(2012) 11 KAR CK 0003

Karnataka High Court

Case No: Writ Petition No. 22888 of 2010 (LA-BDA)

Lakeview Tourism Corporation		APPELLANT
	Vs	
The State of Karnataka, The Karnataka Industrial Area Development Board and M/s. Laxmi Tourism Corporation		RESPONDENT

Date of Decision: Nov. 28, 2012

Acts Referred:

- Industrial Areas Development Act, 1966 - Section 28 (1), 28 (8), 3 (1)
- Land Acquisition Act, 1894 - Section 16, 17 (3A), 48, 48 (1)

Hon'ble Judges: Anand Byrareddy, J

Bench: Single Bench

Advocate: Jayakumar S. Patil, for Shri. H. Srinivasa Rao, for the Appellant; K.S. Mallikarjunaiah, Government Pleader for Respondent No. 1, Shri. Uday Holla for Shri. K. Shashi Kiran Shetty, Advocate for Respondent No. 3 and Shri. Nadiga Shivanandappa, Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Anand Byrareddy

1. The facts of the case are as follows:

The petitioner is said to be a partnership firm. It is the case of the petitioner that the State Government of Karnataka had hosted a Global Investors Meet in the year 2000. The petitioner had participated at the said Meet and had offered to set up a tourism project proposing to invest a cum of Rs. 250 Crore, indicating the land requirement, for the project, at about 70 acres. The petitioner had identified willing sellers of agricultural land in Hebbal and Hebbal Ammannikere villages, Bangalore North Taluk, comprised in land bearing Survey Nos. 59/1 to 75, 82 to 87 and 102 to

109, apart from other lands of those villages measuring about 33 acres. The State Government is said to have accepted the proposal. In accordance with the procedure that was prescribed to process such proposals, the petitioner had submitted the proposal to a Single Window Agency, known as the State Level High Power Committee (Hereinafter referred to as the ''SLHPC'', for brevity), headed by the Minister of Industries and the said Committee, at its meeting held on 28.6.2000, had approved the project.

Though initially, it was proposed that the petitioner would acquire, through direct negotiation with the land holders, 33 acres of land and that the State Government would be required to acquire the remaining extent of 37 acres that was required for the project, it was decided by the said SLHC, at its meeting dated 14.8.2001, to acquire the entire extent of 70 acres required for the project, at the cost of the petitioner. Accordingly, it was agreed that the acquisition would be made under the provisions of the Karnataka Industrial Areas Development Act, 1966 (Hereinafter referred to as the ''KIAD Act'', for brevity) and he was called upon to deposit 40% of the estimated cost, which was assessed at over Rs. 1.00 Crore. The petitioner had deposited such amount. The petitioner was thereafter called upon to pay certain service charges and he had paid a further sum of Rs. 76,15,700/-, on that account.

The KIADB issued a declaration u/s 3(1) of the Karnataka Industrial Areas Development Act, 1966 (Hereinafter referred to as the ''KIAD Act'', for brevity), declaring an area of 63 acres 33 guntas as an industrial area and also issued a preliminary notification u/s 28(1) of the KIAD Act dated 25.11.2000.

It transpires that subsequent to the issuance of the notification u/s 28(1) of the KIAD Act, a preliminary notification u/s 17(1) and (3) of the Bangalore Development Authority Act, 1976 (Hereinafter referred to as the ''BDA Act'', for brevity) dated 3.2.2003, proposing to acquire large extents of land, for the formation of a housing layout known as ''Arkavathy Layout'', including the portion of lands, which were already notified u/s 28(1) of the KIAD Act, as aforesaid, was issued.

The KIADB immediately addressed the BDA in this regard, and had requested the deletion of lands, which were sought to be notified, from the acquisition proceedings under the BDA Act. This was also taken up by the State Government with the BDA.

In the meanwhile, the petitioner was required to deposit a further amount of Rs. 8,53,45,237/-, which was promptly deposited as on 24.4.2004. The KIADB had then issued a final notification dated 11.5.2004, in respect of 55 acres 13 guntas of land. A mahazar was also drawn up as to taking possession of the said land in terms of Section 28(8) of the KIAD Act, after following the due process of law contemplated u/s 28(6) and 28(7) of the KIAD Act and possession of the land was handed over to the KIADB. Thus, the lands had vested absolutely with the State" and possession was also delivered to KIADB. There were attempts at encroachment on the land during

the said period and action was also initiated in respect of the same.

On the other hand, it transpires that the BDA, inspite of the infirmity in the acquisition proceedings under the BDA Act, as aforementioned, seeking to include the lands, which were already covered by the acquisition proceedings under the KIAD Act, had proceeded to issue a final notification u/s 19(1) of the BDA Act, inclusive of the lands which were not available, as already stated.

Therefore, the petitioner was compelled to challenge the action of the BDA by way of writ proceedings in WP 46785/2004. The said writ petition was allowed by an order dated 23.10.2010 and the acquisition under the BDA Act was quashed insofar as it overlapped the lands acquired under the KIAD Act. The BDA had filled an appeal challenging the said order. However, the appeal was dismissed.

It transpires that the third respondent, which is said to be a partnership firm, is said to have approached the Karnataka Udyog Mitra, seeking approval of a tourism project proposed to be established over the lands of Hebbal Ammannikere village vide application dated 23.1.2005, which is said to have been rejected as on 1.6.2005, while finding that the petitioner''s project had already been approved in respect of the very lands, which was also sought to be included in the proposed project of respondent no. 3.

The said respondent had preferred a writ petition in WP 25741/2005, wherein the petitioner was said to be a respondent, But, however, that writ petition was withdrawn as on 2.2,2010, on the basis of a memo filed by the said third respondent that the State Government had decided to de-notify the lands in question, which were the subject matter of the writ petition.

The State Government on 3.2.2010, is purported to have issued a notification u/s 4 of the KIAD Act de-notifying an extent of land measuring 4 acres 4.25 guntas in Hebbal Village, which were part of the lands acquired by the KIADB for the petitioner''s project. The said lands were actually in Hebbal Ammannikere village, which has been subsequently corrected by issuing a Corrigendum Notification. It is this action of the State Government, which is the subject matter of the present writ petition.

2. The Statement of objections filed by the respondents are to the following effect:

That the State Government has issued a notification to delete the lands in question, as it is to be utilized by the third respondent for the purpose of tourism development. Since there was no allotment made in favour of the petitioner, nor was possession handed over, there was no impediment for issuance of such a notification and that there is no illegality committed by the state Government. The third respondent, in turn, questions the locus standi of the petitioner to challenge the impugned notifications, as the petitioner had not acquired any right over the property, as in the eye of law, the acquisition is for the benefit of the KIADB and not

for the benefit of the petitioner.

It is further contended that the rigour of the provisions of the Land Acquisition Act, 1894 (Hereinafter referred to as the ''LA Act'', for brevity) would not be applicable to the acquisition made under the KIADB Act and there is no prohibition to withdraw from acquisition under the provisions of the KIAD Act unlike under the provisions of the LA Act. In any event, the petitioner cannot question the same. The third respondent claims as the owner of the land and since the third respondent also seeks to utilize the land for a public purpose, albeit by setting up a project in the tourism industry, there is no illegality in the impugned notification.

It is claimed that the third respondent had purchased 10 acres 78 guntas of land in various survey numbers of Hebbal Ammannikere village and it is thereafter that an application was made before the SLHPC seeking approval of its project as per application dated 25.1.2095. Pursuant to which, the application was rejected on the ground that another project of similar nature had already been approved. Though the third respondent had challenged that order by way of a writ petition, it had also filed an application before the State Government seeking deletion of land to an extent of 4 acres 1/4 gunta of Hebbal Ammannikere Village owned by the respondent, which was the subject matter of the acquisition under the KIAD Act. Since it had not been allotted to any entity and was in the possession of the KIADB, the same has been deleted from the acquisition proceedings.

The third respondent has also questioned the bona fides" of the petitioner - firm and its constitution and therefore, seeks to question the very intention and object of its partners, in seeking to obtain the benefit of the lands that were subject matter of the acquisition proceedings, including the land which has now been de-notified. Though, those acquisition proceedings are claimed to have been initiated at the instance of the petitioner, the petitioner approached the State Government or the authority constituted under the Karnataka Facilitation Act, 2002 (Hereinafter referred to as the ''KF Act'', for brevity), would not enable the petitioner to claim that any approval granted by any such authority in respect the proposed acquisition of any particular land, could be linked to independent acquisition proceedings under the KIAD Act, which has no reference of the petitioner being the ultimate beneficiary and therefore, the petitioner would not be entitled to question the inclusion or exclusion of any item of land in the said acquisition proceedings.

3. By way of rejoinder, it is asserted that the petitioner''s locus standi to question the de-notification cannot be in doubt. It is pointed out that in earlier proceedings initiated by the petitioner, particularly, in writ appeal in WA 3725/2011 upholding the judgment of a single judge in WP 46785/2004, while imposing costs of Rs. 2,00,000/- on the BDA, it was clearly held that the land in question had been notified by the State Government for the petitioner''s project and that the petitioner was entitled to the benefit of the principle of promissory estoppel as against the State Government, This would clearly be in line with the fact that the beneficiary of the

acquisition proceedings was in fact and in law the petitioner and this is evident from inception, as already narrated by the petitioner.

Insofar as the contention that the State Government is not fettered in withdrawing from the acquisition proceedings even after the lands have vested with the State Government, is concerned, the effect of the land vesting in the State Government, would be the same, whether it is the LA Act or KIAD Act. The factum of such vesting and the possession having been handed over to the KIADB, is not capable of being denied. Therefore, it does not enable the State Government or the third respondent to plead that Section 21 of the General Clauses Act, 1897 (Hereinafter referred to as the ''GC Act'', for brevity) could be pressed into service, in the State Government having its power to withdraw from the acquisition, after the land has vested in the State Government.

Insofar as the bona, fides of the partners constituting the petitioner - firm is concerned, the petitioner has also sought to verify and clarify the doubt sought to be raised in this regard.

4. In the backdrop of the above contentions, the learned Senior Advocate Shri Jayakumar S Patil, appearing for the Counsel for the petitioner seeks to canvass the following:-

It is contended that the State Government, by its notification dated 3.2.2010, has sought to withdraw acquisition of the lands mentioned therein. This, it is stated, is outside the power of the State Government when once the possession of the lands has been taken by the Land Acquisition Officer, as, provided under the KIAD Act. The fact of possession having been taken is evidenced by a mahazar, which is available on record and possession was also handed over to the KIADB. This is an admitted circumstance as evident from the pleadings in WP 46785/2004.

The petitioner being denied the benefit of the lands, as being opposed to the principle of promissory estoppel, has been endorsed by a Division Bench of this court, to the knowledge of the State Government and which is a binding decision insofar as the State Government is concerned. Attention is drawn to Paragraph-9 of the said Division Bench judgment in WA 3725/2002. Hence, it is contended that from the tenor of Section 28(4) of the KIADB Act, the land having vested in the State, any notification u/s 4 of the KIAD Act, which is sought to be pressed into service, could only be issued prior to the said notification u/s 28(4) of the KIAD Act, when such power is unavailable subsequent thereto.

The learned Senior Advocate would draw attention to a decision in M. Nagabhushana Vs. State of Karnataka and Others, , with particular reference to Paragraphs - 28 to 35, to emphasize the position of law, as endorsed by the apex court, that the land stand vested with the State immediately after the issuance of the notification u/s 28(4) of the KIAD Act and in comparison, under the provisions of the LA Act, the land vests only after the possession is taken and after passing of an

award and issuance of a notification u/s 16 of the LA Act.

It is further contended that the third respondent is said to have purchased the lands in question subsequent to the issuance of the preliminary and final notifications u/s 28(1) and 28(4) of the KIAD Act and therefore, would have had no right to seek withdrawal from the acquisition proceedings by the State Government and was at best entitled to seek compensation and no other relief in respect of the lands in question. In this regard, reliance is placed on a decision in Vasanth Sreedhar Kulkarni and Others Vs. State of Karnataka and Others, .

Insofar as the allegation against the petitioner - firm that its constitution is doubtful, in that, Shri Dayananda Pai, the partner, after having sold the property to M/s Mantri Group, is seeking to pursue the present petition is denied. It is asserted that the petitioner is a firm consisting of M/s Shivashakthi Estate and Investments Private Limited, represented by one Sushil Mantri and M/s Ashwitha Property Developers Private Limited, represented by Shri Dayanand Pai, as partners, which firm has been in existence since the year 1999. The firm had its office at Jayanagar, but later shifted to Vittal Mallya Road, Bangalore in the year 2004. Therefore, the allegations of mala fides and the doubt sought to be cast on the manner in which the petitioner has been conducting its business, is misleading and false.

It is further contended that insofar as the argument that the SLHPC having approved the project of the petitioner, requiring the KIADB to acquire the land, the notifications issued under the KIADB Act, did not specify that the lands were being acquired for the benefit of the petitioner and as such, the petitioner did not have any locus standi to claim that he is the beneficiary or to question the actions of the State, is held to be untenable.

The learned Senior Advocate would draw attention to the case of P. Narayanappa and Another Vs. State of Karnataka and Others, , wherein it is held that an entrepreneur or a company may give a proposal to the State Government for setting up an industry or infrastructural facilities and the Government can thereafter acquire the land and hand it over to the Board and thereafter be allotted to an entrepreneur for setting up an industry or infrastructural facilities.

In any event, in the present case on hand, it is pointed out that a Division Bench of this court has already endorsed that the ultimate beneficiary of the acquisition was the present petitioner and that the State Government was estopped from denying the benefit of the lands to the petitioner, especially, after the petitioner has invested substantial sums of money at a very early point of time and to deny the petitioner the benefit of the lands by the summary withdrawal of the lands from acquisition proceedings, is no longer available to the State.

It is further emphasized that two items of land, in respect of which, the State has sought withdrawal from the acquisition proceedings, had been purchased by respondent no. 3, after the preliminary notification and six items of land were

purchased by the third respondent after the final notification. These transactions were clearly in violation of Section 3 of the Karnataka Land (Restriction on Transfer) Act, 1991, as the lands had vested in the State Government upon the final notification u/s 28(4) of the KIAD Act having been published. The law contemplates criminal proceedings to be initiated against the seller of such properties and any subsequent purchaser could, at best, proceed to seek compensation having stepped into the shoes of the original owner. Therefore, the State Government was not justified in issuing the impugned notifications.

The State Government has also sought to overlook the circumstance that respondent no. 3 had made an application, seeking approval of its project including the lands that are now the subject matter of the impugned notifications. Such application was rejected by the competent authority, while noticing that the project of the petitioner was duly approved at a prior point of time in respect of the very lands in question. Therefore, the conduct of the third respondent, having proceeded to purchase the lands subsequent to the acquisition proceedings, which were well under way and the State Government having chosen to withdraw from the acquisition proceedings at the instance of the third respondent, is clearly illegal and mala fide.

5. On the other hand, the learned Senior Advocate Shri Udaya Holla, appearing for the Counsel for respondent no. 3, would contend that admittedly, it was the petitioner''s case that it had identified 70 acres of land, which was to be utilized in the proposed project of the petitioner and it was further reported that in respect of 33 acres, the petitioner has already finalized transactions with the land owners to purchase the same and it was only 37 acres of land, which would be required to acquire through the medium of the State. This was also placed before the SLHPC, which had, at its meeting dated 10.7.2000, approved only the acquisition of 37 acres. Inexplicably, however, at a further meeting dated 14.8.2001, it was then decided to acquire the entire 70 acres. In any event, the notifications issued under the KIAD Act, are clearly for the acquisition of lands measuring 63.33 acres of Hebbal and Hebbal Ammannikere villages, for the establishment of industries by the KIADB. Therefore, there is no indication that the acquisition was for the ultimate benefit of the petitioner.

It is in that background that the third respondent had challenged the acquisition in a writ petition filed in WP 25741/2005 and an interim order was also granted in the said petition. But, during the pendency of the writ petition, since the State Government had decided to withdraw from acquisition of the lands, which belonged to the third respondent, the third respondent had chosen to withdraw the writ petition and it is immediately thereafter that the State Government has chosen to withdraw from the acquisition in respect of 4 acres and 4 1/4 guntas of land.

It is contended that there is no illegality or irregularity in respect of the same and in any event, the same not having been handed over to the petitioner, the petitioner

could have no locus standi to question the same.

It is pointed out that the present challenge however is on the following grounds, namely,

(a) that the lands are acquired for the benefit of the petitioner

(b) there is no bar to denotify or withdraw acquisition of the lands once the lands stand vested in the State Government,

(c) that the possession of the land has been taken on 22.6.2004 and hence could not be exempted from the acquisition proceedings,

(d) that the third respondent could not have approached the State Government, seeking such withdrawal from the acquisition proceedings.

The learned Senior Advocate would submit that it is the case of the third respondent that the possession of the land has never been taken by the petitioner and there is no proof nor is it the case of the petitioner. In any event, the lands are sought to be acquired for the KIADB and it is not spell out in the acquisition proceedings that it is on behalf of the petitioner.

The entries in the RTC pertaining to the land in question, after the issuance of the notifications under Sections 28(1) and 28(4) of the KIAD Act, clearly indicated that the lands continued to be in the possession of the land owners, including the third respondent.

Therefore, the withdrawal from the acquisition proceedings, even if it was under the provisions of the LA Act not being prohibited in law, was also not prohibited under the KIAD Act, notwithstanding the purported issuance of a notification u/s 28(4) of the KIAD Act, when the fact remains that the actual physical possession had not been taken, as is evident from the material on record. Therefore, the petitioner''s locus to challenge the impugned notifications is not available, as held by this court in the case of M/s Moola Investments Private Limited vs. State of Karnataka, in WP 11727/2006, disposed of on 13.4.2010, wherein it was held that v/hen the lands sought to be acquired for the KIADB are denotified, the company claiming that its project is approved by the State Government and that it includes the lands so denotified, has no locus to challenge the notification of the State Government. The said decision applies to the present case on hand.

In Valivalam Desikar Chatram Trust Vs. Assistant Commissioner (Land Reforms) and Others, , it has been held that a stranger cannot challenge a denotification issued u/s 48 of the LA Act, on the ground that possession had already been taken by the Government nor can the Government be compelled to furnish reasons for withdrawal from such acquisition.

In Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, ; it has been held that the Government cannot be compelled to give reasons for withdrawal

from acquisition.

It is further contended that insofar as the question whether the possession of the land had been taken by the State Government or the KIADB is concerned, it is contended that Section 28(6) of the KIAD Act, specifies that notice is required to be issued in writing to a person, who may be in possession of the land calling upon him to deliver possession of the land to the State Government within 30 days of service of such notice.

In the instant case on hand, no such notice having been issued, is claimed nor is any material placed on record in support of the same. Therefore, it is not open to the petitioner to contend that physical possession of the land has been taken, in the absence of compliance with the above mandatory provisions and hence, no such possession has been taken, as established by the third respondent from the material on record.

Incidentally, neither the State Government nor the KIADB have categorically declared that possession has been taken. The State Government, in its wisdom, having sought to withdraw from the acquisition proceedings gives rise to a presumption that it was acting on the footing that since possession had not been taken physically, it was open for it to exercise its power u/s 4 of the KIAD Act.

The only document sought to be relied upon in proof of possession having been taken, is a mahazar, under which, possession is claimed to have been taken, in respect of over 100 items of land, spread over two different villages. This is bereft of details, such as the persons who are involved in taking possession of the lands, the names of the witnesses and their addresses, who are present in respect of each such item of land or other particulars of the respective lands. Therefore, it is evident that any such mahazar cannot be relied upon in respect of this important aspect of acquisition and hence, it cannot be said that taking of actual physical possession has been established.

It is also pointed out that the mahazar does not indicate the presence of the land owners nor do they endorse the same.

The apex court has repeatedly held that in the absence of actual physical possession having been taken being established, it would not be out of place to treat any such circumstance, as is sought to be evidenced in the present case, as being mere symbolic possession. Reliance is placed on the following authorities :-

1. Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, ,

2. Muniyamma Vs. State of Karnataka Dept. of Urban Development, ,

3. Prahlad Singh and Others Vs. Union of India (UOI) and Others, .

It is also pointed out that the RTC in respect of the lands in question, even subsequent to the date of mahazar, clearly indicates that the owners continued in

possession of the lands in question. Therefore, the presumption that arises u/s 133 of the Karnataka Land Revenue Act, 1964, to the effect that the entries made therein are true and correct, would have to be applied. In, any event, the petitioner has not placed any rebuttal evidence to demonstrate that possession has been taken beyond all doubt.

The apex court, in an identical circumstance, in Raghbir Singh Sehrawat Vs. State of Haryana and Others, , has held that when the RTC showed the names of the owners and when there were no reasons to disbelieve the same, a mahazar set up as regards taking of physical possession, cannot be made the basis of a finding that possession of the land has been taken.

It is contended that in so far as the power available to the State government to de-notify or to withdraw from the acquisition proceedings, u/s 4 of the KIAD Act, is concerned, attention is drawn to a decision of this Court in Thomas Patrao since deceased by his LR and Another Vs. The State of Karnataka and Others, , wherein it is opined that the State Government could, in exercise of power u/s 4 of the KIAD Act read with Section 21 of the General Clauses Act, withdraw land from the acquisition proceedings. It is contended that this is a view which is further fortified by the other aspect highlighted by the apex court in the case of State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , namely, that in respect of acquisition under the provisions of the LA Act, 1894, it is possible for the State to withdraw from the acquisition proceedings in terms of Section 48 thereof, only if the land has not already vested in the State by the State having taken physical possession of the same. However, from a reading of Section 4 of the KIAD Act such a restriction is not forthcoming and hence in exercise of power there under and in terms of Section 21 of the General Clauses Act, the State may withdraw from the acquisition irrespective of whether possession of the land had been taken. It is further contended that such power can be exercised by the State, even without disclosing any reasons in doing so, as held by the apex court in the case of Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, .

It is contended that the petitioner firm constituted by one Dayanand Pai and his brother Satish Pai are real estate developers and the proposed project is only a smoke screen to enable the petitioner firm to deal with the land, that is acquired at a nominal price through the machinery of the State, as real estate. It is contended that even during the pendency of these proceedings the said partners have struck a deal with one Mantri Group, another major property developer, who are now inducted into the petitioner firm as a partner, which would clearly reveal the design of the petitioner - firm. It is also pointed out that the State which is aware of the practice of entrepreneurs generally to seek land in excess of their requirement for particular projects, or imaginary projects, a Land Audit Committee was specifically set up to scrutinize the actual land requirement of all projects for which land is to be acquired. In the present case on hand, no such audit has been carried out. It is

sought to be highlighted that the conduct and business practices of Dayanand Pai has already been taken note of by the Courts, as is evident from the caustic remarks recorded by the apex court in the case of Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, . Shri Holla draws attention to the extensive adverse remarks made against Pai, by the apex court, in relation to his conduct in respect of land involved in those proceedings.

In the light of the above contentions, the points for consideration by this court are :

a) Whether the State government could issue the impugned notification u/s 4 of the KIAD Act, after the culmination of proceedings and steps as contemplated u/s 28(6), (7) & (8) of the said Act ?

b) Whether the petitioner has the locus standi to question the action of the State government, when the petitioner is not shown to be the beneficiary of the acquisition proceedings?

It is significant that the State Government has not chosen to file any pleadings in these proceedings. The learned Government Pleader appearing on behalf of the State has however, sought to justify the impugned order with reference to case law - which is cited by the parties.

On facts, there is no dispute that the lands in question were the subject matter of acquisition proceedings under the provisions of the KIAD Act. It is not in dispute that a notification u/s 28(4) of the said Act was issued and duly published in the Karnataka Gazette. There is also material on record to demonstrate that further steps have been taken as contemplated u/s 28(6), (7) and (8) of the Act, in respect of the lands in question. Respondent no. 3 has seriously disputed that actual physical possession of the lands had been taken of the lands involved, notwithstanding any documentary material to the contrary.

As can be from the several decisions relied upon by respondent no. 3 the following legal position emerges:

It is the view of this court (See: Thomas Patrao, supra) that on publication of the declaration under sub section (4) of Section 28 of the KIAD Act, land vests absolutely with the State Government. But the object of the Act cannot be achieved by mere vesting of the land with the State government. The object can be achieved only when possession of the vested lands are taken by the State government and transferred to the KIADB for the declared purpose. The acquisition is not complete without taking possession and compensation is not payable unless the acquisition is complete. In other words the land owner is not entitled for compensation immediately after vesting of the land in the State Government. It is held that title vests with the State Government on publication of the declaration, but acquisition of the land is not complete without taking possession. It was declared that the State government is empowered to withdraw the land from acquisition, before taking its

possession, by cancellation of the notification issued under sub-section (2) and (4) of Section 28 of the KIAD Act, in exercise of power u/s 21 of the GC Act. That the State Government may also exclude lands from the declared "industrial area" by the issuance of a notification u/s 4 of the KIAD Act By implication, therefore, the State could not withdraw from the acquisition after possession of the lands had been taken. The above view has been approved and applied in subsequent decisions including, Moola Investments case and connected matters, supra.

The consistent view of this court has been that it is possible for the State government to withdraw land from the acquisition proceedings, under the provisions of the KIAD Act, only if physical possession has not been taken of the same by the State. There is no view expressed as to whether the State can withdraw any land from such acquisition even if physical possession has been taken, by virtue of the wide power conferred u/s 4 of the KIAD Act. Though it was canvassed on behalf of the respondents that such a power is always available and that the power is such that it was not incumbent on the State to even assign reasons for doing so, this proposition cannot be accepted without qualification. The respondents seek to draw inspiration for such a proposition from the observations of the apex court in the case of Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, . The apex court in that case, was addressing a situation where land that was the subject matter of acquisition was so overrun by unauthorized occupants, that the State government felt it was futile to make any attempt at forcible dispossession and sought to with draw the acquisition proceedings, the land owners having sought to compel the State government to go ahead with the same, the apex court held that absence of any reasons assigned by the government was not material, if otherwise the circumstances that were indisputably prevalent, justified the decision. In the opinion of this court, in answer to a hypothetical question, whether the State Government would be enabled to issue a notification u/s 4 of the KIAD Act, after the acquisition proceedings are completed in all inspects, without assigning any reason. The answer would be a categorical no.

Such a situation as contemplated above has not arisen in the present case on hand, as elaborated hereinafter. But if a situation should arise, as for example, where the lands acquired in a particular instance though classified under a certain zone for purposes of planning and development under zonal regulations or other legislation, and yet declared as part of an "industrial area", under the provisions of the KIAD Act, without the prior change of land use, and should the statutory authority under such other legislation refuse the conversion of land use, it may be inevitable to efface the acquisition proceedings pursuant to the provisions of the KIAD Act, and in such a situation whether that could be assigned as a reason to invoke Section 4 of the KIAD Act, by the State even if possession has been taken, is a question that is left open for consideration if the occasion should arise.

As regards the disputed question of fact whether actual physical possession was taken of the lands in question, such a dispute is raised in the face of material documents such as the Mahazar drawn at the time of actual taking of possession by the concerned and the acknowledgement of the further handing over of possession of the lands to the KIADB. The respondent State Government has not denied the said material documents or the veracity of the same by filing any pleadings. It is the private respondent that seeks to question the same on the ground that the documents are concocted and would only demonstrate possession of the lands on paper, and that actual physical possession was never taken. The said respondent seeks to place reliance on the following authorities to substantiate that the material on record is inadequate to demonstrate that actual physical possession of the lands in question was ever taken and therefore it is possible to conclude that the State government was proceeding on that footing in seeking to withdraw the acquisition proceedings.

In Balwant Narayan Bhagde, supra, the apex court was deciding a question as to whether possession of land which was released by the competent authority u/s 48(1) of the LA Act, was taken or not. It was held that the said Act contemplates the actual taking of possession as a necessary condition of vesting of the land. How such possession can be taken would depend on the nature of the land. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of the land. It was held that it could not be laid down as an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. In that particular case, as the land was lying fallow and there was no crop on the land at the material point of time, the act of the Tahshildar having inspected the land for the purpose of determining what part of it was waste land and what part was arable in order to take possession thereof, was held as sufficient to constitute the taking of possession. It was expressed that the presence of the owner or the occupant of the land was not necessary to effectuate the taking of possession. It was also expressed that it is not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it would be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking mere paper possession, without the occupant or the owner ever coming to know of it.

Shri Holla would hence contend that in the instant case, the alleged Mahazar said to have been drawn up at the time of taking of possession of the lands, on the face of it, does not evoke any confidence. It is pointed out that about 72 items of land are said to have been taken possession in Hebbal village and about 29 items of land in Hebbal Ammanikere village. It is contended that the large number of lands have been taken possession of on the same day and the absence of particulars in respect

of each item of land which is not forthcoming, would clearly indicate that the document has been prepared for the record, without the physical inspection and actual taking of possession and hence cannot be accepted.

In the case of Prahlad Singh, supra, the apex court was concerned with the question whether the land which was the subject matter of acquisition could be treated as having vested in the State u/s 16 of the LA Act, on the making of an award by the Collector, though the actual physical possession continued with the land owner. While holding that the vesting of land under Sec. 16 of the LA Act presupposes actual taking of possession and till that is done, legal presumption of vesting enshrined in Section 16 cannot be raised in favour of the acquiring authority, the court has expressed that since the Act does not prescribe the mode and manner of taking possession of the acquired land by the Collector, the Court has proceeded to apply the principles as laid down in the case of Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, , wherein the apex court has extensively reviewed the case law in which the issue has been considered. The principles laid down therein are as follows :

(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily he treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not he possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficial of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken.

It was found on facts by the apex court, after applying the above principles, that the possession of the lands had remained with the appellant therein.

In Raghbir Singh Sehrawat''s case, supra, the principles laid down in Banda Development case were again applied in deciding on the facts of that case.

The contention on behalf of respondent no. 3 that the material on record is inadequate to hold that physical possession has not been taken of the land in question. There are sufficient details provided in respect of those items of lands on which there were standing trees or structures, in the document evidencing the taking of possession by the competent authority. The total extent was about 55 acres of land and the several parcels apparently ''being contiguously situated, were certainly capable of being inspected and taken possession of conveniently on the same day, as reflected in the mahazar. The same cannot be discarded as a nebulous document. The State government has not negated the same. Accordingly, the factum of possession of the lands in question having been taken by the State, is adequately established.

On the question whether the petitioner has the locus standi to question the impugned notification is concerned. Reliance sought to be placed on the case of B.A. Basavaiah and Others Vs. Bangalore Development Authority and Others, , by the respondent no. 3, would not be relevant. In that case, a stranger had sought to question the notification issued by the State for de-acquisition, on the ground that possession had been taken by the State and therefore it was not open to the state to issue such a notification. Both the land owner and the State had shown that the possession was not taken.

Though it is true that the notifications issued u/s 28(1) and (4) of the KIAD Act did not indicate the petitioner as the beneficiary of the land in question. It is not in serious dispute that the fact that the petitioner had approached the State government with a project report proposing the setting up of a tourism project, with a request to acquire the lands in question. This is not a procedure contemplated under the KIAD Act, in so far as the acquisition of lands thereunder are concerned. This court having already taken note of the practice in the case of this very petitioner in earlier proceedings has not found it to be illegal or irregular and more particularly has found that the petitioner having invested substantial sums of money in the exercise was vested with adequate interest in addressing those proceedings. Further, the apex court in P. Narayanappa''s case has taken note of the practice of an entrepreneur or a company making a proposal to the State Government for setting up an industry and that the Government may thereafter acquire the land and give it to the Board. Hence it cannot be said that the petitioner has no locus standi to prefer this petition.

In so far as the allegations against the partners of the firm and their alleged true intentions are concerned. The scope of this writ petition does not warrant the said

allegations being enquired into. Whether any business practice or strategy results in an illegality is a question of fact. There is no scope for an enquiry in that regard in these proceedings.

In the result, the present writ petition is allowed. The impugned notifications are hereby quashed.