contend that the entire process of acquisition resorted to in the present case is contrary to the provisions of the 1903 Act. Specifically it is argued by Shri Ganguli that the preliminary notification dated 21st June, 1985 was issued even prior to the publication of a Scheme which is a condition precedent to the issuance of the Notification under Section 16(1) of the 1903 Act. In this regard, Shri Ganguli has specifically pointed out the findings of the learned single judge as recorded in paragraph 11 of the judgment and order dated 22nd February, 2001 to the effect that on consideration of the relevant file it is clear that no scheme was in existence or available at the point of time contemplated by the Act i.e. before the dates of the Notification under Section 16(1) of the Act. According to Shri Ganguli, though there is a reference in the Notification dated 21st June, 1985 that the Scheme is available for inspection/verification, no such scheme was actually published. It is further submitted by Shri Ganguli that the provisions of Section 17 of the 1903 Act have been bypassed and the final notification published under Section 18 of

the 1903 Act does not have the required sanction of the Government inasmuch as the Notification itself states that the said notification is subject to approval of the Government. Shri Ganguli has further submitted that no notice contemplated by Sections 9 and 10 of the Land Acquisition Act, 1894 was issued to the appellants. Though under Section 23 of the 1903 Act the land vests in the Government only after publication of the award and payment of costs of acquisition and only thereafter the land could have been transferred to MUDA, in the instant case, even before such vesting had taken place by operation of the provisions of Section 18(4) of the 1903 Act, the land was allotted to respondent No.28-Society by MUDA. In fact, with regard to such allotment, Shri Ganguli has drawn our attention to the several communications on record by and between the MUDA and the respondent No.28-Society and the functionaries of the State of Karnataka to show that the sole object of the acquisition under the 1903 Act was for allotment of the land in question to the respondent No.28-Society. In this regard, Shri Ganguli has specifically drawn the attention of the Court to the

communications/correspondence dated 09th April, 1986, 20th May, 1986, 15th June, 1986, 20th September, 1986, 8th November, 1986, 26th November, 1986 and 18th December, 1986 exchanged between the respondent No.28-Society, the Chief Minister and the Minister of Urban Development of the Government of Karnataka for allotment of 100 acres of land in S.No.1 of Vijayasreepura, Kasaba Hobli, Mysore Taluk to the respondent No.28-Society. Shri Ganguli has further submitted that acquisition 11 of land under the 1903 Act for the purpose of benefiting the respondent No.28-Society is not contemplated inasmuch as acquisition of land under the 1903 Act is for improvement and future expansion of the city of Mysore as the preamble of the 1903 Act would indicate. Shri Ganguli has further submitted that on the basis of the correspondence exchanged between the respondent No.28-Society and the respondent State as early as on 6th April, 1987 the Board has passed a resolution allotting 55 acres of land to the respondent No.28-Society out of 94 acres and 28 gunthas notified under Section 16(1) of the 1903 Act. In this regard, it is pointed out that the Notification under Section 16(1) earlier published on 21.6.1985 was gazette subsequently on 30th April, 1987. It is also pointed out that the real purpose of the acquisition is evident from the draft notification dated 20th August, 1987 under Section 18 of the Act which is in the following terms: “the properties specified below, the same, a little more or less are needed for a publicpurpose to wait for formation of a layout of sites and for development of Jayachamarajendra College of Engineering.” The aforesaid recital was subsequently corrected in the Final Notification dated 29th April, 1988 issued under Section 18 wherein the words “for development of Jayachamarajendra College of Engineering” were dropped.

9. The arguments advanced on behalf of the appellants have been refuted by Shri Basavaprabhu S. Patil, learned Senior Counsel appearing for the State of Karnataka, Shri P. Vishwanatha Shetty, learned Senior Counsel appearing for the MUDA and Shri Huzefa Ahmadi, learned Senior Counsel appearing for the respondent No.28-Society.

10. The arguments advanced on behalf of the respondents may be summarized as hereunder. The respondents contend that the acquisition of the land for the respondent No.28-Society for the purposes of development of Engineering College is not foreign to the provisions of the 1903 Act. In fact, according to the learned counsels, the object of the 1903 Act is to acquire land for a public purpose as in the case of acquisition under the Land Acquisition Act, 1894. Relying on a decision of this Court in *The State of Bombay Vs. Ali Gulshan* [1], it is pointed out that acquisition of land for setting up of educational institutions by private benefactors is a public purpose. Reliance in this regard has also been placed on a judgment of this Court in *Smt. Venkatamma and others Vs.City Improvement of Trust Board, Mysore and others*[2] to contend that it has been held by this Court that acquisition under the 1903 Act is permissible even for a private organization as long as the purpose of such acquisition is improvement of the city of Mysore. It is contended that the development of the Engineering College on the outskirts of the city of the Mysore would certainly be a step in the development of the city of Mysore.

11. The learned counsels for the respondents have further contended that it would not be correct to contend that no scheme was in existence on the date when the preliminary notification dated 21st June, 1985 was issued or on the date of publication of the said notification in the Gazette i.e. 30th April, 1987. Insofar as the findings of the learned single judge in this regard are concerned it is contended that the reference to the Notifications by the learned single judge in paragraph 11 of his judgment are in respect of the notification as corrected after the stage of consideration of objections under Section 16(2) was over. Viewed in this light, the dates mentioned by the learned single judge are not in respect of the Notification under Section 16(1) of the Act of 1903. In any case, according to the learned counsels, the appellant did not take any objections with regard to the availability of the Scheme in the objections filed by him on 12th June, 1987. In fact, in the said objections the appellant had accepted the acquisition sought to be made and had only prayed that out of 94 acres and 28 gunthas sought to be acquired an area 20 acres of land be made available to him to enable him to tide over his personal difficulties. It is further contended that in the writ petition filed also, no specific objection in this regard was taken.

12. According to the learned counsels for the respondents the writ petition is inordinately delayed. The writ petition has been filed in the year 1994 though the acquisition of land was finalized in the year 1988 and, in fact, the possession of the land to the respondent No.28-Society was handed over as far back as on 26th September, 1988. It is further pointed out that the fact that the acquisition was being made, in part, for the respondent No.28-Society is amply clear from the recitals contained in the order dated 31st July, 1987, by which the objections of the appellant under Section 16(2) was rejected. In this regard, it is also pointed out that in the course of the objection hearing the appellant was represented by his counsel. It is therefore contended that the statement made by the writ petitioner – appellant that he came to know about the allotment of the land for the respondent No.28-Society when the said Society had made attempts to construct a wall on the land in the year

1994 is wholly incorrect and the entire premise on the basis of which the writ petition has been filed is false.
Therefore, on the aforesaid twin grounds of delay and lack of bona fides of the writ petitioner, the present appeals are liable to be dismissed. It is further submitted by the learned counsels for the respondents that the slight infirmities in the process of acquisition as pointed out on behalf of the appellants are minor deviations from the process contemplated under the 1903 Act and the State Government on 28th May, 1988 accorded its consent to the resolution dated 6th April, 1987 of the Board allotting 55 acres of land to the respondent No.28-Society.

13. Lastly it is pointed out by Shri Huzefa Ahmadi, learned Senior Counsel appearing for the respondent No.28-Society that while it is correct that in the interim order passed in the Writ Petition= on 13th September, 1994 it was observed that further constructions, if raised,
would be at the risk and cost of the respondent No.28 – Society, over a period of time a full-fledged University campus has come up on the land in question which needs to be protected in the exercise of the equitable jurisdiction of this Court. In this regard, the decision of this Court in *U.G. Hospitals Private Limited versus State of Haryana and others*[3] has been relied upon. In this regard Shri Ahmadi has specifically urged that construction on the land allotted to respondent No.28 began much earlier to the date of the interim order of the High Court. In fact by the time the said order came to be passed the respondent No.28 had no option of turning back and it had no choice but to go ahead in view of the stage at which the construction stood and the commitments already made.

14. To appreciate the rival stand advanced before us it will be useful to notice the Scheme under the 1903 Act at the outset.

The 1903 Act has been enacted for the purpose of improvement and future expansion of the city of Mysore. Section 14 vests in the Board the power to draw up detailed schemes for such improvement or expansion or both, as may be, in respect of the areas to which the 1903 Act applies.

15. Section 15 provides for the particulars to be provided for in an improvement scheme. It reads as under:

> "15. Particulars to be provided for in an improvement scheme. -- Every improvement scheme under Section 14.- (1) Shall, within the limits of the areas comprised in the scheme, provide
> for.-
>
> (a) The acquisition of any land which will, in the opinion of the Board, be necessary for or affected by the execution of the scheme.
>
> (b) Re-laying out allot any land including the construction and reconstruction of buildings and the formation and alteration of streets;

(c) Draining streets so formed or altered;

(2) May, within the limits aforesaid provide for.-

(a) Raising any land which the board may deem expedient to raise for the better drainage of the locality;

(b) Forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;

(c) The whole or any part of the sanitary arrangements required;

(d) The establishment or construction of markets and other public requirements or conveniences; and

(3) May, within and without the limits aforesaid, provide for the construction of buildings for the accommodation of the poorer and working classes, including the whole or part of such classes to be displaced in the execution of the scheme. Such accommodation shall be deemed to include shops."

16. After a Scheme is prepared, under Section 16 the Board is obligated to draw up a notification stating that the scheme has been made; the limits of the area comprised therein and to name a place where particulars of the scheme; a map of the area comprised therein; and the details of the land which is proposed to be acquired or in respect of which a betterment fee is proposed to be imposed may be seen and inspected. Under Section 16(1)(b), the notification is required to be published in the Gazette and also posted in the office of the Deputy Commissioner or Municipal Council or such other place as may be considered necessary under Section 16(2). Within a period of 30 days following the publication of the notification in the Gazette the Board is required to serve notice on every person whose name appears in the assessment list of the Municipality or the local body concerned or in the land revenue register requiring such person to file objections, if any. Under Section 17 the Board is obliged to consider the objections/representations received in response to the communication/notices issued under Section 16(2) and on the basis thereof carry out such modification in the scheme earlier prepared as may be necessary. The scheme with or without modifications is required to be forwarded to the Government for sanction and on receipt thereof a 'final' notification under Section 18 is required to be issued stating the fact of such sanction and mentioning that the land proposed to be acquired by the Board for the purposes of the scheme is required for a public purpose. The said Notification is required to be published in the Official Gazette.

17. Under Section 23 of the 1903 Act, acquisition of land, if resorted to, has to follow the provisions of the Land Acquisition Act, 1894. Section 23, inter alia, provides that after the land has vested in the Government under Section 16 of the Land Acquisition Act, 1894 the Deputy Commissioner shall upon payment of cost of acquisition transfer the land to

the Board whereupon the land will vest in the Board.

18. In the present case, the principal ground of attack on behalf of the appellants is that there was no scheme prepared and the reference to the availability of a scheme for inspection in the preliminary notification dated 21st June, 1985 as published in the Gazette on 30th April, 1987 is a hollow declaration. The findings of the learned single judge in this regard has already been noted. To resolve the controversy, this Court had required the State to place before it the records in original containing the schemes framed and the communications and correspondence exchanged in this regard. The Chief Secretary of the State of Karnataka was entrusted with the responsibility of ensuring that the said record is made available to the Court. In the affidavit of Chief Secretary dated 29th October, 2015 it has been admitted that the said record has been destroyed and such destruction had taken place during the pendency of the present case. It would hardly be necessary to state that in view of the clear findings of the learned single judge in this regard; the absence of any positive material to show that a scheme as framed had existed at the relevant point of time; and the actions of the respondent State in destroying the records can be led to only one conclusion which necessarily has to be adverse to the respondents.

19. In view of the clear language of Section 16(1) of the 1903 Act and the scheme of the 1903 Act there can be no manner of doubt that the requirement of the existence of the plan/development scheme prior to publication of the preliminary notification under Section 16(1) of the 1903 Act is a mandatory requirement. From the facts placed before the Court it is clear that such mandatory requirement has not been followed. Not only that, there is no material to show that the question of modification(s) in the scheme were duly considered in the light of the objections received and that the scheme was sent to the State Government for sanction as required under Section 17 of the 1903 Act. In fact, the whole position is made abundantly clear by the terms of the notification dated 29th April, 1988 under Section 18(1) and 18(2) of the 1903 Act which recites that "This development scheme is subject to administrative sanction by the Government.". There is, therefore, a clear infringement of the mandatory requirement under Section 18 of the 1903 Act. The correspondence between the respondent No.28-society and the State of Karnataka referred to above which is a part of the record of the case, on which there is no dispute, would go to show that the provisions of the 1903 Act in respect of 94 acres and 28 gunthas of land were invoked at the request of the respondentNo.28-Society who wanted allotment of a total of 100 acres of land specifying the said requirement to be in S.No.1 of Vijayasreepura, Kasaba Hobli, Mysore Taluk. The communications on record also go to show that the Chief Minister of the State had intervened and issued necessary directions in this regard and it is pursuant to the same that the provisions of the 1903 Act were invoked to acquire the land in question. However, as already referred to, even before the notification dated 21st June, 1985 under Section 16(1) of the 1903 Act was published in the Gazette as required under the 1903 Act (published on 30th April, 1987), on 6th April, 1987 the Board had passed a resolution allotting 55 acres of land to the respondent No.28 – Society out of 94 acres and 28 gunthas covered by the preliminary notification dated 21st June, 1985. It is, thereafter, by letter dated 2nd September,

1987 that the Board informed the Government that the remaining area of land can be utilized for developing a layout and a separate scheme will be prepared and approval of the Government sought for with regard to final notification. Thereafter it appears that on 28th May, 1988, which document is also available on record, the Government had accorded its consent/approval to there solution dated 6th April, 1987 of the board allotting 55 acres of land to the respondent No.28-Society. Possession of the said land was given to the respondent No.28-Society on 26th September, 1988. The above sequence of events demonstrates State action which does not conform to the requirements of law. Furthermore, the Government approval to the resolution of the Board to hand over 55 acres of land to the respondent No.28-Society on 28th May, 1988 and handing over of possession of such land on 26th September, 1988 is also contrary to the specific provisions contained in Section 23(4) of the 1903 Act inasmuch as the aforesaid provision of the 1903 Act contemplates vesting of the land in the Government after an award is passed and compensation is paid and only on such vesting of the land in the Government the same can be transferred to the Board. If this is what the 1903 Act contemplates it is difficult to understand how on 28th May, 1988, even before an award was passed and the land had vested in the Government and the question of transfer to the MUDA had not even arisen in law, the Government could have approved the Board's Resolution to allot the land to Respondent No.28 and how the possession of the land could have been handed over by MUDA to the respondent No.28-Society on 26th September, 1988.

20. In the light of the above facts and the conclusions that we have reached we do not consider it necessary to decide the question as to whether the acquisition of land for the purposes of Engineering College is within the four corners of the 1903 Act or such acquisition is alien/foreign thereto. Even if this issue is to be hypothetically answered in favor of the MUDA and the respondent No.28- Society by holding the acquisition to be for a purpose contemplated by the object of the 1903 Act there is no escape from the fact that the mandatory provisions of the 1903 Act as detailed herein above have been breached in the process of acquisition which has to result in invalidation of the same and the acquisition made on the basis thereof.

21. It has been vehemently argued on behalf of the respondents that the writ petition ought not to have been entertained and any order thereon could not have been passed as it is inordinately delayed and the appellant has made certain false statements in the pleadings before the High Court details of which have been mentioned hereinabove. This issue need not detain the Court. Time and again it has been said that while exercising the jurisdiction under Article 226 of the Constitution of India the High Court is not bound by any strict rule of limitation. If substantial issues of public importance touching upon the fairness of governmental action do arise the delayed approach to reach the Court will not stand in the way of the exercise of jurisdiction by the Court. Insofar as the knowledge of the appellant – writ petitioner with regard to the allotment of the land to the respondent No.28-Society is concerned, what was claimed in the writ petition is that it is only in the year 1994 when the respondent No.28-Society had attempted to raise construction on the land that the fact of allotment of such land came to be known to the writ petitioner – appellant. A mere recital of

the fact that a part of the land proposed for acquisition is contemplated to be allotted to the Respondent No. 28 in the order dated 31st July, 1987 rejecting the objections filed by the writ petitioner – appellant in response to the notice issued under Section 16(2) of the 1903 Act, in our considered view, cannot conclusively prove that what was asserted in the writ peti tion has to be necessarily understood to be false and incorrect. At the highest, the fact claimed by the respondents that the appellant had previous knowledge may be a probable fact. The converse is also equally probable. Taking into account the above position and the contentious issues raised and the conduct of the State Authorities and the MUDA, we are of the view that the said fact by itself i.e. delay should not come in the way of an adjudication of the writ petition on merits. We, therefore, hold that the impugned acquisition by MUDA under the provisions of the 1903 Act is invalid in law and has to be so adjudged.

22. There is one incidental but important issue that needs to be dealt with at this stage. Shri P. Vishwanatha Shetty, learned Senior Counsel appearing for the MUDA has vehemently and repeatedly urged that the appellant – writ petitioner is not the owner of the properties and the same are State properties inasmuch as the appellant – writ petitioner who claims to be a descendant of the Maharaja of Mysore cannot have the benefit of suit property as the same was not included as the private property of the Maharaja in the instrument of accession executed at the time of merger of the princely State of Mysore with the Union. Shri Shetty has offered to lay before the Court the relevant documents in this regard which, according to him, would clearly disclose the absence of ownership of the appellant – writ petitioner in the property in question. Shri Shetty has further submitted that the above determination should be made by this Court in the exercise of its jurisdiction under Article 136 of the Constitution of India inasmuch as substantial questions of public interest arise there from as a person who is not the owner is claiming properties that belong to the State. We are afraid we cannot go into the said question as not only the same was not an issue before the High Court; it had not also been raised by any person, body or authority in any forum at any point of time. It is an issue raised at the fag end of the lengthy oral discourse made on behalf of the contesting parties. Furthermore, the above stand taken before this Court on the one hand and resort to the process of acquisition on the other is also self-contradictory. Except what is stated above, we do not wish to dilate on the said point and leave the matter for a just determination by the appropriate forum as and when the same is raised by a person aggrieved, if at all so raised. We are told that the Respondents No. 4 to 27 had raised a claim to be occupancy tenants in respect of the entire land of 94 acres 28 gunthas. The said claim had been rejected by the learned Revenue Tribunal. The matter is presently pending in a writ appeal before the Division Bench of the High Court of Karnataka i.e. Writ Appeal No.1654 of 2008. As the said matter is pending, we do not consider it necessary to go into the above issue except to state the obvious, namely, that the judgment of the High Court in the said writ appeal as and when passed will naturally take its own effect in accordance with law. In this regard, we may also take note of the fact that it is admitted by Shri Shetty, learned Senior Counsel appearing for the MUDA that out of remaining 40 acres of land approximately, about 16 acres and 30 gunthas is presently lying vacant and there are encroachers on the remaining land. Insofar as the encroachments are concerned, we need hardly to emphasize that all such encroachments need to be dealt with in accordance with law so that full effect of this order and the

consequential directions contained herein can be given effect to.

23. The next and the final question that needs to be now answered is the relief(s) which should be accorded in the present case.

24. The acquisition under the 1903 Act and the allotment of 55 acres of land to the respondent No. 28 having been found to be contrary to law consequential orders of handing over of possession of the entire land should normally follow. However, in granting relief at the end of a protracted litigation, as in the present case, the Court cannot be unmindful of facts and events that may have occurred during the pendency of the litigation. It may, at times, become necessary to balance the equities having regard to the fact situation and accordingly mould the relief(s). How the relief is to be molded, in the light of all the relevant facts, essentially lies in the realm of the discretion of the courts whose ultimate duty is to uphold and further the mandate of law. If the issue is viewed from the aforesaid perspective the several decisions cited on behalf of the respondents in this regard, particularly by the respondent No. 28, i.e., *Competent Authorit y Vs. Barangore Jute Factory and Others* [4] U.G. *Hospitals Pvt. Ltd. Vs . State of Haryana and Others* [5] , *Gaiv Dinshaw Irani and Others Vs. Tehmtan Irani an d Others* [6] and *Bhimandas Ambwani (Dead) Through Lrs. Vs. Delhi Power Compan y Limited* [7] can at best indicate the manner of exercise of the judicial discretion in the facts surrounding the particular cases in question.

25. Adverting to the facts of the present case, we find that out of the 94 acres and 28 guntas of land that was acquired way back in 1985-88, 55 acres have been allotted to the respondent No. 28. The layout proposed by MUDA was in respect of the balance land i.e. about 40 acres. Of the said approximately 40 acres of land, according to the MUDA, about 16 acres and 30 guntas is presently vacant whereas there are encroachments on the remaining land. Though even on the land not allotted to respondent No. 28, no developmental work, in consonance with the object of the 1903 Act has been undertaken we are not certain if the same is on account of the smallness of the area available or for any other good and acceptable reasons. However, keeping in mind that even if we are to set aside the acquisition, re-acquisition can be resorted to in which event the land would continue to vest in the MUDA and the land owner would be entitled to compensation, though at an enhanced rate, we are of the view that it would be just, fair and equitable to direct that the land vacant as on today and all such lands under encroachments, after being made free therefrom, may be retained by the MUDA for developmental works in consonance with the object(s) of the 1903 Act and the owner thereof be entitled to compensation in terms of the directions that follow. All proceedings connected to such encroachments will be completed within six
Months from today by all such forums before which the same may be pending. In the event MUDA does not consider it feasible to utilize the land for the purpose of the Act the same be handed over to the person entitled to receive such possession depending upon the outcome of Writ Appeal No. 1654 of 2008.

26. Insofar as the 55 acres of land allotted to the respondent No. 28 is concerned, we have taken note of the fact that despite the interim order dated 13th September, 1994 passed in Writ Petition No. 14726 of 1994 by the High Court of Karnataka, referred to above, the respondent No. 28 has raised constructions on the land. It is not necessary for us to go into the question as to whether such constructions had to be raised as the said respondent, by the time the interim order came to be passed, was committed to undertake such constructions and had no choice in the matter. What however cannot escape from notice is that notwithstanding the illegality in the allotment made and the risk undertaken by the respondent No. 28 in raising the constructions despite the interim order dated 13th September, 1994, a full-fledged academic campus consisting of several buildings, details of which are mentioned below, have come up on the land in question.

> "1. JSS Polytechnic
> 2. JSS Public School
> 3. JSS Polytechnic for the differently Abled
> 4. JSS Polytechnic for Women
> 5. JSS Polytechnic for Women's Hostel
> 6. SJCE Ladies Hostel
> 7. JSS NODAL Centre
> 8. JSS-KSCA Cricket Ground"

27. The judicial power should not be destructive if the Rule and Majesty of law can be upheld by suitable and appropriate adaptations and modifications in the eventual order that may be passed by the Court in a given case. In the present case, that a full-fledged academic campus have come up on the 55 acres of land; that a large number of persons are utilizing the benefit of the said infrastructure and facilities provided therein; that the infrastructure raised on the allotted land is providing avenues of employment to many and a host of other such circumstances cannot be overlooked by the Court. On a perusal of the materials laid before the Court, particularly, the Google Map showing the layout of the buildings on the 55 acres of land in question which, was specifically sought for by the Court, we find that even today there are large tracts of vacant land within the said 55 acres notwithstanding the constructions raised. In such circumstances, it is our considered view that the respondent No.28 should be asked to surrender to MUDA a compact area of a minimum of 15 acres, which vacant land the MUDA will take possession of within a month from today. The return of the said land will be once again made to the person or persons entitled to receive such possession depending upon the outcome of Writ Appeal No.1654 of 2008. Insofar as the remaining 40 acres of land allotted to respondent No.28 is concerned, we direct that compensation, in respect thereof, to the person/persons entitled to receive such compensation under the Land Acquisition Act, will follow the outcome of Writ Appeal No.1654 of 2008. The compensation under the Act will be paid by taking the date of the order of the learned Single Judge of the High Court i.e. 22.02.2001 to be the date of the Notification under Section 4 of Land Acquisition Act. The aforesaid date, which represents the midway point between earlier and subsequent dates (the earlier date of notification under Section 16(1) of

the Act of 1903 or the date of the present order) that could have been opted for, has been preferred by the court to balance the equities in a situation where the landowner is being denied the return of the land and the beneficiary of an illegal allotment is permitted to retain the same (in part) in larger public interest. We further direct that along with the market value of the land as on the said date i.e. 22.2.2001 the person or persons found to be entitled will be also entitled to compensation under all other heads including interest in accordance with the provisions of the Land Acquisition Act. The provisions of Section 18 and other provisions of the Act for enhanced compensation will also be applicable. The same directions and principles will govern the matter concerning compensation in respect of the vacant land (16 acres 30 guntas) and the land under encroachment referred to above after such encroachments are dealt with in terms of the directions contained herein. In view of the long efflux of time the process of determination and grant of compensation shall be completed by all forums within a period of one year from today.

28. Consequently and in the light of what has been discussed above both the appeals are allowed to the extent indicated. Civil Appeal No.453 of 2007 –

29. In the light of the above, Civil Appeal No.453 of 2007 is disposed of.

Judgment Referred.

[1]1955 (2) SCR 0867
[2]1973 (1) SCC 0188
3(2011) 14 SCC 0354
[4]2005(13) SCC 0477
[5]2011(14) SCC 0354
[6]2014) (8) SCC 0294
[7]2013) (14) SCC 0195