Sri Srwath Hegde and Others. Vs Bangalore Development Authority and The State of Karnataka and Others

Court: Karnataka High Court

Date of Decision: Sept. 2, 2011

Acts Referred: Bangalore Development Authority Act, 1976 â€" Section 17 (1), 27, 33
Constitution of India, 1950 â€" Article 12, 226

Hon'ble Judges: D.V. Shylendra Kumar, J

Bench: Single Bench

Advocate: M.S. Bhagwat and Sri D. Pavanesh, In WP. Nos. 16074-100 of 2010 and Misc. W.6944 of 2010 Sri. M.S. Bhagwat and Sri. D. Pavanesh, In WP Nos. 16101-106 of 2010 Sri C.M. Nagabhushana, for P1, Sri M.S. Bhagwat, for P2. 3, 5-10 and 12-14, Sri B. Papegowda, for P4 and PI 1 In WP Nos. 6584-97 of 2011 Sri G Shastri, in WP Wo 6467 of 2011 and Misc. W. 4049/2011 Sri. M.S. Bhagwat and Sri D. Pavanesh, In WP Nos. 5389-92 of 2011 and Misc. W.3466/2011 M/S Dharmashree Associates, In WP No. 6608 of 2011 Sri. M.S. Bhagwat, Sri Pavanesh D and Sri Lokesh M, In WP Nos. 13510-11 of 2011 Sri. M.S. Bhagwat, Sri Pavanesh D and Sri Lokesh M In WP Nos. 8566-67 of 2011, for the Appellant; B.V. Shankara Narayana Rao, for R1, Sri R. Om Kumar, AGA for R2 In WP. Nos. 16074-100 of 2010 and Misc. W. 6944 of 2010 Sri R. Om Kumar, AGA for R1 and Sri B.V. Shankara Narayana Rao, for R2 In WP Nos. 16101-106 of 2010 Sri V.Y. Kumar, for R1 and R2, Sri R. Om Kumar, AGA for R3 and Sri V.B. Shivakumar, for R4 In WP Nos. 6584-97 of 2011 Sri R Om Kumar, Aga for R1, Sri V.Y. Kumar, for R2 and R3 and Sri V.B. Shivakumar, for R4 In WP Wo 6467 of 2011 and Misc. W. 4049/2011 Sri V.Y. Kumar, for R1 and R2, Sri R. Om Kumar, Aga for R3 and Sri V.B. Shivakumar, for R4 In WP Nos. 5389-92 of 2011 and Misc. W. 3466/2011 Sri. V.Y. Kumar in WP No. 6608 of 2011 Sri V.Y. Kumar, for R1 and R2, Sri R. Om Kumar, Aga for R3 In WP Nos. 13510-11 of 2011 Sri Basavaraj V Sabarad, for R1, SRI R. Om Kumar, Aga for R2 and Smt M.C. Akkamahadevi, for R3 In WP Nos. 8566-67 of 2011, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.V. Shylendra Kumar

1. Bangalore Development Authority [BDA] and the manner of its functioning is rather difficult to fathom. BDA is a development authority within

the meaning of the provisions of the Bangalore Development Authority Act, 1976 [for short, the Act] in respect of metropolitan area of Bangalore

city and also planning authority within the meaning of this phrase as it occurs in the Karnataka Town and Country Planning Act, 1961, has been on

the other hand an authority functioning in a most erratic, whimsical, arbitrary manner over a period of time.

2. The city of Bangalore, which could have been transformed into a beautiful developed garden city, has only turned out to be a concrete jungle, a

messed up concrete jungle and the annihilation of green cover which was available earlier in the city has made this possible!

3. Even when the manner of functioning of this authority has been brought before courts by affected, interested citizens, judiciary, in the name of

development, a distorted and misconceived perception of development, has, over a period of time, overlooked a number of follies of this authority

and in fact has overlooked many illegalities committed by BDA and this has only resulted in the authority being encouraged in its wayward

functioning and acting like a tyrant ignoring the interest of the general public, citizens of the city and has been acting even in a partisan manner,

favouring some and victimizing many and the present batch of writ petitions only repeats this story, which is not uncommon before this court.

4. The BDA being both the planning authority under the provisions of the Karnataka Town & Country Planning Act, 1961 and a Development

Authority under the BDA Act is required to ensure that there is a proper outline development plan which is a comprehensive plan for the entire

Bangalore metropolitan region prepared and published in terms of the provisions of the Karnataka Town & Country Planning Act, 1961 and also

to ensure that all developments within Bangalore metropolitan area takes place only in conformity with this plan.

5. Being a Development Authority under the BDA Act, when a scheme is prepared as in the instant case, the scheme for "Rajamahal Vilas

Extension" development, it is the primary duty of the BDA to ensure that the scheme is only in conformity with the plan which it has already

prepared and published under the Karnataka Town & Country Planning Act, 1961. It is also necessary while acting as a planning authority to

ensure that the development in the entire metropolitan area, not merely the scheme which BDA has prepared, but developments otherwise also are

all fully in conformity with the plan. When such is the twin, onerous responsibility and is a statutory duty imposed on the BDA under these two

enactments, the conduct and attitude of the BDA in not placing either the overall plan for the metropolitan area as was prevailing at the time of

preparation of the scheme for "RMV II Stage Extension" or the non placing of the original scheme with reference to which alone, one can

understand and appreciate the extent up to which the BDA has implemented the scheme in conformity with the scheme as had been originally

propounded and also as to whether such extent of implementation can in any way amounts to a substantial implementation of the scheme, could

have been answered. The BDA in spite of specific directions to place such record before the court, not having done so, in a proper manner, but

producing maps prepared as of now with the help of some current facilities, definitely leads to doubting the bona fides of the BDA in the exercise

of its statutory powers and also belies its claim that the BDA had implemented the scheme in a substantial manner to avoid the operation of section

27 of the BDA Act.

6. The BDA had virtually suppressed this material from the scrutiny of the court on earlier occasions and on the other hand has created an

impression that the extent of land that had been allotted in favour of private Housing Societies is to be included in the extent of land in respect of

which the BDA has implemented the scheme and for example as was the case of the BDA before this court in Bangalore Development Authority

v. Dr. H.S. Hanumanthappa (1996 (7) KAR L3 1) based on which the division Bench of this court has rendered the Judgment reversing the single

Bench decision which had allowed the writ petition filed by one Dr. Hanumanthappa and others and the division Bench had dismissed the writ

petition being of the impression that there was a substantial implementation of the scheme by the BDA and therefore section 27 of the BDA Act

was not attracted!

7. This Judgment having preceded on a mistaken impression created by the BDA that it has implemented the scheme in a substantial manner if the

extent of land allotted to private Housing Co-operative Societies is to be included and having deliberately suppressed before this court the crucial

fact as to whether the societies have in fact adhered in their developmental activities either in accordance with the scheme prepared by the BDA or

in terms of the overall plan for the metropolitan area and the Judgment having been rendered under such a mistake of fact for holding that; the

provisions of section 27 of the BDA Act is not attracted, the Judgment cannot be construed as a binding authority having efficacy of a binding

precedent and therefore does not help the respondent - BDA for seeking a like finding in the present examination also. On the other hand, on the

admitted facts as presented by the respondents themselves before this court as revealed in their statements, additional statements and memos with

the sketch and maps of the manner of utilization of the land for ''Rajamahal Vilas II Stage Extension'', the BDA has miserably failed to implement

the scheme not only in a substantial manner but even in a minimal manner within the stipulated period of five years.

8. BDA being treated and having been accustomed to being treated very liberally, even condoning its lapses and being encouraged by such

protection given by the judiciary has been indulging in acts which when viewed from a purely legalistic angle and on the touchstone of the

provisions of the Act and the provisions of Constitution of India, per se, turns out to be illegal and unconstitutional, but has been enabled to

become bold and brazen, by the condoning manner of functioning of the judiciary and the response of the BDA to the grievance of the petitioners

in these writ petitions is not any different.

9. No wonder Sri B V Shankaranarayana Rao, learned counsel for respondent-BDA, submits and asserts before this court that his client was

never accustomed to this kind of searing rather meticulous, deep and pervasive scrutiny by the judiciary; that never in the history of the authority, it

had been faced with such a situation and to crown the submission, it is asserted and submitted that BDA has won the war by the earlier decisions

and judgments of this court and Supreme Court and even has binding decisions of Division Benches and armed with such earlier judgments, has

been urging this court to dismiss these writ petitions.

10. It was the popular saying and belief that it is impossible to read the mind of a lady even when it may be possible to trace the path of a fish in

water or even if it was possible to find a white crow or even if it was possible to site a flower tree bearing figs, but BDA has made this historical

proverb/wisecrack sound rather hollow by excelling even a lady, in covering up its ways and means of functioning, method and manner of

implementing its developmental schemes and even the modus operandi of distribution of sites laid out from out of the lands acquired from private

citizens/owners by the State Government and handed over to the BDA for the implementation of schemes propounded by it.

11. The BDA not merely a development authority under the provisions of the Bangalore Development Authority Act, 1976 (for short "the BDA

Act") but also declared and commissioned as a planning authority for the development of Bangalore Metropolitan Region under the provisions of

the Karnataka Town and Country Planning Act, 1961, which is a twin responsibility of the Development Authority and Planning Authority for the

city of Bangalore and which function if it should have performed even in a reasonably acceptable manner could have transformed Bangalore City

into a well developed beautiful garden city, has on the other hand, due to its haphazard, wayward, whimsical and statute non conforming manner of

functioning has only developed a beautiful city into a concrete jungle with some green patches left in the city but only in places, which it has not

touched for development, but which has escaped the treatment of development given by the BDA.

12. The present writ petitions only very vividly brings out this manner of functioning of not only the development authority but equally supported,

guided, even many a times dictated manner of functioning by the State Government also. It appears even on occasions when the Development

Authority wanted to adhere to its role and function and adhere to the statutory provisions, the State Government has imposed on it, its own wishes,

its own methods of controlling the authority and has not left BDA with much choice or discretion, particularly, in the matter of removing large

chunks of lands, which had been earlier notified for acquisition solely for the purpose of implementation of the scheme propounded by the

Development Authority, but released from the scope of acquisition itself for the benefit of private citizens not in any uniform manner nor guided by

any fixed norms or statutory provisions but such action taken in a partisan manner, in a pick and chose manner in a whimsical manner to virtually

sabotage the scheme propounded by the Development Authority in the course of its implementation.

13. It is no doubt true that BDA has not totally failed in its functioning, as in spite of this manner of functioning the Development Authority has in

fact provided some sites and places to a good number of persons for their habitation within the Bangalore City, but if one looks at the amount of

cost incurred for such purpose by the Development Authority and the number of persons, who have been victimized in this process, it makes one

wonder as to the justification for the State to compulsorily take over properties belonging to private persons in the name of sub-serving a large

number of persons and therefore in public interest, in the name of development, has not really been made good and only makes one wonder as to

whether it is merely used as a ruse for acquiring private lands and later distribute the same in favour of favoured persons to the whims and fancies

of not only the State Government but also the functionaries in the Development Authority itself and all these happenings and developments come

out very clearly in this batch of writ petitions by as many as 57 persons, who have approached this Court for relief in the years 2000 by filing

petitions in the year 2010 and 2011 in respect of adverse action initiated by the Development Authority for dispossessing or removing the

petitioners from subject lands they are occupying as of now on the premise that they are encroachers on BDA property and by issue of notices u/s

33 of the Act as against the neighbours of some of the writ petitioners and a further action against them by demolishing their structures and by

forcibly taking possession, which alerted the writ petitioners apprehending a like action against them has given a cause for them to approach this

Court seeking for various reliefs as under in different writ petitions:-

IN WP Nos.16074-16100/2010:

i. Call for the records from the respondents;

ii. Declare that the acquisition of land initiated by the respondents vide Notification dated 2.8.1978 during 1977-78 under the provisions of the

Bangalore Development Authority Act 1976, in respect of the land in Sy.No.1/4 of Geddalahalli Village, Kasaba Hobli. Bangalore North Taluk,

(presently RMV 2nd Stage, BBMP Ward No. 100), has lapsed.

iii. Issue a writ or prohibition restraining the respondents or any person/s claiming under them from dispossessing them or demolishing the houses

constructed by the Petitioners over the schedule ''A'' to ''W'' properties;

IN WP Nos. 16101-16106/2010:

i.. Call for the records from the respondents;

ii. Declare that the acquisition of land initiated by the respondents vide notification dated 2.8.1978 during 1977-78 under the provisions of the

Bangalore Development Authority Act, 1976, in respect of the land in Sy.No. 1/4 of Geddalahalli Village, Kasaba Hobli, Bangalore North Taluk,

(presently RMV 2nd Stage, BBMP Ward No. 100), has lapsed;

iii. Issue a writ or prohibition restraining the respondents or any person/s claiming under them from dispossessing them from the schedule ''A'' to

''F'' properties;

iv. Issue a writ or order directing the 1st respondent to pay suitable compensation to the petitioners for demolishing the houses constructed over

the petition schedule properties;

IN WP Nos.6584-6597/2011 :

a. Issue a writ of certiorari by quashing the notice dated 19.01.2011 in No.BDA/EEG/1389/2010-2011 as per Annexure H to the writ petition.

b. Issue a direction to the respondents not to demolish the existing residential houses in the petition schedule premises;

c. To quash the land (Acquisition proceedings pertaining to Sl.No. 140, Sy.No.56/2, situated at Geddalahalli Village, Bangalore North Taluk, in

No.HUD 39 MNG 78 dated 2.8.1978 as per Annexure ''G'' to the writ petition;

OR ALTERNATIVELY

Declare that the acquisition of land initiated by the respondents, pursuant to Notification dated 3.1.1977 issued u/s 17(1) of the BDA Act, 1976,

by the 1st respondent and notification dated 2.8.1978 issued u/s 19(1) by the 3rd respondent of the BDA Act, 1976, (Annexure-G) has lapsed,

insofar as the petition schedule properties are concerned

d. To pass such other order/s or relief/s as deems fit by this Hon''ble Court based on the facts and circumstances of the case along with the cost, in

the interest of justice and equity.

e. Issue a writ or order directing the respondent Nos. 1 and 2 to pay compensation of Rs. 7 lakhs to the 7th petitioner for high handed and illegal

action of demolition of the petition schedule belonging to the 7th petitioner;

f Issue a Writ of Certiorari quashing the impugned letter of Allotment bearing No. (sic).56/1 & 56/2/GH/33/201011 dated 29.10.2010 issued by

the 1st respondent in favour of the 4th respondent (Annexure-S);

IN WP No.6467/2011 (LA BDA):

i. Issue a writ of certiorari or any other writ quashing the notice dated 19.1.2011 in No.BDA/EE(N)/1389/2010 11 issued by the third respondent

produced at Annexure-K.

ii. Forbear, the respondents from enforcing any scheme so far as the petition land is concerned since the scheme has been lapsed u/s 27 of the

Bangalore Development Authority Act, 1976 as amended.

IN WP Nos.53895392/2011 (LA BDA) :

i Call for the records from the respondents;

ii. Declare that the acquisition of land initiated by the respondents, pursuant to Notification dated 3.1.1977 issued u/s 17(1) of the BDA Act 1976,

by the 1st respondent (Annexure-G) and Notification dated 2.8.1978 issued u/s 19(1) by the 3rd respondent of the BDA Act 1976, (Annexure-

G1) has lapsed, insofar as the petition schedule properties are concerned, in the interest of justice and equity.

iii. Issue a writ or prohibition restraining the respondents or any person/s claiming under them from dispossessing them or demolishing the houses

constructed by the Petitioners over the schedule ''A'' to ''D'' properties;

iv. Pass any other appropriate order as this Hon''ble Court deems fit under the facts and circumstances of the case, including the costs of this

petition, in the interest of justice and equity.

v. Issue a writ of certiorari quashing the impugned letter of allotment bearing No. (sic).56/1 &56/2/GH/33 /2010-11 dated 29.10.2010 issued by

the 1st respondent (Annexure R) in favour of the 4th respondent;

IN WP No.6608/2011 :

Issue a writ of prohibition or any other appropriate writ order or direction, directing the respondent and it''s Offficials not to demolish the

petitioner''s building / structure on the schedule property.

IN WP Nos. 13510-11/2011 :

i. Call for the records from the respondents;

iii. Declare that the acquisition of land initiated by the Respondents, pursuant to Notification No A3 PR 511/SLAO/76-77 dated 3/1/1977 issued

u/s 17(1) of the BDA Act, 1976. by the 1st Respondent (Annexure-G) and Notification No. HUD 39 MNJ 78 dated 2/8/1978 issued u/s 19(1)

by the 3rd Respondent of the BDA Act, 1976, (Annexnre - G1) has lapsed, in so far as the petition schedule property is concerned;

iii. Issue a writ or prohibition restraining the respondents or any person/s claiming under them from dispossessing them from the petition schedule

property or demolishing the house constructed by the petitioners over the petition schedule property.

iv. Pass any other appropriate order as this Hon''ble Court deems fit under the facts and circumstances of the case, including the costs of this

petition.

IN WP Nos.8566-8567/2011:

i. Call for the records from the respondents;

ii. Declare that the acquisition of land initiated by the respondents, pursuant to Notification No.AS PR 511/SLAO/76-77 dated 3.1.1977 issued

u/s 17(1) of the BDA Act, 1976, by the 1st respondent (Annexnre G) and Notification No.HUD 39 MNJ 78 dated 2.8.1978 issued u/s 19(1) by

the 2nd respondent of the BDA Act, 1976, (Annexure -G1) has lapsed /is abandoned, insofar as the petition schedule property is concerned;

iii. issue a writ or prohibition restraining the respondents or any person/s claiming under them from dispossessing the petitioners from the petition

schedule property

iv. Issue a writ or order directing the 1st respondent to pay compensation of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) to the petitioners

for demolishing the house constructed over the petition schedule property;

v. Pass any other appropriate order as this Hon''ble court deems fit under the facts and circumstances of the case, including the costs of this

petition,

14. All these developments have been noticed by this Court in the periodic orders that had come to be passed by this Court on 30.11.2010,

1.12.2010, 8.12.2010, 16.12.2010 in W.P.Nos. 16074 to 16100/2010 as also the developments that have taken place during the pendency of

these writ petitions before this Court. The orders dated 30.11.2010 and 16.12.2010 are reproduced herewith for ready reference:-

DVSKJ:

30-11-2010

Writ petitioners, being as many as 22 in number claim to be owners of either sites or buildings located in Geddalahalli Village. Bangalore North

Taluk, which originally formed part of Sy.No.1/4 and presently described as RMV II Stage, BBMP Ward No. 100 said to have been purchased

in terms of sale deeds marked as Annexure-D in favour of petitioner No A. Annexure-E in favour of petitioner No.5, Annexure-F in favour of

petitioner No.6(a), Annexure-F1 in favour of petitioner 6(b), Annexure-G1 in favour of 7th petitioner''s father, Annexure-H in favour of petitioner

No.8, Annexure-J in favour of petitioner Nos.9(a) & (b), along with rectification deed, Annexure-K in favour of petitioner No. 10, Annexure-L in

favour of petitioner No. 11, Annexure-N in favour of petitioner No. 13, Annexure-O in favour 14th petitioner''s father, Annexure-R in favour

petitioner Nos. 17(a) and 17(b). Annexure-S in favour of petitioner No. 18, Annexure-T in favour of petitioner No. 19.

2. Such sale deeds have been executed by different vendors at different points of time ranging from Annexure-E dated 5.11.1981, a house building

on a site measuring 40'' x 60'' and tile roofed house up to Annexure-T dated 18.12.2009 i.e., purchases made from the year 1981 upto 2009.

3. While such is the factual assertions by writ petitioners, it is obvious that either the petitioners are ignorant or have ignored to their peril certain

acquisition proceedings that had been initiated in respect of this Sy.No.1/4 of Geddalahalli Village in terms of a preliminary notification dated

24.2.1977 issued u/s 17 of the Bangalore Development Authority Act, 1976 (hereinafter referred to as "the BDA Act"), which had been

followed-up by a declaration dated 31.8.1978 issued u/s 19(1) of the Act and which had covered an extent of 1,334 acres 12 guntas of land in

several villages including Sy.No.1/4 of Geddalahalli Village.

4. While it is submitted by Sri Bhagawat, learned counsel for the petitioners in these petitions that such acquisition proceedings were subject matter

of writ petition before this Court in W.P.No.20377/1989 at the instance of one Dr.H.S. Hanumanthappa and came to be disposed of in terms of

order dated 20.02.1992, copy produced as Annexure-X-1 along with rejoinder filed on behalf of the petitioners and that petition came to be

allowed quashing the acquisition proceedings insofar as it related to the lands notified under the two notifications referred to above and insofar as it

related to Sy.No. 29 measuring an extent of 4 acres 8 guntas and an extent of 4 acres 28 guntas in Sy.No.30 of Lottegollahalli village, a village

adjacent to Geddalahalli Village and the acquisition proceedings under the preliminary notification and final notification stood quashed in respect of

this extent of land, it is neither urged nor factually correct to say that the order in these writ petitions can cover the lands/sites claimed to he in the

ownership of the petitioners also.

5. Mr. Bhagwat, learned counsel for the petitioners would also bring to the notice of this court another order dated 27.7.1984 passed by this court

in writ petition No.29726 of 1981 connected with WP No.29355 of 1981 wherein one person by name Shivanna and another lady by name Smt.

Sunandamma had also questioned the validity of the very acquisition proceedings in terms of the very preliminary notification and the final

declaration, whereunder this court found fault with the mariner of the acquisition proceedings having gone about, particularly, for not adhering to

the mandatory requirement of sub-section [5] of section 17 of the Act and therefore thought it fit to quash the proceedings such as the preliminary

notification u/s 17 of the Act and also final declaration u/s 19 of the Act respectively, but nevertheless, reserved liberty to the respondents - State

and the Bangalore Development Authority (BDA) to initiate fresh acquisition proceedings by following the due procedure.

6. However, Sri Bhagwat, learned counsel for the petitioners has also brought to my notice another order dated 30.3.1992 passed in civil petition

Nos.144 & 144A of 1989, which was a review petition in respect of the order referred to above in WP No.29726 of 1981 and WP No.29355

of 1981, at the instance of the Chairman of the Bangalore Development Authority and the land acquisition officer figuring as petitioners impleading

the writ petitioners as respondents 1 and 3 and the State as second respondent and one M A Lakshmithathachar who claims to have purchased

some site in the subject survey numbers after this court quashed the preliminary notification and the final declaration.

7. In terms of this order, the learned single Judge of this court while has reviewed the earlier order, passed the order as under:

19. In the result, I make the following order;

(i) Office is directed to incorporate one more number as C.P. No. 144-A of 1989 in the relevant register and the petitioners shall furnish the deficit

court fee within two weeks;

(ii) The Review Petitions C.P. Nos. 144 of 1989 and 144-A of 1989 are allowed;

(iii) The order made in the writ petitions is modified as follows:-

A) W.P. No. 29726/1981

(i) The Writ Petition is allowed:

(ii) The impugned final notification (Annexure -A) is quashed, only in so far it relates to the following extent of lands;

Village Sy.No.Extent A-G

Mathikere 48/1 1-08

48/8 0-01

48/9 0-02

120/1 0-14

Chikkamaranahalli 1/1 9-04

44 7-32

Total 18-31

(iii) The B.D.A. is at liberty to proceed from the state at which the illegality was committed;

(iv) The writ petitioner and all the persons who are applicants in the interlocutory applications shall file their objections to the preliminary

notification on or before 30th April 1992 before the Land Acquisition Officer;

(v) Respondent No.4 or any other person similarly situated shall also be at liberty to present their case in writing before the Land Acquisition

Officer and/or the B.D.A. in support of the acquisition of the lands in question on or before 30.4.1992;

(vi) The competent authority shall proceed to consider and hear objections, in accordance with law after 30th April 1992 and a final decision in the

matter shall be taken in accordance with law;

(vii) The B.D.A. shall not demolish any structure put up on the land in question till the acquisition is completed and thereafter shall be at liberty to

take appropriate steps in accordance with law;

(uiii) The writ petitioner or the applicants for impleading, by themselves or through any other person on their behalf, shall not put up any

construction or continue any construction activity on the land concerned;

B) W.P.No. 29355/1981

(i) The Writ Petition is allowed;

(ii) The impugned final notification (Annexure -A) is quashed, only in so far it relates to the following extent of lands;

Village Sy.No.Extent A-

G

Dyavasandra 28 4-00

34/1 0-35

Total 4-35

(iii) The B.D.A. is at liberty to proceed from the stage at which the illegality was committed;

(iv) The petitioner and all the persons who are applicants in the interlocutory applications shall file their objections to the preliminary notification on

or before 30th April 1992 before the Land Acquisition Officer;

(v) Respondent-4 or any other person similarly situated shall also be at liberty to present their case in writing before the Land Acquisition Officer

and/or the B.D.A, in support of the acquisition of the lands in question on or before 30.4.1992:

(vi) The competent authority shall proceed to consider and hear objections, in accordance with law, after 30th April 1992 and a final decision in

the matter shall be taken in accordance with law;

(vii) The B.D.A. shall not demolish any structure put up on the land in question till the acquisition proceedings are finalised and thereafter shall be at

liberty to take appropriate steps in accordance with law;

(uiii) The writ petitioner or the applicants for impleading, by themselves or through any other person on their behalf, shall not put up any

construction or continue any construction activity on the land concerned.

8. It is in the wake of such orders, the petitioners have approached this court with the apprehension that the Bangalore Development Authority

may take high handed action to demolish their buildings as the officials of the respondents are hovering around their plots/buildings with threat of

demolition and therefore have approached this court seeking for following reliefs:-

[i] Call for the records from the respondents

[ii] Declare that the acquisition of land initiated by the respondents vide notification dt.2.8.1978 during 1977-78 under the provisions of the

Bangalore Development Authority Act, 1976, in respect of the land in Sy. No.1/4 of Geddahalli Village, Kasaba Hobli, Bangalore North Taluk

[presently RMV 2nd Stage BBMP Ward No. 100] has lapsed;

[iii] Issue a writ or prohibition restraining the respondents or any person/s claiming under them from dispossessing them or demolishing the houses

constructed by the petitioners over the schedule ''A'' to ''W'' properties.

[iv] Pass any other appropriate Order as this Hon''ble Court deems fit under the facts and circumstances of the case, including the costs of the

petition, in the interest of justice and equity.

9. Statement of objections have been filed on behalf of the first respondent - Authority, supported by the affidavit sworn to by one G C

Vrushubendramurthy, son of late G N Chandrashekar working as additional land acquisition officer in the Bangalore Development Authority.

10. I have heard Sri. Bhagwat, learned counsel for the petitioners and also Sri. Shankar Narayana Rao, learned counsel for the first respondent -

Authority.

11. The sum and substance of the statement of objections filed on behalf of the authority is that the petition is not tenable on the strength of the ratio

laid down not only by the supreme court but also by full Bench of this court and another division Bench of this court rendered in the following

cases.

[i] Union of India (UOI) Vs. Shivkumar Bhargava and Others, .

[ii] Poornaprajna House Building Co-operative Society, Bangalore Vs. Bailamma @ Dodda Bailamma and Others, .

[iii] John B. James and Others Vs. Bangalore Development Authority and Another, .

12. It is contended that while the petitioners are put to strict proof of their claims regarding ownership, it is abundantly clear that the law does not

permit them to acquire title in the wake of the notifications that had been issued under the Bangalore Development Authority Act, 1976 for

acquisition of subject lands; that the lands have already vested in the State Government and in turn handed over to the Bangalore Development

Authority on the strength of the very preliminary notification and final declaration coupled with the award dated 8.6.1981 [copy at Annexure-R3 to

the statement of objections] and as a specimen have produced a report of the revenue inspector for having taken possession of the subject lands in

Sy. No.1/4 on 16.7.1981 [copy at Annexure-R4 to the statement of objections] and has therefore contended that the petitioners cannot claim any

right, title and interest in the subject land; that if at all they claim to be in possession, they are in unauthorized possession and are liable for eviction

and therefore the authority cannot permit the unauthorized occupants to squat on the property of the Bangalore Development Authority and action

to evict them is justified in law and have urged for dismissal of the writ petitions.

13. It is also emphatically asserted that the scheme for developing the RMV II Stage has been substantially implemented and that it has not lapsed

as had been alleged in the writ petitions or otherwise and the petitioners being intruders on public property, permitting them to remain so would be

against public interest; that the petitioners have no legal right nor can invoke jurisdiction of this court in the exercise of jurisdiction under Article 226

of the Constitution of India and have urged for dismissal of the writ petitions.

14. Sri Shankara Narayana Rao, learned counsel for the respondent - Authority submits that the respondent - authority has met the averments in

the writ petition and in fact neither the counsel was aware of the earlier Judgments of this court rendered in writ petition No.29726 of 1981

connected with WP No.29355 of 1981 and was reviewed and altered in terms of civil petition Nos. 144 & 144A of 1989 in terms of the order

dated 30.3.1992 and would venture to submit that white the Authority has answered whatever questions were raised in the petition, as the

petitioners themselves had not put forth this order as a ground in support of the petitions, there was no occasion for the authority to traverse it and

production of copies of the orders passed by this court earlier in the writ petitions and as reviewed at the instance of the authority are all

developments during the course of the submissions made today before the court; that unless learned counsel gets back to his client to seek further

instructions and is unable to make further submission without being aware of the factual position in this regard, particularly, to answer about the

developments after these orders, as to whether notices had been served on land owners and as to whether the proceedings have thereafter gone

about in a proper and law conforming manner and for such purpose would request the matter to be taken up on 1.12.2010 at 2.30 pm.

15. While learned counsel may be hondicapped for want of proper instructions, bonafide conduct on the part of the first respondent - authority

cannot be automatically inferred as it was the duty of the first respondent- authority - a statutory body under the statute which is nothing short of

''State'' within the meaning of Article 12 of the Constitution of India to have placed true and correct facts before this court and not to mislead this

court by incorrect facts or to suppress any relevant facts which could create a distorted picture before this court and could also create suspicion

about the bonafides or lack of bonafides on the part of the respondents,

16. If as urged by Sri. Shankara Narayana Rao, learned counsel for the respondent -Authority, the respondent - Authority has acted fully in

conformity with the modified order passed by this court in review petitions and can on record make good that position, perhaps that may be a

plausible answer, even to cover up the blemish or the lacuna on the part of the respondent - authority in not placing all relevant facts and material

before this court while filing statement of objections on behalf of this respondent. If on the other hand, it is found that the information is either

deliberately withheld or with an oblique intention, to somehow manage the day before the court, it is nothing short of misleading this court and an

affidavit if it has not placed the correct facts before the court it is nothing short of committing perjury during the court proceedings.

17. While such may be a consequence on any responsible person who has sworn to an affidavit and who is not true to his knowledge about the

facts averred in the affidavit, the responsibility of the Head of the Institution never ceases and ultimately the Authority represented by its

Commissioner will have to own up all misdeeds, drawbacks, deficiencies and what not, committed by his subordinates. That responsibility cannot

be fastened on any other person other than the Commissioner and therefore it is always the Head of the Organization who is directed to be present

before the court to answer and explain the conduct of the officials of a particular authority, when the authority has exercised statutory powers and

the action is reviewed by the writ court

18. Therefore, the Commissioner of the first respondent - BDA is directed to be present before this court on 1.12.2010 at 2.30 pm. along with

supporting staff and original records.

19. List for further orders on 1.12.2010 at 2.30 pm.

20. It is open to the first respondent -authority to file additional statement if it is so advised, in the meanwhile.

DVSKJ:

16.12.2010

All these petitions had been listed for further orders pursuant to the order dated 8.12.2010 passed by this Court particularly, paragraphs 8 to 16 of

the order reading as under:-

8. It is in the wake of such orders, the petitioners have approached this court with the apprehension that the Bangalore Development Authority

may take high handed action to demolish their buildings as the officials of the respondents are hovering around their plots/buildings with threat of

demolition and therefore have approached this court seeking for following reliefs:

[i] Call for the records from the respondents.

[ii] Declare that the acquisition of land initiated by the respondents vide notification dt.2.8.1978 during 1977-78 under the provisions of the

Bangalore Development Authority Act, 1976, in respect of the land in Sy. No. 1/4 of Geddahalli Village, Kasaba Hobli, Bangalore North Taluk

[presently RMV 2nd Stage BBMP Ward No. 1001 has lapsed;

[iii] Issue a writ or prohibition restraining the respondents or any person/s claiming under them from dispossessing them or demolishing the houses

constructed by the petitioners over the schedule ''A'' to ''W'' properties.

[iv] Pass any other appropriate Order as this Hon''ble Court deems fit under the facts and circumstances of the case, including the costs of the

petition, in the interest of justice and equity.

9. Statement of objections have been filed on behalf of the first respondent - Authority, supported by the affidavit sworn to by one G C

Vrushubendramurthy, son of late G N Chandrashekar working as additional land acquisition officer in the Bangalore Development Authority.

10. I have heard Sri Bhagwat, learned counsel for the petitioners and also Sri, Shankar Narayana Rao, learned counsel for the first respondent -

Authority.

11. The sum and substance of the statement of objections filed on behalf of the authority is that the petition is not tenable on the strength of the ratio

laid down not only by the supreme court but also by full Bench of this court and another division Bench of this court rendered in the following

cases.

[i] Union of India v. Shivakumar Bhargava'' reported in JT 1995 [6] SC 274.

[ii] Poornaprajna House Building Cooperative Society v. Bailamma Alias Bailamma and Others'' reported in ILR 1998 EAR 1441.

[iii] John B. James and Others Vs. Bangalore Development Authority and Another, .

12. It is contended- that while the petitioners are put to strict proof of their claims regarding ownership, it is abundantly clear that the law does not

permit them to acquire title in the wake of the notifications that had been issued under the Bangalore Development Authority Act, 1976 for

acquisition of subject lands; that the lands have already vested in the State Government and in turn handed over to the Bangalore Development

Authority on the strength of the very preliminary notification and final declaration coupled with the award dated 8.6.1981 [copy at Annexure-R3 to

the statement of objections] and as a specimen have produced a report of the revenue inspector for having taken possession of the subject lands in

Sy. No. 1/4 on 16.7.1981 [copy at Annexure-R4 to the statement of objections] and has therefore contended that the petitioners cannot claim any

right, title and interest in the subject land: that if at all they claim to be in possession, they are in unauthorized possession and are liable for eviction

and therefore the authority cannot permit the unauthorized occupants to squat on the property of the Bangalore Development Authority and action

to evict them is justified in law and have urged for dismissal of the writ petitions.

13. It is also emphatically asserted that the scheme for developing the RMV II Stage has been substantially implemented and that it has not lapsed

as had been alleged in the writ petitions or otherwise and the petitioners being intruders on public property, permitting them to remain so would be

against public interest; that the petitioners have no legal light nor can invoke jurisdiction of this court in the exercise of jurisdiction under Article 226

of the Constitution of India and have urged for dismissal of the writ petitions.

14. Sri Shankara Narayana Rao, learned counsel for the respondent - Authority submits that the respondent - authority has met the averments in

the writ petition and in fact neither the counsel was aware of the earlier Judgments of this court rendered in writ petition No. 29726 of 1981

connected with WP No. 29355 of 1981 and was reviewed and altered in terms of civil petition Nos.144 & 144A of 1989 in terms of the order

dated 30.3.1992 and would venture to submit that while the Authority has answered whatever questions were raised in the petition, as the

petitioners themselves had not put forth this order as a ground in support of the petitions, there was no occasion for the authority to traverse it and

production of copies of the orders passed by this court earlier in the writ petitions and as reviewed at the instance of the authority are all

developments during the course of the submissions made today before the court; that unless learned counsel gets back to his client to seek further

instructions and is unable to make further submission without being aware of the factual position in this regard, particularly, to answer about the

developments after these orders, as to whether notices had been served on land owners and as to whether the proceedings have thereafter gone

about in a proper and law conforming manner and for such purpose would request the matter to be taken up on 1.12.2010 at 2.30 pm.

15. While learned counsel may be handicapped for want of proper instructions, bonafide conduct on the part of the first respondent - authority

cannot be automatically inferred as it was the duty of the first respondent - authority - a statutory body under the statute which is nothing short of

''State'' within the meaning of Article 12 of the Constitution of India to have placed true and correct facts before this court and not to mislead this

court by incorrect facts or to suppress any relevant facts which could create a distorted picture before this court and could also create suspicion

about the bonafides or lack of bonafides on the part of the respondents.

16. If as urged by Sri Shankara Narayana Rao, learned counsel for the respondent -Authority, the respondent - Authority has acted fully in

conformity with the modified order passed by this court in review petitions and can on record make good that position, perhaps that may be a

plausible answer, even to cover up the blemish or the lacuna on the part of the respondent - authority in not placing all relevant facts and material

before this court while filing statement of objections on behalf of this respondent If on the other hand, it is found that the information is either

deliberately withheld or with an oblique intention, to somehow manage the day before the court, it is nothing short of misleading this court and an

affidavit if it has not placed the correct facts before the court, it is nothing short of committing perjury during the court proceedings.

2. In the meanwhile, on behalf of the petitioners Misc. W. 11998/2010 in W.P.No. 16101-16106/2010 is filed for permission to put up some

temporary construction or sheds. Application is on the premise that the petitioners'' structures which were their dwelling units have been

demolished by the officials of the respondent-authority without following any procedure etc., and without issuing any notice to them and even while

such constructions were demolished, petitioners continue to remain in possession and to have a shelter over their head, they are seeking permission

of the Court to put up construction etc.

3. Misc.W. 11998/2010 in W.P.No.16101-16106/2010 for permission is opposed by filing written statement of objection on behalf of the

Bangalore Development Authority (BDA). On this aspect I have heard Sri M.S. Bhagwat, learned counsel for the petitioners and Sri B.V.

Shankar Narayana Rao, learned counsel for the BDA and the learned Advocate General who has made submissions on behalf of the State.

4. Mr. B. V. Shankar Narayana Rao, learned counsel has pointed out to the affidavit of the Commissioner, BDA, which is placed before the Court

today, in response to the order/direction dated 8.12.2010. The affidauit reads as under :-

AFFIDAVIT

1, Bharat Lal Meena, IAS, Son of Sri. Sukhji Ram Meena, aged about 53 years, Commissioner, Bangalore Development Authority, do hereby

state on oath as under:-

1. I state that State Government has placed on record a Circular dated 07.12.2010 on the last date of hearing i.e. 8.12.2010

2. I state that pursuant to Circular No.NA.AA.E/887/BEN.BHU.SWA/2010 Dated 7.12.2010, the Bangalore Development Authority has issued

Show cause notices to these writ petitioners and Petitioners in W.P.Nos. 16101 to 16106/2010 calling for their objections to the action proposed

in terms of the order passed by this Hon''ble Court on 8.12.2010.

3. I further state that matter/subject of appropriate restitution measures in case of petitioners in W.P.Nos. 16101 to 16106/2010 will be placed

before the Board in the immediate next meeting and appropriate decision will be taken in accordance with law.

I. Bharat Lal Meena, IAS, the Deponent herein, de hereby verify that what is stated above is true and correct to the best of my knowledge and

information.

5. Objections filed to the Misc.W.1 1998/2010 by the authority while referring to the statement of objections filed to the main petition and

reiterating the same, has also raised certain legal defences in the wake of the reliance placed by the learned counsel for the petitioners on the order

dated 27.7.1984 in W.P.No.29726/1981 c/w 29355/1991 r/w order dated 30.3.1992 passed in a Civil Petition Nos.144 & 144A/1989, only in

respect of the orders passed referred to above. A reference is also made to Annexures L. M and N. produced along with application Misc.W.1

1998/2010 to indicate that those orders are in respect of different survey numbers and the benefit of the order can be claimed only by the

petitioners in that petition and not by the present petitioners.

6. What is primarily contended by the learned counsel for the Authority is that the petitions are not maintainable and in such petitions, no order

enabling the petitioners to put up any structures on the land, at this point of time can be granted and an order of this nature could give an impression

that even trespassers are recognised as having rights in properties, over which the BDA claims ownership rights through the state government

which in turn had got title to the property through acquisition proceedings.

7. Insofar as the undertaking, that was required to be given by the authority is concerned, reference is made to paragraph 2 of the affidavit of the

Commissioner, BDA and Mr. Shankar Narayan Rao, learned counsel has submitted that the recently issued government circulars will be followed

and implemented.

8. Insofar as the aspect of reparation to petitioners whose houses had been demolished is concerned, it is indicated that the details of the same will

be placed before the executive committee/board of the Bangalore Development Authority in its ensuing meeting for a proper decision to be taken

etc.

9. The affidavit as spelt out in paragraphs 2 and 3 is not exactly a proper response to the order passed by this Court, which was passed for the

purpose of impressing upon the officials of the State Government, and also of the authority, to abide by rule of law and to follow procedures

diligently and therefore a recent directions of the state government to the officers and a further reference to this circular in itself is not the criteria or

can it constitute a further assurance to this Court about the proper and law conforming manner of functioning of the officials of the BDA.

10. In fact the authorities and its officials are always bound to act in accordance with law, rules and procedures and quoting the government

circular is no assurance to this Court. It is precisely because the officials have violated the statutory provisions, rules and regulations by embarking

upon overnight demolition acts without proper notice and opportunity to the petitioners, the Commissioner of BDA and the Secretary to

Government were directed to appear before the Court to make them realize the gravity of the situation and also to ensure that suitable corrective

measures are taken at their end.

11. A reading of the affidavit in paragraphs 2 and 3 does not necessarily indicate that realization has dawned upon the Commissioner, BDA. When

it is obvious that the officials of the authority had acted in a high handed manner and when the Commissioner, BDA, being the head of the

organization was bound to look into the matter and take suitable action, it is only an affidavit of the Commissioner, BDA, for ensuring that

henceforth all actions by officials of the authority will be only in accordance with law and procedures and not otherwise and also they should assure

that commensurate action will be taken against the erring officials, who thought they are a law themselves unto and took law into their own hands!

This is minimum of what is expected on the part of the Commissioner, BDA, being the head of the Authority by giving an undertaking to this effect

The present affidavit woefully lacks to fulfill this requirement Even insofar as the reparation aspect is concerned, when it is a fact that the petitioners

are now living without a shelter over their heads and exposed to the open sky, after demolition of their structures and even assuming that they were

trespassers in the property of the BDA, which is disputed by the learned counsel for the petitioner, it was the minimum courtesy expected of on the

part of the authority to have provided such affected persons some interim relief and that is not forthcoming.

12. In the circumstances, this Court has to inevitably pass orders for protecting the interest of such petitioners.

13. While Sri Shankar Narayan Rao, learned counsel for the BDA submits that action for taking possession of the lands/sites in the possession of

the petitioners in W.P.Nos.16074 to 16100/2010 as well as the petitioners in W.P.Nos.16101 to 16106/2010 has already been initiated. Insofar

as the petitioners in W.P.Nos.16101 to 16106/2010 are concerned, they have come this Court complaining that their buildings /houses were

demolished, pursuant to notices and have again been intimated for taking possession of the land from them also and has placed before the Court

specimen copy of the notice along with a memo, a notice purporting to be issued u/s 33 of the Bangalore Development Authority Act, 1976, to as

many as 26 persons in W.P.Nos, 16074-100/2010 and another batch of 6 persons who are petitioners in W.P.Nos.16101-16106/2010.

14. The notice seeks to give details of the acquisition proceedings and has called upon the petitioners to produce documents to the issues of notice

to evidence lawful possession and occupation of the premises by the petitioners within three days from the date of receipt of the notice further

indicating that non-compliance would result in necessary ex-parte action etc.

15. Sri Bhagwat, learned counsel for the petitioners has raised two issues on this notice viz., that lend the notice no real, opportunity is given to

petitioners to put forth their claim/ answers, that if the petitioners are asked to reply within three days from the date of receipt of notice,

particularly, production of documents etc., it is an apology for giving an opportunity to petitioners before embarking upon a drastic and irreversible

action like demolition of structures and therefore the notice itself is bad in law.

16. Another aspect Sri Bhagwat learned counsel would bring to the notice of this Court is that a notice u/s 33 of the Act cannot achieve the object

of dispossessing the petitioners as held by this Court in John B. James and Others Vs. Bangalore Development Authority and Another, .

17. Mr. Bhagwat also urges that writ petitions are required to be disposed of on merits rather than interim orders to be passed, but as the six

petitioners are without any shelter etc., unless they are permitted to put up structure they will be exposed to the vagaries of nature etc.

18. Submission of Mr. Bhagwat, learned counsel on the merits of the matter is that in terms of earlier order passed quashing the very acquisition

proceedings, and when this Court has quashed the acquisition proceedings holding it as void and therefore, no further proceedings can take place

etc.

19. It is neither possible nor necessary at this stage to go into the merits of the matter, particularly, as the affidavit of the Commissioner, BDA,

before the Court is woefully lacking in its compliance to the order/directions issued by this Court on 8.12.2010 and therefore, while the

Commissioner is directed to place before the Court a proper affidavit, responding appropriately to the order/direction issued on 8.12.2010, the

time stipulated in the notice issued by the BDA to the petitioners to respond to the notice is extended by another 30 days and it is open to the

petitioners to respond even well before 30 days, without waiting for the last date.

20. Further proceedings pursuant to the show cause notices can take place but subject to the result of these writ petitions and in the meanwhile, it

is open to the authority to examine the explanations offered by the petitioners and if a decision is taken one way or the other, while it may be

communicated to the petitioners for implementation the BDA to await further orders to be passed in these petitions. Implementation/execution of

the orders to be passed by the BDA on the show cause notices now issued to the petitioners is put on hold, pending orders in this petition.

21. In the wake of the hardship and difficulty expressed by petitioner in W.P.Nos.16101 - 16106/2010 is concerned, and as the extent of damage

the petitioners have suffered because of the high handed illegal demolition of the structures, which is conceded but the precise extent of damages

suffered by petitioners due to the demolition cannot be satisfactorily resolved in these petitions particularly, as it may involve examination of rival

versions and supporting material to be placed by petitioners as well as the authority, while the aspect of petitioners claiming compensation by way

of damages is relegated to be worked out before the civil court if the petitioners so desire and it is also open to the petitioners to seek such further

relief as they deem fit and if they are so desirous before the civil court, insofar as the present writ petitions are concerned the respondent - BDA is

directed to pay an adhoc compensation of 1 Lakh (Rupees One Lakh only) each, in favour of four petitioners who had put up only ACC roofing

structures and a sum of 2 Lakhs (Rupees Two Lakhs) each in favour of two petitioners who had put up RCC roofing structures, which had come

to be demolished by the authority, by way of an interim measure which amount can be adjusted if ultimately the civil court or any other forum

determines the precise extent of damages, to which the petitioners are entitled, due to illegal manner of demolition of structure.

22. It is however, made clear that this order does not either confer any right to the petitioners to claim any rights on the basis of this order itself, but

it is open to the petitioners to claim such compensation, independent of this order and on such other basis as they are entitled to in law.

23. However, as there is already an interim order granted by this Court in these petitions to maintain status quo which binds both the parties in

W.P.Nos. 16101-106/2010, it is not necessary at this stage to pass further orders on the application Misc.W. 11998/2010, accordingly, it is

rejected, but the interim orders granted earlier are continued during the pendency of these petitions.

List for further hearing on 6.1.2011

15. Though the matters were heard intermittently, it was not concluded and the developments in this regard is yet again noticed by the order

passed on 8.8.2011. It is in this background and during the course of which hearing of all these matters that following further order came to be

passed on 29.08.2011.

DVSKJ:

29-8-2011

During the hearing of this batch of writ petitions Sri M S Bhagwat learned counsel for the petitioners in some of the writ petitions, has brought to

the notice of the court that a part of the subject land in Sy No 1/4, which was in the occupation of a person and in which a building was

constructed, had been demolished, is in the neighbourhood of some of the writ petitioners and which created apprehension in the minds of the

petitioners that they may also meet the same fate and in fact five of the writ petitioners having suffered same fate, had sought for interim relief and

an interim order has been passed by this court on 15-12-2010.

But the development subsequent to this manner of illegal demolition by the authority is that a part of this land now sought to have been carved out

as Site No 253A measuring 50'' x 80'' and has been allotted in favour of Ms Pallavi Ram d/o Sri D B Chandre Gowda, member of parliament,

under ''G'' category and the highhanded manner of demolition of structure, forcible throwing out of the occupants from the land and now being

allotted in favour of another person under ''G'' category only betrays the intentions of the authority to victimize persons like the petitioners for the

benefit of persons like the allottee as mentioned above.

The authority while is required to implement the scheme and in a manner permitted in law, a highhanded action always elicite adverse attention of

the court, even while reviewing the administrative action of the state.

Even though the learned counsel for the respondent-authority have put up spirited defence and have called in aid an earlier judgment of a Division

Bench of this court in the case of Bangalore Development Authority Vs. Dr. H.S. Hanumanthappa, to contend that the present writ petitions are to

be dismissed in the wake of this binding authority, that question has to be considered firstly in the background of as to whether the respondent-

authority and the state had with any bona fides and had actually placed the true and precise facts before this court, to bring about the result in the

case of DR H S HANUMANTHA [supra], particularly for getting the appeal allowed by reversing the order passed by a learned Single Judge of

this court, but also to examine if thereafter at least as to whether the respondent-authority has been acting in a law-abiding, fair manner, not

misusing or abusing its statutory powers and for such purpose, the respondent-authority is hereby directed to produce the original records not only

relating to the allotment of site in favour of Ms Pallavi Ram but also records relating to allotment of 37 guntas of land in favour of Sri Krishna

Reddy, fourth respondent in WP No 5389-92 of 2011.

The respondent-authority also to place before the court the factual information relating to extent of actual formation of sites and if allotted, how

many within the period of five years from the date of issue of declaration and if there was any impediment due to stay orders passed by courts to

indicate the extent of land covered by such stay orders granted by courts and the period during which stay orders operated against the respondent-

authority.

List the matter for such purpose and for further hearing on 30-8-2011.

16. Writ petitions though are numerous and the background and the manner of right and grievances putforth before the Court by the petitioners

vary from petitioner to petitioner, ultimately the main object of all the petitioners is to sustain their present possession and to avoid any adverse

coercive action being taken against them by the disturbance of their possession and also to safeguard or conserve the structures which many of

them have put up on the subject land and many of whom are dwelling in the structures so put up by them.

17. Writ litigation before this court in respect of subject matter viz., implementation of what is known as Raj Mahal Vilas II Stage Extension, a

scheme proposed by BDA, perhaps, which had taken shape with the authority in the year 1976, followed up by issue of preliminary notification

dated 3-1-1977 covering an extent of 1316 acres 4 guntas of land and after the further requirement in law whether complied in a proper manner or

otherwise, has reflected in the orders passed by this court in the earlier writ litigation, some of them by the very petitioners and followed up by

issue of declaration by the state government u/s 19(1) of the BDA Act dated 2-8-1978, though in respect of a slightly larger extent of land viz.,

1334 acres 12 guntas, has a story of its own to tell.

18. However, for the purpose of continuation of facts and developments, it is the version of the development authority that awards have been

passed from the year 1981 onwards in respect of different survey numbers and different extents of lands and if the version of the writ petitioners is

to be believed, the business of passing of awards had not ended in the year 2010, as is evident from the notice dated 19-1-2011 issued by BDA

to one Nanjappa s/o Muniyappa, khatedar in respect of a total extent of 2 acres 20 guntas of land in Sy o 56/1 and 56/2 of Geddalahalli village,

which was a land which figured as part of the preliminary notification of the year 1977 and the declaration of the year 1978. [However, it is

clarified by the learned counsel for the respondent-BDA that this notice does not reflect the correct state of affairs; that award has been passed on

19-4-1983, but amount of compensation payable to the owner was deposited on this day before the court of principal Civil Judge, Bangalore].

19. Be that as it may, it is only symptomatic of even if BDA is not conceding and admitting this position, but it is a fact on that the BDA has been

issuing such notices even till date and it has not taken possession of all lands, which even according to the state government and the BDA, has

vested in the state government and handed over to BDA, in the wake of the acquisition notifications and follow up actions for taking possession

claimed to be evidenced by the mahazars drawn on the date of taking possession and further taken beyond controversy by publication of gazette

notifications in terms of Section 16(2) of Land Acquisition Act, 1894 [for short, LA Act] as amended by the Karnataka Act. One such gazette

notification having been produced as Annexure-R3 to the statement of objections filed on behalf of BDA in WP No 6584-97 of 2011 and

connected case.

20. In so far as the petitioners are concerned, the total extent of land which they are claiming to be in possession as of now and though none of

them figured either in the preliminary notification or declaration, it is claimed by first petitioner in WP No 5389-92 of 2011, who is purchaser of an

extent of 20 and 10 guntas of land in Sy No 56/ 1 and 1 /4 respectively of Geddalahalli as per sale deed dated 27-8-1971 [copy at Annexure-A

to these writ petitions] and said to have been registered at the office of the sub-registrar, Bangalore north taluk i.e. almost 5 to 6 years prior to the

issue of preliminary notification by the BDA, but the khata not showing her name and therefore preliminary notification or the subsequent

declaration also not sharing her name.

21. Other petitioners claim that they acquired interest in small bits and pieces of land in Sy No 56/1 or 56/2 or 1/4 or 4 of the very village during

different periods ranging from 1981 to 2009, either under the original khatedar whose names were notified or subsequent purchasers from the

original khtedar etc., taut all of them assert that as of now they are in durable possession; that their possession is also recognized by the civic

bodies like Bruhat Bangalore Mahanagarapalike, which has been accepting property taxes from them and even in respect of built portions etc., and

it is asserted on behalf of the petitioners that most of the lands have been converted for non-agricultural purpose/use and the civic authorities have

recognized this by permitting construction of dwelling units and for other purpose being put on the land etc.

22. Though such assertions on behalf of the petitioners are all disputed by the respondents, who have been very vociferous in defending this

litigation, both state government and the BDA, the track record of the state government and BDA only exposes them of their selected, frenzied,

rearguard action after having allowed large extents of notified land to go out of the scope of the scheme for which purpose the lands had been

acquired, but putting up spirited defence that in the year 2011 in respect of a small chunk of about 6 to 7 acres of land which petitioners assert is in

their possession and occupation for the dwelling purpose etc.

23. While petitioners have pleaded a current live cause of action for their approaching the writ court for relief, invoking Article 226 of the

Constitution of India, mainly for the purpose of defending their present possession of the land and to this extent, it is not in dispute that they are all

in durable possession, petitioners are definitely entitled to defend their possession and claim relief even against the state in respect of any

highhanded, arbitrary, statute-non-conforming action against them as it has been time and again emphasized that writ jurisdiction is not one either to

recognize title or confer title, but to examine a current cause if brought before this court by a person affected on the touchstone of the statutory and

constitutional provisions and as to whether the actions on the part of the state and lessor forms of state like BDA in the present case, are all law-

conforming. In the present situation, BDA Act and on the larger extent of rights guaranteed to citizens in Part-Ill of the Constitution of India,

petitioners seeking such rights are affected.

24. Even here, the examination is rather limited, in the sense, whether the action by BDA and the State are all sustainable on the touchstone of the

provisions of Section 27 of the BDA Act.

25. It is the very stout assertion on behalf of the BDA and even the state government that these writ petitions are all not even tenable or

maintainable before this court. In the first instance, it is contended by counsel for BDA that writ petitioners have no locus to bring these petitions

before this court, being not in the position of persons who can claim right, title and interest in respect of lands notified under statutory provisions for

acquisition; that their rights, if any, claimed under the original owners/khatedars under sale transactions referred to above as claiming by them, are

all voided in terms of the provisions of Section 17 and the notifications issued thereunder; that they being in the position of speculators, who have

acquired right, title and interest, notwithstanding issue of notifications under the provisions of the BDA Act for acquisition of lands, cannot claim

any right, title or interest better than the erstwhile owners and if the erstwhile owners themselves have not questioned the notifications or actions of

BDA hitherto, just because some of the petitioners have acquired right, title and interest recently, such subsequent purchases will not give them any

fresh cause of action to question the actions of BDA, which had begun way back in the year 1977 and therefore on the grounds of want of

sufficient locus and also on the ground of delay and laches, petitions are to be rejected outright.

26. The other formidable defence on behalf of BDA to ensure these petitions are dismissed is that there is absolutely no scope for this court to

examine the present writ petitions, particularly in the wake of the earlier decisions of this court and even a judgment of a Division Bench of this

court in the case of DR H S HANUMANTHAPPA [supra], wherein the Division Bench while reversing the view taken by a single bench of this

court in holding that the scheme as had been proposed and propounded by BDA has lapsed due to non-implementation in a substantial manner

within a period of five years from the date of declaration, as mandated u/s 27 of the BDA Act, but this view was not endorsed by the Division

Bench and the writ appeal by BDA was allowed and writ petition was dismissed accepting the version of the authority that large extent of lands

which had been diverted in favour of private housing co-operative societies for development by way of bulk allotment, which was also for

development of housing and residential enclaves is in consonance with the purpose and object of the scheme and therefore when the extents of

land in respect of which BDA itself was able to implement the scheme on its own and the extent of land handed over to housing cooperative

societies put together, if has been utilized for housing purpose, that was in substantial implementation of the scheme and in the light this judgment of

the Division Bench, the present writ petitions cannot be examined for the very purpose; that this judgment of the division bench bids a single judge

of this court, that there is no more scope for examining the applicability or otherwise of the provisions of Section 27 of the BDA Act at this stage,

just: because some of the petitioners are complaining their present possession is threatened by the actions of the BDA by issue of notices u/s 33 of

the BDA Act etc.

27. It is also urged on behalf of the respondent-BDA that some of the very writ petitioners have approached this court earlier and had failed and if

so there is no question of entertaining another round of writ litigation at their instance; that such petitions are per se to be rejected and at any rate

such persons are estopped from putting up of the very argument again and again before this court by filing repeated writ petitions; that principles of

res judicata and binding precedent as well as principles of estoppel are all attracted and operate against the petitioners for dismissing the writ

petitions and the learned counsel for the respondents very strongly pleaded for dismissal of these writ petitions and to allow the authority to take

action for not only repossessing the acquired lands but, also for further implementation of the scheme.

28. I have heard Sri M S Bhagwat, Sri C N Nagabushan, Sri G G Sastry and other learned counsel for petitioners, Sri R Omkumar, learned AGA

for the state, Sri B V Shankarananarayana Rao and Sri V Y Kumar for respondent-BDA and Sri V B Shivakumar, learned counsel who appears

for persons in whose favour BDA has made bulk allotment of land in Sy Nos 56/1 and 56/2 in terms of allotment order dated 29-10-2010 [copy

at Annexure-R to the WP No 5389-92 of 2011], which is sought to be quashed by the petitioners in this batch of writ petitions.

29. The defence on behalf of the authority is to get over the contentions urged on behalf the writ petitioners who have their own resources and

ammunition in the form of several orders and judgments of this court and Supreme Court, starting with the order of a learned Single Judge in what

is popularly known as SHIVANNA''s case, an order dated 27-7-1984 rendered in WP Nos 29726 of 1981 and connected cases, an order

passed in a review petition, which is claimed to be given rise to rights to the writ petitioners and also on behalf of BDA in their own manner, and

the review order being dated 30-3-1992 passed in Civil Petition Nos 144 & 144A of 1989, which, though has its own peculiarities, what is sought

to be capitalized from this order on behalf of the writ petitioners being the time lapse between the date of original order passed in the two writ

petitions referred to be being on 27-7-1984 and the date on which the state government issued fresh notifications u/s 19(1) of the BDA Act as on

14-12-1995, as in the first instance in the order passed in the main writ petitions 1981 notification was quashed by this court for non-compliance

of the requirement of Section 17(5) of BDA Act, but the authority exhibits a very belated awareness about the disastrous consequences of this

order and having tried a damage control operation through the review petitions and that too after a failure before a Division Bench of this court in

appellate jurisdiction and the salvaging aspect with which the learned judge in the review petition had indicated that quashing of declaration u/s

19(1) is confined to writ petitioners therein and not in respect of persons who were not before the court i.e. the order passed by this court in the

earlier writ petitions, which is dated 27-7-1984, is in the nature of an order in personam and not an order in the nature of an order in rem and

therefore the authority having chosen to come up with a fresh notification issued u/s 19(1) of BDA Act on 14-12-1995 only in respect of writ

petitioners and while argument on behalf of writ petitioners is that when once this court quashes a notification in the nature of declaration u/s 19(1)

and had not qualified the orders and on some reason or the other, it is to be taken entire notification is quashed and therefore even assuming that

this court had reserved liberty to the authority to come up with fresh notifications, such fresh notifications being only in respect of those writ

petitioners and not in respect of others and under whom petitioners are claiming right, title and interest, as there is no declaration and no acquisition

proceedings are taken to a logical conclusion in a logical manner as per the provisions of the BDA Act and therefore the state and BDA have no

manner of right, title and interest to disturb the possession of the petitioners at this point of time.

30. Petitioners also have relied upon a subsequent Division Bench judgment of this court in the case of State of Karnataka Vs. Gokula Education

Foundation and Others, . affirming an earlier order passed by a learned Single Judge in WP Nos 3832 49 of 2004 and connected matters,

rendered on 15-4-2004 and particular reliance is placed on para-24 of this judgment, reading as under:

24. Before we conclude it is fair though not necessary to notice certain decisions cited by Sri Udaya Holla, learned Senior Counsel Sri Udaya

Holla cited before us a judgment of the Division Bench of this Court in V.T. Krishnamoorthy v State of Karnataka and judgment of the Supreme

Court in Reliance Petroleum Limited v Zaver Chand Popatlal Sumaria to contend that since in the award enquiry late Sri M.S.Ramaiah, one of the

owner so the subject lands, claimed compensation at the rate of Rs. 100 per sq. yard, the owners are not entitled to assail the land acquisition

proceedings. We have carefully perused the statement of late Sri M.S. Ramaiah recorded by the Land Acquisition Officer. Late Sri M.S. Ramaiah

while stating that the subject lands are required for their own purposes, sought that in the event of acquisition, compensation at the rate of Rs. 100

per sq. yard should he paid. From that statement it could not be said that late Sri. M.S.Ramaiah consented for acquisition of the subject lands as

proposed by the State Government for the purpose of the BDA. Therefore, the above case-law is of no help to support the contention of Sri

Udaya Holla. Sri Udaya Holla also cited before us the judgments of the Supreme Court in Tamil Nadu Housing Board v A. Viswam; State of

Tamil Nadu v Mahalakshmi Amrnal and M/s Larsen and Toubro Limited v State of Gujarat and unreported judgment of the Division Bench of this

Court dated 14-1-2000, W.A.No.1330 of 1992 with regard to mode of taking possession and legal consequences that flow from the taking of

possession and to contend that since Government issued notification u/s 16(2) of the LA Act on 1-4-1982, the subject lands stood vested in the

State Government and therefore, the title held by the owners thereby stood divested. All the judgments of the Supreme Court cited by Sri Udaya

Holla are by two-Judges Bench In view of the three-Judges Bench judgment of the Supreme Court in Balwant Narayan Bhagde"s case, the

judgments cited by Sri Udaya Holla are of no help to support its claim Apart from that as already pointed out supra, there is clear and clinching

evidence to show that even after 31-8-1981 and 1-4-1982, the physical possession of the subject lands has always been with the GEF and this

position is admitted by the State Government and BDA as noted above, and the Division Bench having found no occasion to disturb this order and

having dismissed the appeals by the authority, what is very vehemently urged by the learned counsel for the petitioners is that in the wake of this

judgment, it is not possible for BDA to contend any more that the scheme is still sustaining and Section 27 is not attracted; that when once this

court had noticed that large extent of lands were being released from the scope of acquisition time and again and that the authority cannot proceed

against persons who have remained in the possession of the land notwithstanding acquisition notifications and the petitioners" position being

different, as they and their predecessors-in-title have continued to remain in possession notwithstanding the acquisition proceedings, they are also in

the same situation as was petitioners in WP Nos 3832-49 of 2004 and connected matters and have very strongly relied upon this judgment for the

relief that they have claimed in these petitions.

31. This judgment, which is per se against the BDA and the state, is sought to be distinguished by the learned counsel for the respondent-BDA on

the premise that the fact situation is totally different. It is contended that this court found it as a matter of fact and on the peculiar facts and

circumstances of the subject land having been developed into an educational institution, BDA should not be permitted to disturb their possession

and such is not the situation in so far as the petitioners in these petitions are concerned. While it was the case of erstwhile landowner having

developed some educational institution, the present writ petitioners are speculative purchasers during the pendency of the notifications for

acquisition and therefore cannot take advantage of this judgment for claiming relief in these petitions!

32. Petitioners have also placed reliance on another single bench decision of this court rendered on 22-11-2010 in WP No 19526 of 2001 for

urging that Section 27 is attracted to the present situation. For the same reason, reliance is also placed on yet another single bench decision of this

court in the case of Mrs. Poornima Girish Vs. Revenue Department Govt. of Karnataka, Commissioner and Special Additional Land Acquisition

Officer Bangalore Development Authority, , particularly para-8, reading as under:

8. Having heard Sri Krishnappa, learned counsel for the petitioner and Sri Abdul Khader, learned counsel for the respondent -authority on merits,

it is found that the situation is one which is irredeemable and irretrievable for the authorities as the authority by its own inaction and letharginess has

allowed the acquisition proceedings insofar as the petitioner is concerned to lapse. Therefore, the acquisition proceedings in terms of the

preliminary notification u/s 17 of the Act and final notification u/s 19 of the Act are hereby quashed only insofar as it relates to the land in

possession of the petitioner in terms of the report now placed before the court according to which the petitioner is in possession of site measuring

40 feet by 60 feet.

33. Reliance is also placed on the judgment of the Supreme Court in the case of Delhi Development Authority#RAM Prakash (2011 (2)

SUPREME 375) to contend that it is not open to a development authority to take possession of a land which had been left with the erstwhile

owner or left for as long a period as 25 years by pressing into service the statutory provisions under the Development Authorities Act. Strong

reliance is placed on paras-22 and 23 of this judgment reading as under:

22. Even as to the contention raised on behalf of the petitioner that there was no limitation prescribed for making a demand of arrear charges, the

Division Bench relying on the decision of this Court in State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd., . observed that

even where no period of limitation is indicated, the statutory Authority is required to act within a reasonable time. In our view, what would construe

a reasonable time, depends on the facts and circumstances of each case, but it would not be fair to the respondent if such demand is allowed to be

raised after 25 years, on account of the inaction of the petitioner.

23. We do not, therefore, find any reason to interfere with the judgment either of the learned Single Judge or of the Division Bench of the High

Court and the SLP is, accordingly, dismissed.

34. Reliance is also placed on another single Bench decision of this court rendered on 9-6-2011 in WP No 7384 of 2010 and connected cases,

taking the view that when once relief is given to some of the landowners in respect of lands that had been notified for acquisition by quashing the

acquisition proceedings, the consequence is acquisition proceedings should be taken to be quashed in respect of all other similarly placed

landowners, as otherwise even assuming a fresh notification is issued in respect of the same, ultimately that could bring about uneven treatment at

the hands of the state in the matter of payment of compensation to landowners whose lands are acquired for the same purpose, but while those

petitioners who had not approached court will have to remain content with receiving compensation as on the date of issue of preliminary

notification issued earlier, but those who had approach court and had got the notification quashed, fresh preliminary notification issued being at a

disadvantageous position of receiving a higher compensation due to lapse of time and the market value having gone up in the interregnum and

paying compensation to like landowners whose lands are acquired for the same purpose at different rates would bring about a situation where state

acts in discriminatory manner between two sets of landowners and to avoid this, more so when this court examines such matters on judicial side, a

result or a consequence which avoids such discrimination should be preferred and therefore it: has been held that quashing of acquisition

proceedings operates in rem and not in personam

35. Very strong reliance is placed on behalf of the writ petitioners by all the learned counsel for the petitioners on a decision of a single judge of this

court rendered on 27-7-2011 in WP No 28101-108 & 28612-13 of 2010 to contend that writ petitioners are entitled to claim relief u/s 27 of

BDA Act; that this section does operate in the present situation and writ petition are not hit by delay and laches etc., and the consequence of

Section 27 are necessarily to be enforced in law by issue of suitable directions to the authority etc.

36. However, it is brought to the notice of this court by Sri Shankaranarayana Rao, learned counsel for the respondent-BDA that two single Bench

decisions of this court rendered in WP No 19526 of 2002 and in WP No 28101-108 & 28612-13 of 2010 are appealed against and are now

pending before division bench of this court and in the latter decision, there is an order of stay granted by a Division Bench of this court to the

following effect:

Mr. K Suwan, advocate for respondent nos.1 to 10 and Mr. Veerappa, learned Government Advocate for respondent no 11.

Admitted.

The operation of the impugned order shall remain stayed till further orders. The parties shall ensure, status quo qua possession of the land of

respondent nos. 1 to 10.

37. On behalf of the respondent-state, Sri R Om Kumar, learned AGA has very strongly urged for dismissal of these writ petitions on the grounds

of want of locus, maintainability of the writ petitions, present writ petitioners being in the position of speculative purchasers and granting relief to

such persons more so in writ jurisdiction is not warranted; that discretionary writ jurisdiction should not be allowed to be exercised in favour of

such persons, particularly as the transactions on which these petitioners claim right, title and interest to the subject land being voided in terms of

Section 23 of the Indian Contract Act, 1872; that recognizing or encouraging such purchasers even while subject lands are already notified for

acquisition under the BDA Act, is not only to encourage such speculators but transaction being opposed to public policy, no credence should be

given to the claims put forth by the writ petitioners, but the writ petitions should be dismissed.

38. It is urged by the learned AGA that in terms of provisions of Section 23 of the Contract Act, transaction being opposed to public policy or

voided and therefore petitioners do not acquire any title in respect of subject land and such persons should not be heard in writ jurisdiction for

either grant of any relief to them or for invalidating any action on the part of the state and the BDA. In support of this submission, learned AGA has

placed reliance on the judgment of Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo

Nath Ganguly and Another, .

39. Learned AGA has also placed reliance on anther judgment of the Supreme Court in the case of Offshore Holdings Pvt. Ltd. Vs. Bangalore

Development Authority and Others, to urge that even in a situation where a scheme has lapsed due to non-compliance of the requirement of

Section 27 of the BDA Act, lands which had already been taken possession pursuant to acquisition proceedings and have vested in the state do

not automatically get divested but they remain with the state and will be available for the state to disburse the land in any manner as it deems fit and

therefore there is no question of allowing the lands which had already vested in the state government to be remained in the possession of petitioners

etc.

40. However, reliance is also placed on behalf of the petitioners by Sri Bhagawat on paras-26 and 39 of decision in the case of OFFSHORE

HOLDINGS PRIVATE LIMITED [supra] reading as under:

26. The next relevant provision for our purpose, which is of significance, is Section 27 of the BDA Act which reads as under:

27. Authority to execute the scheme within five years - Where within a period of five years from the date of the publication in the Official Gazette

of the declaration under subsection (1) of Section 19, the Authority fails to execute the scheme substantially, the scheme shall lapse and the

provisions of Section 36 shall become inoperative.

It places an obligation upon the Authority to complete the scheme within a period of five years and if the scheme is not substantially carried out

within that period, it shall lapse and the provisions of Section 36 shall become inoperative i.e. this is a provision which provides for serious

consequences in the event the requisite steps are not taken within the specified time.

Xxx

39. What is meant by the language of Section 27 of the BDA Act i.e. ""provisions of Section 36 shall become inoperative"", is that if the acquisition

proceedings are pending and where the scheme has lapsed, further proceedings in terms of Section 36(3) of the BDA Act i.e. with reference to

proceedings under the Land Acquisition Act shall become inoperative. Once the land which, upon its acquisition, has vested in the State and

thereafter vested in the Authority in terms of Section 36(3); such vesting is incapable of being disturbed except in the case where the Government

issues a notification for revesting the land in itself, or a corporation or a local authority in cases where the land is not required by the Authority

under the provisions of Section 37(3) of the BDA Act to contend that the observations made in this paragraph, on the other hand, support the case

of the writ petitioners and not of the respondents.

41. On behalf of the BDA, Sri V Y Kumar another counsel of BDA, has placed strong reliance on a single judge decision of this court rendered on

19-8-1986 in WP No 9488 of 1986 and connected cases, wherein figuring M Nanjappa, Appaiah, another M Nanjappa, Krishnappa, Ramaiah,

Thimmaiah, Narasimhaswamy etc., as petitioners, who had also questioned the very acquisition proceedings and the very scheme in respect of

lands situated at Geddalahalli village and the following observations towards end of para-3 of this order, reading as under:

Writ Petition No.8321/84 and similar matters where same notifications were challenged have been dismissed following principles enunciated in

Kanthamma''s case. Hence, no merit in the plea that on account of non-implementation of the scheme within the period prescribed in Section 27 of

the Act, scheme has lapsed to contend that the argument on behalf of the writ petitioners that Section 27 of the BDA Act is attracted and the

scheme has lapsed has already been rejected at the instance of the very petitioners and they cannot come back again and again contending the

same thing by filing petition after petition.

42. Reliance placed is on an irrelevant decision and the submission is also irresponsible, as while no independent finding is recorded in this order of

the learned Single Judge, it is only following the principles enunciated in the order in the case of Smt. Kanthamma v. State of Karnataka (ILR 1984

(2) KAR 1494). An examination of the reasoning in this decision shows that there is no principle enunciated at all.

43. On the other hand it is urged by the learned counsel for the petitioners that BDA and the state have not been fair to the court and have been

playing the game of hide and seek, in not having brought to the notice of this court that the subject declarations issued u/s 19(1) had already been

quashed by a learned Single Judge in WP No 29726 of 1981 and connected matter, decided on 27-7-1984 and this factual position had been

suppressed from being noticed by this court by BDA, though it is a statutory functionary under the BDA Act and is ''State'' for the purpose of

Article 12 of the Constitution of India.

44. Reliance is also placed by Sri Shankaranarayana Rao, learned counsel for BDA on the following decisions:

(1) in the case of SMT. KANTHAMMA [supra] and the following observations in para-5 and 6:

5. Aside the question of delay, we do not think that we could examine the contention urged with reference to Section 27 of the Act Section 27

reads:

27. AUTHORITY TO EXECUTE THE SCHEME WITHIN FIVE YEARS: Where within a period of five years from the date of the publication

in the Official Gazette of the declaration under sub-section (1) of Section 19; the Authority fails to execute the scheme substantially, the scheme

shall lapse and the provision of Section 36 shall become inoperative,

6. For the scheme to lapse there must be proof regarding the failure on the part of the authority to execute the scheme substantially within five years

from the date of publication in the Official Gazette of the declaration u/s 19(1) of the Act It seems to us that in the first place the ""failure to execute

the scheme"" envisaged u/s 27 means that there mast be dereliction of statutory duties without justification and not a mere delay in the execution of

the scheme. Secondly, the ""substantial execution"" in the context depends upon the magnitude of the scheme and the nature of the work executed

and remains to be executed.

7. In the very nature of the project in question, it is almost impossible for mis Court to embark upon an enquiry on the contention raised by the

Learned Counsel. The Court as observed by the learned Single Judge would be slow to interfere with the public projects, massive or minor, unless

there is compelling reason. We do not find any such compelling reason in this Court.

Writ Appeals are accordingly rejected to contend that this court had already taken the view that in respect of the present scheme, the scheme has

not; lapsed. (2) decision in the case of A Krishnamurthy v. Bangalore Development Authority (1996 (3) KAR LJ 506). wherein a Division Bench

of this court had taken the view that for the court to hold a scheme has lapsed, it is necessary on the part of the writ petitioners to show some

dereliction of statutory duty or failure on the part of the authority to execute the scheme; that mere lapse of five years cannot be taken as failure

attracting Section 27 and that such onus is on the petitioners to prove the same etc.

45. Sri Shankaranarayana Rao has also placed reliance on another decision of a Division Bench of this court rendered on 25-5-2009 in WA No

1979 of 2007 to contend that even a non-formation of layout in some acquired lands will not vitiate the scheme u/s 27 of BDA Act and also to

urge that the present writ petitions are hit by delay and laches and for want of locus etc.

46. These judgments, on an examination, I notice as under: The last judgment [WA No 1979 of 20071 is one in the context of some landowners

who had made an effort to get their lands also denotified having failed before the state government and having approached this court for issue of a

like direction on the ground that the state government is discriminating in the matter of issue of notifications u/s 48 for withdrawal from acquisition

proceedings. Such are not the present writ petitions. Question whether scheme lapses in terms of Section 27 is not necessarily dependent on the

utilization of one piece of land or one parcel of land and is rightly so observed by this court, but as to whether the implementation of the scheme is

in substantial manner.

47. Even the judgment in the ease of A KRISHNAMURTHY [supra] while indicates that in examining as to whether there is substantial failure,

provision should be made to exclude the time etc., where the authority had been rendered helpless due to other developments, particularly stay

orders issued by courts and this judgment in turn is only placing reliance on the earlier judgments of this court etc. The judgment was in the context

of a challenge to the very acquisition proceedings per se and in the background of provisions of Section 11-A of LA Act vis-Ã¯Â¿Â½-vis Section 27 of

BDA Act.

48. In so far as the judgments of this court, whether in favour of petitioners taking the view that the scheme has lapsed or against the petitioners

and in favour of BDA, taking the view that petitioners have not been able to demonstrate by placing relevant materials before the court that the

scheme has lapsed in a substantial manner, are all decisions rendered much prior to the decision in the case of OFFSHORE HOLDINGS

PRIVATE LIMITED [supra] wherein the Supreme Court had occasion to examine the question and the meaning of Section 27 of BDA Act in the

background of its earlier decision in the case of Girnar Traders Vs. State of Maharashtra and Others, .

49. While Supreme Court in the ease of GIRNAR TRADERS [3] [supra] was per se concerned with the applicability or otherwise of the

provisions like Sections 11A and 6 of LA Act and that question was answered against the petitioners by making a distinction between the

acquisition of land made under the LA Act and the acquisition for specific purpose of development activity under Development Authorities Acts

like BDA Act, precise effect of Section 27 of BDA Act was not in examination and it was not examined even in the case of OFFSHORE

HOLDINGS PRIVATE LIMITED.

50. Though Sri Shankaranarayana Rao, learned counsel for the respondent-BDA has brought to the notice of this court in ail fairness that a

Division Bench of this court has stayed the operation of the order passed in WP Nos. 28101-108 & 28612-13 of 2010, a stay of the judgment by

Division Bench is only of the operation of that order and at the best puts on hold the consequential effect of a particular order or judgment and

does not come in the way of another decision being rendered, whether on the same touchstone or as it prevails in the facts and circumstances of a

subsequent case. A judgment is an authority and can be cited as a precedent only for the ratio it has and not for any and every observations

contained in the judgment including an interim order. An interim order does not have the value of a binding precedent; nor does it contain any ratio,

but may give a guidance or some inputs while examining matters of like nature and nothing more.

51, Be that as it may, in so far as the legal principles are concerned, they are to be applied and such legal principle as evolved by court through

judgment has the effect of a binding precedent or even when the Supreme Court declares a law within the meaning of Article 141 of the

Constitution of India.

52. The contention urged on behalf of the respondents to claim that this court has already examined and upheld the applicability or otherwise of

Section 27 and the sequel viz., as to whether the scheme has lapsed or otherwise, is a defence put up based on two fallacies. First and the most

basic fallacy is assumption that legal principles evolved in the context of the conventional adversary English legal system continued to hold the field

even in matters of constitutional jurisdiction where the lis is not adversary, but examination is only of actions of the state within the scope of judicial

review of administrative action and writ petitioners merely serving a purpose of bringing a cause before the court for examination and being more in

the nature of a relater action and not as an adversary to state.

53. The principles of res judicata and estoppel do not necessarily apply in a situation where this court is examining an action of the state on the

touchstone of statutory provisions and constitutional provisions.

54. When the present actions are examined on the touchstone of Section 27, without being burdened or influenced by various judgments cited at

the bar, some in favour and some against the proposition that the scheme has lapsed and even as held by the Supreme Court decision in the case

of OFFSHORE HOLDINGS PRIVATE LIMITED [supra], the BDA Act stipulates an outer time period of five years from the date of issue of

declaration for the substantial implementation of the scheme. It is the duty of the court to examine this position without being influenced or carried

away by any other facts and the only scope, perhaps, is to make provisions for the time during which the authority is virtually restrained from giving

effect to the scheme or implementing the scheme because of the stay orders passed by courts and to this extent the judgment of the Division Bench

in the case of A KRISHNAMURTHY [supra] can be taken note of to understand that such a situation is not to be taken as failure on the part of

authority, but the time stipulation of five years can neither be elongated nor curtailed by court orders.

55. The second fallacy is, putting the onus on the petitioners to prove or to provide materials to make home the failures or substantial failure for

implementation of a scheme by the authority. Here again, courts are being guided or influenced by conventional legal principle that he who

approaches court has to bear the burden of making good his case, which is again a legal principle evolved in the context of adversary English legal

system, it is not the same in writ jurisdiction. It is the duty and responsibility of the state to defend its actions more so when the action, prima facie,

and on the face of the record appears to be an uneven action, an action which is in the nature of pick and choose and an action which per se is

contrary or opposed to what is proclaimed to be the purpose for which action is taken. If the stated purpose is one and the real action is for

something else, it is a classical case of colourable exercise of power, as is very-obvious in the present situation.

56. To defend the actions on behalf of the state and other respondents, while it is contended by the learned counsel for them and following figures

have been given to demonstrate that the actual extent of land notified, actual extent of land which the state and the authority were able to take

possession of, actual extent of land in respect of which the scheme is claimed to have been implemented and also the extent of land in respect of

which state government has issued notifications u/s 48 releasing lands from acquisition proceeding itself, which in turn takes it out of the scheme

also, are as under:

1 Extent of land forming subject matter of A G 1331-04

acquisition as per the final notification dated

2-8-1978

2 Extent of land handed over to engineering 629-24

section

3 Extent of land utilized for formation of layout 379-35

by BDA

3AExtent of land allotted to private house 405-04

building co-operative society by the

government by bulk allotment [including

CPRI & TATA institute]

3BExtent of land denotified 102-36

3CExtent of land unauthorized structure 443.09

57. This version as claimed by and presented before this court and is accepted without further scrutiny, but only shows that BDA has utilized an

extent of 380 acres for actual implementation of the scheme from out of a total extent of 1331 acres of land declared for the purpose of

implementation of the scheme and out of which, it is claimed only an extent of 629 acres of land had been handed over to the engineering section of

the BDA.

58. While large chunks of land is conceded to have been left out of acquisition proceedings by issue of periodic notifications issued u/s 48 by the

state government, which is per se an act contrary or at cross purpose to the scheme, the fact that an extent of 443 acres of land has been left out

or is not even touched or possessed by the state or the BDA, on the premise that there already exists unauthorized structure is a true testimony to

the wayward, quixotic and arbitrary manner of implementation of the scheme by BDA and being controlled or guided by the state government.

59. It also reveals that BDA is out to take action only against a select few like petitioners whose total land holding may not exceed seven acres,

whereas it is conceded before the court by the authority that a large extent of 443 acres 9 guntas of land is an area with unauthorized structure. It

passes one''s comprehension, imagination, forget either logic or rationale as to why BDA is hell-bent to take action that too a highhanded law

violating, law-non-conforming, highly belated arbitrary action against the petitioners, virtually terrorizing petitioners and by invoking the provisions

of Section 23 of the BDA Act at this belated point of time viz., 33 years after the issue of preliminary notification in respect of petitioners, who

claim they have already put up their dwelling units and are living there and the manner in which the BDA had permitted some other structures but,

single out only writ petitioners and their seven houses for a demolition treatment just because they had approached this court earlier, only

demonstrates the highhanded manner of functioning of BDA and the action per se attracting Article 14 of the Constitution of India.

60. But, on the other hand, BDA is wary of placing its relevant records before the court and learned counsel for the respondent-BDA have been

beseeching this court not to undertake such an examination, as the BDA has never been accustomed to such a deep scrutiny by courts; that the

examination is very microscopic, too very detailed to the great dismay and chagrin of BDA; that when the authority''s version would usually pass

muster before this court and when the authority could at the drop of a hat get writ petitions dismissed, as has happened in respect of the very

scheme in the earlier round of writ litigation before this court, as to why this court is putting the authority to such a scrutiny and discomfiture now is

a very strong argument urged on behalf of the authority by its learned counsel.

61. No wonder such arguments are put forth, as the state and public authorities have been accustomed before this court to get away by placing

their own versions which are seldom scrutinized by this court and which is accepting as gospel truth and many a time, as in the earlier judgments

noticed above, writ petitions are being dismissed on the premise that the petitioners are not able to make good their case or have not; placed

material before the court and therefore the writ petitions have to he dismissed and the scheme has to be sustained.

62, An authority which is loath to part with its record inspite of the matter being admitted and being asked to place the record before the court may

never reveal the true state of affairs to any person though discomforting feature that the State and public authorities are facing is in the wake of the

legislation of Right to Information Act, 2005 which frowns upon non-disclosure of information.

63. Petitioners like the present only, seldom can have any knowledge or access to what all irregularities or even illegalities could have taken place

in the course of implementation of the scheme. A development scheme envisaged in respect of lands to an extent of 1,331 acres 4 guntas if is

implemented first in respect of an extent of 380 acres of land which is less than 30% area wise and that too even in the year 2011 i.e., 33 years

after the issue of declaration is still in the process of implementation of the scheme then by no stretch of imagination or judicial interpretation can it

be accepted as a substantial implementation of the scheme.

64. The manner in which the authority has managed to pull the wool over the eyes of this court in claiming that the lands allotted in favour of private

house building co-operative societies are also to be taken as part of implementation of the scheme which is not less than 405 acres and by playing

this trick on the court, has managed to create an impression that more than 50% of the acquired or notified land is utilized for implementation of the

scheme is another finding virtually extracted from this court by distorting the factual position and the finding is nothing short of a finding recorded on

a mistaken fact. The public authority has virtually played a trick or a fraud in bringing about this result for claiming that this court has already taken

the view that the scheme has not lapsed in terms of section 27 of the BDA Act.

65. A scheme per se on the face of the record and even as conceded in the year 2011 is a scheme which does not pass or meet the requirements

of section 27 of the BDA Act being held to be a scheme which is substantially implemented in the year 1995 or 1996 is a travesty of truth and fact

and a distortion of the record and legal position.

66. In the background of such developments, if the petitioners'' contention that they are being disturbed and are actually being thrown out of their

homes not because the BDA has any bonafides or intention to implement the scheme, but because it wants to favour selected persons and for

other considerations is examined, particularly, the manner in which the extent of 37 guntas of land notified under this scheme is sought to be allotted

in favour of the house building society on the premise that the person was a loser of some land notified for acquisition under a different scheme etc.,

and if the allotment order is to be examined a little more, it reveals another sorry state of affairs wherein the land of the house building society

though notified is said to be never taken possession of, but a notification u/s 48 of the BDA Act is said to have been issued withdrawing the very

acquisition way back in the year 1992 and the Government and the BDA is moved to tears on the request of such a person in the year 2010 to

come up with an order to compensate a land owner whose land it is said to have been lost due to acquisition proceedings in respect of the scheme

known as "BTM Layout" and in Madivala Village notified during the years 1977-79 and the present allotment being on the ruse that the BDA or

the Government is not in a position to restore possession of the land to the person. If in the first instance, possession had not been taken, there is

no question of restoration and on the other hand the version of the BDA is that the land had been handed over to a public authority as part of bulk

allotment etc., and to crown all these fantastic developments, the BDA is very reluctant to place the relevant record before this court leading to this

allotment and on the other hand contention urged on behalf of the petitioners is that the so called representation on behalf of the house building

society is not even placed before the court.

67. The secretive manner in which the State and the BDA are functioning in the matter of acquisition of private lands and in the name of public

purpose and going about allotting acquired lands to all and sundry acting at cross purposes with the scheme and the purpose for which acquisition

is made and above all the State Government asserting that the land vested in the State after taking possession is a land which it can deal in any

manner as it deems fit even if it is not possible to implement the scheme for the purpose for which it had been acquired is only another manifestation

of the arbitrary and authoritative manner in which the State functions in such situations. That again is nothing short of an instance colorable exercise

of power as, if the State keeps on diverting the land acquired for one purpose to other purposes, that too in an arbitrary manner not being

regulated by any rules or law, the exercise of power in an arbitrary manner is complete and such actions per se attract Article 14 of the

Constitution of India.

68. While this court exercises the jurisdiction of judicial review of administrative action, the only examination is the legality or otherwise of the

action of the State and its authorities for sustenance or otherwise, insofar as operation of section 27 of the BDA Act is concerned, it is not by this

court declaring or taking a view that section 27 of the BDA Act is now attracted, that it operates! Section 27 of the BDA Act operates on its own

as per the statutory provision and on the contingency of the scheme having not been implemented in a substantial manner within the stipulated

period of five years or otherwise. It is not a thing that happens as and when examination takes place but as and when period of five years has

lapsed and this court while reviewing any action, only recognizes this position in law and if in the name of implementation of statutory provision, the

authorities are pursuing action to the detriment of any complaining citizen before this court and that too in a most uneven manner as noticed in the

present case, it is the duty of this court to prevent such manner of arbitrary exercise of power, misuse and abuse of statutory power as if the BDA

is denuded of the power to act because of the operation of section 27 of the BDA Act in combination with section 36 of the BDA Act under

which when once section 27 of the BDA Act is attracted, the provisions of the Land Acquisition Act, 1894 goes out on and after that stage and

therefore the State or the BDA are not at liberty to pursue further action for acquisition either by taking possession or even for passing an award or

any such related action.

69. In such a situation, it is too far fetched for the BDA to fall back on a notice issued u/s 33 of the BDA Act purporting to take action against

encroachers or unauthorized occupants etc.

70. While this court does not either recognize or confer title on the writ petitioners in respect of subject land in which they are in occupation, it is

not in dispute that the BDA is now making efforts to dispossess them or to evict them from the premises for the reason that they are in illegal

occupation which again is based on the assumption or presumption that the land had earlier vested in the State Government and in turn had been

handed over to the BDA and therefore present persons having no title to the land are in the position of trespassers or encroachers and are required

to be thrown out, but when that itself is a disputed fact and the present possession of the petitioners in the land is not in dispute and with this court

having examined the applicability or otherwise of section 27 of the BDA Act in the present situation and the scheme, purely on the touchstone of

section 27 of the BDA Act and the earlier authority cited being of no avail either on legal principles or on factual aspects as the BDA had never

placed before this court the true facts and figures and is not ready to place it even now, the inevitable conclusion being section 27 of the BDA Act.

operates and therefore further action for either taking possession of the land or for affecting such persons cannot be permitted and even the legal

position as noticed by this court in WP Nos.28101 of 2010 & connected matters disposed of on 27.07.2011, being that even a land notified for

acquisition has already vested in the State, but thereafter the scheme lapses, it does not result in an automatic divesting of the land is the position

noticed by the supreme court even in OFFSHORE HOLDINGS PRIVATE LIMITED case [supra], but implementation of the scheme being not

possible any further because the scheme has lapsed, assuming that in some cases the land had vested in the State Government which depends upon

the factual situation, it will be necessary for the State or the BDA in such an event to take possession of the subject land in a manner known to law

but not by resorting to any coercive or arbitrary method by using their JCBs and bulldozers, but seek for recovery of possession only before a civil

court based on their title if they are able to make good their case before the civil court and therefore notices issued u/s 33 of the BDA Act cannot

be sustained and are all quashed by issue of writ of certiorari.

71. This result follows notwithstanding contention urged on behalf of the respondents to the effect that insofar as the petitioners are concerned, the

BDA has already taken possession and this is conclusively proved by the production of copies of gazette notifications issued u/s 16[2] of the BDA

Act which is already referred to for more than one reason.

72. Firstly, the original record, particularly, the award and the spot mahazar on which reliance is placed for issue of the notification u/s 16[2] of the

BDA Act and paragraphs 8, 9 and 10 of the award passed in respect of this land very clearly shows the most inconsistent and irreconcilable

narration as noticed in paragraphs 8, 9 and 10 of the award and to crown the illegality or irregularity the spot mahazar does not contain the

signature of any witnesses but is only a self serving spot mahazar containing signatures of officials of the BDA, but not one single independent

witnesses having witnessed taking possession of the land. If such is the spot mahazar evidencing taking of possession which alone can result in the

land vesting in the State Government and in turn to be handed over and with the assertion of the petitioners that they have never been disturbed

from their possession hitherto and they have been put in possession by their erstwhile vendors etc., their version cannot be brushed aside as even

durable possession of the land by petitioners being conceded and intention of the BDA to take possession as of now, the notification u/s 16[2] of

the BDA Act and presumptive value as per this provision are all of no consequence even as noticed in GOKULA EDUCATION

FOUNDATIONS case [supra] and the very original records having betrayed the authority and not making good taking possession of the subject

land, the assertion of the petitioners that the possession had remained with them, not much importance needs to be attached to the defence put up

by the BDA about the presumption u/s 16[2] of the Act and is therefore rejected but other consequences as above do follow.

73. The scheme having lapsed, the further consequence in terms of WP Nos.28101 of 2010 & connected matters disposed of by this court on

27.07.2011 follows in the present case such as the BDA being restrained from taking further coercive action in the name of implementation of the

scheme.

74. However, insofar as the land which has been taken possession of and which has remained in the possession of the BDA and not allotted in

favour of the aspiring applicants who are in queue before the BDA is concerned, such land has to be allotted only to such bona fide applicants in

accordance with the relevant rules and not to be diverted in favour of any other person including any erstwhile land owner or any other person on

compassionate ground or on consolatory basis. It is for this reason, allotment made in favour of the fourth respondent in writ petition is also

quashed by issue of a writ of certiorari.

75. Insofar as claim towards compensation claimed by some of the writ petitioners due to demolition of their buildings in the subject land are

concerned, this court had passed interim order directing the BDA to pay an adhoc amount. It is the submission of Mr. Bhagwat, learned counsel

for the petitioners that this amount is also not paid. However, Sri. Shankaranarayana Rao, learned counsel for the BDA submits that this is also

appealed against.

78. This is nothing but for a lethargic attitude or for reasons otherwise on the part of the BDA, that appeals have not been listed for admission.

79. The fact remains that the BDA has shown scant respect to the orders passed by this court hitherto and in the name of preferring an appeal

against the order, it is avoiding compliance is yet again a manifestation of the typical manner of functioning of the BDA which has no respect for law

and orders of this court, but has its own methods and manner of functioning and all this only to favour a few and to the dismay and hardship of a

large number of other persons/citizens.

80. Unfortunately, the State and the public authorities like the BDA have all along, and being got accustomed to a very liberal, permissive treatment

accorded to them by this court even in writ jurisdiction, particularly, as it is presumed that the State and such lesser versions of the State always act

for public good and in public interest, but that presumption itself being diluted by the State and the BDA whose actions now a days are more

guided by other considerations; whose actions time and again exposes them to be acting in a whimsical, partisan manner, biased action in favour of

favoured ones and prejudicial action against others being the order of the day and in this background, learned counsel for the BDA no wonder

complains that they should not be given such harsh treatment, as part of the submission, is no surprise. It is high time that the State Government and

the public authorities like the BDA learn to respect law, act in accordance with law, abide court orders and when called upon to place the record

and the developments, be straight and clean before this court and not to indulge in selective placement of records, suppress all relevant records and

even in distorting and misleading the courts on facts.

81. No wonder, the Supreme Court of India had an occasion to observe that the affidavits filed by the officials of the State Government are not

worthy of belief or acceptance. Unfortunately, the State appears to have not done much to get over such a certificate that it had received at the

hands of the highest court of the land and if one is to look into the manner in which the present developments leading up to the present writ

petitions have taken place, such impressions are only confirmed.

82. The lethargic and erratic manner in which the BDA has gone about in implementation of the scheme starting from the year 1977 and if it has not

even completed even in the year 2011, that is a very sad reflection on its ability, on its manner of functioning and more so about its commitment to

the purpose for which it is created and in its commitment to adhere to the statutory provisions.

83. Unfortunately, the State and lesser forms of State assume that statutory powers are meant to be exercised by them in any manner; that they

cannot be questioned as to the manner of exercise of this power; that when once the BDA has escaped scrutiny In a particular manner at the hands

of this court, thereafter they can indulge in any type of actions; that the officials can indulge in any type of conduct and behaviour and everything

else can elicit acceptance at the hands of this court on the bogie of the principles of res judicata or estoppel or the matter having received attention

of this court earlier.

84. Even a writ petition once dismissed at the instance of some person and challenging a particular scheme is not a blanket cheque in favour of the

State and its authorities to indulge in arbitration actions thereafter.

85. Just because some persons who come up before this court have failed in their efforts to make good an arbitrary or whimsical action on the part

of the State, it does not mean that it cannot be demonstrated by others or some persons at a later point of time if it really existed and the State

thereafter also has been acting in an arbitrary manner.

86. There is never an escape for the State from the scrutiny of judicial review of administrative action by the judiciary. It is not as though once a

suit in an adversary proceedings is got dismissed, plaintiff cannot improve upon the case later. Such principles per se are not attracted to judicial

review of administrative action in writ jurisdiction.

87. It is therefore these writ petitions are allowed. The impugned notices and allotment are quashed by issue of writ of certiorari.

88. The further following directions are issued to the BDA in the matter of implementation of schemes henceforth.

89. The BDA to have a clear picture, a clear plan and evaluate the pros and eons before embarking on presenting a scheme and forwarding it to

the State Government.

90. It is desirable that the BDA takes up smaller extents for development rather than embark on acquiring vast extents of lands and the scheme

ultimately will turn out as one for implementation of a fraction of the lands originally proposed for acquisition and acquired for implementation of the

scheme.

91. It is desirable that: the BDA goes about in performing its duties as a statutory authority in a more realistic manner than start in a very ambitious

manner or impractical manner, more so, when the State Government and the BDA are in the habit of not only withdrawing from the scheme of

acquisition, but diverting the land for non scheme purposes and prolonging the scheme over a period of 25 to 30 years.

92. It is high time the BDA shows awareness to the statutory provisions of section 27 of the BDA Act and well before taking up a scheme,

evaluate the possibilities of implementation of the scheme within the statutory period and then only embark on the fresh scheme.

93. The BDA once has gone through the acquisition proceedings and has obtained possession of the land should necessarily adhere to the

implementation of the scheme and not keep diverting the land to all and sundry. All lands acquired and handed over to the BDA for implementation

of the scheme should be allotted only in accordance with the rules and regulations and in favour of bona fide applicants and not to be diverted in

the name of bulk allotments to societies or erstwhile owners of the land or such other persons which is nothing short of playing a fraud on the

power and provisions of the relevant rules for allotment and distribution of such developed lands and sites under a scheme.

94. The BDA to notify the manner of implementation of the scheme on its notice board periodically, the progress achieved every year after the

lands are handed over to its possession and also to notify the persons in whose favour all sites in developmental scheme are allotted, to the

information of the general public which can avoid arbitrary or partisan action on the part of the BDA.

95. It is however made clear that it is open to the State Government and the BDA to take action, but only in accordance with law and not

otherwise and this order does not in any way come in the way of the State making its claim good before a civil court and in accordance with law.

96. In the wake of the submission at the Bar and not disputed that the respondent - BDA has not paid the ad interim compensation awarded in

favour of some of the writ petitioners in the wake of the high handed action that had been taken and an act of favouritism to let lose on the writ

petitioners by the statutory authorities like the BDA and with the BDA not showing any inclination to obey or respect the orders of this court, but

counsel for the respondent - BDA being content with the submission that a writ appeal is filed in the registry but ensured that it has not come up for

examination by the division Bench of this court, while liberty is reserved to the petitioners to initiate such other action as is permissible in law

including moving the court in contempt jurisdiction for noncompliance with the order which is made absolute as per this order and in the event of

payment, it is open to the respondent - BDA to claim credit for this amount as part of damages payable to some of the petitioners whose structures

are also demolished.

97. It is made clear that liberty is reserved in favour of the petitioners for claiming damages before a court of law if it is their stand that interim

compensation as awarded is not adequate or does not fully meet the damages that they have suffered.

98. At the fag end of this order, Sri. Shankaranarayana Rao, learned counsel for the BDA makes an oral request that the petitioners be directed to

maintain status quo, particularly, for not creating third party interest in the interregnum which may result in other complications etc.

99. A request of this nature coming from the statutory authority like the BDA, in my considered opinion, is most unreasonable for the simple reason

that the BDA which has failed miserably in implementation of the scheme propounded in the year 1977 if is still active for implementation of the

scheme and even in the year 2011 if it has not achieved the same, to submit before this court: that, if status quo is not directed to be maintained for

a period of two weeks it will result in public interest being affected or interest of the BDA will be affected, is nothing short of crying wolf. An

apprehension of this nature while is uncalled for, is only a pretence on the part of the BDA which has all along acted in a most erratic, arbitrary

manner and the BDA which has been inactive has virtually approved unauthorized structures coming up in respect of large extent of 428 acres of

land notified for acquisition is crying hoarse for protecting its interest in respect of an extent of about 7 acres of land in which the petitioners claim

they have acquired interest and they are in possession that unless status quo is not directed to be maintained by the petitioners, it will affect public

interest and interest of the BDA, is nothing short of a most unreasonable request and it is therefore rejected outright.

100. The respondent - BDA having not complied with the interim directions that had been issued earlier in favour of some of the writ petitioners

and having not paid the interim compensation that had been ordered by way of damages clue to the high handed action on the part of the BDA

officials against these petitioners and now that the writ petitions are allowed and interim orders become absolute, it is open to the writ petitioners to

seek for issue of a certificate from the registry of this court for realization of this amount as though it is a decree passed by the civil court for

executing the same.

101. Registry of this court is in turn directed to issue a certificate in favour of the petitioners who have been granted interim order directing the

respondent - BDA to pay them the amount to enable those petitioners to realize the amount with interest at 6% per annum from the date on which

the amount was due as per the interim order till realization.

102. It is open to the petitioners and respondents to approach the civil court for additional payment or for claiming that the amount is in excess

etc., and while it is open to the party approaching civil court for relief in this regard to claim the amount as by way of damages, it is equally open to

the respondents to claim set off/adjustment or counter claim as the case may be and the present amount awarded by way of interim relief by this

court is subject to final determination by the civil court.

103. In view of disposal of the main writ petitions itself, Misc. W. 6944 of 2010 filed by the petitioners in WP Nos. 16074-16100/2010. Misc.

W. 4049 of 2011, both filed by the petitioners in WP No.6467 of 2011 for production of additional documents and Misc. W. 3466 of 2011 filed

for vacating stay do not survive for consideration, hence these applications are dismissed.