®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL 2017

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION Nos.59461-59462 OF 2014

CONNECTED WITH

WRIT PETITION No.18861 OF 2013

WRIT PETITION Nos.18890 AND 23750-23752 OF 2013

WRIT PETITION Nos.20367-20373 AND 20375-20380 AND 20382 AND 20384-88 OF 2013 [LA-KIADB]

WRIT PETITION Nos. 49228 & 50925-50936 OF 2013[LA-KIADB]

IN WRIT PETITION No.30920 OF 2014 [LA-KIADB]

WRIT PETITION No. 35461 OF 2014[LA-KIADB]

WRIT PETITION No.32416 OF 2015 [LA-KIADB]

WRIT PETITION Nos.51805-51807 OF 2015[LA-KIADB]

WRIT PETITION No.859 OF 2016[LA-KIADB]

WRIT PETITION No.17272 OF 2014(LA-KIADB)

WRIT PETITION Nos.2907 OF 2015 AND 46915 OF 2016 (LA-KIADB)

WRIT PETITION Nos.40473-40474 OF 2015 (LA-KIADB)

WRIT PETITION Nos.41641-41642 OF 2015 (LA-KIADB)

WRIT PETITION Nos.44987-44988 OF 2015 (LA-KIADB)

WRIT PETITION Nos.48824-48840 OF 2015 [LA-KIADB]

WRIT PETITION Nos.58807-58809 OF 2015 [LA-KIADB]

IN W.P.Nos.59461-59462/2014

BETWEEN:

J. Venkatesh Reddy,
S/o. Gurumurthy Reddy,
Aged about 56 years,
Residing at Jakkasandra Village,
Kasaba Hobli, Malur Taluk,
Kolar District,
Owner of Sy.No.55/1,
An extent of 5 acers. ... PETITIONER

(By Shri V. Lakshminarayana, Senior Advocate for Shri V. Javahar Babu, Advocate)

AND:

1. The State of Karnataka,
Represented by its Chief Secretary,
Vidhana Soudha,
Bangalore - 560 001.

2. The Principal Secretary,
Department of Industries and Commerce,
Karnataka Industrial Areas Development Board,
M. S. Building,

Bangalore - 560 001.

3. The Executive Member,
Karnataka Industrial Areas Development Board,
1st floor, Nrupathunga Road,
Bangalore - 560 001.

4. The Special Land Acquisition Officer,
Karnataka Industrial Areas Development Board,
1st floor, Nrupathunga Road,
Bangalore - 560 001.

... RESPONDENTS

(By Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader, for Respondent Nos.1 and 2;
Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B.B. Patil, Advocate for R.3 And R.4)

These Writ Petitions are filed under articles 226 and 227 of the constitution of India praying to call for the entire record from the office of Karnataka Industrial Areas Development Board in the matter of Land Acquisition proceedings vide notification dated 13.03.2012 and 04.12.2012; quash the preliminary notification dated 13.3.2012 under Section 28(1) of the Karnataka Industrial Areas Development Board Act 1966 at Annexure-C and final notification dated 4.12.2012 under Section 28(4) at Annexure-D duly gazette and published from the office of first respondent in respect of petitioner's land being fertile agricultural garden lands and consequently to allow the petitioners to continue active agricultural operations in the agricultural lands and etc;

IN W.P.No.18861/2013

BETWEEN:

Sri. M. R. Ashwathappa,
S/o. Ramaiah,
Aged about 50 years,
Mindahalli Village,
Kasaba Hobli, Malur Taluk,
Kolar District.

... PETITIONER

(By Shri K. H.Somasekhara, advocate)

AND:

1. The Principal Secretary,
Commerce And Industrial
Development Board,
Bangalore - 1.

2. The Under Secretary,
Industry and Commerce Department,
M. S. Building,
Bangalore - 1.

3. The Special Land Acquisition Officer,
KIADB, No.14/3,
Aravinda Bhavana,
Nrupathunga Road,
Bangalore-01. ... Respondents

(By Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent Nos.1 and 2;
Shri K. B. Monish Kumar, advocate for R.3)

This Writ Petition is filed under articles 226 and 227 of constitution of India praying to call for the records which ultimately resulted in issuing both preliminary and final notifications vide Annexure-A and B respectively; quash the impugned preliminary notification dated 13.03.2012 vide Annexure-A and final notification dated 04.12.2012 vide Annexure-B as illegal and quash the same in so far petitioner land is concerned.

IN W.P.Nos.18890 AND
23750-23752 OF 2013

BETWEEN:

Sri. Narayanappa,
S/o. Late Dodda Siddappa,
Aged about 55 years,
Resident of Jakkasandra Village,
Kasaba Hobli, Malur Taluk,
Kolar District .

... PETITIONER

(By Shri Chandrashekar P., Advocate)

AND:

1. The State of Karnataka,
   Commerce and Industries Department,
   Room no.106, 1st floor Vikasa Soudha,
   Bengaluru - 560 001,
   Represented by its
   Principal Secretary to Government.

2. Karnataka Industrial Areas
Development Board,
(A Government of Karnataka
undertaking)
Nrupathunga Road,
Bangalore - 560 001.
Represented by its Chairman.

3. The Special Land Acquisition Officer,
K.I.A.D.B. Nrupathunga Road,
Bangalore - 560 001.

4. The Deputy Commissioner,
Kolar District,
Kolar – 563 101.

... RESPONDENTS

(By Shri Aditya Sondhi, AAG-III for Smt. R.Anitha, Government Pleader for Respondents 1 and 4;
Shri K. B. Monish Kumar, advocate for Respondent Nos.2 and 3)

These Writ Petitions are filed under articles 226 and 227 of the constitution of India praying to quash the notification dated 13.03.2012 vide Annexure - H to the writ petition; Quash the order dated 14.06.2012 passed by the R-3 Special Land Acquisition officer, Bangalore vide Annexure-M to the writ petition and quash the notification dated 04.12.2012 vide Annexure-L to the writ petition and etc.

IN W.P. Nos.20367-20373 AND
20375-20380 AND
20382 and 20384-20388 OF 2013

BETWEEN:

1. Sri. J. Siddappa,

S/o. Appayyanna,
Aged about 85 years,

2. Sri. S. Narayanappa,
S/o. J. Siddappa,
Aged about 45 years,

3. Sri. Muniyappa,
S/o. Motappa,
Aged about 55 years,

4. Sri. Gangana Bhovi,
S/o. Narayana Bhovi,
Aged about 73 years,

5. Smt. Kempamma,
W/o. Krishnappa,
Aged about 78 years,

6. Sri. Appanna,
S/o. Munivenkatappa,
Aged about 52 years,

7. Sri. K. M. Doddappaiah,
S/o. Munishamappa,
Aged about 60 years,

8. Sri. M. Gopalappa,
S/o. Munivenkatappa,
Aged about 45 years,

[Petitioner No.8
(W.P.No.20374/2013)
Dismissed as not pressed
Vide court order dated

13.4.2015]

9. Sri. Mallegowda,
S/o. Munishamappa,
Aged about 75 years,

10. Smt. M. Jayalakshmi,
D/o. Mallegowda,
Aged about 46 years,

11. Smt. M. Padma,
D/o. Mallegowda,
Aged about 42 years,

12. Smt. M. Vijayalakshmi,
D/o. Mallegowda,
Aged about 39 years,

13. Sri. Muniraju.M
S/o. Mallegowda,
Aged about 37 years,

14. Sri. M. Lakshminarayan,
S/o. Mallegowda,
Aged about 35 years,

15. Sri. M. Krishnappa,
S/o. Munivenkatappa,
Aged about 30 years,

[Petitioner No.15
(W.P.No.20371/2013)
Dismissed as withdrawn
Vide court order dated
14.10.2015]

16. Smt. Narayanamma,
W/o. Late Ramanaika,
Aged about 45 years,

17. Sri. Mallappa @ Mallana,
S/o. Siddanna,
Aged about 70 years,

[Petitioner No.17
(W.P.No.20383/2013)
Dismissed as not pressed
Vide court order dated
13.4.2015]

18. Sri. M. Siddappa,
S/o. Mallappa,
Aged about 30 years,

19. Sri. M. Manjunath,
S/o. Mallappa,
Aged about 32 years,

20. Sri. N. Gopalappa,
S/o. Narayanappa,
Aged About 45 Years,

21. Sri. Chandrachari,
S/o. Ramachandrachari,
Aged about 70 years,

22. Sri. S. Krishna Singh,
S/o. Seetharam Singh,
Aged about 59 years,

Petitioners are all residing at
Jakkasandra Village,
Kasaba Hobli, Malur Taluk,
Kolar District. .. PETITIONERS

(By Shri V. Lakshminarayana, Senior Advocate for Shri M. Shivaprakash, Advocate for petitioners
Petitions (W.P.Nos.20374 and 20383/2013) dismissed as not pressed against petitioner Nos.8 and 17 vide court order dated 13.4.2015
Petition (W.P.No.20381/2013) dismissed as withdrawn against petitioner no.15 vide court order dated 14.10.2015)

AND:

1. The State of Karnataka,
Represented by its Chief Secretary,
Vidhana Soudha,
Bangalore - 560 001.

2. The Principal Secretary,
Department of Industries and Commerce,
Karnataka Industrial Areas Development Board,
M. S. Building,
Bangalore - 560 001.

3. The Executive Member,
Karnataka Industrial Areas
Development Board,
1st floor, Nrupathunga Road,
Bangalore - 560 001.

4. The Special Land Acquisition Officer,
Karnataka Industrial Areas

Development Board,
1st floor, Nrupathunga Road,
Bangalore - 560 001. ... RESPONDENTS

(By Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent Nos.1 and 2;
Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B.B.Patil, Advocate for Respondent Nos.3 and 4)

These writ petitions are filed under articles 226 and 227 of the constitution of India praying to call for the entire record from the office of Karnataka Industrial Areas Development Board in the matter of Land Acquisition proceedings vide notification u/s 28(1) dated 13.03.2012 & notification dated 04.12.2012 and etc.

IN W.P.Nos.49228 & 50925-50936/2013

BETWEEN:

1. Smt. K. Premalatha,
W/o. C. Shivappa,
Aged about 44 years,

2. Sri. Srinivasappa,
S/o. Nanjappa,
Major, aged about 50 years,

3. Sri. Gangana Bovi,
S/o. Gangana Bovi,
Major, aged about 59 years,

4. Sri. K. M. Doddappaiah,
S/o. Late Muniswamappa,
Major, aged about 58 years,

5. Sri. Narayanappa,
S/o. Doddasiddanna,
Major, aged about 47 years,

6. Sri. Muniramaiah,
S/o. Munivenkanna Bovi,
Major, aged about 46 yea,

7. Sri. Bodappa,
S/o. Gangana Bovi,
Major, aged about 58 years,

Petitioner nos. 1 to 7 are
Residing at Jakkasandra Village,
Kasaba Hobli, Malur Taluk,
Kolar District.

8. Sri. Narayanaswamy,
S/o. Munivenkatappa,
Aged about 50 years,
R/at. Mindahalli Village,
Bananahalli Post,
Malur Taluk, Kolar District. ... PETITIONERS

(By Shri. V. Lakshminarayana, Senior Advocate for Shri M. Shivaprakash, Advocate)

AND:

1. The State of Karnataka,
Represented by its Chief Secretary,
Vidhana Soudha,
Bangalore-560 001.

2. The Principal Secretary,
Department of Industries and Commerce,
Karnataka Industrial Areas Development Board,
M. S. Building, Bangalore-560 001.

3. The Executive Member,
Karnataka Industrial Areas Development Board,
1st floor, Nrupathunga Road,
Bangalore - 560 001.

4. The Special Land Acquisition Officer,
Karnataka Industrial Areas Development Board,
1st floor, Nrupathunga Road,
Bangalore - 560 001.

... RESPONDENTS

(By Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent Nos.1 and 2;
Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B.B.Patil, Advocate for Respondent Nos.3 and 4)

These writ petitions are filed under articles 226 and 227 of the constitution of India praying to call for the entire record from the office of Karnataka Industrial Areas Development Board in the matter of Land Acquisition proceedings vide notification under section 28[1] dated 13.03.2012 and notification dated 04.12.2012 and quash the preliminary notification dated 13.3.2012 under Section 28[1] of Karnataka Industrial Areas Development Board Act 1966 at Annexure-C and final notification dated 4.12.2012 under section 28[4] at Annexure-D duly gazetted and published form the office of respondent no.1 in respect of petitioners lands being fertile agricultural garden lands and consequently to allow the petitioners to continue active agricultural operations in the agriculture lands and etc.

IN W.P.No.30920/2014

BETWEEN:

Smt. Nanjamma,
W/o. Manjunath,
Aged about 44 years,
R/at. Huskur Village,
Bidarahalli Hobli,
Bangalore East Taluk. ... PETITIONER

(By Shri V. Lakshminarayana, Senior Advocate for Shri M. Shivaprakash, Advocate)

AND:

1. The State of Karnataka,
Represented by its Chief Secretary,
Vidhana Soudha,
Bangalore - 560 001.

2. The Principal Secretary,
Department of Industries and Commerce,
Karnataka Industrial Areas Development Board,
M. S. Building, Bangalore-560 001.

3. The Executive Member,
Karnataka Industrial Areas Development Board,
1st floor, Nrupathunga Road,
Bangalore - 560 001.

4. The Special Land Acquisition Officer,
Karnataka Industrial Areas Development Board,
1st floor, Nrupathunga Road,

Bangalore - 560 001.

... RESPONDENTS

(By Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent No.1;

Shri Ashok Haranahalli, Senior Advocate along with Shri. K. Shashikiran Shetty, Senior Advocate for Shri B.B.Patil, Advocate for Respondent Nos.2 to 4)

This Writ Petition is filed under articles 226 and 227 of the constitution of India praying to call for the entire record from the office of Karnataka Industrial Areas Development Board in the matter of Land Acquisition proceedings vide notification dated 13.03.2012 and notification dated 04.12.2012 and quash the preliminary notification dated 13.3.2012 under Section 28[1] of Karnataka Industrial Areas Development Board Act 1966 at Annexure-C and final notification dated 4.12.2012 under section 28[4] at Annexure-D duly gazetted and published form the office of respondent no.1 in respect of petitioners lands being fertile agricultural garden lands and consequently to allow the petitioners to continue active agricultural operations in the agriculture lands and etc.

IN W.P.No.35461/2014

BETWEEN:

R.Venkatesh
S/o. Late V. Ramaiah,
Aged 62 years,
Residing at Kumbara Pet,
Malur Town,
Kolar District. ... PETITIONER

(By Shri K. H. Somasekhara, Advocate)

AND:

1. The Principal Secretary,
   Commerce and Industrial
   Development Board,
   Bangalore - 1.

2. The Under Secretary,
   Industry and Commerce Department,
   M. S. Building,
   Bangalore - 1.

3. The Special Land Acquisition Officer,
   KIADB, No.14/3, Aravinda Bhavana,
   Nrupathunga Road,
   Bangalore - 1. ... RESPONDENTS

(By Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent Nos.1 and 2;
Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B. B. Patil, Advocate for R.3)

This Writ Petition is filed under articles 226 and 227 of the constitution of India praying to call for the records which ultimately resulted in issuing both preliminary and final notifications vide annexure-A & B respectively; Quash the impugned preliminary notification dated 13.03.2012 vide Annexure – A and final notification dated 04.12.2012 vide Annexure – B as illegal and quash the same in so far petitioner's lands are concerned and etc.

IN W.P.No.32416/2015

BETWEEN:

Sri. P. Venugopal,
S/o. P. Krishnappa,
Aged about 51 years,
R/o. Mahathe, No. 72/1, 3rd Main,
16th Cross, G. D. Park Extension,
Vyalikaval, Bangalore – 560 003.

... PETITIONER

(By Shri Sharath N., advocate)

AND:

1. The State Represented by
Principal Secretary,
Department of Commerce and Industry,
No. 49, South Block, Khanija Bhavan,
Race Course Road,
Bangalore – 560 001.

2. The Commissioner,
Karnataka Industrial Area Development Board,
Nrupathunga Road,
Bangalore - 560 001.

3. The Special Land Acquisition Officer,
Karnataka Industrial Area Development Board,
Nrupathunga Road,
Bangalore - 560 001.

4. The Deputy Commissioner,
Kolar District,

Kolar – 563 101.

... RESPONDENTS

(By Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent Nos.1 and 4;
Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B.B.Patil, Advocate for Respondent Nos.2 and 3)

This writ petition is filed under Articles 226 and 227 of the constitution of India praying to quash the impugned order/letter of the R-3 dated 26.05.2015 as per Annexure-E. Direct the respondents to fix compensation and pass award under the new act (the right to fair compensation and transparency in Land Acquisition, rehabilitation and resettlement act, 2013).

IN W.P.Nos.51805-807/2015

BETWEEN:

1. Chikka Hanumaiah,
S/o. Late Ganga Hanumaiah,
Aged about 65 years,
R/o. Arasinakunte Village,
Kasaba Hobli, Nelamangala Taluk,
Bangalore Rural District.

Presently residing at No 641,
8th Main, Vinayaka Layout,
Nagarbhavi II Stage,
Bangalore – 560 072.

2. P. M. Siddappa,
S/o. Maheswarappa,
Aged About 44 years,

3. P. M. Diwakar Sankol,
S/o. Maheswarappa,
Aged about 42 years,

Sl.Nos. 2 and 3 are
R/at. Pille Karanahalli Village,
M. D. Halli Post,
Kasaba Hobli,
Chitradurga Taluk and District.

... PETITIONERS

(By Shri P. N. Rajeswar, advocate)

AND:

1. The State of Karnataka,
Represented by its Principal Secretary
Department Of Commerce & Industries,
Vikas Soudha,
Dr. B. R. Ambedkar Road,
Bangalore – 560 001.

2. Karnataka Industrial Areas Development Board,
No.49, 111 & IV floors,
Khanij Bhavan Race Course Road,
Bangalore – 560 001.
Represented by its Chief Executive
Officer and Executive Member.

3 The Special Land Acquisition Officer - 2 ,
Karnataka Industrial Area Development Board,
No.49, V Floor, Khanij Bhavan,
East Wing, Race Course Road,
Bangalore – 560 001.

... RESPONDENTS

(By Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent No.1;
Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B. B. Patil, Advocate for Respondent Nos.2 and R.3)

These writ petitions are filed under articles 226 and 227 of the constitution of India praying to quash notifications under Sections 3(1), 3(1) and section 28(1) dated 14.06.2013 (Annexure-A, B, C) issued by the R-1 so far as the petitioners lands are concerned and quash the notification bearing dated 30.1.2015 (Annexure-D) in so far the petitioners lands are concerned.

IN W.P.No.859 OF 2016

BETWEEN:

S. Narayanappa,
Age 53 years,
Son of Seetharamaiah,
Residing at Santhepete,
Sira Town,
Tumakuru District.

... PETITIONER

(By Shri Patel D. Kare Gowda, Advocate)

AND:

Special Land Acquisition Officer,
Karnataka Industrial Area
Development Board,
Maruthi Group Building,
II Floor, near SIT College,

B. H. Road, Tumakuru - 572 103.

... RESPONDENT

(By Shri Ashok Harnaahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B.B.Patil, Advocate)

This Writ Petition is filed under articles 226 and 227 of the constitution of India praying to direct the respondent to consider the representation given by way of legal notice dated 31.10.2015 vide Annexure-E to the Writ Petition. Direct the respondent to consider the directions issued by this Hon'ble Court in W.P.No.9620/2015 dated 22.09.2015 vide Annexure-D to the Writ Petition and etc.

IN W.P.No.17272 OF 2014
BETWEEN:

Sri. Chandrappa,
Son of Jalige Anjinappa,
Aged about 53 years,
Residing at Arebinnamangala,
Jala Hobli,
Bangalore North Taluk,
Bangalore District.

Represented by his
GPA holder Sri. Kiran,
Son of Anjanappa,
Aged about 30 years,
Residing at No.444, Bagalur,
Bangalore North (Addl.) Taluk,
Bangalore - 562 149. ... PETITIONER

(By Shri V. Lakshminarayana, Senior Advocate for Smt. Shilpa Rani, advocate)

AND:

1. The State of Karnataka,
Represented by the Secretary,
Department of Revenue,
Vidhana Soudha,
Bangalore - 560 001.

2. The State of Karnataka,
Represented by the Secretary,
Department of Commerce and Industries,
Vikasa Soudha,
Dr.B.R.Ambedkar Veedhi
Bangalore-560 001.

3. The Karnataka Industrial Areas
Development Board [KIADB],
Represented by its Managing Director,
Nrupathunga Road,
Bangalore - 560 001.

4. The Deputy Commissioner,
The Karnataka Industrial Areas
Development Board (KIADB),
Nrupathunga Road,
Bangalore - 560 001.

5. The Special Land Acquisition Officer,
The Karnataka Industrial Areas
Development Board (KIADB),
Nrupathunga Road,
Bangalore - 560 001.

6. The Tahsildar,

Bangalore North (Addl.) Taluk,
Bangalore - 560 001.

... RESPONDENTS

(By Sri. Aditya Sondhi, AAG III for Smt. R. Anitha, Government Pleader for Respondent Nos.1, 2 and R.6,
Sri. Ashok Haranahali, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B.B.Patil, advocate for Respondent Nos.3 to 5)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to i) Quash the preliminary notification dated 07.08.2006 and final notification dated 25.09.2008 and notification under section 1[3] and 3[1] in so far as it relates to the schedule property vide Annexure - C, C1 and D and etc.

IN W.P.Nos.2907/2015 and W.P.No.46915/2016

BETWEEN:

Sri. R. Narayana,
Son of Late Ramaiah,
Aged about 44 years,
Residing at Medihalli Village,
Bidara Halli Hobli,
Bangalore East Taluk.

... PETITIONER

(By Smt. Suguna R. Reddy, Advocate)

AND:

1. The State of Karnataka,
   By its Secretary,

Revenue Department,
M.S.Building,
Dr. Ambedkar Veedhi,
Bangalore – 560 001.

2. The Secretary,
Department of Industries and
Commerce, M.S.Building,
Dr. Ambedkar Veedhi,
Bangalore – 560 001.

3. The Secretary,
Karnataka Industrial
Development Board,
Zonal Office,
Bangalore Division,
No.3, 1st Cross, Keni Building,
3rd Floor, Gandhinagar,
Bangalore – 560 002.

4. The Special land
Acquisition Officer,
Karnataka Industrial
Development Board,
Zonal Office,
Bangalore Division,
No.3, 1st Cross,
Keni Building,
3rd Floor, Gandhinagar,
Bangalore – 560 002.

5. The Commissioner,
Bangalore Mahanagar Palike,
Bangalore – 560 001.

6. The Secretary,
Bangalore Water Supply
And Sewerage Board,
Cauvery Bhavan,
K.G.Road,
Bangalore – 560 001.

…RESPONDENTS

(By Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashi Kiran Shetty, Senior Advocate for Shri B.B.Patil, Advgocate for Respondent Nos.3 and 4;
Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent Nos.1 and 2;
Shri K.N.Putte Gowda, Advocate for Respondent No.5;
Shri I.G.Gachchinamath, Advocate for Respondent No.6)

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to quash impugned preliminary notification issued under Section 28[1] dated 27.10.2007 vide Annexure-G and final notification dated 28.5.2008 vide Annexure-H issued by the R-2 and 4 under Section 28[1] and 28[4] of Karnataka Industrial Area Development Act, 1966 with regard to lands bearing Sy.No.70/1 measurin g0-07 guntas and SY.No.70/3 measuring 0.04 guntas which are situated at Medihally Village, Bidarahally Hobli, Bangalore East Taluk.

IN W.P.Nos.40473-40474 OF 2015

Mr. Shivanna,
Son of Late Sathagaiah,
Aged about 52 years,
Resident of Vrishabhavathi Pura,
Ittamadu PO,
Bidadi Hobli,

Ramanagar Taluk and District – 562 109.

…PETITIONER

(By Shri Rajeshwar P.N., Advocate)

AND:

1. The State of Karnataka,
   Represented by its
   Principal Secretary,
   Department of Commerce and
   Industries,
   Vikas Soudha,
   Dr. B.R.Ambedkar Road,
   Bangalore – 560 001.

2. Karnataka Industrial Areas
   Development Board,
   III and IV Floors,
   Khanij Bhavan,
   Race Course Road,
   Bangalore – 560 001,
   Represented by its
   Chief Executive Officer and
   Executive Member.

3. The Special Land Acquisition Officer
   Karnataka Industrial Area,
   Development Board,
   14/3, Maharshi Aravind Bhavan,
   I Floor, Nrupathunga Road,
   Bangalore – 560 002.

…RESPONDENTS

(By Shri Aditya Sondhi, A.A.G-III for Smt. R. Anitha, Government Pleader for Respondent No.1;

Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri P.V.Chandrashekhar, Advocate for Respondent Nos.2 and 3)

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to declare that the acquisition of the petitioner's land measuring 4 acres in Sy.NO.8 of Baleveerana Halli Village, Bidadi Hobli, Ramanagar Taluk, in the final notification dated 15.7.1997 Annexure-A is lapsed under Section 24[2] of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and etc;

IN W.P.Nos.41641-41642 OF 2015

BETWEEN:

1. Sri. Manju,
   Age 51 years,
   Son of Late Malleshaiah,
   Resident of No.284,
   Halagevaderahalli,
   Rajarajeshwarinagar,
   Bangalore – 560 098.

2. Smt. Nalini,
   Age 42 years,
   Wife of Sri. Manju,
   Resident of No.284,
   Halagevaderahalli,
   Rajarajeshwarinagar,
   Bangalore – 560 098.

…PETITIONERS

(By Shri K.L.Ashok, Advocate)

AND:

1. The State of Karnataka,
Represented by its Secretary,
Revenue Department,
M.S.Building,
Bangalore – 560 001.

2. The State of Karnataka,
Represented by its under Secretary,
Department of Commerce and Industry,
M.S.Building,
Bangalore – 560 001.

3. The Special Land Acquisition Officer,
Karnataka Industrial Area
Development Board, (KIADB),
No.3/2, Kheni Building,
1st Cross, Gandhinagar,
Bangalore – 560 009.

4. Karnataka Industrial Area Development
Board, represented by its
Chairman, (KIADB),
No.3/2, Kheni Building,
1st Cross, Gandhinagar,
Bangalore – 560 009.

5 The Commissioner,
Ramanagara Channapatna Urban
Development Authority,
Town Muncipality Commercial
Complex, beside Arkavathi Old Bridge,
Ramanagara – 578 002.

[respondent no.5 deleted
As per the court order
Dated 13.10.2015]

…RESPONDENTS

(By Shri Aditya Sondhi, A.A.G-III for Smt. R. Anitha, Government Pleader for Respondent Nos.1 and 2;
Shri Ashok Haranahalli, Senior Advocate aiong with Shri K. Shashi Kiran Shetty, Senior Advocate for Shri B.B.Patil, Advocate for Respondent Nos. 3 and 4;
Respondent no.5 deleted vide court order dated 13.10.2015)

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to call for records from the respondents pertaining to the acquisition proceedings in respect of land bearing Sy.No.155, measuring 4 acres phot karab 0.1 gunta situated at Archakarahalli Village, Kasaba Hobli, Ramanagara Taluk and District and peruse the same quash the acquisition proceedings in respect of the land of the petitioners in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Annexure-D.

IN W.P.Nos.44987-44988 OF 2015

BETWEEN:

Mr. Ajit Kumar D.R.,
Son of Late D.S.Radhakrishna,
Aged about 60 years,
Resident of #295, Ground Floor,
9th Main, 12th Cross,
Jayanagar II Block,
Bangalore – 560 011.

…PETITIONER

(By Shri P.N.Rajeshwar, Advocate)

AND:

1. The State of Karnataka,
Represented by its
Principal Secretary,
Department of Commerce and
Industries, Vikasa Soudha,
Dr. B.R.Ambedkar Road,
Bangalore – 560 001.

2. The Karnataka Industrial Area
Development Board,
III and IV Floors,
Khanij Bhavan,
Race Course Road,
Bangalore – 560 001,
Represented by its
Chief Executive Officer and
Executive Member.

3. The Special Land Acquisition Officer,
Karnataka Industrial Area
Development Board,
Office-2,
Khanij Bhavan,
Bangalore – 560 001.

…RESPONDENTS

(By Shri Aditya Sondhi, A.A.G-III for Smt. R. Anitha, Government Pleader for Respondent No.1 ;

Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashi Kiran Shetty, Senior Advocate for Shri B.B.Patil, Advocate for Respondent Nos. 2 and 3)

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to direct the respondents to make an award in respect of the petition lands measuring 4 ¾ guntas and 4.7 ½ guntas in Sy.No.28/4 of Konnappana Agrahara, Begur Hobli, Bangalore South Taluk, as per the Right to Fair Compensation and Transparency in Land Acquisition , Rehabilitation and Resettlement Act, 2013 and etc;

IN W.P.Nos.48824-48840 OF 2015

BETWEEN:

1. Smt. Puttalakshmamma,
   W/o. Lingappa,
   Aged about 60 years,
   Residing at Nelahala (Post),
   Bellavi Hobli,
   Tumkur Taluk and District-572 128.

2. Sri. H. Prabhanna,
   S/o. Late Hanumanthaiah,
   Aged about 49 years,
   Residing at Devenahalli,
   Bellavi Hobli, Nelahal(Post),
   Tumkur Taluk and District-572 128.

3. Sri. Krishnappa,
   S/o. Late Narasimhaiah,
   Aged about 63 years,
   Residing at Nelahala (Post),
   Bellavi Hobli,

Tumkur Taluk and District-572 128.

4. Sri. Seebe Gowda,
S/o. Basaiah,
Aged about 60 years,
Residing at Hunjinal,
Kallambella Hobli,
Sira Taluk,
Tumkur District-572 128.

5. Sri. Hanumantharaya,
S/o. Thimmavva,
Aged about 40 years,
Residing at Nelahala (P),
Bellavi Hobli,
Tumkur Taluk and District-572 128.

6. Sri. Mahadevaiah,
S/o. H. Eranna,
Aged about 58 years,
Residing at Sy.No.11/10,
Nelahala (Post),
Bellavi Hobli,
Tumkur Taluk and District-572 128.

7. Sri. Gangadharaiah,
S/o. Thimmaiah,
Aged about 38 years,
Residing at Nelahala (Post),
Bellavi Hobli,
Tumkur Taluk and District - 572 128.

8. Sri. Kenchaiah,
S/o. Hanumaiah,
Aged about 80 years,

(Benefit of Senior Citizen not claimed)
Residing at Nelahala (Post),
Bellavi Hobli,
Tumkur Taluk and District-572 128.

9. Smt. Lakshmamma,
W/o. Late Nagaraju,
Aged about 45 years,
Residing at Nelahala (Post),
Bellavi Hobli,
Tumkur Taluk and District - 572 128.

10. Sri. G. K. Lakshmanna,
S/o. Late Kote Thimmaiah,
Aged about 65 years,
(Benefit of Senior Citizen not claimed)
Residing at Nelahala (Post),
Bellavi Hobli,
Tumkur Taluk and District-572 128.

11. Sri. Gaviyappa,
S/o. Late Kote Thimmaiah,
Aged about 70 years,
(Benefit of Senior Citizen not claimed)
Residing at Nelahala (Post),
Bellavi Hobli,
Tumkur Taluk and District - 572 128.

12. Smt. Lakkamma,
W/o. Late Ramaiah,
Aged about 55 years,
Residing at Nelahala (Post),
Bellavi Hobli,
Tumkur Taluk and District-572 128.

13. Sri. A. G. Basavarajaiah,
S/o. Late Gurupadappa,
Aged about 58 years,
Residing at Chikkaseebi,
Bellavi Hobli,
Tumkur Taluk and District-572 128.

14. Smt. Doddathayamma,
W/o. Doddahanumaiah,
Aged about 55 years,
Residing at Nelahal(Post),
Bellavi Hobli,
Tumkur Taluk and District-572 128.

15. Sri. Vasant A. Gowda,
S/o. K. V. Adinarayana Gowda,
Aged about 49 years,
Residing at No.27, Jakkur,
Yalahanka Hobli,
Bangalore - 560 064.

16. Sri. Siddaramaiah,
S/o. Late Bettaiah,
Aged about 70 years,
(Benefit of Senior Citizen not claimed)
Residing at Nelahala (Post),
Bellavi Hobli,
Tumkur Taluk and District - 572 101.

17. Sri. Thimmaiah,
S/o. Late Doddaiah,
Aged about 65 years
(Benefit of Senior Citizen not claimed)
Residing at Kempadali Village,
Hal Dodderi Post, Kora Hobli,

Tumkur Taluk and District - 572 101.

... PETITIONERS

(By Shri N. Devadass, Senior Advocate for Shri M. R. Rajagopal, Advocate)

AND:

1. The Union of India by its Secretary,
Ministry of Rural Development and
Land Resources,
New Delhi - 110 001.

2. The Union of India by its Secretary,
Department of Law and Parliamentary Affairs,
New Delhi - 110 003.

3. The State of Karnataka,
By its Chief Secretary,
Vidhana Soudha,
Bangalore - 560 001.

4. The Principal Secretary,
State of Karnataka,
Department of Industries and Commerce,
Vidhana Soudha,
Bangalore – 560 001.

5. The Member Secretary,
Karnataka Industrial Areas,
Development Board, Nrupathunga Road,
Bangalore - 560 001.

6. The Special Land Acquisition,
Officer, Karnataka Industrial Areas

Development Board,
NIMZ, Maruthi Towers,
1st floor, B H Road, Tumkur-572 101.

7. The Director (Technical Cell),
Commerce and Industries Department,
Vidhana Soudha,
Bangalore - 560 001.

8. The Karnataka State Industrial
and Infrastructure Development Corporation,
Represented by its Managing Director,
Bengaluru.

[cause title amended vide
Court order dated 26.9.2016]

... RESPONDENTS

(By Shri. Krishna S. Dixit, Central Government Counsel for Respondent Nos.1 and 2;
Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent Nos.3, 4 and R.7,
Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B.B.Patil, Advocate for Respondent Nos.56;
Shri P. S. Manjunath, Advocate for Respondent No.8)

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India praying to A] Declare that the provisions of section 3[1] of chapter II and provisions of sections 28 to 31 of the Karnataka Industrial Areas Development Act 1966 [Karnataka Act No.18/1966] as unconstitutional being repugnant and inconsistent with the provisions of right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement

Act 2013 as well as under Article 254[2] of the constitution and etc.

IN W.P.Nos.58807-58809 OF 2015

BETWEEN:

Mr. H.S.Somashekar,
Son of H.Shivanna,
Aged about 63 years,
Residing at #971, 11th B Main,
III Block, Rajajinagar,
Bangalore – 560 010.

... PETITIONER

(By Shri K.G.Raghavan, Senior Advocate for Shri P.N.Rajeshwar, Advocate)

AND:

1. The State of Karnataka,
Represented by its Additional
Chief Secretary,
Department of Commerce and
Industries,
Vikas Soudha,
Dr. B R.Ambedkar Road,
Bangalore – 560 001.

2 The State of Karnataka,
Represented by its
Principal Secretary,
Department of Health and
Family Welfare (Medical Education),
Vidhana Soudha,

Bangalore – 560 001.

3. Karnataka Industrial Areas
Development Board,
III and IV Floors,
Khanij Bhavan,
Race Course Road,
Bangalore – 560 001.
Represented by its
Chief Executive
Officer and Executive Member.

4. The Special Land Acquisition Officer-I,
Karnataka Industrial Areas
Development Board,
Maharshi Arvind Bhavan,
1st Floor, Nrupathunga Road,
Bangalore – 560 002.

5. The Rajeev Gandhi University of
Health Sciences, Karnataka,
IV 'T' Block, Jayanagar,
Bangalore – 560 041,
By its Registrar.

... RESPONDENTS

(By Shri Aditya Sondhi, AAG-III for Smt. R. Anitha, Government Pleader for Respondent Nos.1 and 2;
Shri Ashok Haranahalli, Senior Advocate along with Shri K. Shashikiran Shetty, Senior Advocate for Shri B.B.Patil, Advocate for Respondent Nos.3 and 4;
Shri N.K.Ramesh, Advocate for Respondent No.5)

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India praying to direct declaring that the

acquisition of the lands of the petitioner measuring 9 acre 7 guntas including 8 guntas of kharab land in Sy.No.71 of Archakarahalli Village, Kasaba Hobli, Ramanagar Taluk and District vide preliminary notification dated 27.2.2007 vide Annexure-D and D1 and final declaration dated 18.6.2007 vide Annexure-G published under Section 28(4) of the Karnataka Industrial Area Development Act, 1966 published in the Karnataka Gazette on 18.6.2007 have lapsed under Sections 24, 25, 114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Section 8 of the General Clauses Act, 1897 or in the alternative.

These petitions having been heard and reserved on 4.11.2016 and 5.11.2016 and coming on for pronouncement of Orders this day, *ANAND BYRAREDDY.,J* delivered the following:-

ORDER

These petitions are heard and decided by this common order only on questions of law that arise for consideration. On facts, there are dissimilarities as to the circumstances pertaining, in several cases. However, the legal issues that arise, overlap. The findings arrived at on the legal issues would have to be applied to each given case, which would require this bench or such other bench to afford a further hearing to each individual petitioner, on the facts of each case, vis-a-vis the opinion expressed on the legal

issues. Hence, it is made clear that this bench is not expressing any opinion as to the merits, on the facts of each case, except noticing the bare facts, in context.

WP 59461-62/2014:

The petitioner claims to be the absolute owner of agricultural land bearing survey no.55/1 measuring 5 acres, at Jakkasandra village, Malur taluk, Kolar district. He is said to have acquired the land under a sale deed dated 22-10-2011. He is said to be growing horticultural crops on the land.

A Notification under Sections 3(1), 1(3) and Section 28(1) of the Karnataka Industrial Areas Development Act, 1966, (Hereinafter referred to as the 'KIAD Act', for brevity) dated 13.3.2012, is said to have been issued by the State Government, declaring an area comprising about 696 acres of land of Jakkasandra village, including the petitioner's land, as an industrial area to be developed and proposing to acquire the same. A Final Notification under Section 28(4) dated 4.12.2012, is said

to have been issued restricting the area of land to be acquired to 627 acres.

It is claimed that notwithstanding the initiation of the acquisition proceedings, the respondents have neither taken physical possession of the land nor have paid any compensation and that with the coming into force of The Right to Fair Compensation And Transparency In Land Acquisition And Resettlement Act, 2013 (Hereinafter referred to as the , '2013 Act', for brevity) with effect from 1.1.2014 and by virtue of Section 24(2) thereunder, the acquisition proceedings in question are deemed to have lapsed and seeks a declaration to that effect. Alternatively, it is sought that the petitioner be held entitled to compensation in accordance with the 2013 Act.

WP 18861/2013:

The petitioner herein claims to be the owner of land measuring 2 acres 1 and 1/2 guntas of land in land bearing Survey no.42/1 of Jakkasandra village. The land is said to have been converted for non-agricultural purposes as per an Order of the

competent authority, dated 29.5.2012. He is also said to have obtained a sanction for the formation of a housing layout, from the Assistant Director, Town & Country Planning Authority, Kolar, as on 28.6.2012. He claims to have formed about 38 house sites and some of the sites are said to be the subject matter of agreements of sale with third parties.

The said land is also the subject matter of the very same acquisition proceedings referred to in the first of these cases. The petitioner has sought amendment of the petition to incorporate pleadings to claim the benefit of Section 24(2) of the 2013 Act. (Incorrectly mentioned as, "Section 25(2)")

WP 18890/2013:

The petitioner herein claims to be the owner of lands bearing survey nos.7,41,73 and 106 of Jakkasandra village, measuring 3 acres 7 guntas, 1 acre 1 gunta , 2 acres 2 guntas and 1 acre, respectively. His two children are said to be physically handicapped.

The lands are said to be his only source of income. They are said to be fertile lands. The land in Survey no.106 is said to be wet land. He is said to be a sericulturist too.

The petitioner is aggrieved by the very acquisition proceedings referred to above.

WP 20367-20373 AND 20375-20380 AND 20382 AND 20384-88 OF 2013

There are 22 petitioners who have filed this common petition. They are all residents of Jakkasandra. Their land holdings vary from very small lands to large extents.

The petitioners herein have raised various grounds, questioning the wisdom and the *bona fides* of the State Government in proceeding with the acquisition proceedings. The petitioners have claimed the benefit of the 2013 Act, by virtue of which, it is claimed that the acquisition proceedings have lapsed.

WP 49228/2013:

There are 8 petitioners who have filed this common petition. They are all residents of Jakkasandra. They are all said to be actively cultivating their individual holdings. The particulars of the lands which are all situated in Jakkasandra, are furnished as Annexures A1 to A14, to the writ petition. They have raised identical grounds as urged in the writ petition in WP 20367-388/2013 and seek similar reliefs.

WP 30920/2014:

The petitioner is said to be the owner of agricultural lands bearing survey no.25/1 measuring 26 guntas and land bearing survey no. 33/1 measuring 1 acre 9 guntas of Jakkasandra village. The petitioner being aggrieved by the very acquisition proceedings, claims the benefit of the provisions of the 2013 Act .

WP 35461/2014:

The petitioner is said to be the owner in occupation of lands in survey no.90/2 measuring 1 acre 3 guntas, survey no. 90/3

measuring 1 acre 8 guntas and survey no. 90/4 measuring 1 acre 18 guntas, all of Jakkasandra village. The petitioner is said to have developed horticultural crops on the said lands.

The petitioner has sought to amend the writ petition to incorporate pleadings to claim the benefit of the provisions of the 2013 Act, to seek the quashing of the acquisition proceedings.

WP 32416/2015:

The petitioner is said to be the owner of land bearing survey no. 148 of Achatanahalli, Narasapur hobli, Kolar district. The same was said to be the subject matter of acquisition proceedings under the KIAD Act. Pursuant to a preliminary notification dated 20.10.2012 and a final notification dated 4.1.2013, possession of the land is purportedly taken by the respondents on 11.1.2013.

It is claimed that in the matter of payment of compensation, in spite of an assurance that the same would be paid under the provisions of the 2013 Act, the respondents have failed to do so

and hence the present petition claiming the benefit of the 2013 Act.

WP 51805-807/2015:

There are 3 petitioners herein. They own lands in Adinarayana Hosahalli, Dodballapur taluk, Bangalore Rural District. The first petitioner is said to be the owner of land in Survey no. 64/1 measuring 1 acre and 8 guntas, the second petitioner is said to be the owner of land in survey no. 64/2 measuring 1 acre 12 guntas and the third petitioner is said to be the owner of land in survey no. 63 measuring 1 acre 16 guntas.

They are aggrieved by acquisition proceedings under the provisions of the KIAD Act, initiated vide preliminary notification dated 14.6.2013 and a final notification dated 12.2.2015. The petitioners have raised several grounds of challenge including the benefit of the 2013 Act, in questioning the acquisition proceedings.

WP 859/2016:

The petitioner is said to be the owner of land in survey no.164/2 of Madhugiri Village, Sira Taluk, Tumkur District, measuring about 25 guntas. The said land is said to have been acquired under the provisions of the KIAD Act, in terms of a final notification dated 19.8.2010. It transpires that the petitioner was notified as regards a meeting for fixing the market value. But it is claimed that even after a lapse of 3 years no progress was made in that direction. The petitioner is said to have approached this court by way of a writ petition in WP 11553/2013. The same was said to have been summarily disposed of with a direction to the respondents to consider the case of the petitioner.

It is stated that the respondents had failed to consider the case of the petitioner and had hence initiated proceedings for contempt of court, which was however dismissed.

Hence, the present petition apparently claiming the benefit of the 2013 Act. The petitioner however, has not raised a specific ground in this regard.

WP 44987-88/2015:

The petitioner is said to be the owner of land bearing survey no.28/4 of Konappana Agrahara, Bangalore South Taluk, measuring about 4.7 and a half guntas and 4 and three-fourths guntas. The same was proposed to be acquired under the provisions of the KIAD Act, vide Final Notification dated 6.7.2001. The petitioner was said to have been issued a notice under Section 28(6) of the said Act and physical possession is said to have been taken by the respondents.

The petitioner claims to have purchased the above lands under sale deeds dated 25.9.1993 and 23-12-1993. He is not said to have indicated his willingness to receive the compensation offered. And that there was no Award passed even as on the date of the petition. In this regard, he has even obtained an endorsement to that effect by recourse to the provisions of the Right to Information Act, 2005.

The petitioner therefore, claims the benefit of the provisions of the 2013 Act.

WP 41641-42 /2015:

The petitioners are the joint and absolute owners in possession of land bearing survey no.155 measuring about 4 acres, of Archakarahalli, Ramanagara Taluk, and is said to have purchased the same under a sale deed dated 28.9.2005. The said land is said to have been converted for non-agricultural purposes, at the instance of the petitioners vide an order of conversion by the competent authority, dated 29.5.2006.

The said land, along with other lands of the village, was said to have been notified for acquisition vide notification dated 27.2.2007 issued under Section 28(1) of the KIAD Act, for purposes of establishment of the Rajiv Gandhi Medical University and allied institutions. A final notification under the said Act is said to have been issued on 18.6.2007. An award for a sum of

Rs.86 lakh as compensation was said to have been determined in respect of the land.

It is claimed that the said award amount has neither been paid to the petitioners nor has been deposited in the Civil Court as required in law.

Hence, the present petition claiming the benefit of the 2013 Act.

WP 40473-474/2015:

The petitioner is said to be the owner of land bearing survey no.8 of Bale Veeranna halli, Ramanagar taluk, measuring about 4 acres. The same was said to have been notified for acquisition vide notification dated 15.7.1997, under Section 28(4) of the KIAD Act. As no further steps were taken to determine and pay the compensation due to the petitioner, he is said to have approached this court by way of a writ petition in WP 829/2000, seeking appropriate directions, this court is said to have allowed the writ petition directing the respondents to take steps to deposit

the compensation in a civil court, while noticing that there was a civil dispute as regards apportionment. It transpires there was no such deposit made by the respondents, even as on the date of the petition.

Hence the present petition, claiming the benefit of the provisions of the 2013 Act.

WP 2907/2015 & WP 46915/2016:

The petitioner claims to be the absolute owner of land bearing survey no.70/1 and 70/3 measuring 7 guntas and 4 guntas of Medihalli, Bangalore East Taluk. It is claimed that the lands have long lost the character of agricultural lands as the surrounding area is completely built-up. The petitioner has obtained sanction of conversion of the land for residential purposes from the competent authority, vide order dated 22.5.2014. He is said to have formed house sites on the land.

It is claimed that he has now learnt, only in retrospect , that the lands have been acquired under the provisions of the KIAD

Act, vide preliminary notification dated 27.10.2007 and final notification dated 28.5.2008. It is the petitioner's case that the acquisition proceedings are carried out in the name of the erstwhile owners notwithstanding the fact that the petitioner was the owner as on the date of acquisition.

It is claimed that the respondents had failed to pass an award and pay compensation, even as on the date of the petition and hence the present petition.

WP 17272/2014:

The petitioner claims to be the absolute owner of land bearing survey no.1 of Arebinnamangala, Bangalore North (Addl.) Taluk. The land was said to have been granted in favour of the petitioner in the year 1979. However, it is admitted that the petitioner's name is not reflected in the Revenue records.

The land is said to have been notified for acquisition under the provisions of the KIAD Act, vide preliminary notification dated 7.8.2006 and final notification dated 25.9.2008.

The petitioner seeks to challenge the acquisition proceedings as not being in accordance with law.

WP 58807-809/2015:

The petitioner is said to be the owner of land measuring 9 acres and 7 guntas of land bearing survey no.71 of Archakarahalli, Ramanagar Taluk. The said land along with lands of the village was said to have been notified under the provisions of the KIAD Act, vide preliminary notification dated 1.3.2007 and final notification dated 18.6.2007.

It is stated that the petitioner had unsuccessfully challenged the acquisition proceedings before this court and a Special Leave Petition filed by the petitioner before the Apex Court against the dismissal of his appeal before this court is said to be pending and that the petitioner is also said to have the benefit of an interim order of stay of dispossession.

In the meantime, having noticed that adjacent land owners lands which were similarly notified for acquisition having been

dropped from the acquisition proceedings on the summary instructions of the then Chief Minister of the State, he is said to have obtained similar instructions from the Minister for Medical Education.

However, it is stated that he has been served with a notice to receive the compensation determined in respect of the land in question. The petitioner claims that he has continued in actual physical possession of the land till the date of the petition, thereby indicating that the respondents do not require the land for any development.

The petitioner hence claims the benefit of the provisions of the 2013 Act.

WP 48824 -840/2015:

These petitions are filed in the following background :

The first petitioner, Puttalakshmamma claims to be the owner of the lands in survey No.66/2 measuring 3 acres 9 guntas, survey No.67/1 measuring 3 acres 25 guntas and survey No.67/2,

measuring 5 acres 30 guntas situated in Nelahal village of Tumkur Taluk.

The second petitioner H. Prabanna claims to be the owner of lands in survey No.60/3 and 49/2, respectively, measuring 3 acres 26 guntas and 1 acre 38 guntas, situated in Nelahal village of Tumkur Taluk and District.

The third petitioner, Krishnappa claims to be the owner of land measuring 3 acres 20 guntas in survey No.48 of Nelahal village. A copy of the Record of Right showing the name of the petitioner as the owner has been produced and marked as Annexure-D.

Seebe Gowda, the fourth petitioner claims to be the owner in possession of survey No.8/3 measuring 4 acres, survey No.80/3 measuring 1 acre 17 guntas and survey No.80/1C measuring 1 acre 23 guntas of Nelahal Village of Tumkur Taluk and District.

Similarly, the fifth petitioner, Hanumantharaya claims to be the owner in possession of land measuring 5 acres 9 guntas in survey No.30 of Nelahal village of Tumkur Taluk and District.

The sixth petitioner, Mahadevaiah claims to be the owner in possession of lands in survey No.11/10 measuring 3 acres 9 guntas, survey No.14/5 measuring 0.37.08 guntas, survey No.13/4 measuring 0.31 guntas, survey no.13/9 measuring 0.16 guntas, survey No.13/11 measuring 0.11. guntas and survey No.13/10 measuring 0.11 guntas situated in Nelahal village of Tumkur Taluk and District.

Gangadharaiah, the seventh petitioner claims to be the owner in possession of lands in survey no.30 measuring 4 acres 18 guntas and survey No.32 measuring 2 acres 24 guntas of Nelahal village, Tumkur Taluk and District.

The eighth petitioner, Kenchaiah claims to be the owner in possession of 2 acres 24 guntas in survey No.32 of Nelahal Village.

Lakshmamma, the ninth petitioner claims to be the owner in possession of 1 acre 35 acres of land in survey No.40/1 and 0.5½ guntas of land in survey No.58/1 of Nelahal village, Tumkur Taluk and District.

The tenth petitioner, Lakshmanna claims to be the owner in possession of lands in Sy.No.40/1 measuring 1acre 35 guntas and Sy.No.58/1 measuring 0.5½ guntas situated in Nelahal village of Tumkur Taluk and District.

Gaviyappa, petitioner no.11, claims to be the owner in possession of land bearing Sy.No.40/1 measuring 1 acre 35 guntas and Sy.No.58/1 measuring 0.5½ guntas situated in Nelahal village of Tumkur Taluk and District.

Lakkamma, petitioner no.12 also claims to be the owner in possession of lands comprising in survey No.40/1 measuring 1 acre 35 guntas and survey No.58/1 measuring 0.5½ guntas situated in Nelahal village, Tumkur Taluk and District.

Basavarajaiah, petitioner no.13 claims to be the owner in possession of lands bearing Sy.No.106/P measuring 3 acres 9 guntas and survey No.9/2B measuring 0.5 guntas of Chikkasheebi village, Tumkur Taluk and District.

Doddathayamma, petitioner no.14 claims to be the owner in possession of 2 acres 26 guntas in survey no.26/2A situated in Nelahal village of Tumkur Taluk and District.

Vasant A.Gowda, petitioner no.15 claims to be the owner in possession of 3 acres 30 guntas of land in survey no.48 of Nelahal village, Tumkur Tlauk and District.

Similarly, Siddaramaiah, petitioner no.16 claims to be the owner of the land measuring 8 acres 4 guntas in Sy.No.64/1 of Nelahal village, Tumkur Taluk and District.

Thimmaiah, petitioner no.17 claims to be the owner in possession of 3 acres 12 guntas of land in survey No.49 of Kempadalahalli Village, Tumkur Taluk and District.

The above said lands, along with other lands are said to have been notified for acquisition under the provisions of the KIAD Act vide preliminary notifications dated 10.3.2015 and 23.4.2015, the petitioners are said to have filed objections opposing the acquisition proceedings and that the matter is at the stage of providing an opportunity of hearing to the petitioners.

There is an interim order of stay of further proceedings granted by this court.

The petitioners have challenged the constitutional validity of Section 3, Chapter II and provisions of Chapter VII of the KIAD Act.

3. SUBMISSIONS OF SHRI N.DEVADAS, SENIOR ADVOCATE

Shri N. Devadas, Senior Advocate appearing for Shri M.R. Rajagopal, counsel for the petitioners in WP 48824-48840/2015, contends as follows.

That the constitutional validity of Section 3(1) of Chapter-II relating to declaration of any Area in the State as an industrial Area, by the State Government under the Karnataka Industrial Areas Development Act, 1966 (Karnataka Act No.18/1996) and also the provisions of Sections 28 to 31 in Chapter VII in the said Act relating to acquisition and disposal of land for the purpose of

development of Industries in such Industrial Areas notified Under Section 3 of the Act, is questioned as the said provisions are repugnant to the provisions of the 2013 Act (Central Act No.30/2013), which provides for acquisition of land for Infrastructure Projects, which includes projects for Industrial Corridors or mining activities, National Investment and Manufacturing zones (NIMZ) as designated in the National Manufacturing Policy (NMP).

The acquisition notifications issued by the State Government under the KIAD Act have referred to NIMZ. Thus, it is clear that the State Government has implemented the NIMZ contemplated by the Central Government, through National Manufacturing Policy-2011, which is also adopted by the State Government vide its Government Order dated 27.2.2015.

The Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion (DIPP) has declared a National Manufacturing Policy dated 4.11.2011. The Policy is based on the principle of industrial growth in

partnership with the States. The Central Government would create the enabling policy frame work, provide incentives for infrastructure development on a public private partnership (PPP) basis through appropriate financing instruments, and State Governments would be encouraged to adopt the instrumentalities provided in the policy. The policy further states, while the NIMZ is an important instrumentality, the proposals contained in the policy apply to manufacturing industry throughout the Country, including wherever industry is able to organize itself into clusters and adopt a model of self-regulation as enunciated.

The preface to NMP states that *"This policy document has been prepared after extensive stakeholder consultation and inputs from the industry, State Governments and experts in the field of manufacturing and business environment".*

The policy statement provides for the industries which will be given special attention and deals with various aspects. As far

as the land is concerned, the policy statement vide Para 1.19 provides thus:

> *"Land has emerged as a major constraint for industrial growth in recent years. The Government will take measures to make industrial land available, which is critical for sustained industrial growth through creation of land banks by States; digitalization of land and resources and programs for utilization of lands locked under non-productive uses, including defunct or sick industries."*

Attention is drawn to the following guidelines prescribed under the NMP:

> " Following guiding principles will be applied by the State Government for the purpose:
>
> i. Preferably in waste lands; infertile and dry lands not suitable for cultivation.
>
> ii. Use of agricultural land to the minimum;
>
> iii. All acquisition proceedings to specify a viable resettlement and rehabilitation plan;
>
> iv. Reasonable access to basic resources like water;
>
> v. It should not be within any ecologically sensitive area or closer than the minimum distance specified for such an area.

Attention is also drawn to the following Paragraphs of the NMP:

> *"9.4 requires a State Government to provide for water requirement, power connectivity etc.,*
>
> *9.4.3 - Infrastructure Linkage provides that the State Government, applying for NIMZ, will ensure that after notifying the area, all physical Infrastructure and utilities linkages under its jurisdiction are provided within one year from the date of notification failing which the NIMZ may be de-notified."*

It is contended that the Government of Karnataka has issued a Government Order dated 27.02.2015 in the matter of approval for development of NIMZ at Vasanthanarasapura, Tumakuru.

The Government Order states in the preamble that *"Government of India (GOI) announced the 'National Manufacturing Policy' (NMP) 2011, with the main objectives of enhancing the share of manufacturing in GDP to 25% within a decade and creating 100 million jobs. As per the policy, "NIMZ*

will be developed as integrated industrial townships with state of the art infrastructure and land use on the basis of zoning; clean and energy efficient technology, necessary social infrastructure; skill development facilities, etc. The minimum area of land required for establishing NIMZ is 5000 hectares (12500 acres) as per the NIMZ guidelines."

It is contended that unfortunately, the State Government which identified 2322 acres of Government land, was to identify 9729 acres, so as to provide for the minimum area of 12500 acres, did not bother to adhere to the guiding principles to identify waste lands, infertile and dry land not suitable for cultivation. Though the policy states that the use of agricultural land should be to the minimum, the State Government and its agencies identified only wet lands and garden lands consisting of coconut and arecanut gardens and other wet lands.

The guiding principles require an environmental impact study to be conducted in respect of a prospective NIMZ, in consultation with the Ministry of Environment and Forest. The

State Government, after identifying the lands in question to the extent of 7915 acres, chose to issue the Government Order on 27.02.2015 adopting NIMZ and immediately followed by declarations under the State Act declaring an industrial area and also issuing acquisition notifications within a span of ten days.

It is contended that the State Government having not invoked the provisions of the appropriate Act, namely, 2013 Act, which has come into force with effect from 01.01.2014, has erroneously invoked the KIAD Act, which does not contemplate any environmental impact study. It is thus evident that the State Government can recklessly identify any area for industrial development and can declare any area as an industrial area and extend the provisions of Chapter-VII to acquire those lands. Thus, it is contended, all the three Notifications issued by the State Government pertaining to the petitioners concerned are arbitrary and illegal and directly in conflict with the NMP and its own Government Order.

It is further contended that under Section 3 of the State Act, the State Government may declare any area in the State to be an Industrial Area for the purposes of the Act. The Notifications issued under Section 3 shall define the limits of the Area.

How an Industrial Area is Identified by the State Government, albeit through its Agency, the KIADB, is not reflected in the Notifications issued under Section 3(1) or under Section 1(3) of the Act. As to what are the criteria adopted to identify an area so as to declare it as an Industrial Area, is not known. As to what are the factors that are considered by KIADB is also not disclosed. In fact, there are no rules or guidelines under the Act as to how an area has to be identified so as to declare that area as an Industrial Area.

But the State Government having adopted the NMP for the establishment of NIMZ is duty bound to identify the area for NIMZ, by strictly following the guidelines stipulated in the NMP for acquisition of lands vide Chapter-IX of the policy. But the State Government has not followed the guidelines in the matter.

This could be very easily discerned from the fact that the State Government has issued a Government Order adopting the NMP on 27.02.2015, which states that the detailed application for final approval in the format prescribed along with the Techno-Economic Feasibility Report cum Development Plan to the DIPP, Government of India is required to be submitted by the State Government. There has been no such compliance.

It is contended that the 2013 Act has come into force with effect from 01.01.2014. On or after the said date, no State Government has any power to acquire lands for establishment of Industrial Area, Industrial Estate and Industrial Infrastructural facilities, under any State Acts in force, in view of the parliamentary legislation providing for acquisition of lands for industrialization and development of essential infrastructural facilities. Section 2 of the 2013 Act which provides for the application of the Act to the whole of India, is applicable for acquisition of lands for infrastructure projects, which includes

projects for industrial corridor or mining activities, NIMZ, as designated in the NMP.

The Land Acquisition Act, 1894 (Hereinafter referred to as the '1894 Act', for brevity), which was in force till the 2013 Act, came into force, did not specifically provide for acquisition of lands for Industrial Infrastructural Projects including NIMZ, as designated in the NMP. The 1894 Act provides for acquisition of lands only for public purposes or for a company. 'Public Purpose', is defined by Section 3(f) of the Act and only for such public purpose, could the lands be acquired under the 1894 Act. The public purpose defined in Section 3(f) did not include acquisition of land for Industrial Areas. Hence, the State Government had made a special law for acquisition of lands for Industrial areas.

The Land Acquisition Act, 1894 being a general law in nature, many State Governments, had enacted special laws for establishment and development of Industries in the name of Industrial Area or Industrial Corridor or Industrial facilities. The

State Government had enacted the Karnataka Industrial Areas Development Act, 1966 (Hereinafter referred to as the 'KIAD Act', for brevity). The said Act has received the assent of the President of India. In fact, Section 47 of the KIAD Act deals with "Effect of provisions inconsistent with other laws." It provides that the provisions of the Act shall have effect notwithstanding anything inconsistent contained therein with any other law. The 2013 Act specifically provides for acquisition of lands for Industrial Areas. The provisions of the Central Act totally takes away the power of State Governments, hither to exercised under the State Acts for acquisition of lands for Industrial Areas.

Section 3(e) defines "Appropriate Government" as, in relation to acquisition of land situated within the territory of a State, the State Government.

Section 3(za) defines "Public Purpose" as the activities specified under Sub-Section (1) of Section 2.

Section 3(zb) defines "Requiring Body" as meaning and including the appropriate Government.

Chapter IV of the 2013 Act provides for Notification and Acquisition. Section 11 provides for publication of preliminary Notifications and power of the Officers. It, *inter alia,* provides that the Notification issued under sub-Section (1) shall also contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the social impact assessment report and particulars of the administrator appointed for the purpose of rehabilitation and resettlement under Section 43. It is only thereafter that the land acquisition proceedings can be completed.

Thus, in view of the specific provisions of the Central Act providing for acquisition of land for industrial Corridors or for public purposes as specified in Section 2(b) of the Act and the State Government being the appropriate Government for the acquisition of lands situated within its territory, the State Government has to exercise power only under the Central Act and

follow the provisions of the Central Act and cannot resort to exercising power under the State Act, which has become redundant and invalid in view of the parliamentary legislation.

The provisions of the KIAD Act are repugnant to the Central Act or is otherwise inoperative and the State Government is not competent to exercise power under the State Act anymore, for the purpose of establishing and acquiring land for industrial areas, including NIMZ, which is under NMP. Thus, it may be necessary to compare the provisions of both the laws to find out whether the State Act is repugnant to the Central Act or has otherwise become inoperative and invalid in view of the provisions of the Central Act.

By virtue of the provisions of sub-section (3) of Section 1 of the KIAD Act, it is mandatory that the State Government issue a notification published in the Official Gazette specifying the area to which Chapter VII shall apply and the date from which the said Chapter VII shall come into force in such area.

Under the Scheme of the Act, first, it is necessary and mandatory for the State Government to issue notification specifying the area and the date, in respect of which the State Government proposes to declare such area as an industrial area.

Next, it is necessary that the State Government make a Notification under Section 3 declaring any area to be an industrial area for the purpose of the Act and it is mandatory that such notification shall define the limits of the area to which the Industrial area relates.

In view of the specific provision of Section 103 of the 2013 Act, which clearly states that the provisions of the Central Act shall be in addition to and not in derogation of, any other law for the time being in force, the State Government which is the appropriate Government for carrying out the provisions of this Act, cannot exclusively exercise power under the State Act, *de hors* the provisions of the Central Act. It is mandatory for the State Government to follow the provisions of the Central Act, in addition to the provisions of the State Act, if necessary, but as far

as the acquisition of lands for establishment of industrial corridors or industrial areas, the Central Act is a self-contained code by itself and ignoring the Central Act, the State Government cannot resort to exercise power under the State Act.

The Central Government has made two sets of Rules, namely, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014 vide Notification No.13011/01/2014-LRD, New Delhi, dated 8th August 2014.

The above said Rules provide for various aspects that have to be taken into consideration by the team which undertakes the Social Impact Assessment, the important aspects being the location of land proposed to be acquired and the proposed lands for acquisition is the bare minimum required, possible alternative sites and their feasibility, nature of the land, present use and classification of the land and if it is agricultural land, the irrigation coverage for the said land and the cropping pattern and the special

provisions with respect to food security have been adhered to in the proposed land acquisition.

It is contended that it is not open for the State Government to acquire lands for industrial areas under the State Act, especially for the establishment of NIMZ, which is the concept under the NMP of the Government of India. Even otherwise, the entire field of establishment of industrial areas is covered under the Central Act, the provisions of the State Act are redundant and such provisions are directly in conflict with the provisions of the Central Act and as such they are repugnant and inoperative, as contemplated under Article 245 and Article 246 of the Constitution of India.

The Central Act is traced to item 42 in List III – Concurrent List of Seventh Schedule which provides for acquisition and requisitioning of property. Hence in the matter of acquisition of property namely, the lands, is covered under the said provision, the Central Act prevails over the State Act, as contemplated under

Article 246(2) and Article 246(4) read with the proviso to Article 254(2) of the Constitution.

A Constitution Bench of five Judges of the Supreme Court has declared the law in the matter of *Ishwari Khetan Sugar Mills Private Limited vs. State of Uttar Pradesh, 1980(4) SCC 136*. The Bench has referred to Paragraph 17, the different entries in List I, II and III of the Seventh Schedule, that stood before the Constitution Seventh Amendment Act, 1956, and has held (paragraph 18) that in so far as substitution of a comprehensive entry in List III is concerned, it could hardly be urged with confidence that the power of acquisition and requisition of property was incidental to other power. It is an independent power provided for in a specific entry. Therefore, both the Union and the State would have power of acquisition and requisition of property. This portion is unquestionably established by the majority decision in *R.C. Cooper vs. Union of India (11 Judges*

Bench) – (AIR 1970 SC 564), where *Shah J,* speaking for the majority of 10 Judges held as under :

> *"Power to legislate for acquisition of property is exercisable only under Entry 42 of List III, and not as an incident of the power to legislate in respect of a specific head of legislation in any of three lists."*

After discussing the case law, it has been declared thus:

> *"19. It thus clearly transpires that the observation in 'Cooper case' extracted above that power to legislate for acquisition of property is exercisable only under Entry 42 of List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists, is borne out from 'Rajahmundry Electric Supply Corporation Case' and 'Maharajadhiraja Sir Kameshwar Singh Case'."*

The law laid down by the 11 Judges Bench in *R.C.Cooper vs. Union of India,* quoted by the Constitution Bench in *Ishwari Khetan Sugar Mills' case* (see paragraph 40 in *R.C.Cooper's case, AIR 1970 SC 564).*

It is contended that in so far as the law laid down by the 11 Judges Bench in *R.C.Cooper case,* followed by the Constitution Bench in *Ishwari Khetan Sugar Mills, 1980(4) SCC 163*, is not overruled by any other larger Bench of the Supreme Court. Thus the law laid down by the 11 Judges in *R.C.Cooper's case,* that power to legislate for acquisition of property is exercisable only under Entry 42 of List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the 3 lists, is the ultimate law laid down by the Supreme Court so far.

Even the Constitution Bench in *Rajiv Saran vs. State of UttaraKhand, 2011(8) SCC 708* has reiterated the law in para 70 thus:

> *"Under The Indian Constitution the field of legislation covering claim for compensation on deprivation of one's property can be traced to schedule 7 List III Entry 42 of the Constitution. The Constitution (7th Amendment) Act, 1956 deleted schedule 7 List I Entry 33, List II Entry*

36 and reworded List III Entry 42 relating to "Acquisition and requisition of property".

Thus, in view of the law laid down by the 11 Judges Bench and followed by subsequent Constitution Benches of the Supreme Court mentioned in the above decisions, any argument that the State Act can incidentally provide for acquisition of lands for industrial purposes by a law traceable to Entry 24 in List II (State List), is untenable.

A contention that state is competent to make law under item 24 in List II, which provides for Industries subject to the provisions of entries 7 & 52 of List- I, is untenable, in as much as the provision providing for Industries does not empower the State to make law providing for acquisition of property for establishment of Industries. The acquisition of property being in the Concurrent List, it is open for both the State Government and the Central Government to make laws through the respective legislatures. Once the Parliament makes a law providing for

acquisition of lands for industries and the Central Act being a self contained Code by itself, the Central Law prevails over the State Law and as such, the provisions of the KIAD Act are in direct conflict with the provisions of the Central Act and as such, repugnant to the Central Legislation and as such, liable to be declared as unconstitutional.

The KIAD Act, can be divided into 2 parts; one relates to the Industrial areas referred to in Chapter II and establishment and constitution of the Board under Chapter III to VI.

The other part of the Act relates to acquisition of land in Chapter VII. However, the provisions in Chapter VII of the Act cannot be considered as a self contained code inasmuch as no guidelines are provided for acquisition of lands.

That apart, the entire Act except Chapter VII comes into force at once that is with effect from 26.05.1966. The peculiarity of this Act is that Chapter VII relating to acquisition of lands

comes into force in such area and from such date as the State Government may, from time to time, specify by a notification. Thus, Chapter VII does not extend to the whole of State of Karnataka, but it only extends to different areas that may be notified by the State Government. There are no guidelines in the Act which provide as to the manner and method of identifying the areas which may be notified as Industrial areas under section 3 of the Act. Thus any land anywhere can be acquired by declaring such area as an Industrial Area, at the whim and fancy of the executive. Thus, the provisions of Section 1(3) and the provisions of Section 28 are unconstitutional being violative of Article 14 of the Constitution of India.

That apart the constitutional validity of acquisition of lands under Section 28 of the Act read with Section 1(3) of the Act have not been examined, in view of the fact that the earlier land acquisition Act did not include the acquisition of lands for industrial purpose, as a public purpose and accordingly Courts

have held that the acquisition of land is incidental to the power of the State Government to establish the industrial areas which is the dominant purpose of the State Act.

Now the object of the 2013 Act is to provide a transparent process for land acquisition for industrialization and development of essential infrastructural facilities, etc., This is further elucidated by Section 2 of the Act read with the definition of 'Public purpose' defined in Section 3(z)(a) of the Act. Thus the acquisition of lands for industrial purposes is covered under the Central Act, which is the dominant legislation made by the Parliament by virtue of powers under the Proviso to Article 254(2) of the Constitution.

Industrial areas cannot be established without lands, either Government lands or the lands owned by citizens. The right to property is traceable to Article 300A of the Constitution. Chapter VII of the Act which provides for acquisition and disposal of land cannot be termed as incidental to establishing Industrial areas.

Acquisition of property, as laid down by the Supreme Court can be traced to Entry 42 of List III only and as such the State Act which does not satisfy the law laid down by the Supreme Court relating to acquisition of property, is in conflict with the Central Act and as such, repugnant to the Central Act made by the Parliament under Article 254(2).

Thus the 'doctrine of severability' is applicable and provisions of Chapter VII read with Section 1(3) of the Act which bring the provisions of Chapter VII to force from the date that may be specified by the State Government, are liable to be declared as unconstitutional, being repugnant to the Parliamentary Legislation.

Reference can be made to the Judgment of the Constitution Bench in *Offshore Holdings (P) Ltd. Vs. Bangalore Development Authority, 2011(3) SCC page 139 (Paragraphs 107 to 118).*

The contention that Section 30 of the State Act providing for application of the Central Act No.I of 1894, is a legislation by

incorporation has no bearing on the issue involved in examining whether the State Act is repugnant to the Central Act by virtue of proviso to Article 254 of the Constitution. The Central Legislation is a self contained code and the State Government which is the Appropriate Government under the Central Act is empowered to make rules in respect of the acquisition of land to achieve the object of the Act and one of the objects of the Act is to acquire lands for industries or Industrial Corridors, which is also the object under the State Act.

4. SUBMISSIONS BY SHRI K.G. RAGHAVAN, SENIOR ADVOCATE

Shri K.G. Raghavan, learned Senior Advocate, appearing for the learned counsel for the petitioners Shri Rajeshwar P.N., in WP 58807-809/2015, contends that the principal question which arises for consideration is whether Section 24 of the 2013 Act is applicable to an acquisition initiated and completed under the

provisions of Section 28 of the KIAD Act, if the conditions specified in Section 24(2) of the 2013 Act are satisfied.

It is the contention of the petitioners that the provisions contained in Section 24 of the 2013 Act are applicable to the acquisition made under Section 28 of the KIAD Act, in view of Section 30 therein.

Section 30 of the KIAD Act, 1966 makes the provisions of the 1894 Act, applicable *Mutatis Mutandis* in respect of the following, namely:

1) Enquiry and award by the Deputy Commissioner
2) Reference to the Court
3) Apportionment of Compensation and
4) Payment of Compensation.

Section 30 of the KIAD Act is an example of legislation by reference.

Section 30 of KIAD Act makes a reference to the provisions of the 1894 Act and Section 30 is legislation by reference.

Section 24(2) of the 2013 Act has to be read conjointly with Section 30 of the KIAD Act.

The effect of Section 24(2) of the 2013 Act is to divest the title from the acquiring authority and vest the property back in the hands of the land owners. In other words, there is statutory divesting and re-vesting of the property in the hands of the land owners. This is the effect of *"lapsing"* as set out in Section 24(2) of 2013 Act.

In respect of acquisition made under the Karnataka Urban Development Authorities Act, 1987 and the Bengaluru Development Authority Act, 1976 (Section 36(2)), this Court in the case of *Chikkatayamma,* has held that Section 36 of the said Acts have to be constructed as legislation by reference.

Where a statute is cited by reference in another statute, any repeal or amendment of statute that is cited by reference is automatically carried over into referring statute.

Section 36 of the Karnataka Urban Development Authorities Act, 1987 and the Bangalore Development Authorities Act, 1976 are in all material particulars similar to Section 30 of the KIAD Act. The only difference between Section 30 of the KIAD Act and Section 36 of the aforesaid Acts is that while all the provisions of 1894 Act are applicable in the former Acts, under the KIAD Act, the only provisions relating to certain specified subjects as stated above have been incorporated. There is no reference in Section 30 to any specific Section of the Land Acquisition Act, 1894. Therefore, the ratio as laid down by this Court in *Chikkatayamma's* case is squarely applicable to the construction of Section 30 of the KIAD Act, in the context of Section 24(2) of the 2013 Act.

The contention that Section 24(2) of the 2013 Act specifically refers to the acquisition initiated under the Land Acquisition Act, 1894 and therefore is inapplicable to the acquisition initiated under Section 28(1) of the KIAD Act is erroneous. Section 24 of the 2013 Act should not be read in

isolation, but should be read in conjunction with Section 30 of the KIAD Act. Section 103 of the 2013 Act advances the contention of the petitioners to the effect that the provisions of the 2013 Act have to be read in conjunction with the provisions of the KIAD Act.

Furthermore, by virtue of Section 30 of the KIAD Act, a fiction of acquisition under the 1894 Act is created and that fiction is carried forward by applying the provisions of the Land Acquisition Act, 1894 in respect of the aforesaid four subjects to acquisition under the KIAD Act, even though nominally and formatively the acquisition is under Section 28 of the KIAD Act. This is the purport of the expression *"Mutatis Mutandis"* used in Section 30 of the KIAD Act, meaning thereby that all the provisions of the 1894 Act are applicable in respect of the aforesaid four subjects, but with modification in relation to minor details. The minor details include specification of a Section or an Officer and the like. Section 24(1) and 24(2) of the 2013 Act on the face of it, may seem to suggest their applicability in respect of

acquisition proceedings initiated under the Land Acquisition Act, 1894. However, that is required to be understood in the context of Section 30 of the KIAD Act as meaning acquisition under Section 28 of the KIAD Act. In other words the statement in Section 24(2) *"initiated under the Land Acquisition Act, 1894"* to be read and understood as *"initiated under the Karnataka Industrial Areas Development Act, 1966"*. This is a minor change which is the effect of the use of the phrase "*Mutatis Mutandis*" under Section 30 of the KIAD Act. It does not amount to re-writing the Section.

Sections 23, 24 and 25 of the 2013 Act relate to enquiry and making of an award. The same are analogous to Sections 11 and 13 of the 1894 Act.

Section 23 of the 2013 Act relates to enquiry and award by the Collector which is squarely within the purview of Section 30 of the KIAD Act.

Section 25 is also pertaining to making of an award.

Section 24 deals with the effect of not making an award. Therefore, to say that Section 24 alone is inapplicable and not covered within the scope of Section 30 the KIAD Act, is an artificial construction which requires to be negatived. The scheme under Chapter IV of 2013 Act does not permit of excluding section 24 from the subject of *"enquiry and award"* and *"Payment of compensation"*.

The distinction made between the acquisition under the Land Acquisition Act, 1894 and the acquisition under the Karnataka Industrial Areas Development Act, 1966, giving the benefits in respect of the acquisitions under the former and not giving benefits to acquisitions under the latter will amount to unfair discrimination and violating the mandate of Articles 14 of the Constitution of India. Attention is drawn to *Nagpur Improvement Trust vs Vithal Rao, 1973(1) SCC 500 Paras28, 29, 30 and 31.*

The position is further fortified by the fact that under Section 3(za) of the 2013 Act, public purpose means activities

specified under Section 2(1). Section 2(1) includes the activities listed in the notification of the Government of India dated 27.03.2012.

The Notification dated 27.03.2012 includes within it infrastructure development, which inter-alia specifies common infrastructure for Industrial Parks, SEZ, Tourism facilities and Agricultural markets, which is in *pari materia* under Section 2(7a) of the KIAD Act. Therefore, in a given situation there can be acquisition of land for the same purpose under the 2013 Act and acquisition of another piece of Land for similar purpose under the KIAD Act. It would be highly discriminatory and anomalous to hold that certain benefits accrue only in favour of the former and not to the latter.

The construction which advances a harmonious gel between various statutes within the Constitutional mandate has to be preferred by the Court. The Construction therefore, which harmoniously brings together Section 24 of the 2013 Act and Section 30 of the KIAD Act has to be preferred to a construction,

which brings Section 24(2) of the 2013 Act in conflict with Section 30 of the KIAD Act.

The Judgment of the Supreme Court of India in the case of *Offshore Holdings Private Limited vs. Bangalore Development Authority and others, (2011) 3 SCC 139* and *Girnar Traders* case do not address the question as raised and pronounced upon by this Court in *Chikkatayamma's* case. The position at present is not a mere exercise in the matter of interpretation of the statutory provisions contained in Section 30 of the KIAD Act or Section 24(2) of the 2013 Act, but, involves the construction of two statutes in the light of Article 254 of the Constitution of India.

The Judgment of the Supreme Court of India in the matter of *Delhi Development Authority vs Sukbhir Singh and others in Civil Appeal No.5811/2015 and Civil Appeal No.8857/2016* is distinguishable, in that, the Apex Court was not examining the case whether the acquisition has been made under different enactments, like in the instant case, but, in fact was dealing with the acquisition which has been made under the Land Acquisition

Act, 1894. The question that arose therein was whether the judgment of the Apex Court in *Pune Municipal Corporation* case required to be reviewed or unsettled. It is in that context, the Apex Court has dilated upon Section 24 of the 2013 Act, and indicated that Section 24 incorporates the limits of legislative tolerance. The court was not considering the situation like the present one where Section 30 of the KIAD Act, which made applicable the provisions of the Land Acquisition Act, 1894 by reference to the acquisition made under the provisions of the KIAD Act. The Judgment of the Supreme Court of India in the case of *Delhi Development Authority*'s case is clearly distinguishable.

The Judgment of the Bombay High Court in the case of *Hanuman Rao Gudadhe vs State of Maharashtra and others, 2015(6) Mh L.J 127,* raised a question as to whether Section 24(2) of the 2013 Act, is applicable to acquisition made under the MRTP Act. The Court examined the acquisition under the MRTP Act, in the light of the judgment of the Supreme Court in *Girnar*'s case and came to the conclusion that, primarily the purpose of the

MRTP Act was to regulate planning and provisions relating to acquisition were only incidental and therefore the reference under Section 126 and 127 of the MRTP Act to the 1894 Act, was a legislation by incorporation and not a legislation by reference.

Under Section 126 of the MRTP Act, there is specific reference to one provision of 1894 Act, namely Section 6. This is clear from paragraph 10 of the judgment of the Bombay High Court. The judgment of Bombay High Court in fact directs that the provisions relating to compensation under 2013 Act will have to be read into MRTP Act, in view of the pronouncement of the judgment by the Supreme Court of India in *Nagpur Improvement Trust case,* in order to prevent the MRTP Act from the vice of discrimination. The judgment of the Bombay High Court is clearly distinguishable in as much as the KIAD Act is not an enactment for regulating the planning activity like the Karnataka Town and Country Planning Act, 1961. As the preamble of the KIAD Act suggests that the Act is meant to secure the establishment of Industrial areas in the State of Karnataka. It is

needless to state that for the purpose of establishing the industrial areas, the enactment contemplates a substantial second part, namely, the power to acquire under Chapter VII. The objects under the KIAD Act is two-fold namely, (1) establishing an industrial area and (2) acquisition of land for the purpose of establishing industrial area. This is fortified by the requirement of declaration under Section 3(1) of the said Act. In structure and content, the KIAD Act is different from the structure and content of MRTP Act and therefore the judgment of the Bombay High Court is clearly inapplicable to the facts of the instant case. In the context of structure of the MRTP Act, the Bombay High Court came to the conclusion that the provisions of the 1894 Act were made part of the MRTP Act, by incorporation and not by reference. Per Contra, this Court on consideration of the provisions of the Karnataka Urban Development Authority Act, 1976, has come to a clear conclusion that reference to the 1894 Act is by reference. The provisions of Section 30 of the KIAD Act

are *pari materia* with the provisions of Section 36 of the said enactments.

The reference to Section 103 of the 2013 Act, has no relevance, in as much as Section 103 advances the object of the 2013 Act by making it applicable to the existing laws. In other words, the provisions of the KIAD Act have to be read together with the provisions of the 2013 Act. That is the construction that requires to be placed on Section 30 of the KIAD Act. In fact, Section 103 of the 2013 Act advances the contention of the petitioners to the effect that the provisions of 2013 Act have to be read in conjunction with the provisions of the KIAD Act.

The distinction between vesting provisions contained in the Land Acquisition Act, 1894 and the Karnataka Industrial Areas Development Act, 1966, as pointed out by the Supreme Court of India in Para 34 of *Naghbhushan's* case are not *germane* in as much as at whatever point, the vesting may take place, there is a divesting under Section 24(2) of the 2013 Act by providing for

lapsing of the acquisition proceedings if the conditions specified under Section 24(2) are satisfied.

5. SUBMISSIONS BY SHRI V.V. GUNJAL

Shri V.V.Gunjal, learned Counsel appearing for the petitioners in WP 59461-462/2014 and WP 23940-44/2015, contends as follows:-

The provisions contained in Chapter VII of the State Act, viz., Sections 20 to 30 of the KIAD Act, are inconsistent and repugnant to the provisions of the 2013 Act, as both the Acts are traceable to Entry 42 in List III, Concurrent List of Seventh Schedule of the Constitution of India.

The Central Act would prevail over the State Act and that in case of repugnancy or inconsistency between them, the State Act would be void and inoperative to the extent of repugnancy in view of Article 254 of the Constitution of India, till the State Act is properly amended and the assent of the President of India is obtained.

It is further contended that the reference made in the Sate Act to the erstwhile Central Act, is only by way of referential legislation and not by doctrine of incorporation and therefore, in the absence of necessary amendments to the State Act, it would be void and inoperative.

Moreover, the State amendment seeking to incorporate Section 105-A in the Central Act, would exhibit the repugnancy between both the Acts. The impugned notification is repugnant, void and inoperative, because of the Central Act, in the light of Article 254(1) of the Constitution of India.

Regarding the Doctrine of Repugnancy, the Apex Court in *State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106*, has held as under:-

> *"47. The question of repugnancy between parliamentary legislation and State legislation arises in two ways. First, where the legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two*

legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the parliamentary legislation will predominate, in the first by virtue of non obstante clause in Article 246(1); in the second, by reason of Article 254(1)."

Article 254(2) deals with a situation where, the State legislation having been reserved and having obtained the President's assent, prevails in that State. This again is subject to the proviso, that the Parliament can again bring a legislation to override even such State legislation.

In Clause (1) of Article 254, the significant words used are "provision of a law made by the legislature of a State", "any provision of a law made by Parliament which Parliament is competent to enact", "the law made by Parliament, whether passed before or after the law made by the legislature of such State", and "the law made by the legislature of the State shall, to the extent of repugnance, be void?. Again, Clause (2) of Article 254 speaks of

"a law made by the legislature of a State", "an earlier law made by Parliament", and "the law so made by the legislature of such State". Thus, it is noticeable that throughout Article 254, the emphasis is on law-making by the respective legislatures.

The entire above discussion on Articles 245, 246, 251 is only to indicate that the word "made" has to be read in the context of the law-making process and, if so read, it is clear that to test repugnancy, one has to go by the making of law and not by its commencement.

In *T. Barai v. Henry Ah Hoe, (1983) 1 SCC 177,* the Supreme Court has laid down the following principles on repugnancy:

There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision, firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1)

enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that. if a State law relating to a concurrent subject is "repugnant" to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the

State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the same matter. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together. For example, where both prescribe punishment for the same offence, but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1).

6. SUBMISSIONS BY SHRI ADITYA SONDHI, ADDITIONAL ADVOCATE GENERAL

Shri Aditya Sondhi, the learned Additional Advocate General, appearing on behalf of the State would contend as follows.

That from a bare reading of Article 254, repugnancy between a law enacted by the Parliament and a law enacted by a Legislature of a State arises only when the laws in question are in respect to one of the matters enumerated in the Concurrent List.

That a constitutional bench of the Supreme Court in *M. Karunanidhi vs. Union of India and another, (1979) 3 SCC 431,* while examining as to whether the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973, was repugnant to the Indian Penal Code, 1860, held as follows:

> *"Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List, the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if*

on an analysis of the provisions of the Act it appears that by and large, the law falls within the four corners of the State List an entrenchment, if any, is purely incidental or inconsequential."

That the aforesaid position was reiterated by the Supreme Court in *Vijay Kumar Sharma and others vs. State of Karnataka and others, (1990)2 SCC 562*. While following the ratio in *M. Karunanidhi's case (supra),* it was held as follows:

"10. Though for some time there was difference of judicial opinion as to in what situation Article 254 applies, decisions of this Court by overruling the contrary opinion have now concluded the position that the question of repugnancy can arise only with reference to a legislation falling under the Concurrent List.."

And concluded that the test for determining whether two legislations relate to the same subject matter is to adopt the pith and substance rule –

"53. The aforesaid review of the authorities makes it clear that whenever repugnancy between the State and Central

Legislation is alleged, what has to be first examined is whether the two legislations cover or relate to the same subject matter. The test for determining the same is the usual one, namely, to find out the dominant intention of the two legislations. If the dominant intention, i.e. the pith and substance of the two legislations is different , they cover different subject matters. If the subject matters covered by the legislations are thus different, then merely because the two legislations refer to some allied or cognate subjects they do not cover the same field. The legislation, to be on the same subject matter must further cover the entire filed covered by the other. A provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation. But such partial coverage of the same area in a different context and to achieve a different purpose does not bring abut the repugnancy which is intended to be covered by Article 254(2). Both the legislations must be substantially on the same subject to attract the Article."

It is therefore clear that the provision of Article 254(2) applies only where the two enactments in question substantially, and in pith and substance, cover the very same field in the Concurrent List.

In the present case, the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013, replacing the Land Acquisition Act, 1894, is a law providing for acquisition of land for public purposes. The enactment is traceable to the legislative field "Acquisition and requisitioning of property" under Entry 42 List III of Schedule VII of the Constitution.

It is contended that the Karnataka Industrial Areas Development Act, 1966 was enacted by the State of Karnataka with the object of industrial development and as such, is in fact, traceable to the legislative field "Industries" under Entry 24 List II of Schedule VII of the Constitution. The aforesaid submission is

supported by the Statement of Objects and Reasons of the KIAD Act which reads as follows:-

> *"It is considered necessary to make provision for the orderly establishment and development of Industries in suitable areas in the State. To achieve this object, it is proposed to specify suitable areas for Industrial Development and establish a Board to develop such areas and make available lands therein for establishment of Industries. Hence this Bill."*

The preamble to the KIAD Act reiterates the objective of the legislation-

> *"An Act to make special provisions for securing the establishment of industrial areas in the State of Karnataka and generally to promote the establishment and orderly development of industries therein, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid.*
>
> *WHEREAS it is expedient to make special provisions for securing the establishment of*

> *industrial areas in the State of Karnataka and generally to promote the establishment and the orderly development of industries in such industrial areas, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid;"*

It is therefore contended that the KIAD Act, in pith and substance, is a legislation enacted for the primary purpose of industrial development and hence, is traceable to the legislative field "Industries" under Entry 24 List II of Schedule VII of the Constitution of India.

A Constitution Bench of the Supreme Court in *Shri Ramtanu Co-operative Housing Society Limited and another vs. State of Maharashtra and others, (1970) 3 SCC 323*, while examining the constitutional validity of the Maharashtra Industrial Development Act, 1962, an enactment that is *pari materia* to the KIAD Act, held as follows:

> *"15. It is in the background of the purposes of the Act and powers and functions of*

the Corporation that the real and true character of the legislation will be determined. That is the doctrine of finding out the pith and substance of an Act. In deciding the pith and substance of the legislation, the true test is not to find out whether the Act has encroached upon or invaded any forbidden field but what the pith and substance of the Act is. It is true intent of the Act which will determine the validity of the Act. Industries come within Entry 24 of the State List subject to the provision of Entry 7 and Entry 52 of the Union List of the Constitution. Entry 7 of the Union List relates to industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52 of the Union List relates to Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest. The establishment, growth and development of industries in the State of Maharashtra does not fall within Entry 7 and Entry 52 of the Union List. Establishment, growth and development of industries in the State is within the State List of industries. Furthermore, to effectuate the

purpose of the development of industries in the State it is necessary to make land available. Such land can be made available by acquisition or requisition. The Act in the present case deals with acquisition of land by the State and on such acquisition, the State may transfer the land to the Corporation which again may develop it itself and establish industrial estates or may develop" industrial areas. Acquisition or requisition of land falls under Entry 42 of the Concurrent List. In order to achieve growth of industries it is necessary not only to acquire land but also to implement the purposes of the Act. The Corporation is therefore established for carrying out the purposes of the Act. The pith and substance of the Act is establishment, growth and organization of industries, acquisition of land in that behalf and carrying out the purposes of the Act by setting up the Corporation as one of the limbs or agencies of the Government. The powers and functions of the Corporation show in no uncertain terms that these are all in aid of the principal and predominant purpose of establishment, growth and establishment of industries. The Corporation is established for that purpose.

> *When the Government is satisfied that the Corporation has substantially achieved the purpose for which the Corporation is established, the Corporation will be dissolved because the raison d'etre is gone. We, therefore, hold that the Act is a valid piece of legislation."*

That in *Offshore Holdings Private Limited vs. Bangalore Development Authority and others, (2011)3 SCC 139,* a Constitution Bench of the Supreme Court held that Section 11-A of the Land Acquisition Act, 1894 is inapplicable to the provisions of the Bangalore Development Authority Act, 1976. While holding as such, the Court examined the repugnancy between the two legislations and held as such:

> *"120. Having examined the pith and substance of the impugned legislation and holding that it is relatable to Entries 5 and 18 of List II of Schedule VII of the Constitution, the question of repugnancy can hardly arise. Furthermore, the constitutionality of the impugned Act is not determined by the degree*

> *of invasion into the domain assigned to the other Legislature but by its pith and substance. The true nature and character of the legislation is to be analysed to find whether the matter falls within the domain of the enacting Legislature. The incidental or ancillary encroachment on a forbidden field does not affect the competence of the legislature to make the impugned law."*

A Constitution Bench of the Supreme Court in *Rajiv Saran vs. State of Uttarakhand, (2011) 8 SCC 708,* while examining whether the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 was repugnant to the provisions of the Forest Act, 1927 held as follows:-

> *"38. As discussed hereinbefore KUZALR Act is a law principally relatable to Entry 18 (land) of List II read with Entry 42 in List III of the Seventh Schedule of the Constitution and only incidentally trenches upon "forest" i.e., Entry 17A/List-III of the Seventh Schedule of the Constitution."*

The Court then proceeded to expound on the principles governing repugnancy under Article 254 of the Constitution and held as follows:-

> *"xxx xxx While considering the issue of repugnancy what is required to be considered is the legislation in question as a whole and to its main object and purpose and while doing so incidental encroachment is to be ignored and disregarded."*

A Division Bench of the High Court of Bombay in *Hanumanrao vs. State of Maharashtra, (2015) 6 Mh.LJ 127,* while examining the applicability of the 2013 Act to the Maharashtra Regional and Town Country Planning Act, 1966, observed as follows-

> *"10. … By applying the doctrine of 'pith and substance', it could be seen that the true intent of both the enactments is different. It would be worthwhile to refer to the judgments reported in AIR 1970 SC 1771 (Shri Ramtanu Co-operative Housing Society Limited and another vs. State of Maharashtra and others) and (2011) 3 SCC*

1 (supra) in this regard. The MRTP Act deals with planning and development, the acquisition of land being incidental for achieving the object of the Act, whereas the Land Acquisition Act and the RFCTLARR Act are enacted with an object of acquiring the land for public purposes and companies, for determination of the compensation and for the rehabilitation and resettlement of the affected. Both the Laws i.e. the MRTP Act and the RFCTLARR Act are wholly dissimilar, they operate in different fields and have different objects.

…

After considering the scheme of the two enactments, even if a fractional overlapping is accepted between the two Statutes i.e., the MRTP Act and the RFCTLARR Act, the same is saved by the doctrine of 'incidental overlapping', specially when the Centre and the State have enacted the Laws i.e. the RFCTLARR Act and the MRTP Act respectively, within the legislative competence and both the Acts can coexist and operate with compatibility."

As such, the KIAD Act and the 2013 Act differ greatly. While the 2013 Act is a general and broad legislation exclusively regulating land acquisition for public purposes, the KIAD Act is a self contained code enacted primarily for the purposes of industrial development. The 2013 Act is traceable to the legislative field "Acquisition and requisition of properties" under Entry 42 List III, the KIAD Act is traceable to the legislative field "Industries" under Entry 24 List II of Schedule VII of the Constitution of India. Therefore, it is contended that on the very touchstone of the ratio in M. *Karunanidhi's case* (supra), the question of repugnancy between the aforesaid legislations does not arise.

It is contended that the land acquisition, as contemplated in Chapter VII of the KIAD Act is only ancillary and incidental to the main object of the legislation (i.e., Industrial Development). A perusal of the KIAD Act in *toto* will indicate that the enactment largely deals with the establishment and growth of industries in

Karnataka. Section 3 in Chapter II calls for the declaration of certain areas as industrial areas by the State Government. Section 5 in Chapter III of the Act, provides for the establishment and incorporation of the Karnataka Industrial Areas Development Board, for the purposes of securing the establishment of industrial areas in the State of Karnataka and generally for promoting the rapid and orderly establishment and development of industries and for providing industrial infrastructural facilities and amenities in industrial areas in the State. The powers and functions of the Board are provided in Chapter IV of the Act. The functions of the Board, as enumerated in Section 13 of the Act are all in relation to the development and growth of industries and industrial areas. The powers of the Board, as conferred by Section 14, are plenary in nature and include the power to execute contracts and agreements in furtherance of the Board's functions. Section 32 in Chapter VIII of the Act permits the State Government to place Government lands at the disposal of the Board, for the purposes of industrial development.

Therefore, Chapter VII of the KIAD Act is the sole Chapter dedicated to the acquisition of land by the State Government, for the purpose of development of industrial areas. A preliminary notification is issued under Section 28(1) of the Act, after which a show-cause notice is required to be issued under Section 28(2) to the owner or occupier, whichever the case may be, within a period of 30 days. The State Government is then required to hear the objections raised by the owners or occupiers and pass appropriate orders under Section 28(3). The final notification of acquisition of land is issued under Section 28(4) after which the land vests absolutely in the State Government, free from all encumbrances under Section 28(5) of the Act. Section 29 of the Act provides for compensation to be paid to the owner of the lands either by way of an agreement or by way of reference to the Deputy Commissioner. Section 30 of the Act states that the provisions of the Land Acquisition Act, 1894 shall *mutatis mutandis* apply in respect of the enquiry and award by the Deputy Commissioner, the reference

to Court, the apportionment of compensation and the payment of compensation, in respect of lands acquired under Chapter VII. Section 31 empowers the State Government to delegate any of its powers under Chapter VII to any of its officers by rules made in this behalf. The most significant provision in Chapter VII of the KIAD Act is Section 27.

A joint reading of Section 27 and Section 1(3) of the KIAD Act will indicate that while all other provisions of the Act came into force in 1966, the provisions contained in Chapter VII will come into effect as when the State Government notifies areas for the same. In other words, the application of Chapter VII of the Act is conditional upon a notification being issued under Section 1(3) and hence, development under the KIAD Act could be *de hors* acquisition of land.

Therefore, it is contended that the KIAD Act, in pith and substance, is an Act for industrial development. It incidentally touches upon the subject of land acquisition but the same is not its

dominant intention. As such, the KIAD Act is not repugnant to the 2013 Act.

Section 103 of the 2013 Act discloses the intention of the legislature to harmonize the Act with all other legislations. The Supreme Court in *KSL and Industries Limited vs. Arihant Threads Limited and others, (2015) 1 SCC 166*, while examining whether there was any conflict between the Sick Industrial Companies (Special Provisions) Act, 1985 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, interpreted Section 34(2) of the latter Act *pari materia* with Section 103 of the Land Acquisition Act, 2013 as follows:-

> *"xxx xxx Though the RDDB Act is the later enactment, Sub-section (2) of Section 34 specifically provides that the provisions of the Act or the rules thereunder shall be in addition to, and not in derogation of, the other laws mentioned therein including SICA.*

> *The term "not in derogation" clearly expresses the intention of Parliament not to detract from or abrogate the provisions of SICA in any way. This, in effect must mean that Parliament intended the proceedings under SICA for reconstruction of a sick company to go an and for that purpose further intended that all other proceedings against the company and its properties should be stayed pending the process of reconstruction. While the term "proceedings" under Section 22 did not originally include the RDDB Act, which was not there in existence. Section 22 covers proceedings under the RDDB Act."*

Even Section 105 of the 2013 Act excludes the application of as many as 13 enactments as enlisted in Schedule IV thereto, at the very least for a period of 1 year in terms of Section 105(3). It is clear therefore that the Land Acquisition Act, 2013, itself contemplates other enactments remaining in force, with respect to acquisition of land or various purposes.

Section 2 of the Act is a definition and an enabling provision, having wide and inclusive meaning. The same cannot in anyway limit or restrict the powers of the State Legislatures and the interpretation of the State legislations. Indeed in the federal structure the powers of the State are independently provided for in terms of Lists II and III contained in Schedule VII to the Constitution of India read with Article 245 and 246 thereof.

As stated *supra,* the land sought to be acquired by the Stated Government under Section 28 of the KIAD Act vests absolutely in the Government, free from all encumbrances upon issuance of the final notification under Section 28(4). It is contended that such vesting is contemplated under Section 28(5) of the KIAD Act has far reaching legal implications that are vitally different from the provisions of the Land Acquisition Act, 1894 and the 2013 Act.

Section 28(5) of the Act states as follows-

"28. Acquisition of land –

> …
>
> *(5) On the publication in the official Gazette of the declaration under sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances.*
>
> …"

The Supreme Court in *Vatticherukuru Village Panchayat vs. Nori Venkatarama Deekshithulu and others, 1991 Supp (2) SCC 228,* explained the meaning and import of the term "vest" in the following manner –

> *"xxx xxx Thus the word 'vest' bears variable colour taking its content from the context in which it came to be used. Take for instance, the land acquired under the Land Acquisition Act. By operation of Sections 16 and 17 thereof, the property so acquired shall vest absolutely in the Government free from all encumbrances. Thereby, absolute right, title and interest is vested in the Government without any limitation divesting the pre-existing rights of its owner."*

The Supreme Court in *M.Nagabhushana v .State of Karnataka, (2011) 3 SCC 408,* distinguished the KIAD Act from the 1894 Act in the following Manner.

> *"29. Therefore, on a combined reading of the provisions of Sections 28(4) and 28(5) of the KIAD Act, it is clear that on the publication of the notification under Section 28(4) of the KIAD Act, i.e., from 30.03.2004, the land in question vested in the State free from all encumbrances by operation of Section 28(5) of the KIAD Act, whereas the land acquired under the said Act vests only under Section 16 thereof, which runs as under:*
>
> > *"16. Power to take possession; When the collector has made an award under Section 11 he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.*
>
> *30. On a comparison of the aforesaid provisions, namely, Section 28(4) and 28(5) of the KIAD Act with Section 16 of the said Act, it is clear that the land which is subject to acquisition proceedings under the said act gets vested with the Government only when the collector makes on award under Section 11, and the Government takes possession. Under Sections 28(4) and 28(5) of the KIAD Act, such vesting takes place by operation of law*

and it has nothing to do with the making of any award. This is where Sections 28(4) and 28(5) of the KIAD Act are vitally different from Sections 4 and 6 of the Said Act"

It is contended that such a provision for divesting must exist in the very same legislation that the provision for vesting exists in. As such, it is contended that upon vesting of the land in the State Government, provisions of lapse of land acquisition proceedings will not apply.

The Supreme Court in *V.Chandrashekaran's* case held as follows:

"25. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period."

It is contended that Section 30 of the KIAD Act is a legislation by incorporation.

Sections 28 and 29 of the KIAD Act substantially deal with the powers and consequences of acquisition of land.

The said provisions together are a complete code in the matter of initiating acquisition, taking possession and such other matters. It is only in respect of four aspects that the 1894 Act, is made applicable to the KIAD Act, as per Section 30 thereof.

It is contended that a conjoint reading of Section 30 of the KIAD Act and the corresponding incorporated provisions of the Land Acquisition Act, 1894 will disclose that it is only specific parts in the latter Act which have been incorporated into the former. Such incorporation can be explained as follows:

Incorporated Provisions of the 1894 Act in Section 30 of KIAD Act.	Corresponding provisions in the 1894 Act
Enquiry and Award by the Deputy Commissioner	Section 11-15A
Reference to Court	Part –III
Apportionment of Compensation	Part –IV
Payment of Compensation	Part -V

As such, it is evident that specific Chapter titles have been bodily lifted into the KIAD Act. Any subsequent amendment, repeal or re-enactment in the incorporated legislation will not affect the KIAD Act.

The lapse under Section 24(2) of the 2013 Act is deeming fiction and applies only where the acquisition is initiated under the 1894 Act.

The Supreme Court in *Pune Municipal Corporation & Another Vs. Harachand Misirimal Solanki & Others, (2014)3 SCC 183,* has held that lapse under Section 24(2) is a legal fiction.

> *"21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-Section (2) of Section 114,*

however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid"

It is settled position that deeming provisions have limited application. In *State of Maharashtra v. Lajit Rajshit Shah & Others,(2000) 2 SCC 699,* the Supreme Court held as follows-

"6……. It is well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of

the Section by which it is created. A legal fiction in terms enacted for the purpose of one Act is normally restricted to that Act and cannot be extended to cover another Act…."

It is contended that Section 24 of the 2013 Act applies only to acquisition proceedings initiated under the 1894 Act. The Supreme Court in *Delhi Development Authority v.Sukhbir Singh & Others., (Civil Appeal No.5811 of 2015, decided on 09.09.2016),* affirmed the judgement in *Pune Municpal Corporation's* case and held as follows-

"13. To Section 24(1)(b) an important exception is carved out by Section 24(2). The necessary ingredients of Section 24(2) are as follows:

(a) Section 24(2) begins with a non-obstante clause keeping sub-section (1) out of harm's way;

(b) For it to apply, land acquisition proceedings should have been initiated under the Land Acquisition Act.

(c) Also, an award under Section 11 should have been made 5 years or more prior to the commencement of the 2013 Act;

(d) Physical possession of the land, if not taken, or compensation, if not paid, are fatal to the land acquisition proceeding that had been initiated under the Land Acquisition Act.

(e) The fatality is pronounced by stating that the said proceedings shall be deemed to have lapsed, and the appropriate Government, if it so chooses, shall, in this game of snakes and ladders, start all over again."

In *Hanumanrao's* case, the High Court Bombay, while holding that the provisions of the 2013 Act would be wholly inapplicable to the Maharashtra Regional and Town Country Planning Act, 1966 on this score, observed as follows-

"11. Even assuming that the other provisions of the RFCTLARR Act were to apply to the acquisitions under the MRTP ACT, it could be gathered from the clear and unambiguous provisions of Section 24 of the RFCTLARR Act, by applying the salutary principles of interpretation that the provisions of Section 24 of the RFCTLARR Act would apply only to the acquisitions

> *'initiated' under the Land Acquisition Act, 1894. The word 'initiated' has been defined in the Oxford English Dictionary to mean 'cause, process or action to begin'. The proceedings for acquisition under the Land Acquisition Act, 1894 commence or begin with the issuance of the Section 4 notification".*

It is contended that the provision of lapse under Section 24(2) will not apply to acquisitions under the KIAD Act, in light of decisions of the Supreme Court in *Nagabhushan's case, Pratap's case , Satendra Prasad's case,* and in the *Offshore Holdings case,* that once the land vests in the Government, the provisions of lapsing will not apply. Furthermore, a bare reading of the same will indicate that the lapse of acquisition could occur where the award has been passed 5 years or more prior to the commencement of the Act, but physical possession of the land has not been taken, or compensation has not been paid. It is contended that the present set of facts do not fit in to either of the aforementioned situations.

In the light of the above, it is contended that Section 24 is wholly inapplicable to acquisition proceedings commenced under the KIAD Act.

7. SUBMISSIONS OF SHRI ASHOK HARNAHALLI AND SHRI SHASHIKIRAN SHETTY, SENIOR ADVOCATES

Shri Ashok Harnahalli, Senior Advocate along with Shri Shashi Kiran Shetty, Senior Advocate appearing for Shri. B.B. Patil appearing for KIADB would contend as follows:

It is contended that the Karnataka Industrial Areas Development Board is a statutory body established under the Karnataka Industrial Areas Development Act, 1966 with an object of promoting the establishment and orderly development of industries in industrial areas. In terms of Section 3(1) of the KIAD Act, the State Government declares lands as industrial lands. In terms of Section 1(3) of the KIAD Act, a notification is issued invoking the provisions of Chapter VII of the KIAD Act.

It is relevant herein to note that in terms of Section 1(3) of the KIAD Act, this Act except Chapter VII shall come into force at once. Chapter VII shall come into force in such area and from such date as the State Government, from time to time, by notification, specify in this behalf. Chapter VII of the KIAD Act starts from Section 27 which again provides that the provisions of Chapter VII shall apply to only such areas have been notified in terms of notification under section 1(3) of KIAD Act. In terms of Section 28(1) to 28(8) the lands are acquired and handed over to the Board by the State Government for setting up industrial estates and industrial areas.

The acquisition initiated under the KIAD Act is by the State Government for securing the objectives of the KIAD Act or for the benefit of the Board and the Land Acquisition Act comes into play only at the stage of compensation.

The acquisition under the KIAD Act is akin to acquisition under Section 17 of the 1894 Act, and the vesting happens with

the issuance of the notification under Section 28(5) of the KIAD Act.

Section 29 of the KIAD Act deals with compensation. In terms of section 29(2), compensation by agreement can be paid to the land loser. In case of the compensation not agreed under Section 29(2) of the KIAD Act, an award under Section 29(3) and (4) of the KIAD Act has to be passed. The same can be noted in terms of Rule 14 of the KIAD Rules, whereunder power under Section 29(3) is also delegated.

In support of the above propositions, reliance is placed on *N.Somashekar vs. State of Karnataka, 1997 SCC Online Kar 653* (Para 26).

The constitutional validity of the Maharashtra Industrial Development Act, 1961, which is similar to the KIAD Act has been upheld by the apex court.

It is contended that Entry-24 of List-II, that is the State List deals with Industries subject to the provisions of Entries 7 and 52 of the List -1. The KIAD Act is enacted in terms of the powers

vested with the State. Legislature under Entry-24 of the State List, that List No.II. It is further contended that Entry-7 of the Union List provides for "Industries declared by the Parliament by law to be necessary for the purpose of defense or for the prosecution of war" and Entry 52 of the same lists provides for "industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest." The issue of considering the entries and the concept of repugnancy is dealt with in *Shri Ramtanu Co-operative Housing Society Limited vs. State of Maharashtra, (1970)3 SCC 23, at Para-15.*

Reliance is placed on the following authorities:-

i) M/s Hoechst Pharmaceuticals Limited and others vs. State of Bihar and other, (1983)4 SCC 45 at Paras 41,51,54 and 57.

ii) Rajiv Sarin and another vs. State of Uttarakhand and others, AIR 2011 SC 3081 at paras 28,30, and 35.

iii) K.T.Plantation Private Limited and another vs. State of Karnataka, AIR 2011 SC 3430, at Paras 65,66, and 67.

It is contended that a pre-requisite to applying Section 24 of the 2013 Act is to ascertain whether the acquisitions under the KIAD Act, are acquisitions under the KIAD Act or the 1894 Act. In case the said acquisitions are under the 1894 Act, Section 24 is applicable and in case the acquisitions are under the KIAD Act, the 2013 Act and Section 24 therein have no application whatsoever to the acquisitions. The issue is dealt under the next head. Without prejudice to the submission that the acquisitions are under the KIAD Act, the application of Section 24 of the 2013 Act is as under:

Section 24 of the 2013 Act, deals with the acquisition proceedings that are under process as on 01.01.2013, that is coming into force of the 2013 Act and the repealing of the 1894 Act. The said section deals with firstly, acquisitions wherein an award is not made; secondly acquisitions wherein an award is made; thirdly and finally, cases wherein an award is made five

years prior to the coming into force of the 2013 Act and the compensation is not paid or the physical possession is not taken.

In the first case, the provisions relating to compensation of the 2013 Act will apply; in the second case, the 2013 Act is totally inapplicable and in the third case, the acquisition initiated stands lapsed.

Reliance is placed on *Delhi Development Authority vs. Sukhbir Singh and others, 2016 SCC Online SC 929 at paras 13,14,15 and 16.*

It is contended that in terms of Rule 14 of the KIAD Rules, the powers of the State Government under sub-section (2), (3),(6),(7) and (8) of Section 28 and sub-section (1), (2) and (3) of Section 29 of the KIAD Act are delegated to the Special Land Acquisition Officer. The Special Land Acquisition Officer is delegated with the powers of hearing objections and of drawing up an award under Section 29 of the KIAD Act.

In view of Section 29 and 30 of the KIAD Act, in case of there being no agreement as regards the compensation to be

received, an award under Section 20(3) of the KIAD Act was to be drawn. The said issue is provided for in *C.V. Krishnareddy and Others vs. The State of Karnataka and Others. WP Nos.16642-649/2012.* It is further relevant to note that the procedure to be adopted in determining the compensation, the enquiry and the award, provisions of the 1894 Act are to be applied *mutatis mutandis.*

Section 30 of the KIAD Act provides for reading of provisions of the 1894 Act into the KIAD Act. The said section is legislation by incorporation. Referential legislations fall under two categories, that is by reference and by incorporation. Where a statute by specific reference incorporates the provisions of another statute, as of the time of adoption and where a statute incorporates by general reference, the law concerning a particular subject as a genus. In terms of rules of statutory interpretation, it is provided that in case of the former the subsequent amendment made in the referred statute cannot automatically be read into the adopting statute. In case of the latter, it may be presumed that the

legislative intent was to include all the subsequent amendments also. This principle of construction of reference statute has been neatly summed by Sutherland (Sutherland's Statutory Construction) thus:

> *"A statute which refers to the law or a subject generally adopts the law on the subject as of the time the law invoked. This will include all the amendments and modification of the law subsequent to the time the reference statute was enacted."*

There is a distinction between a mere reference to or a citation of one statute in another and an incorporation which in effect means the bodily lifting of the provisions of one enactment and making it part of another. In case of a reference or a citation of one enactment by another without incorporation, the effect of a repeal of the one "reference to" is that set out in section 8(1) of the General Clauses Act, 1897. Whereas in case of incorporation, it is as held in the case of *Clarke V. Bradlaugh (1881)8 QBD 63* as under:

> *"Where a statute is incorporated, by reference, into a second statute the repeal of the first statute by a third does not affect the second."*

In *Hanumanrao Morbaji Gudadhe and others, vs. State of Maharashtra and others, 2015(6) Mh.LJ 127 at para 10* provides as under:

> *"Although the provisions of the RFCTLARR Act would not per se apply to the MRTP Act specially when the MRTP Act is not yet amended and continues to make a reference to the 1894 Act by incorporation, in our view, the provisions of the RFCTLARR Act insofar as they relate to determination of compensation will have to be read into the MRTP Act in view of the judicial pronouncement in the case of Nagpur Improvement Trust and another vs. Vithal Rao and others, (1973)1 SCC 500, (2011)3 SCC 1 and other judgments so as to save some of the provisions of the MRTP Act from the vice of discrimination."*

It is however stated that the KIADB in terms of a Board resolution has resolved that insofar as acquisition initiated after

01.01.2014, the provisions as regards the determination of compensation contained in the 2013 Act will be made applicable, in line with the view expressed in *Hanuman Morbaji Gudadhe and others vs. State of Maharashtra and others, (2015)6 Mh.LJ 127 at Para 10.*

8. SUBMISSIONS OF SHRI V.LAKSHMINARAYANA, SENIOR ADVOCATE, AND SHRI M.SHIVAPRAKASH AND SHRI JAWAHAR BABU, ADVOCATES

By way of reply, Shri V. Lakshminarayana, learned Senior Advocate appearing for the learned counsel for the petitioners, Shri M. Shivaprakash and Shri Jawahar Babu, in WP 59461-62/2014, contends that Section 24(2) of Act No.30/2013 is a deeming provision. It would apply only under two circumstances:

a) Where physical possession is not taken,

b) Where award was passed five years prior to the date of enforcement of the Act and compensation is not paid.

It is contended that as per the judgment rendered in the case of *Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others, (2014)3 SCC 183,* the entire Land Acquisition Act, 1894 is repealed. What is saved is only the rights envisaged under Section 24(2) of the Act.

The land acquisition proceedings would commence from the date of the preliminary notification being issued and conclusion of the land acquisition proceedings would be when the possession of the land is taken and compensation amount is paid.

It is contended that KIAD Act is a self contained Act in so far as the objects of industrialisation and development of industrial areas is concerned. In so far as the completion of the acquisition proceedings is concerned, since there is no provision under the KIAD Act to pay compensation, it has to fall back on the 1894 Act. This is so in so far as the enquiry proceedings, reference and award proceedings.

It is an admitted fact that though KIAD Act came into effect in 1966, the Land Acquisition Act, 1894 was also being followed

by the State Government for the purpose of passing of an award and payment of compensation. Therefore, applicability of the provisions of the 1894 Act in relation to the award and reference is not disputed.

It is contended that the Board has also conceded that with effect from 01.01.2014, the new Act would be made applicable. Thus, the pending proceedings as on 01.01.2014 are deemed to have continued under the 2013 Act including the provisions of Section 24(2) of the Act.

It is contended that the legislative *casus omissus* cannot be supplied by judicial interpretative process, as held by the Apex Court in *Padma Sundara Rao (dead) and others vs. State of Tamil Nadu and others, 2002(3)SCC 533.* Therefore, lapsing of acquisition proceedings either under Section 24(2) or under Section 25 of the Act cannot be disputed.

When the amended provisions of the earlier statute are necessarily to be read into the later enactment becomes necessary as non-incorporation thereof would render the subsequent Act

wholly unworkable and ineffectual. In this regard, the principles laid down in *M.V.Narasimhan's* case is made applicable. Attention is drawn to *Girnar Traders vs. State Of Maharashtra and others, 2011(3) SCC 1.*

It is pointed out that in *Girnar's* case, the "test of intention" and "test of unworkability" has been discussed. In Para 150, it is held that even if it is a case of legislation by reference, if the amendment Act would defeat the very object of the Act, or when the earlier law and later law, result in an irresolvable conflict and cannot be reconciled and it results in destroying the essence and purpose of the principal Act (the later law), then the legislation by reference has no application.

In Para 157 of *Girnar's* case, it has been laid down as follows:-

> *"Section 23(1-A), 23(2) and 28 of the Land Acquisition Act which o are in consonance with the Scheme of the State Act and in no way obstruct the planned development, rather they ensure proper balance between private and State interest by granting*

just and fair compensation to the claimants. Three bench decision of this court in U.P.Avas Evam Vikas Parishad vs.Jainul Islam reported in 1998(2) SCC 467 has already taken a view that these provisions are to be applied while determining the compensation payable for acquisition of land, we see no reason to differ with the view taken."

Therefore, even in a case of a Town Planning Act, the provisions of the Land Acquisition Act are made applicable.

The answer is even in respect of planning statutes, Central Act 68/1894 is made applicable. Therefore, KIAD Act hitherto was supplemented by the Land Acquisition Act, 1894, based on this analogy, there is no reason not to apply the 2013 Act in place of the repealed statute in view of Section 8 of the General Clauses Act, 1897.

It is contended that the argument that acquisition proceedings being initiated under the 1894 Act being relevant would require a reference to the definition "initiate" or "initiation" or "initiated". The word "initiated" refers to past proceedings. The word "initiate" refers to stages of proceedings. The word

"initiated" includes the proceedings already "initiated" and refers to the stage of the proceedings as on the date when the Act No.30/2013 came into effect.

When acquisition proceedings already initiated, but not concluded, as on 01.01.2014, denotes where physical possession is not taken or payment of compensation is not made despite an award. Therefore, the acquisition proceedings which are pending on 01.01.2014, Section 24(2) would be applicable to the award proceedings despite the acquisition initiated under the KIAD Act.

In view of Section 30 of the KIAD Act read with the word 'initiated' envisage award proceedings pending as on 01.01.2014. The word "proceedings" include original proceedings, appellate proceedings and proceedings upto the Apex Court including proceedings in execution also. Reliance is placed on *Garikapati Veeraya vs. N.Subbiah Choudhry and others, AIR 1957 SC 540; P.L.Kantha Rao and others vs. State of Andhra Pradesh & others, and P.L.Kantha Rao and others vs. State of Andhra Pradesh, AIR 1995 SC 807* in this respect.

The word 'proceedings' includes execution proceedings including a decree passed by a Court wherein a Court which has been substituted by a new Court, by amendment and the decree passed earlier can be executed by a new Court. Reliance is placed on *Babu Lal vs. M/s Hazari Lal Kishori Lal and others, (1982)1 SCC 525,* in this regard.

Insofar as the contention by the learned Additional Advocate General that once vesting has taken place, no divesting is permitted, is concerned, it is asserted that acquisition proceedings under the KIAD Act initiated under Section 28(1) upto Section 28(5) of KIAD Act, only the rights and interest of land is acquired but between Section 28(1) and Section 28(5) of the KIAD Act, there is no provision to take possession of the land after final notification is issued.

If possession had been vested under Section 28(5) of the KIAD Act, there was no need for Section 28(6), Section 28(7) and Section 28(8) of the KIAD Act. Section 28(8) of the KIAD Act is analogous to Section 36(3) of the Bangalore Development

Authority Act, 1976, it implies vesting of the land in the Government and thereafter transferring it to the KIADB. Uniess a transfer takes place by the Government, there is no vesting of land with the KIADB.

Under Section 28(8) of KIAD Act, there are two kinds of vesting – vesting with the Government and vesting with the Board, upon a transfer. Therefore, if it is to be construed that Section 28(5) of the KIAD Act contemplates vesting in possession, then Section 28(8) of the KIAD Act becomes otiose or nugatory. Under these circumstances, the petitioners contend that there is no justification for the respondents to contend that possession is vested under section 28(5) of the KIAD Act. When the possession vests under Section 28(8) of KIAD Act, there is no question of vesting under Section 28(5) of the KIAD Act. By interpreting in the manner suggested by the respondents – State Government and the Board, Section 28(6), 28(7) and 28(8) of the KIAD Act would be rendered otiose. Therefore, such a contention cannot be accepted.

The payment of compensation ought to be proved by cogent material of the same having been offered or deposited for the benefit of the land owner and not to expect the land owner to have demanded it as laid down by the Supreme Court in *Aligarh Development Authority vs. Megh Singh and others, 2016 SCC Online SC 504.* Therefore, there is no reason to presume that the compensation is deemed to have been paid.

It is contended that the acquisition proceedings can be challenged at various stages as laid down by the Apex Court in *Anil Kumar Gupta vs. State of Bidar, (2012)12 SCC 443*, which are as follows.

(i) When the preliminary notification was issued

(ii) When notification under section 6 was issued

(iii) When notice to pass an award was issued under section 9 and 10

(iv) After the award is passed under Section 11-A

(v) When possession is taken or after the possession is taken

(vi) When de-notification of other owners under the same notification similar treatment is not extended to an owner in terms of Article 14 of the Constitution of India, petition can be filed.

It is contended that the remedy provided under Section 24(2) of Act No.30/2013 which is a beneficial piece of legislation to achieve noble social objects and the said provision is in favour of the land owners.

The Supreme Court in *Tukaram Kana Joshi& others vs. Maharashtra Industrial Development Corporation and others, (2013)1 SCC 353 para 17* has held as follows:-

> *"Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not*

permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development."

It is contended that Section 28 of the KIAD Act was sought to be compared to Section 16(2) and Section 17 of the Land Acquisition Act, 1894. It is pointed out that it is a well settled principle of law that so far as Section 17 of the 1894 Act is concerned, it depends upon urgency and acquisition in public interest. The acquisition under the KIAD Act cannot be under any purported urgency clause. There is no similar provision under the KIAD Act. Even under Section 17 of the 1894 Act, 80% of the compensation has to be paid, that too after notice of award under Section 9 and Section 10 of the 1894 Act. Section 28(5) of the KIAD Act cannot be compared with Section 17(1) or Section 17(3) of the 1894 Act.

It is contended that Section 16(1) of the 1894 Act and Section 16(2) of the Karnataka Amendment Act clearly envisages

that vesting takes place only after the award is passed that too when physical possession of the land is taken and compensation is paid. Therefore, Section 24(2) contemplates actual physical possession and not symbolic or paper possession. The Supreme Court in *Delhi Development Authority v/s Sukhbir Singh and others in Civil Appeal No.5811/2015 dated 09.09.2016*, has laid down that the provisions of Section 24(2) is a "deeming provision", Section 11-A contemplates a statutory lapsing and under Section 24(2). the words used are 'deemed to have been lapsed'. This is of great significance and differs from the expression 'lapse', used under Section 11-A of the Act. Therefore, "deemed lapsing" is different from "mere lapsing" used by the legislature.

The Supreme Court has stated in *Girnar Traders v/s State of Maharashtra's case, (2011) 3 SCC 161 para 168* as follows:

> *"There are different kinds of vesting of land as mentioned in the two acts. The state Act has multi-dimensional purposes leading to primary object of*

planned development, while the Central Act has only one dimension i.e. acquisition of land for a specified public purpose. The Land, in terms of section 16 of the central Act shall vest in the state free of encumbrances only when the compensation is paid and possession of the land is taken under that Act. Section 48 of the Central Act empowers the state to withdraw from acquisition of any land of which possession has not been taken, despite the facts that award may have been pronounced in terms of section 11 of the central Act. But once there is complete vesting of land in the state it amounts to transfer of title from owner to the state by fiction of law."

A similar provision fell for consideration before the Supreme Court in *State of U.P. v/s Hari Ram reported in (2013) 4 SCC 280 (para 32).* The provisions of Section 28 of the KIAD Act is analogous to Section 10 of the Urban Land Ceiling Act. The word 'vesting' has been interpreted in para 32 of the said judgment. The word 'vesting' includes right and interest over the property including *de-jure* possession, but not *de-facto* possession.

De-facto possession contemplates physical possession. Therefore, Section 24(2) of the KIAD Act applies in a case where actual physical possession continues with the owner even though *de-jure* possession vests with the Government. Therefore, Section 24(2) of the Act 30/2013 applies.

It is further contended that in the very same judgment, it has been laid down that if a statute is repealed, the question of taking possession under the repealed statute does not arise at all. Therefore, it is in this context that Section 24(2) of Act 30/2013 is enacted. When the entire provisions of the Land Acquisition Act, 1894 is repealed, what is saved under Section 6 of the General Clauses Act is only the rights under Section 24(2). Therefore, *de-facto* possession is saved and the said rights are guaranteed and saved by the Parliament to the land owners. Therefore, the arguments of the respondents that it has no application is not tenable.

The objects and the reasons of Act No.30/2013 is fully discussed and enunciated in *Chikkathayamma's* case in W.P.No.38868-38870/2015 and therefore, the social piece of legislation has to be interpreted in favour of the land owners by applying the beneficial rule of constructions.

It is only after the vesting of possession of the land, he becomes *persona non grata*. Therefore, the same is not applicable in a case where physical possession is not taken.

It is contended that the acquisition may be made under any enactment, but the provisions of passing an award can only be under the 1894 Act as laid down by the Apex Court in *Nagpur Improvement Trust v/s Vithal Rao, (1973) 1 SCC 500.*

If there is a situation where the rigour of Article 14 of the Constitution of India is applicable, the provisions of the 1894 Act has to be made applicable. Reliance is placed on paragraphs 31

& 32 of the judgment in *U.P. Avas Evam Vikas Parishad v/s Jainul Islam & another.*

It is contended that when the provisions of the 1894 Act are applicable by Section 30 of the KIADB Act, the Act does not exclude applicability of the Land Acquisition Act, 1894. Reliance is placed on *Aresh alias Ashok J Mehta (dead) by Lrs v/s Special Tahasildar, Belgaum, Karnataka & another, (2013) 4 SCC 349 paras 21 to 23.*

Even under the 1894 Act, when a consent award is passed, if solatium and interest, are denied, the aggrieved can approach a Court of law. Reliance is placed on *Krishnabai & Others vs. Special Land Acquisition Officer (Claims), Upper Krishna Project & another, ILR 2009 Kar 4417 para 6.*

The acquisition of land for a private company is not permitted under the KIAD Act. Reliance is placed on *Shri*

Ramtanu Co-operative Housing Society Limited and another vs. State of Maharashtra and others, 1970(3) SCC 323 para 21.

Acquisition of land for a private company is not for a public purpose. Acquisition can be permitted only under Chapter VI of the Land Acquisition Act, 1894. Reliance is placed on *Devinder Singh and other vs. State of Punjab and others, AIR 2008 SC 261 para 41.* It has been laid down as follows:

> *"In the case of acquisition of land for a private company, existence of a public purpose being not a requisite criteria other statutory requirements call for a strict compliance being imperative in character."*

Therefore, the acquisition of land under the KIAD Act is only for industrialization and development of industrial area that too by the State Government not by the Board. Thus, the Board is only an implementing authority and not acquiring authority, which is not an aggrieved person to contend Section 24(2) should not be made applicable to land owners.

When an acquisition provision has been enacted to conceive the interest of the owner as a socio-economic piece of legislation, the same has to be interpreted in favour of the land owners. Therefore, the KIAD Act and the 1894 Act are cognate legislation. They must be interpreted as providing for a comprehensive scheme to complete the acquisition proceedings by operation of both the statutes. There is no provision under the KIAD Act dealing with the award and reference proceedings. Section 24(2) speaks of award proceedings. Therefore, to complete the acquisition proceedings even for industrialization, the KIAD Act is bound to follow the provisions of the 1894 Act. Now the Act is repealed. Whenever there is analogous provision of an amended Act, the same will have a reference to the repealed law in terms of Section 8 of the General Clauses Act. Therefore, the petitioner contends that the provisions of the 2013 Act shall be interpreted as a social piece of legislation.

Therefore, wherever award is not passed within one year from 01.01.2014, the acquisition proceedings are deemed to have lapsed under Section 25 of 2013 Act, in view of statement made by the Respondents that the provisions of 2013 Act are applicable the award proceedings and if no award is passed, acquisition proceedings would lapse.

Regarding the manner of taking possession, it is only the actual possession and no statutory presumption is available in view of the judgment of the Supreme Court in the case of *Prahlad Singh & ors v/s Union of India & ors, (2011) 5 SCC 386* and the decision of the Division Bench of this Court in *W.A.No.768/2012 (BDA vs. Dodda Muniswamappa).*

Taking of possession is governed by the principles laid down by the Apex Court in the case of *Patasi Devi v/s State of Haryana, (2012) 9 SCC 503* and in the case of *Magnam Promoters Pvt Ltd v/s Union of India, (2015) 3 SCC 327.*

When a statutory benefit is extended to a citizen, it is the duty of the Court to ensure that the rights derived from the said amendment, shall not be deprived to a citizen having regard to the object of the statutes. Since the right to property is a constitutional right under Article 300A of the Constitution of India and also a human right.

2. Having heard the learned Counsel appearing on behalf of the petitioners and the learned counsel appearing for the respondents, the several legal issues that arise for consideration may be stated as follows :

POINTS FOR CONSIDERATION:

i) Whether Section 3(1) and Sections 28 to 31 of the KIAD Act are repugnant to the provisions of the 2013 Act.

ii) Whether Section 24 of the 2013 Act is applicable to an acquisition initiated under the provisions of the KIAD Act.

iii) Whether there could be a deemed divesting of the acquired land in terms of Section 24 (2) of the 2013 Act, which provides for a lapsing of the acquisition proceedings if the conditions specified therein are satisfied, notwithstanding the deemed vesting of the land in terms of Section 28(5) of the KIAD Act.

iv) Whether the decision of the Apex Court in Civil Appeal no.353/2017, The Special Land Acquisition Officer, KIADB, *Mysore v. Anasuya Bai*, dated 25.1.2017, would entail dismissal of these petitions. (Incidentally, after these petitions were heard and reserved for Orders, the Apex Court having rendered the above decision it is necessary to address this issue).

9. DISCUSSION ON POINT NO. (iv): Whether the decision of the Apex Court in Civil Appeal No.353/2017 dated 25.1.2017 would render these petitions infructuous.

In the light of the above contentions and on consideration of the voluminous authorities cited at the bar, it is felt necessary to

address the last point, as framed above, for consideration - first. Namely, whether the decision of the Apex Court in Civil Appeal 353/2017 would render these petitions infructuous.

The question of law that was considered in the above said appeal was, whether the provisions of the 2013 Act, were applicable to the case before it, when the land was acquired under the provisions of the KIAD Act.

The facts in that case were that there were two parcels of land belonging to the respondents therein, of Anganahalli, Srirangapatna Taluk, Mandya District, measuring about 4 acres and 1 acre, respectively. The State Government had issued a preliminary notification under Section 28(1) of the KIAD Act, as on 15.9.2000, in respect of the said lands. A final notification is said to have been issued, under Section 28(4), as on 15.6.2005, in respect of a total area of 153 acres, including the above lands.

An Advisory Committee with the Deputy Commissioner, Mandya, as its head is said to have been constituted as an authority to assess and fix the market value prevailing as on the

date of notification under Section 28(1) of the KIAD Act, in consultation with the land owners. Meetings were said to have been held with the land owners by the said Committee. It was claimed that a consensus was reached as to the market value - which was said to have been fixed at Rs.6.50 lakh. And that a majority of the land owners had even accepted the compensation amount. However, the respondents had denied that there was any such consensus. Though a letter by them dated 16-8-2006, was placed on record, where they had sought that reasonable and adequate compensation be paid.

However, before the compensation could be disbursed, the family members of the respondents are said to have raised a dispute as regards apportionment of the compensation amongst them. It was hence claimed that the KIADB had deposited the entire amount of compensation payable to the respondents, before the civil court, as on 8-3-2007.

At that stage, a writ petition is said to have been filed by the respondents, praying for quashing of the preliminary and final notifications on the following grounds :

(a) that the Deputy Commissioner had not passed any award under Section 11 of the 1894 Act.

(b) that the entire proceedings had lapsed as no award was passed within two years from the date of the final notification.

(c) that in the absence of a consent award, the Deputy Commissioner ought to have passed a regular award, with in two years from the date of final notification , in terms of Section 11 A of the 1894 Act.

(d) that the respondent had never appeared before the Advisory Committee and had not participated in any meetings and hence had never acceded to the consent award.

The petition was said to have been allowed by a learned Single judge of this court, in part, holding that the respondents were not parties to the consent award. However, the appellants were directed to proceed with the fixing of the market value as on

the date of final notification. The plea of the respondents that the proceedings had lapsed, was negatived.

An appeal is said to have been preferred by the respondents against the said order, before a Division Bench of this court. During the pendency of the appeal, the 2013 Act came into force. The respondents sought amendment of their pleadings claiming that Section 24 of the 2013 Act was applicable to the said acquisition proceedings, and since no award was passed under Section 11 of the 1894 Act, the proceedings had lapsed. The appeal was said to have been allowed and the notifications quashed.

The reasoning of the Division Bench of this court in applying Section 24 of the 2013 Act , was as follows:

> *"13. It is also noted that the acquisition proceedings including preliminary and final declaration have been passed under the provisions of the KIADB Act. But there is no provisions under the KIADB Act to pass an award and award has to be passed only under the provisions of the LA Act, 1894. If the award has to be passed under LA Act, whether the*

new act can be pressed into service to hold the acquisition proceedings are lapsed on account of non-passing of award within a period of 5 years U/s 11. If the award is passed under LA Act, the enquiry has to be conducted by the Deputy Commissioner or Collector before passing the award. Section 11A contemplates if the award is not passed within 2 years from the date of publication of the final declaration, the entire proceedings for acquisition of the land shall automatically stands lapsed.

It is no doubt true the Hon'ble Supreme Court in the case of M. Nagabhushana Vs. State of Karnataka and Others, (2011) 3 SCC 408 has held that Section 11-A of the Act has no application in respect of the land acquired under the provisions of the Karnataka Industrial Areas Development Act. We have to consider in this appeal as to whether Section 24(2) of the New Act is applicable in order to hold that the acquisition proceedings deemed to be lapsed due to non-payment of compensation and non-passing of the award within a period of five years from the date of declaration and with effect from non-payment of compensation to the land owners.

14. The New Act does not say whether the Act is applicable to the land acquired under the provisions of

the Karnataka Land Acquisition Act 1894. What Section 24 says that if the award is not passed U/s 11 of the Act and the compensation is not paid within 5 years or more prior to new act, if the physical possession of the land is taken or not especially the compensation is not paid or deposited in Court such proceedings deem to have been lapsed. In the instant case, it is not case of the respondent that award is not required to be passed under the provisions of LA Act. When the award is required to be passed under LA Act, the respondents cannot contend that the provisions of New Act cannot be made applicable on account of non payment of compensation within a period of five years."

The Apex Court in setting aside the judgment of the Division Bench of this court has referred to the decision in *Nagabushna v. State of Karnataka , (2011) 3 SCC 408,* wherein it was held that when once proceedings are initiated under the KIAD Act, Section 11A of the 1894 Act would not be applicable. This opinion was based on the following rationale expressed in *Nagabushna* :

"22. Having said so, it also needs to be kept in mind that a large chunk of land was acquired by the appellants and a minuscule part thereof belonged to the respondents herein. Further, insofar as respondents are concerned, it even undertook the exercise of fixing the compensation for the acquired land, as per the provisions of the KIAD Act. Advisory Committee was constituted for this purpose. Notices were also sent to all concerned, including the respondents herein. It further transpired that the land owners (except the respondents) participated in the meeting and as per the minutes of the meeting dated 9th September, 2005, consent agreement was arrived at whereby compensation at the rate of Rs.6,50,000/- per acre was fixed. With these minutes, the Advisory Committee remained under the impression that it had accomplished its task by reaching a consensus on the quantum of compensation. Not only this, further steps were taken to pay the compensation at the aforesaid rate to the land owners, whose land was acquired. Insofar as respondents are concerned, due to the disputes inter se between them, the compensation as per the minutes dated 9th September, 2005 was even deposited with the Civil Court. The Civil Court issued notice and the respondents participated in the proceedings before the Civil Court. At that stage, respondents chose to file a writ petition for quashing of the acquisition proceedings coming out with

the plea that they were not consenting parties and had not participated in the meeting dated 9th September, 2005 as even the notice was not received by them. Aforesaid facts disclose that the entire move on the part of the appellants was bonafide one, though there was an accidental slip on their part that insofar as respondents are concerned, no consent to the amount of compensation fixed was given by them. It appears that the appellants-authorities did not proceed further to determine the compensation in respect of respondents' land as they nurtured a bonafide belief that with the fixation of compensation as per the Minutes dated 9th September, 2005 all the land owners, including the respondents, had agreed with the same and, therefore, no further exercise was required. Had the appellants- authorities been more careful, they would have noticed that insofar as respondents herein are concerned, they are not the consenting parties. In that event, they could have brought them on board with other land owners by taking their specific consent as well or proceeded further under Section 29(3) of the KIAD Act.

23. Taking these factors into consideration, the learned Single Judge vide his judgment dated 9th November, 2012 permitted the appellants to proceed on the basis of the Gazette notification dated 15th June,

2005 acquiring the land and determine the compensation by making an award in this behalf. By this process, appellants were allowed to proceed afresh to determine the compensation under Section 29(2) of the KIAD Act by reaching an agreement with the respondents, and failing which to refer the case to the Deputy Commissioner under Section 29(2) for determination of the amount of compensation. The learned Single Judge, by adopting this course of action, specifically rejected the contention of the respondents herein to quash the proceedings.

24. The Division Bench of the High Court by the impugned judgment, however, has quashed the acquisition proceedings itself holding that they have lapsed. For this purpose, the High Court has taken aid of Section 24 of the New LA Act in the following manner:

> *"13. It is also noted that the acquisition proceedings including preliminary and final declaration have been passed under the provisions of the KIADB Act. But there is no provisions under the KIADB Act to pass an award and award has to be passed only under the provisions of the LA Act, 1894. If the award has to be passed under LA Act, whether the new act can be pressed into service to hold the acquisition proceedings are lapsed on account of non-passing of award within a period of 5 years U/s 11. If the award is passed under LA Act, the enquiry has to be conducted by the Deputy Commissioner or Collector before passing the award. Section 11A contemplates if the award is not passed within 2 years from the date of publication of*

the final declaration, the entire proceedings for acquisition of the land shall automatically stands lapsed. It is no doubt true the Hon'ble Supreme Court in the case of M. Nagabhushana Vs. State of Karnataka and Others, (2011) 3 SCC 408 has held that Section 11-A of the Act is no application in respect of the land acquired under the provisions of the Karnataka Industrial Areas Development Act. We have to consider in this appeai as to whether Section 24(2) of the New Act is applicable in order to hold that the acquisition proceedings deemed to be lapsed due to non-payment of compensation and non-passing of the award within a period of five years from the date of declaration and with effect from non-payment of compensation to the land owners.

14. The New Act does not say whether the Act is applicable to the land acquired under the provisions of the Karnataka Land Acquisition Act 1894. What Section 24 says that if the award is not passed U/s 11 of the Act and the compensation is not paid within 5 years or more prior to new act, if the physical possession of the land is taken or not especially the compensation is not paid or deposited in Court such proceedings deem to have been lapsed. In th instant case, it is not case of the respondent that award is not required to be passed under the provisions of LA Act. When the award is required to be passed under LA Act, the respondents cannot contend that the provisions of New Act cannot be made applicable on account of non payment of compensation within a period of five years."

It was thus held by the Apex Court that having regard to the *raison d'etre* for non-application of the 1894 Act and on a parity

of reasoning, Section 24(2) of the 2013 Act was also held not applicable.

However, it should be noticed that the Apex Court in *Nagabushna,* has proceeded on the footing that the validity of the provisions of the KIAD Act had not been challenged. This is evident from the first sentence in paragraph 29 of the said judgment.

Since the validity of the provisions of the KIAD Act are directly in challenge in some of these petitions, it cannot be said that these petitions are rendered infructuous by the said decision of the Apex Court.

10. DISCUSSION ON POINT NO. i) Whether Section 3(1) and Sections 28 to 31 of the KIAD Act are repugnant to the provisions of the 2013 Act.

Insofar as the above question is concerned, the question of repugnancy can arise only when both the Legislatures are competent to legislate with respect to the same subject, viz., a subject included in the Concurrent List (List III). There is no

provision for a Union law to be void by reason of its inconsistency with any State law. But a State law will be void by reason of its being inconsistent with a Union law, subject of course to clause (1) of Article 254 of the Constitution of India.

Article 254 is reproduced hereunder for ready reference.

> "254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States
>
> (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
>
> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant

to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

The conditions for application of clause (1) above is laid down in *M.Karunanidhi v. Union of India*, supra, which reads as follows:-

> *"1. That in order to decide the question of repugnancy, it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.*
>
> *2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.*
>
> *3. That where the two statures occupy a particular field, but there is room or possibility of both*

the statutes operating in the same field without coming in to collision with each other, no repugnancy results.

4. That there is no inconsistency, but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

In Zaverbhai Amaidas vs. State of Bombay, it was held that to establish repugnancy, it is not necessary that one legislation should say "do" what the other legislation say "don't" and that repugnancy might result when both the legislations cover the same field. To make itself clearer, it also agreed with MAXWELL on INTERPRETATION OF STATUTES.

" that if a later statute again describes an offence created by a previous one, and imposes a different punishment or varies the procedure, earlier statute is repealed by the later statute".

But in *Karunanidhi's* Case, the above principle was not applied.

In that case, the Court held:

"Although the ingredients of criminal misconduct as defined in S.5(1)(d) of the Prevention of Corruption Act are substantially the same, in the State Act, than the

one contained in the Central Acts. It is, therefore, manifest that the State Act does not contain any provision which is repugnant to the Central Act, but is a sort of complimentary Act which runs 'pari passu' the Central Acts mentioned above".

In Vijay Kumar Sharma vs State of Karnataka, AIR 1990 SC 2072, the Court summarized the law and laid down eleven ways in which repugnancy or inconsistency may arise.

1. *There may be direct repugnancy between the two provisions;*
2. *Parliament may evince its intention to cover the whole field by laying down an exhaustive code in respect thereof displacing the state Act, provision or provisions in that Act. The Act of Parliament may be either earlier or subsequent to the State law.*
3. *The inconsistency may be demonstrated not necessarily by detailed comparison of the provisions of the two pieces of law, but by their very existence in the statutes;*
4. *Occupying the same field; operational incompatibility; irreconcilability or actual collision in their operation in the same territory by the Act/provision or provisions of the Act*

made by the Parliament and their counterparts in a State law, are some of the true tests;

5. *Intention of Parliament to occupy the same field held by the State Legislature may not be expressly stated but may be implied, which may be gathered by examination of the relevant provisions of the two pieces of legislation occupying the same field;*

6. *If one Act/ provision in an Act makes lawful that which the other declares unlawful, the two to that extent are inconsistent or repugnant. The possibility of obeying both laws by waiving the beneficial part in either set of the provisions is not the sure test;*

7. *If the Parliament makes law conferring a right/ obligation/privilege on a citizen/person and enjoins the authorities to obey the law but if the State law denies the self same rights or privileges, negates the obligation or freezes them and injuncts the authorities to invite or entertain an application and to grant the right/privilege conferred by the Union law subject to the condition imposed therein, the two provisions run on a collision course and repugnancy between the two pieces of law arises thereby;*

8. *Parliament may also repeal the State law either expressly or by necessary implication, but the Court would not always favour repeal by implication. Repeal by implication may be found when the State law is repugnant or inconsistent with the Union law. In other words, where the Central law declares an act or omission lawful while the State law says them unlawful or prescribes irreconcilable penalties/punishments of different kinds, degree or variation in procedure, etc. The inconsistency must appear on the face of the impugned statute /provision/ provisions therein;*

9. *If both pieces of provisions occupying the same field do not deal with the same matter but distinct matters, though cognate or of allied character, there is no repeal by implication;*

10. *The Court should endeavour to give effect to both the pieces of legislation as the Parliament and the Legislatures of the State are empowered by the Constitution to make laws on any subject or subjects enumerated in the Concurrent List (List III of the Seventh Schedule). Only when it finds the incompatibility or irreconcilability of both Acts or provisions or the two law cannot stand together, the Court is entitled to declare*

the State law to be void or repealed by implication;

11. *The assent of the President of India Under Art. 254(2) given to a State law/provision/provisions therein accord only operational validity though repugnant to the Central law; but by subsequent law made by the Parliament or amendment /modification, variation or repeal by an Act of Parliament renders the State law void. The previous assent given by the President does not blow life into a void law."*

It is no doubt laid down in *Shri Ramtanu Co-operative Housing Society Ltd. Case,* supra, while examining the constitutional validity of the Maharashtra Industrial Development Act, 1962, which is said to be *pari materia* to the KIAD Act, that the pith and substance of the Act was establishment , growth and organisation of industries, acquisition of land in that behalf and carrying out the purposes of the Act by setting up the Corporation as one of the limbs or agencies of the Government. The powers and functions of the Corporation showed in no uncertain terms

that the same were all in aid of the principal and predominant purpose of growth and establishment of industries. And that the Corporation was established for that purpose. It was hence held that the Act was a valid piece of legislation.

But in the present context, when viewed from the point of the declared objects as found in the Statement of Objects and Reasons to the 2013 Act, with particular reference to industrialization and industrial corridors and the specific reference to manufacturing zones and the National Manufacturing Policy in the body of the Act, the guiding principles in addressing repugnancy as laid down by the Apex Court in *Vijay Kumar Sharma*'s case being kept in view, the provisions of the KIAD Act if juxtaposed with the provisions of the 2013 Act which contemplates a uniform and consistent development of industries through out the country, with a highly sensitive approach in the acquisition of land and to avoid acquisition of multi-cropped, irrigated land and the process of acquisition itself being preceded by other mandatory checks and balances as to feasibility and

particular concern being placed on rehabilitation and resettlement of displaced land owners. Apart from other multi-pronged ameliorative measures also being kept in view, there does appear a total inconsistency.

In other words, if the main object of the KIAD Act is to secure the establishment of industrial areas in the State of Karnataka and generally to promote the establishment and orderly development of industries therein, but if the provisions of the KIAD Act are silent as regards the criteria for declaring an industrial area and is not adequate and relevant any longer when viewed in the light of the object and tenor of the 2013 Act, which is all encompassing in its breadth and sweep and also has with in its ken the orderly development of industries in tandem with the National Manufacturing Policy. The State Government having adopted the National Manufacturing Policy, the KIAD Act would be rendered redundant unless all the provisions of the 2013 Act, which are introduced to safeguard the interest of the land owners are adhered to. For otherwise, it is incongruous for the State

Government, having adopted the NMP, to apply certain criteria for acquiring lands for purposes of manufacturing zones contemplated under the NMP and to apply a non existent criteria for acquiring land under the provisions of the KIAD Act, to the detriment and in discrimination of the land owners suffering acquisition under the provisions of the KIAD Act.

To elaborate further on the above, the following statements from the Statement of Objects and Reasons to the 2013 Act may be noticed :

> "xxxxxxx
>
> 3. There have been multiple amendments to the Land Acquisition Act, 1894 not only by the Central Government but by the State Governments as well. Further, there has been heightened public concern on land acquisition, especially multi-cropped irrigated land and there is no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement need to be seen as two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement has become necessary. **Hence the proposed legislation proposes to address**

concerns of farmers and those whose livelihoods are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

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9. The National Rehabilitation and Resettlement Policy, 2007 has been formulated on these lines to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. The new policy has been notified in the Official Gazette and has become operative with effect from the 31st October, 2007. Many State Governments have their own Rehabilitation and Resettlement Policies. Many Public Sector Undertakings or agencies also have their own policies in this regard.

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11. "Public purpose" has been comprehensively defined, so that Government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent of the project affected families is to be obtained through a prior informed process. Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

12. To ensure food security, multi-crop irrigated land shall be acquired only as a last resort measure. An equivalent area of culturable wasteland shall be developed, if multi-crop land is acquired. In districts where net sown area is less than 50 per cent of total geographical area, no more than 10 per cent of the net sown area of the district will be acquired.

13. To ensure comprehensive compensation package for the land owners a scientific method for calculation of the market value of the land has been opposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased up to 100 per cent of the total compensation. Where land is acquired for urbanization, 20 per cent of the developed land will be offered to the affected land owners.

14. Comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, house one acre of land in cases of irrigation projects, transportation allowance and resettlement allowance is proposed.

15. Comprehensive rehabilitation and resettlement package for livelihood losers including subsistence allowance, jobs, house, transportation allowance and resettlement allowance is proposed.

16. Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one time financial assistance

of Rs.50,000; twenty-five per cent additional rehabilitation and resettlement benefits for the families settled outside the district; free land for community and social gathering and continuation of reservation in the resettlement area, etc."

The preamble to the Act is relevant :

"**An Act to ensure, in consultation with institutions of local self government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are** affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."

The following provisions of Chapter-I, give some idea of the generous benefits that a land owner would be entitled to on being deprived of his land.

> "2. Application of Act -- (1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely-
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> xxx
>
> iii) **Project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;**
>
> xxx
>
> vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;
>
> xxx
>
> (i) "cost of acquisition" includes -
>
> (i) amount of compensation which includes solatium, any enhanced compensation ordered by the Land Acquisition and Rehabilitation and Resettlement Authority or the Court and interest payable thereon and any other amount determined as payable to the affected families by such Authority or Court;

(ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition;

(iii) cost of acquisition of land and building for settlement of displaced or adversely affected families;

(iv) cost of development of infrastructure and amenities at the resettlement areas;

(v) cost of rehabilitation and resettlement and determined in accordance with the provisions of this Act;

(vi) administrative cost –

(A) for acquisition of land, including both in the project site and out of project area lands, not exceeding such percentage of the cost of compensation as may be specified by the appropriate Government;

(B) for rehabilitation and resettlement of the owners of the land and other affected families whose land has been acquired or proposed to be acquired or other families affected by such acquisition;

(vii) cost of undertaking 'Social impact Assessment study';

Chapter II contemplates the determination of Social impact and Public purpose. It envisages a preliminary investigation for

determination of the above including a public hearing for social impact assessment, and the study being duly published. The appraisal of the Social Impact Assessment Report is further appraised by an expert group. Finally, the State Government makes a further appraisal of the Social Impact Assessment report. There is a complete bar on acquisition of irrigated multi-cropped land, except as a last resort and for certain projects such as railway lines and roads, as laid down in Chapter III.

Chapter IV contains elaborate provisions for determination and payment of compensation.

The deep concern for rehabilitation and resettlement of displaced land owners is demonstrated by Chapters V through VIII being dedicated to ensure the same.

Further according to the NMP, declared by the Government of India as on 4-11-2011, industrial growth is intended to be achieved by the Union government in partnership with the States. The 2013 Act provides for acquisition of land for infrastructure projects, which includes Industrial Corridors and NIMZ, as

designated under the Policy. The NMP is adopted by the State Government vide Government Order dated 27-2-2015. **The Policy further states, while the NIMZ is an important instrumentality, the proposals contained in the policy apply to manufacturing industry through out the country.**

The following guidelines as prescribed under the NMP are relevant :

> "Following guiding principles will be applied by the State Government for the purpose:
>
> i. Preferably in waste lands; infertile and dry lands not suitable for cultivation.
>
> ii. Use of agricultural land to the minimum;
>
> iii. All acquisition proceedings to specify a viable resettlement and rehabilitation plan;
>
> iv. Reasonable access to basic resources like water;
>
> v. It should not be within any ecologically sensitive area or closer than the minimum distance specified for such an area."

Therefore from the above, it is evident that with effect from 1-1-2014, with the coming into force of the 2013 Act, the

compulsory acquisition of land anywhere in the country can only be in accordance with the provisions of the same.

The exception claimed in respect of land acquired under the provisions of the KIAD Act as being incidental to the main purpose of establishment and orderly development of industries and hence to contend that there can be no repugnancy if the exercise of power is under a legislation falling under a legislative head in the State List (List II) vis-a-vis a legislation under the Concurrent List. And that there can be a case of repugnancy only if there is a conflict in respect of laws enacted both by the Parliament and the State legislature under any of the legislative heads under the Concurrent List (List III). To wit, that there could be no repugnancy as between the KIAD Act enacted under the legislative head Entry 24 of List II and the 2013 Act enacted under the legislative head Entry 42 of List III. This argument was valid in the circumstance that the provisions of the 1894 Act contemplated acquisition of land for a 'public purpose ' which did not include industrialization or industrial corridors, specifically.

Hence, it was possible for the State to have enacted the KIAD Act, albeit with reference to the legislative head falling under Entry 24 List II of the Seventh Schedule to the Constitution of India. But it cannot be disputed that the subject, compulsory acquisition of land falls exclusively under Entry 42 of List III. Since acquisition of land for industrial and manufacturing purposes is now declared a primary public purpose under the 2013 Act, the KIAD Act which is silent in all respects as to the feasibility of acquisition of particular land for industrial purposes, the lot of the land owners and their plight and a host of other concerns which the 2013 Act provides for, the working of the KIAD Act should strictly conform to provisions of the 2013 Act prescribing checks and balances, preceding the acquisition of land and in the process of acquisition and thereafter, or perish.

Further, in view of the specific provision under the 2013 Act, namely, Section 103, which lays down that the provisions of the Central Act shall be in addition to and not in derogation of, any other law for the time being in force, the State Government

which is the appropriate government for carrying out the provisions of the Act, cannot exclusively exercise power under the KIAD Act, *de hors* the provisions of the 2013 Act. It is mandatory for the State Government to follow the provisions of the 2013 Act in addition to the provisions of the KIAD Act, if necessary. But in so far as the acquisition of lands for establishment of Industrial corridors, industrial areas or industrial clusters, the 2013 Act is a self contained code by itself and the State government is precluded from overriding the said provisions of the 2013 Act, by resorting to the unbridled powers under the KIAD Act.

The Central Government has also framed The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Compensation, Rehabilitation and Resettlement and Development Plan) Rules,2015. Chapter-II of the 2015 Rules provide for request for land acquisition. Rule 3 providing for request for acquisition of land, contemplates after completion of Social Impact Assessment, wherever applicable and

on receipt of the recommendations of the expert group, if it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, the requiring body or its authorized representative, for whom land is to be acquired shall file the request to the concerned Collector in Form -1. Rule 3(3) provides where the requiring body is the Government, the request shall be filed by the Secretary of the concerned department and in case of public sector undertaking, by the Secretary of the Department dealing with such undertaking.

Rule 4 provides for action by the Collector on receiving such request. The request has to be examined by a Committee of Officers consisting of officers from the Revenue Department, Agricultural Department, Forest Department, Water Resources Department or any other Department as the Collector deems necessary. The said Committee has to make a field visit along with the representatives of the required body to make a preliminary enquiry regarding :-

(i) availability of waste or arid land;

(ii) correctness of the particulars furnished in the request under sub-rule (1) of Rule 3;

(iii) bare minimum land required for the project;

(iv) whether the request is consistent with the provisions of the Act, and submit a report to the Collector.

Clause –B of Rule 4(1) mandates as to the factors that the report of the Committee should include.

Chapter –III provides for preliminary notification for land acquisition and rehabilitation and resettlement scheme. Rule 5 provides for publication of preliminary notification. Rule 6 provides for hearing of objections and making enquiry as provided under section 15(2) of the Act and the Collector ahs to submit a report along with his recommendations on the objection to the appropriate Government for decisions. The report should deal with the matters mentioned in sub-Rule (2).

Chapter IV provides for declaration and award. Rule 10 provides for publication of declaration and acquisition has contemplated in section 19(1) of the Act. Rule 11 provides for

land acquisition ward referred in Section 23. Rule 15 is very important hence it is extracted:-

> "15. Limits of extent of land under sub-section (3) of section 2. – The limits of extent of land referred to in Clause (a) of sub-section (3) of Section 2 shall be twenty hectares in urban areas and forty hectares in rural areas. "

The State Government which is the appropriate Government under the Central Act has made rules known as "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Karnataka) Rules, 2015 published vide Notification No.RD 152 AQB 2013, Bangalore dated 17.10.2015, for carrying out the provisions of the Act.

Chapter-II of the State Rules provide for social impact assessment, under Rules 3 to 15 which can be referred to. Rule -2 contemplates as to how the social impact assessment report, recommendations of the export group etc. have to be considered by the Deputy Commissioner. The

important aspect is that where the land is sought to be acquired for the purposes as specified in sub-section (2) of Section 2 of the Act, the Deputy Commissioner shall also ascertain as to whether the prior consent of the affected families has been obtained in Form IV appended to the Rules.

Chapter-III provides for process of obtaining the prior consent of the affected land owners for acquisition of lands for public private partnership projects and for private companies. Rules 16 to 19 of the Rules in the said Chapter provide the details.

Chapter –IV provides for preliminary notification for acquisition. Rule 20 provides that the preliminary notification issued under Sub-section (1) of Section 11 shall be published in the affected area by way of affixing written notice to the effect on the Grama Panchayath Office and the Office of the Village Accountant.

Rule 22 in Chapter V provides for the manner of public hearing. Rule 28 provides for publication of declaration of

acquisition by the Deputy Commissioner after the requiring body has deposited in full the cost of acquisition of land, and as such, declaration is contemplated under section 19(1) of the Act which is the final notification. Rule 29 of the Rules provide for land acquisition award by Deputy Commissioner or the Authorised Officer as provided under Section 23 of the Act.

The most important aspect of acquisition of lands under the Central Act is the limits of acquisitions of irrigated multi-cropped land. Rule 32 of the State Rules reads as follows:

> 'Rule 32. Limits of Acquisition of Irrigated Multi Cropped Land – Acquisition of Irrigated multi cropped land, in aggregate for all projects, shall not exceed 10% of the total irrigated multi-cropped land of the State and 5% of the total irrigated multi-cropped land for each district. Further, this limitation does not apply for acquisition of lands for public purpose namely linear projects and resettlement of any project displaced families. This limit of extent of land is to be revised, based on the recommendations of an expert group consisting of representatives of agriculture, farmers,

industry, etc., and once in every two years constituted by the State Government."

It is not open for the State Government to acquire lands for the industrial areas under the State Act, especially for establishment of NIMZ, which is a concept under the NMP of the Government of India. Even otherwise, the entire field of establishment of industrial areas is covered under the Central Act, the provisions of the State Act are redundant and such provisions as are directly in conflict with the provisions of the Central Act are repugnant and inoperative, as contemplated under Articles 245 and 246 of the Constitution of India.

The State Government cannot any longer exercise power under Section 3 of the KIAD Act without conforming to the pre-requisites as prescribed under the 2013 Act, nor work the other provisions of the Act without also adhering to other mandatory provisions of the 2013 Act and the Rules thereunder. The Scheme under the KIAD Act as it prevails is inconsistent with the provisions of the 2013 Act in terms of

Article 254 (2) of the Constitution of India and is hence no longer valid as an independent enactment.

11. DISCUSSION ON POINT NO. ii) Whether Section 24 of the 2013 Act is applicable to an acquisition initiated under the provisions of the KIAD Act.

On the next point for consideration as to whether Section 24 (2) of the 2013 Act is applicable to an acquisition initiated under the provisions of the KIAD Act is concerned, it is urged that the said Section is a deeming provision and would apply only where the acquisition is initiated under the 1894 LA Act and reliance is placed on *Delhi Development Authority v. Sukhbir Singh*'s case in this regard. However, it is to be kept in view that the Apex Court in the said case was not examining whether the acquisition had been made under different enactments, like in the instant case. But was dealing with the acquisition made under the 1894 Act. The question that was considered was whether the judgment of the Apex Court in

Pune Municipal Corporation's case required to be reviewed or unsettled. It is in that context that the Apex court expounded upon Section 24 of the 2013 Act and indicated that Section 24 incorporates the limits of legislative tolerance. The Court was not considering the situation like the present one where Section 30 of the KIAD Act, which made applicable the provisions of the 1894 Act by reference to the acquisition made under the provisions of the KIAD Act. The judgment of the Supreme Court of India in the case of *Delhi Development Authority case* is clearly distinguishable.

Reliance was placed on a judgment of the Bombay High Court in the case of *Hanuman Rao Morbaji Gudadhe vs State of Maharashtra and others, reported at 2015 (6) Mh.L.J. 127,* raised a question as to whether Section 24(2) of 2013 Act is applicable to acquisition made under the M.R.T.P. Act. The Court examined the acquisition under the M.R.T.P. Act in the light of the judgment of the Supreme Court in *Girnar's* case and came to the conclusion that primarily the purpose of the

M.R.T.P. Act was to regulate planning and provisions relating to acquisition were only incidental and therefore the reference under Section 126 and 127 of the M.R.T.P. Act to the 1894 Act was a legislation by incorporation and not legislation by reference.

Under Section 126 of the M.R.T.P. Act, there is specific reference to one provision of the 1894 Act, namely, Section 6. This is clear from paragraph 10 of the judgment of the Bombay High Court. The judgment of Bombay High Court in fact directs that the provisions relating to compensation under 2013 Act will have to be read into M.R.T.P. Act in view of the pronouncement of the Judgment by the Supreme Court of India in *Nagpur Improvement Trust case* in order to prevent the M.R.T.P Act from the vice of discrimination. The judgment of the Bombay High Court is clearly distinguishable in as much as the KIAD Act is not an enactment for regulating the planning activity like the Karnataka Town and Country Planning Act, 1961. As the preamble of the KIAD Act

suggests the Act is meant to secure the establishment of Industrial areas in the State of Karnataka. It is needless to state that for the purpose of establishing the industrial areas the enactment contemplates a substantial second part, namely, the power to acquire under Chapter – VII. The objects of under the KIAD Act, is two fold namely (1) establishing industrial area and (2)acquisition of land for the purpose of establishing industrial area. This is fortified by the requirement of declaration under Section 3(1) of the said Act. In structure and content the KIAD Act is different from the structure and content of M.R.T.P. Act and therefore the judgment of the Bombay High Court is clearly inapplicable to the facts of the instant case. In the context of structure of the M.R.T.P. Act, the Bombay High Court Came to the conclusion that the provisions of the 1894 Act, were made part of the M.R.T.P. Act by incorporation and not by reference.

The provisions contained in Section 24 of the 2013 Act are applicable to the acquisition made under Section 28 of the

Karnataka Industrial Areas Development Act, 1966 in view of Section 30 of the Karnataka Industrial Areas Development Act, 1966.

Section 30 of the KIAD Act makes the provisions of the 1894 Act applicable Mutatis Mutandis in respect of the following, namely:

1) Enquiry and award by the Deputy Commissioner
2) Reference to the Court
3) Apportionment of compensation and
4) Payment of compensation.

Section 30 of KIAD Act makes a reference to the provisions of the Land Acquisition Act, 1894

Section 24(2) of 2013 Act has to be read conjointly with Section 30 of the KIAD Act.

The effect of Section 24(2) of the 2013 Act is to divest the title from the acquiring authority and vest the property back in the hands of the land owners. In other words there is statutory divesting and re-vesting of the

property in the hands of the land owners. This is effect of "lapsing" as set out in Section 24(2) of 2013 Act.

There is no reference in Section 30 of KIAD Act to any specific Section of the Land Acquisition Act, 1894.

The contention that Section 24(2) of 2013 Act specifically refers to the acquisition initiated under the 1894 Act and therefore is inapplicable to the acquisition initiated under Section 28(1) of the KIAD Act is erroneous. Section 24 of 2013 Act should not be read in isolation, but should be read in conjunction with Section 30 of the KIAD Act. Section 103 of the 2013 Act advances the contention of the petitioner to the effect that the provisions of 2013 Act have to be read in conjunction with the provisions of the KIAD Act.

Furthermore, by virtue of Section 30 of the KIAD Act, a fiction of acquisition under the 1894 Act is created and that fiction is carried forward by applying the provisions of the 1894 Act in respect of the aforesaid four

subjects to acquisition under the KIAD Act, even though nominally and formatively the acquisition is under Section 28 of the KIAD Act. This is the purport of the expression "Mutatis Mutandis" used in Section 30 of the KIAD Act meaning thereby that all the provisions of the 1894 Act, are applicable in respect of the aforesaid four subjects but with modification in relation to minor details. The minor details include specification of a Section or an Officer and the like. Section 24(1) and 24(2) of the 2013 Act on the face of it seem to suggest their applicability in respect of acquisition proceedings initiated under the 1894 Act. However, that is required to be understood in the context of Section 30 of the KIAD Act, as meaning acquisition under Section 28 of the KIAD Act. In other words the statement in Section 24(2) "initiated under the Land Acquisition Act, 1894" to be read and understood as "initiated under the Karnataka Industrial Areas Development Act, 1966 read with the Land Acquisition Act, 1894." This is a minor change which is

the effect of the use of the phrase "Mutatis Mutandis" under Section 30 of the KIAD Act. It does not amount to re-writing the Section.

Sections 23, 24 and 25 of the 2013 Act relate to enquiry and making of an award. The same are analogous to Sections 11 and 12 of the 1894 Act.

Section 23 of 2013 Act relates to enquiry and award by the Collector which is squarely within the purview of Section 30 of the KIAD Act.

Section 25 is also pertaining to making of an award. Section 24 deals with the effect of not making an award.

Therefore, to say that Section 24 alone is inapplicable and not covered within the scope of Section 30 of the KIAD Act is an artificial construction which requires to be negatived. The scheme under Chapter IV of 2013 Act does not permit of excluding Section 24 from the subject of "enquiry and award" and "payment of compensation".

The distinction made between the acquisition under the 1894 Act and the acquisition under the KIAD Act, giving the benefits in respect of acquisitions under the former and not giving benefits to acquisitions under the latter will amount to unfair discrimination and violating the mandate of Article 14 of the Constitution of India *(See: Nagpur Improvement Trust vs Vithal Rao reported at 1973 (1) SCC 500 Paras28, 29, 30 and 31.)*

The position is further fortified by the fact that under Section 3(za) of the 2013 Act, 'public purpose' means activities specified under section 2(1). Section 2(1) includes the activities listed in the notification of the Government of India dated 27.03.2012.

The notification dated 27.03.2012 includes within it infrastructure development which inter-alia specifies common infrastructure for Industrial Parks, SEZ, Tourism facilities and Agricultural markets which is in *pari material* with Section 2(7a) of the KIAD Act. It would be highly discriminatory and

anomalous to hold that certain benefits accrue only in favour of the former and not in favour of the latter.

Further, Section 114 (1) of the 2013 Act repeals the 1894 Act with effect from 1-1-2014. Section 30 is now to be read as referring to the 2013 Act. It is noticed that in *Offshore Holdings (Private) Limited v. Bangalore Development Authority, (2011)3 SCC 139*, the Supreme Court, when confronted with the question of whether Section 11A of the 1894 Act (introduced by an amendment in 1984) would automatically apply to land acquisitions under the Bangalore Development Authority Act, had held Section 36 therein (a provision akin to Section 30 of the KIAD Act) to be a case of "legislation by incorporation". That finding of the Apex Court , with all due respect to the Apex Court, will have no applicability in determining the applicability of Section 24(2) of the 2013 Act in terms of Section 30 of the KIAD Act, in the backdrop of the wholesale repeal of the 1894 Act and its replacement with the 2013 Act.

The construction which advances a harmonious gel between various statutes within the Constitutional mandate has to be preferred by the Court. The construction therefore which harmoniously brings together Section 24 of the 2013 Act and Section 30 of the Karnataka Industrial Areas Development Act, 1966 has to be preferred to a construction which brings Section 24(2) of the 2013 Act in conflict with Section 30 of the KIAD Act, 1966.

Section 24(2) of the 2013 Act is applicable to acquisition proceedings under the KIAD Act.

Incidentally, it is brought to the attention of this bench that a co-ordinate bench of this court has had occasion to address the question, whether the provisions of the 2013 Act are applicable to the lands sought to be acquired under the provisions of the KIAD Act and if found applicable, then whether Section 24(2) would come into play and to what effect ? *(WP 51377 & WP 52037-042/ 2014, M.Somashekar & others v. State of Karnataka & others, dated 15-12-2016*) And it is held as follows :

"19. In the background of the above, if the effect of provisions of Act 30 of 2013 (New Land Acquisition Act) particularly application of Section 24 of the said Act is examined, the inescapable conclusion would be that no matter whether the acquisition of the land was initiated under the provisions of Land Acquisition Act 1894 or under the provisions of Karnataka Industrial Areas Development Act 1966, for the purpose of payment of compensation, if the amended provisions of the New Land Acquisition Act are applicable, compensation has to be paid as per the said provisions. Otherwise, it will lead to discriminatory treatment resulting in violation of fundamental rights of the land looser under Article 14 of the Constitution. It is useful, at this stage, to refer to Section 24 of the New Land Acquisition Act. It reads as under:-

24. Land acquisition process under Act No.1 of 1984 shall be deemed to have lapsed in certain cases. – (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

20. A careful perusal of Section 24(1) would show that if, as on the date the New Act came into force with effect

from 1.1.2014 no Award under Section 11 of the Land Acquisition Act has been made, then the provisions of the New Act relating to determination of compensation shall be applicable. But, where an Award has already been made, then the proceedings shall continue under the provisions of the Old Act as if the Old Act had not been repealed. This sub section (1) of Section 24 has no application because it is stated in the Statement of objection filed by respondent No.4 that Award was passed on 10.12.2008 and was approved by the Government on 16.11.2009. But, sub section (2) of Section 24 states that where an Award has been made under the provisions of the Land Acquisition Act, 1894, five years or more, prior to the commencement of the New Land Acquisition Act but physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government if it so chooses, shall initiate the said proceedings afresh in accordance with the provisions of the New Act.

21. The question is whether sub section 2 of Section 24 has any application to the facts and circumstances of the present case. As referred to in the preceding paragraphs by considering the ratio of the judgments of the Apex Court that for the purpose of determination and payment

of compensation there cannot be any discrimination between one land owner whose lands are acquired under the Land Acquisition Act and another land owner whose lands are acquired under the Karnataka Industrial Areas Development Act.

22. The New Land Acquisition Act insofar as it provides for right to fair compensation would be applicable even where the acquisition was under the State law namely Karnataka Industrial Areas Development Act wherever the acquisition was incomplete in that Award was not passed or possession was not taken for five years or more from the date of passing of award. By virtue of Section 24(2) cases where acquisition had resulted in passing of the award five years or more prior to the commencement of the New Act but physical possession of the same had not been taken or compensation had not been paid the proceedings shall be deemed to have lapsed. However, the State would be entitled to initiate fresh proceedings in accordance with the provisions of the New Act. The scope, purpose and object of the provisions in the new Act including Section 24(2), if carefully considered, it cannot be equated to or restricted for the scope and object of Section 11A introduced by the Amending Act, Act 68/1984.

23. The purpose and intent behind this provision enacted by the Parliament in the new Act is to ensure that a person who has not been paid compensation for several years cannot be forced to part with his land for payment of compensation under the provisions of the Old Land Acquisition Act which provisions were regarded as insufficient and inadequate for ensuring payment of comprehensive fair compensation package for the land owners by adopting a scientific method for calculation of market value coupled with a comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, houses, transportation allowance and resettlement allowance etc. This is evident from the many laudable objects contained in the statement of objects and reasons to the New Land Acquisition Act. If such benefit is available to a person whose land has been acquired under the Land Acquisition Act and in whose favour though award had been passed under Section 11 of the Land Acquisition Act 1894, five years or more prior to the commencement of the New Land Acquisition Act but physical possession thereof had not been taken or compensation had not been paid, then denial of such benefit in favour of land owners whose lands had been acquired under the provisions of the Karnataka Industrial Areas Development Act, 1966 would be violative of his right under Article 14 of the Constitution of India.

Therefore, Section 24 of the new Act in essence deals with determination of compensation and payment thereof in respect of acquired lands prior to New Land Acquisition Act came into force. The effect of Sub Section 2 of Section 24 would be that cases where acquisition was initiated prior to new Land Acquisition Act came into force which had not been completed despite lapse of five years or more from the date of passing of Award by paying compensation or by taking physical possession of the land, the said proceedings cannot be continued under the Old Act because payment of compensation under the provisions of Old Act would be unrealistic, unfair and result in depriving the owners of their legitimate right for fair compensation guaranteed under Article 300A of the Constitution R/w Article 14 of the Constitution. Therefore, if the Government intends to acquire such land, it has to initiate fresh proceedings whereupon compensation shall be payable based on the market value of the land as on the date of publication of preliminary notification. This result will ensure no matter whether the acquisition proceedings had been initiated under the Land Acquisition Act or under the Karnataka Industrial Areas Development Act, as long as the intention behind the legislation is to provide just and fair compensation by introducing a deeming clause that old acquisition proceedings falling under sub section 2 of Section 24 of the New Land Acquisition Act

stand lapsed. It is immaterial whether the Old Acquisition was under the Land Acquisition Act or under any of the provisions of Karnataka Industrial Areas Development Act because as per Section 29 and 30 of Karnataka Industrial Areas Development Act, the provisions of the Land Acquisition Act shall mutatis mutandis apply in respect of enquiry and award, reference to Court, apportionment of compensation and payment of compensation.

25. In Nagabhushan's case ***(AIR 2011 SC 2113)*** *and in Girinar Traders' case* ***(2011)3 SCC 1)****, the Apex Court has held that KIAD Act and the MRTP Act being self contained Codes, Section 11A which pertained to time frame of acquisition and the consequence of default thereof including lapse of acquisition proceedings was inapplicable for the acquisition under KIAD & MRTP Acts because reference to some of the provisions of the Land Acquisition Act in KIAD & MRTP Act was for a limited purpose and could not be made use of to hamper the purpose and object of the local enactments. In addition, it has been held that the Central Act could not be treated as supplemental to the local enactments.*

26. The scenario has completely changed in the light of enactment of new LA Act. Need for preparation of a social impact assessment report before publication of preliminary notification (Sections 4 to 9 of LA, 2013) exclusion of multi-cropped lands from acquisition (Section 10), provisions for preparation of Rehabilitation and Re-settlement Scheme (Sections 16 to 18) award of 100% solatium, (Section 30) allotment of alternative land, one time subsistence allowance, special provisions for SC/STs, etc., have introduced sea change in the matter of acquisition of land for public purpose.

27. Even a perusal of Sections 107 & 108 of the New Act makes it clear that the State Legislatures are free to enact any law to provide enhanced or additional benefits to the land losers regarding higher compensation or better rehabilitation. This, further makes it clear that while better benefits under the local laws can be extended to the land losers, if the local laws do not provide for atleast minimum benefits as stipulated in the New Land Acquisition Act, 2013, then enforcing such provisions would certainly incur the wrath of Article 14 of the Constitution, in so far as the land losers are concerned.

28. Hence, it has to be stated that if the amendment made to the Land Acquisition Act by enacting a new legislation is not imported into the KIAD Act, it would render the KIAD Act wholly unworkable offending Article 14 especially in the context of the provisions under Section 24(2) of the Act of which we are now concerned. Therefore, the fact that the KIAD Act incorporates certain provisions of the LA Act regarding payment of compensation etc., and therefore, it is a legislation by incorporation does not make any difference in protecting the interest of the land losers in getting fair compensation and other benefits as provided in Section 24(2) of the Act.

29. When it comes to payment of compensation, it includes determination of compensation, the market value payable, the solatium, interest and other amounts as provided under the New Act and also necessarily includes payment of the same compensation to such of the old cases which fall under Section 24. No discrimination can be made with reference to the purpose of acquisition or the provisions of law under which the acquisition is made in the matter of extending the benefits regarding payment of compensation as the same will tantamount to discriminatory treatment violative of the rights of land owners under Article 14 of the Constitution.

Therefore, provisions of Section 24 have to be held to be applicable even in case where the land is acquired under Karnataka Industrial Areas Development Act. "

This bench fully endorses the opinion expressed above and the rationale adopted in the body of the order, portions only of which are extracted above.

12. DISCUSSION ON POINT NO. (iii) Whether there could be a deemed divesting of the acquired land in terms of Section 24(2) of the 2013 Act.

As regards the question whether there could be a deemed divesting of the acquired land in terms of Section 24(2) of the 2013 Act, which provides for a lapsing of the acquisition proceedings if the conditions specified therein are satisfied, notwithstanding the deemed vesting of the land in terms of Section 28(5) of the KIAD Act.

We may usefully extract Sub-sections (5)to (8) of Section 28 of the KIAD Act for ready reference.

"28……

(5) On the publication in the official gazette of the declaration under sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances.

(6) Where any land is vested in the State Government under sub-section (5), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorized by it in this behalf within thirty days of the service of the notice.

(7) If any person refuses or fails to comply with an order made under sub-section (5), the State Government or any officer authorized by6 the State Government in this behalf may take possession of the land and may for that purpose use such force as may be necessary.

(8) Where the land has been acquired for the Board, the State Government, after it has taken possession of the land, may transfer the land to the Board for the purpose for which the land has been acquired."

It is evident from a plain reading of the above that though the land vests absolutely in the State Government, free from all

encumbrances on publication of the declaration in terms of sub-section (4), the State is required to complete the formality of taking over physical possession of the land. It is only thereafter that such possession could be transferred to the KIADB. The process is to be evidenced by acceptable documentation.

Sub-section (2) of Section 24 of the 2013 Act reads thus :

> "(*2*) Notwithstanding anything contained in sub-section (*1*), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:
>
> Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said

> Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

By virtue of Sub-section (2) of Section 24 at what ever point the vesting may have taken place, there is a divesting in terms thereof which provides for lapsing of the acquisition proceedings if the conditions specified therein are satisfied. The expression used in the above provision namely "deemed to have lapsed" is of much significance. It is a deeming fiction enacted so that a putative state of affairs must be imagined, the mind not being boggled at the logical consequence of such putative state of affairs. *(See. Delhi Development Authority v. Sukbhir Singh, supra).*

13. <u>CONCLUSIONS:</u>

The points framed for consideration are answered as follows:-

POINT NO. i) : The State Government cannot any longer exercise power under Section 3 of the KIAD Act without conforming to the pre-requisites as prescribed under the 2013 Act, nor work the other provisions of the Act without also adhering to other mandatory provisions of the 2013 Act and the Rules thereunder. The Scheme under the KIAD Act as it prevails is inconsistent with the provisions of the 2013 Act in terms of Article 254 (2) of the Constitution of India and is hence no longer valid as an independent enactment.

POINT NO.(ii): Section 24(2) of the 2013 Act is applicable to an acquisition initiated under the provisions of the KIAD Act.

POINT NO.(iii): By virtue of Section 24(2) at whatever point of time the vesting of land may have taken place, there is a divesting, in terms thereof, as it provides for a 'lapsing' of the acquisition proceedings, if the conditions specified therein are satisfied.

POINT NO. (iv): The recent decision of the Apex Court in *Civil Appeal No.353/2017, the Special Land Acquisition Officer, KIADB, Mysore vs. Anasuya Bai,* dated 25.1.2017, did not involve a challenge to the constitutional validity of the provisions of the KIAD Act and hence does not advance the case of the respondents.

The petitions to be posted for hearing on facts and the merits of each case for final disposal.

Sd/-
JUDGE

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