

R. RAJASHEKAR AND ORS.

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v.

TRINITY HOUSE BUILDING CO-OPERATIVE SOCIETY AND
ORS.

(Civil Appeal Nos. 9091-9119 of 2016)

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SEPTEMBER 15, 2016

[V. GOPALA GOWDA AND ADARSH KUMAR GOEL, JJ.]

Land Acquisition Act, 1894:

ss.3(f)(vi),4(1),5-A,6(1), 39 r/w. s.41 – Hiring middleman for acquisition of lands from State Government – Respondent-cooperative society entered into agreement with agency to get lands acquired in its favour from State Government for formation of house sites – Proprietor of agency was required to act as a middle man between the State Government and respondent-cooperative society – State Government issued impugned notification u/ss. 4(1) and 6(1) for acquisition of lands for formation of house sites by respondent-cooperative society, stating it to be for ‘public purpose’ u/s.3(f)(vi) – Held: Acquisition proceedings in the instant case cannot be said to be one for ‘public purpose’ as defined u/s.3(f)(vi), especially in light of the fact that not only was there no scheme formulated by the respondent-cooperative society and approved by the State Government for the said purpose before initiating the acquisition proceedings, but evidence clearly indicated that the respondent-cooperative society paid consideration to agency to act as the agent between it and the State Government, to ensure that the lands of the original land owners are acquired in its favour – Hiring middlemen to get lands of poor agricultural workers acquired by the State Government in favour of Cooperative Society is abhorrent and cannot be granted the sanction of law – Thus, impugned notifications issued u/s.4(1) and s.6(1) suffer from not only legal mala fides but also legal malice, which amounts to colourable exercise of power by the State Government and therefore, the same are liable to be quashed – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and re-settlement Act, 2013 – s.24(1)(a) – General Clauses Act, 1897–s.6.

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A *Transfer of property – During pendency of court proceedings – Notification issued by State Government u/s. 4(1) and 6(1) of the Act for acquisition of lands for formation of house sites by respondent-cooperative society – Challenged by some land owners by filing writ petition – Meanwhile, land in question transferred by land owners – Propriety – Held: Lands in question having been*
 B *transferred by the land owners during pendency of the writ proceedings, they were wholly illegal and void ab initio in law – Land Acquisition Act, 1894 – ss.4(1) & 6(1).*

C *Transfer of property – Fraudulent transfer – Hiring middleman for acquisition of lands from State Government – Notification issued by State Government u/s. 4(1) and 6(1) of the Act for acquisition of lands for formation of house sites by respondent-cooperative society – Challenged by some land owners by filing writ petition which was allowed – Within a span of few days thereafter from date of passing the judgment, the middleman executed sale deeds in respect of the*
 D *lands in question in favour of his son, daughter and son-in-law – Held: Middleman played fraud on the land owners and the respondent-cooperative society by executing the sale deeds – Execution of the sale deeds was void ab initio in law – Land Acquisition Act, 1894 – ss.4(1) & 6(1).*

E *Administrative Law:*

Eminent domain power of the State – Malafide exercise of power – Violation of provisions of the Land Acquisition Act by the State – Held: The State exercised its eminent domain power of acquisition by acquiring lands of poor agricultural workers at the instance of
 F *a middleman, which amounted to malafide exercise of power – State has blatantly violated the provisions of the Act and law laid down by the Supreme Court.*

Disposing of the appeals, the Court

G **HELD: 1. On perusal of the conditions incorporated in the agreement it was clear that agency, M/s Srinivasa Enterprises, represented by its proprietor Mr. S. Rangarajan, had agreed to undertake the responsibility to get the lands mentioned therein acquired in favour of the respondent-society from the State Government and prepare a Layout Plan as per the regulations of the Bangalore Development Authority (“BDA”) and Town**
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Planning Authority, and to get the plan sanctioned by BDA in favour of the respondent-society. In addition to the aforesaid responsibility, he had also undertaken to execute the layout work in accordance with the sanctioned layout plan under the supervision of the BDA and get the sites released from the said authority in favour of the respondent-society. Mr. S. Rangarajan was essentially required to act as a middleman between the respondent-Society and the state government to ensure that lands were acquired in favour of the respondent-society for the purpose of its housing project. Further, between the years 1985 and 1987, the respondent land owners had executed power of attorney(s) of the lands in favour of Mr. S. Rangarajan. [Paras 28, 29 and 30] [782-C-D; 783-B]

2. The stand of the respondent-Society was that the acquisition of lands by the State Government was u/s.3(f)(vi) of the Land Acquisition Act, 1894 and that a scheme had been submitted and the same had been approved. But from a perusal of the original acquisition file of the State Government, it was clear that there was no such scheme and no prior approval of the same by the State Government as required u/s.3(f)(vi) of the L.A. Act. Thus, in the light of the Supreme Court judgments referred and in the absence of framing of scheme by the respondent-Society and approval of the same by the State Government as required u/s.3(f)(vi) of the L.A. Act, the Division Bench, holding that communication referred amounts to approval of the scheme, was wholly erroneous in law for the reason that neither the Three Men Committee, nor the State Level Co-ordination Committee even adverted to the said letter in their proceedings. Further, no details were forthcoming from the original file regarding the details of the scheme, and the application of mind by the State Government to approve the same. The principle of law that 'an agreement under which a party to an agreement is required to influence a statutory authority and to procure a decision favourable to the other party, is certainly opposed to public policy'. In the light of the decisions of this Court, as well as the wording of s.3(f)(vi) of the L.A. Act, the acquisition proceedings in the instant case cannot be said to be one for 'public purpose' as defined u/s.3(f)(vi) of the L.A. Act, especially in the light of the fact that not only was there no scheme formulated by the respondent-society

A and approved by the State Government for the said purpose before
 initiating the acquisition proceedings, but that the evidence on
 record clearly indicates that the respondent-society paid
 B consideration to Mr. S. Rangarajan to act as the agent between it
 and the State Government, to ensure that the lands of the original
 land owners were acquired in its favour. Upholding such an
 C acquisition would be akin to approving to such type of agreements
 which were opposed to public policy and the same cannot be
 allowed under any circumstances, as the concept of hiring
 D middlemen to get lands of the poor agricultural workers acquired
 by the State Government in favour of a Cooperative Society was
 abhorrent and cannot be granted the sanction of law. Thus, the
 impugned notifications issued under ss.4(1), 6(1) of the L.A. Act
 are bad in law as the same suffers from not only legal mala fides
 but also legal malice, which amounts to colourable exercise of
 power by the State Government and therefore, the same are liable
 to be quashed. [Paras 29, 33, 34 and 37] [791-E-G, H; 792-A-C;
 793-D]

3. The State Government did not even take into
 consideration the finding of the Committee report, which found
 that the respondent-Society was issuing membership to persons
 E fraudulently, including to those persons who were not even
 residing within the area of operation of the jurisdiction of the
 society. Further, the acquisition of lands of two different villages
 by issuing the impugned notifications by the State Government
 in exercise of its eminent domain power at the instance of a
 F middleman amounts to a mala fide exercise of power by the State
 Government. This is further made clear from the stand of the
 State Government reflected throughout the proceedings, not just
 before this Court, but also before the High Court, where it
 remained a silent spectator to the proceedings, and neither
 G actively defended the acquisition of lands nor opposed it. This
 stand by the State Government clearly goes to show the
 seriousness in which it has exercised its eminent domain power
 in such important case of acquisition of lands of poor agricultural
 workers in blatant violation of the provisions of the L.A. Act and
 law laid down by the Supreme Court. [Para 36] [792-G-H; 793-A-
 C]

H 4. The respondent-original landowners in the first appeal.

had executed power of attorney(s) in favour of Mr. S. Rangarajan to facilitate him to get the lands acquired in favour of the respondent-Society. The acquisition proceedings were initiated and the notifications u/ss. 4(1) and 6(1) of the L.A. Act were issued. Some of the respondent-original landowners objected to the same by submitting their objections to the proposed acquisition of their lands before the Land Acquisition Officer after s.4(1) notification was published. Objections filed by land owners had been mechanically overruled by the Land Acquisition Officer and the State Government without application of mind to the facts of the case and the provisions of the L.A. Act. After the Writ Petitions were allowed by the Single Judge of the High Court, the middleman, Mr. S. Rangarajan played fraud on the land owners and the society by making use of said Power of Attorney(s) and executed the sale deeds in favour of his son, daughter and son-in-law who are the appellants in the appeals arising out of first batch of appeals, within a span of a few days from the date of passing the judgment by the Single Judge in the writ petitions. The said action of Mr. S. Rangarajan tantamounts to fraud played by him upon the respondent-original landowners and therefore, the said transaction of executing the sale deeds in favour of his son, daughter and son in law is *void ab initio* in law. Insofar the sale in favour of the appellants in the second batch of appeals is concerned during the pendency of the writ petitions, the same is also *void ab initio* in law as the same happened during the pendency of the Writ Petition before the Single Judge of the High Court.[Paras 43 and 44] [796-D-H; 797-A]

H.M.T. House Building Co-Operative Society v. Syed Khader (1995) 2 SCC 677; 1995 (2) SCR 200 – relied on.

H.M.T. House Building Cooperative Society v. M. Venkataswamappa (1995) 3 SCC 128; *Bangalore City Cooperative Housing Society Ltd.v. State of Karnataka* (2012) 3 SCC 727; 2012 (3) SCR 295; *B. Anjanappa and Ors. v.Vyalikaval House Building Cooperative Society Limited and Ors.* (2012) 10 SCC 184; *Kanaka Gruha Nirmana Sahakara Sangha v. Narayanamma* (2003) 1 SCC 228 : 2002 (3) Suppl. SCR 97; *Sumitramma v. State of Karnataka* SLP (C) No. 10270

- A of 1996, decided on 04.10.1996; *Muniyappa v. State of Karnataka* SLP (C) No. 14681 of 1995 decided on 04.10.1996; *U.P. Awas Evam Vikas Parishad v. GyanDevi (D) by LRS. & Ors.* (1995) 2 SCC 326; 1994 (4) Suppl. SCR 646; *Narayana Reddy v. State of Karnataka* ILR 1991 Kar 2248; *Rattan Chand Hira Chand v. Askar Nawaz Jung* (1991) 3 SCC 67; 1991 (1) SCR 327; *Vyalikaval House Building Coop. Society v. V. Chandrappa* (2007) 9 SCC 304 ; 2007 (2) SCR 277; *Uddar Gagan Properties Ltd. v. Sant Singh & Ors.* 2016 AIR 2526 – referred to.

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Case Law Reference

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|---|-------------------------|-------------|---------|
| | 1995 (2) SCR 200 | relied on | Para 11 |
| | (1995) 3 SCC 128 | referred to | Para 14 |
| | 2012 (3) SCR 295 | referred to | Para 14 |
| D | (2012) 10 SCC 184 | referred to | Para 14 |
| | 2002 (3) Suppl. SCR 97 | referred to | Para 14 |
| | 1994 (4) Suppl. SCR 646 | referred to | Para 25 |
| | ILR 1991 Kar 2248 | referred to | Para 30 |
| | 1991 (1) SCR 327 | referred to | Para 30 |
| E | 2007 (2) SCR 277 | referred to | Para 32 |
| | 2016 AIR 2526 | referred to | Para 44 |

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9091-9119 of 2016.

- F From the Judgment and Order dated 06.05.2004 of the Division Bench of the High Court of Karnataka, Bangalore in Writ Appeal Nos. 7543-7557 and 7558-7571 of 1996

WITH

C.A. No. 9120-9148 of 2016

- G C.A. No. 9149-9152 of 2016.

H V. Giri, Basava Prabhu S. Patil, Shanti Bhushan, H. N. Nagamohan Das, Ravindra Shrivastava, Sr. Advs., R. S. Hegde, Chandra Prakash, B. N. Prakash, K. R. Krishnamurthy, Mrs. Farhat Jahan Rehmani, Shanti Prakash, Rajeev Singh, Anirudh Sanganeria, Chinmay Deshpande, Amjid Maqbool, A. S. Bhasme, Kartik Seth, Subhash Chandra Sagar, Ms.

Jennifer John, E. C. Vidya Sagar, C. M. Angadi, Irshad Ahmad, V. N. Raghupathy, Parikshit P. Angadi, Adv. Ms. Yugandhara Pawar Jha, Prassana Mohan, Pulkit Tare, Kunal Verma, Ashok K. Mahajan, Advs. for the appearing parties. A

The Judgment of the Court was delivered by

V. GOPALA GOWDA, J. 1. Leave granted in all the Special Leave Petitions. B

2. The present appeals arise out of the common impugned judgment and order dated 06.05.2004 in Writ Appeal Nos. 7543-7557 of 1996 and connected matters passed by the Division Bench of the High Court of Karnataka, wherein the judgment and order dated 12.07.1996, passed by the learned Single Judge of the High Court in Writ Petition Nos. 8188-8201 of 1989 and other connected petitions quashing the acquisition notifications issued under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "L.A. Act") was set aside. C

3. The relevant facts which are required for us to appreciate the rival legal contentions advanced on behalf of the parties are stated in brief hereunder: D

The lands involved in all these acquisition proceedings are agricultural lands belonging to poor agriculturalists. On 09.01.1984, Trinity House Building Co-Operative Society (hereinafter referred to as the "respondent-Society") was registered with the object of providing sites for building residential houses for its members. On 12.03.1985, the said society, represented by its President and Vice President entered into an agreement with M/S Srinivasa Enterprises, represented by its proprietor, Mr. S. Rangarajan. The said agreement was entered into between the parties essentially for getting the lands acquired in favour of the respondent-Society. The relevant clauses of the agreement will be extracted in the reasoning portion of the judgment. As per the agreement, a contract of agency was created in favour of Mr. S. Rangarajan to act as a middleman between the respondent-Society and the State Government to get the lands mentioned therein acquired in favour of the respondent-Society. E F G

4. It is also an undisputed fact that between 06.05.1987 and 12.06.1989, the land owners of the lands mentioned in the agreement dated 12.03.1985 have also executed power of attorney(s) in favour of Mr. S. Rangarajan. The state government of Karnataka by its order H

A dated 23.06.1986, fixed the last date as 30.06.1984 for the registration of the societies. The respondent-Society finds a place at Serial No. 43 in the annexure attached to the above government order.

B 5. By way of order dated 30.04.1987, the state government of Karnataka constituted a 'Three Men Committee' to verify the claims of land for acquisition being made by the various societies, and a State level Co-ordination Committee also was constituted by the Government to inquire into the affairs of the society before recommending their claim for acquisition.

C 6. The case of the respondent-Society came up for consideration before the State Level Coordination Committee on 25.09.1987. The State Level Coordination Committee, without application of mind to the facts of the case, cleared the case of the respondent-Society for acquisition of lands in its favour. The relevant portion pertaining to the Society reads thus:

D "14. Trinity HBSC: Avalahalli and Herohalli (correct name Harohalli) villages, cleared for acquisition of 94-18 acres, Avalahalli (73-33 Acres) and Herohalli (22-25 acres)(both in Yelahanka Bobli) (Action: Revenue Department)"

E On 10.03.1988, the Additional Registrar of Co-Operative Societies, Bangalore passed an order under Section 64 of the Karnataka Co-operative Societies Act, 1959, to inquire into certain allegations made against 98 House Building Co-Operative Societies of Bangalore City, including the respondent-Society, and appointed Sri G.V.K. Rao, the then Controller of Weights and Measures to investigate into the allegations of irregularities and malpractices against the concerned societies.

F 7. In the meanwhile, on 15.04.1988, an agreement was entered into between the state government of Karnataka and the respondent-Society as required under Section 39 read with Section 41 of Part VII of the L.A. Act. The relevant portions of the Agreement are extracted hereunder:

G "AND WHEREAS THE SOCIETY has applied to the Government of Karnataka (hereinafter referred to as "THE GOVERNMENT" that certain land more particularly described in the schedule hereto annexed and hereinafter referred to as "THE SAID LAND" should be acquired under the provisions of the Land Acquisition Act, 1894 (I of 1894) hereinafter referred to

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as “the said Act” for the following purpose namely: A

Formation of sites and construction of houses to the members of the trinity House Building Co-Operative Society Ltd. at Avalahalli and Herohalli, Yelahanka hobli, Bangalore North Taluk, Bangalore District.

AND WHEREAS the Government having caused an inquiry to be made in conformity with the provisions of the said Act and being satisfied as a result of such inquiry that the acquisition of the said land is needed for the purpose.” B

8. Subsequently, on 09.05.1988, the report of the G.V.K. Rao Committee was submitted to the Government for its action. The Report found irregularities in the manner in which the respondent-Society has granted membership to its members. It was stated in the report that the Vice President of the respondent-Society accepted these lapses and even attempted to justify the same. C

9. Even after the G.V.K. Rao Committee submitted its report, the state government of Karnataka proceeded to issue the preliminary notification under Section 4(1) of the L.A. Act, which was published in the official gazette dated 09.06.1988, proposing to acquire the lands in question to the extent of 92 acres 38 guntas in Avalahalli and Herohalli villages of Yelahanka Hobli, Bangalore North Taluk, Bangalore District in favour of the respondent-Society. D E

10. Subsequently, around 33 Objection Petitions were filed before the Land Acquisition Officer by the landowners, which were all rejected under the inquiry conducted by him under Section 5-A(2) of the L.A. Act. The objections filed by some of the landowners were rejected by land acquisition officer primarily on the ground that the objections are not valid, and that the concerned lands come in the middle of the layout and that the lands are being acquired for the formation of house sites by the respondent society, which is a public purpose as per the definition of Section 3 (f) (vi) of the L.A. Act. On 18.03.1999, the state government issued the final notification under Section 6(1) of the L.A. Act declaring that the lands were required for public purpose without proper application of mind to the report received from the Land Acquisition Officer. The relevant portion of the notification is extracted hereunder: F G

“And whereas the Government of Karnataka is satisfied after considering the report of the special Deputy Commissioner, H

A Bangalore District, Bangalore under sub-section (2) of Section 5A and section 6(1) of special Land Acquisition Act (Central Act 1 of 1894) as amended by Karnataka Act No. 17 of 1961 and Land Acquisition (Amendment Act 1984) that the said lands are needed to be acquired for the purpose specified above.”

B 11. Aggrieved of the impugned acquisition notifications, the landowners challenged the validity of the same by way of filing Writ
 C Petitions before the High Court of Karnataka urging various legal grounds and prayed for quashing the same. The learned single Judge of the High Court, after hearing the parties arrived at the conclusion that the facts of the case were similar to those in the decision of this Court in the case of
 D *H.M.T. House Building Co-Operative Society v. Syed Khader*¹. On the facts of the case, the learned single Judge, by way of common
 E judgment and order dated 12.07.1996 held as under:

D “In the instant case, the 4th respondent along with the statement of objections has produced Audit Report as Annexure-I. In the
 E said report there is reference that the landowners have been paid the consideration for their lands through M/S Sree Srinivasa Enterprises. There is also a reference that the society entered into an agreement dated 13.03.1985 with that of M/S Sree Srinivasa Enterprises and as per the said agreement the society has to pay Rs. 160/- per sq. yard to M/S Sree Srinivasa Enterprises.....

F In the statement of objections it is stated that the society through the agency of M/S Srinivasa Enterprises, represented by its proprietor has made payments to the landowners. This fact shows that the facts involved in these petitions are identical with that of
 G the case involved in the decision of HMT House Building Co-Operative Society (supra). The Supreme Court in the said decision has held that the power u/s 4(1) and 6(1) of the Act has been exercised for extraneous consideration at the instance of the persons who have no role in the decision making process. In the said view of the matter, I hold that the decision rendered by the Supreme Court is applicable in all fours and therefore the impugned notifications are liable to be quashed. In view of the decision of the Supreme Court referred to above, I hold that the petitioners are entitled to challenge the impugned acquisition since the land

H ¹ (1995) 2 SCC 677

acquisition proceedings is the product of colourable exercise of power at the instance of the third parties.” A

The learned single Judge has further held that the lands could not have been acquired by the state government in favour of a society for the purpose of providing residential sites to its members without following the procedure provided under Part VII of the L.A. Act. The learned single Judge accordingly, quashed the impugned notifications and also the acquisition proceedings in exercise of the extraordinary and discretionary power under Article 226 of the Constitution of India. B

12. Aggrieved of the common judgment and order passed by the learned Single Judge, the respondent-Society filed Writ Appeals before the Division Bench of the High Court challenging the correctness of the same urging certain legal grounds. The Division Bench of the High Court held that there was no evidence on record to suggest that the “outside agency” (M/s Srinivasa Enterprises) had influenced the acquisition proceedings. On the other hand, it is clear from the material placed on record that the case of the respondent-Society was considered by the State Level Co-ordination Committee on 25.09.1987, and on the basis of the clearance granted by the Committee the state government granted approval to acquire the lands in question. Accordingly, the Division Bench, by way of common final impugned judgment and order dated 06.05.2004 allowed the appeals and set aside the judgment and order passed by the learned single judge and restored the acquisition proceedings. Hence, the present appeals. C D E

13. We have heard Mr. Shekhar Naphade, Mr. V. Giri and Mr. Basava Prabhu S. Patil, the learned senior counsel appearing on behalf of the appellants and Mr. Shanti Bhushan, learned senior counsel appearing on behalf of the respondent-Society and Mr. H.N. Nagamohan Das, the learned senior counsel appearing on behalf of the respondent-original landowners in the first two appeals filed by the so-called purchasers. F

14. The learned senior counsel appearing on behalf of the appellants vehemently question the correctness of the findings and reasons recorded by the Division Bench of the High Court in the impugned judgment and order. It is contended that the findings and reasons recorded on the contentious points are not only erroneous in law but also suffer from error in law. They place strong reliance on the three judge bench decision of this Court in the case of *HMT House Building Cooperative Society* H

A (supra), which has been followed in the subsequent decisions of this Court in the cases of *H.M.T. House Building Cooperative Society v. M. Venkataswamappa*², *Bangalore City Cooperative Housing Society Ltd. v. State of Karnataka*³, *B. Anjanappa and Ors. v. Vyalikaval House Building Cooperative Society Limited and Ors.*⁴.

B The learned senior counsel further sought to distinguish the decision of this Court in the case of *Kanaka Gruha Nirmana Sahakara Sangha v. Narayanamma*⁵, upon which strong reliance has been placed by the Division Bench of the High Court, which has been followed by this Court in the cases of *Sumitramma v. State of Karnataka*⁶ and *Muniyappa v. State of Karnataka*⁷. It is submitted that the reliance placed upon the

C said judgments by the Division Bench of the High Court, in the absence of a scheme framed and approved by the government as required under Section 3 (f)(vi) of the L.A. Act in favour of the respondent-Society, is held to be violative of not only the statutory provisions of law, but also the decisions of this Court referred to supra.

D 15. It is further contended by the learned senior counsel appearing on behalf of the appellants that the framing of a scheme and its prior approval by the state government is sine qua non for initiating acquisition proceedings for the purpose of Section 3(f)(vi) of the L.A. Act. It is submitted that in the instant case, neither any such scheme has been

E framed by the respondent-Society nor has there been any approval accorded by the state government before initiating land acquisition proceedings in its favour and therefore, they submit that the entire proceedings are vitiated in law.

F 16. It is further submitted by the learned senior counsel that this Court in the case of *HMT House Building Co-Operative Society* (supra) elaborated upon the scope of the term housing for the purpose of Section 3(f)(vi) of the L.A. Act. It was held therein as under:

“19. According to us, in Section 3(f)(vi) the expression “housing” has been used along with educational and health schemes. As such the housing scheme contemplated by Section 3(f)(vi) shall

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² (1995) 3 SCC 128

³ (2012) 3 SCC 727

⁴ (2012) 10 SCC 184

⁵ (2003) 1 SCC 228

⁶ SLP (C) No. 10270 of 1996, decided on 04.10.1996

⁷ SLP (C) No. 14681 of 1995 decided on 04.10.1996

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

(emphasis laid by this Court)

17. It is further submitted that a perusal of the above extracted portion of the judgment would show that prior approval of the government to the Housing Scheme, as contemplated under Section 3(f) (vi) of the L.A. Act is a condition precedent for the exercise of eminent domain power by the state government for acquisition of lands for the purpose of the housing scheme of a Co-operative society. Consequently, the existence of Housing Scheme framed by the respondent-Society is a pre-condition for grant of approval of the same by the State Government.

Further reliance is placed on the decision of this Court in the case of *B. Anjanappa* (supra), wherein it was held as under:

“20. We then enquired from Shri Bhat whether his client had submitted housing scheme for the approval of the State Government. Shri Bhat responded to the Court’s query by relying upon the recommendations made by the State Level Coordination Committee for the acquisition of 179 acres, one and half guntas land. We have carefully gone through the recommendations of the State Level Coordination Committee but do not find any trace of housing scheme which was under the consideration of the Committee.

A 21. Shri Bhat then relied upon the approval accorded by the State Government for the acquisition of land and the directions issued to Deputy Commissioner, Bangalore to issue notification under Section 4(1) of the 1894 Act. He also relied upon the judgment in Kanaka Gruha Nirmana Sahakara Sangha v. Narayanamma.

B 22. In Bangalore City Cooperative Housing Society Limited v. State of Karnataka and Ors. decided on 2.2.2012, this Court considered the question whether the approval granted by the State Government for the acquisition of land can be considered as an approval of the housing scheme within the meaning of Section 3(f)(vi) of the Act and answered the same in negative.

C 23. The judgment in Kanak Gruha Nirmana Sahakara Sangha v. Narayanamma (supra), if read in the light of the 1st and 2nd HMT judgments and the finding recorded by us that Respondent No. 1 had not framed any housing scheme and secured its approval from the State Government, the direction given to the Deputy Commissioner to issue notification under Section 4(1) cannot be treated as the State Government's approval of the housing scheme framed by Respondent No. 1. It is also apposite to note that in Kanak Gruha's case, this Court was not called upon to consider a case in which the State Government had come out with a specific stand that the housing society had not framed any scheme."

D 18. In the instant case there was no scheme framed by the respondent-Society for the purpose of providing housing sites to its members and therefore, no prior approval could have been accorded to it by the State Government. It is submitted that the cut-off date for registration of societies and enrolment of members being 30.06.1984, and the respondent-Society having been registered just before the said cut-off date, i.e. on 01.02.1984, and there being no Board of Directors constituted prior to December 1984, and therefore, it could not have enrolled any members before the cut off date. As such, there was no scheme framed before the cut off date. In the absence of the same, there could not have been any government approval of the scheme for initiating acquisition proceedings, so as to justify the acquisition of lands under Section 3(f) (vi) of the L.A. Act. It is further submitted by the learned senior counsel that the letter dated 26.11.1987; on which reliance has been placed by the division bench of the High Court in the impugned judgment also does not amount to an "approval" of a scheme in law. The

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letter reads as under:

“Government of Karnataka
Karnataka Government Secretariat,
Vidhana Soudha,
Bangalore, dated 26.11.1987

No.RD 77 AQB 86

From :

The Revenue Commissioner and
Secretary to Government,
Revenue Department,
Bangalore.

To

The Special Deputy Commissioner,
Bangalore.

Sir,

Sub : Acquisition of land in favour of Trinity House Building
Co-op. Society

I am directed to convey the approval of Government for initiating the acquisition proceedings for an extent of 94-18 acres of land in Avalahalli and Harohalli village in favour of Trinity House Building Co-Op. Society as recommended by the 3 men Committee and the State Level Co-Ordination Committee.

The extent of land to be notified under Section 4(1) may be selected out of the list of Sy. No. Furnished by the 3 men committee.....”

19. It is submitted that the above communication does not reflect the existence of any Housing Scheme and the application of mind by the state Government for according approval thereto. It mechanically directs for publication of the notification under Section 4(1) of the L.A. Act.

20. The learned senior counsel appearing on behalf of the appellants contend that the lands in the instant case could not have been acquired in favour of the respondent-Society in the absence of there being an housing scheme framed by it and approval of the same. It is thus, contended that acquisition of lands in the instant case is violative of both

A the statutory provisions of law as well as the law laid down by this Court.

21. On the other hand, Mr. Shanti Bhushan, the learned senior counsel appearing on behalf of the respondent-Society vehemently opposes the legal contentions advanced on behalf of the learned senior
B counsel appearing on behalf of the appellants and sought to justify the impugned judgment and order by placing strong reliance on the decision of this Court in the case of *Kanaka Gruha* (supra). The learned senior counsel further submits that the state government after accepting the report of Three Men Committee and State High Level Co-ordination
C Committee, by way of its letter dated 26.11.1987, granted approval for acquisition of lands in question in favour of the respondent-Society, the relevant portion of which has been extracted supra.

22. The learned senior counsel further questions the locus standi of the appellants in filing the first batch and second batch of appeals. It is submitted that the agreement dated 12.05.1985 entered into between
D the respondent-Society and M/s. Srinivasa Enterprises stipulates the respondent-Society to pay consideration to Mr. S. Rangarajan for getting the layout plan approved, costs of the entire lands purchased, execution of layout work etc. It is submitted that the original landowners in the instant case executed the general power of attorney in favour of Mr.
E S. Rangarajan to get the lands in question acquired. It is further submitted that the preliminary notification was issued under Section 4(1) of the L.A. Act dated 09.06.1988, and the final notification issued under Section 6(1) of the L.A. Act dated 18.03.1989 were challenged by the respondent-original landowners by way of Writ Petitions before the High
F Court of Karnataka, wherein the learned single judge, by way of common judgment and order dated 12.07.1996 quashed the land acquisition proceedings. It is submitted that within a few days, Mr. S. Rangarajan sold the lands in question in favour of his daughter, son and son in law, who are the appellants in first batch of appeals. It is contended that the
G purported sale transactions in respect of lands covered in the acquisition notifications is illegal as the same is nothing but fraud played by the said middleman on the original land owners and the society with a mala fide intention to deprive the landowners of their constitutional rights, thereby deceiving not only the original landowners, but also the respondent-Society. It is thus, contended that since the alleged sale of lands in favour of some of the appellants by Mr. Rangarajan on the basis of the power
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of attorney executed by the landowners is *void ab initio* in law, they have no *locus standi* to challenge the legality of the impugned judgment and acquisition proceedings in respect of the lands involved in these proceedings before this Court. A

23. Mr. H.N. Nagamohan Das, the learned senior counsel appearing on behalf of the respondent original landowners-farmers sought to justify the impugned judgment and order passed by the Division Bench of the High Court. It is further submitted by the learned senior counsel that during the pendency of the Writ Appeals before the High Court, there came to be a compromise between the farmers and the society. The compromise is immensely beneficial to farmers as for the acquisition of every acre, each one of them are entitled for allotment of one site and the society has agreed to deposit the award amount as determined by the Land Acquisition Officer. The learned senior counsel submits that if the acquisition proceedings are not upheld, the farmers will be deprived of both the award amount as well as a site for every acre of land. In such a scenario, the only party which stands to gain is the fraudulent purchasers of the lands. Alternatively, he submits that even if the acquisition proceedings are quashed on the basis of the non compliance with Section 3(f)(vi) of the L.A. Act and decisions of this Court referred to supra and the sale transactions between Mr. S. Rangarajan and some of the appellants are held void, then also the landowners will get justice for depriving them and their family members of livelihood for more than 28 years by preventing them from cultivating the said lands and earning their livelihood. B C D E

24. We have heard the learned senior counsel appearing on behalf of the parties. Before we turn our attention to the essential questions of law that arise for our consideration in the present case, it is important to advert to a submission made on behalf of the appellants. The learned senior counsel appearing on behalf of the appellants have also sought to contend that the respondent-Society had no *locus standi* to file the Writ Appeal as it did not have any right over the said lands in the instant case. It is submitted that a right would vest in the society only once possession of the land was taken by the state government and award passed in favour of the landowners, and thus, it did not have the *locus standi* to challenge the quashing of the acquisition proceedings. The said submission has been sought to be rebutted by Mr. Shanti Bhushan, the learned senior counsel appearing on behalf of the respondent-Society, by placing reliance F G

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A on a constitution bench decision of this Court in the case of *U.P. Awas Evam Vikas Parishad v. Gyan Devi (D) by LRS. & Ors.*⁸.

B 25. We are unable to agree with the contention advanced on behalf of the learned senior counsel appearing on behalf of the appellants. Once the land is sought to be acquired in favour of the respondent-society and notifications issued under Sections 4(1) and 6(1) of the L.A. Act regarding the same, the respondent-Society acquires the right to challenge the quashing of the acquisition proceedings by a court of law. The contention advanced by Mr. Shanti Bhushan, the learned senior counsel appearing on behalf of the respondent-Society that the appellant-purchasers have no locus standi to file these special leave petitions cannot be accepted
C by us for the reason that they had been impleaded as respondents in the Writ Appeals before the High Court.

26. The essential questions of law that would arise for our consideration in the instant case are:

- D 1. Whether the acquisition of lands in favour of the respondent-society in the impugned acquisition proceedings is covered under the definition of the term public purpose, as defined under Section 3(f)(vi) of the L.A. Act?
- E 2. Whether the sale transactions in favour of the appellants in the first and second batch of appeals during the pendency of the proceedings by the Power of Attorney(s) holder Mr. S. Rangarajan, on behalf of some of the land owners and sale of lands by some of the other landowners during the pendency of the Writ Petitions in favour of the appellant-purchasers in connected second appeals is legal and valid?
- F 3. Whether the appellant-purchasers are entitled for the reliefs as prayed by them?
4. What order?

Answer to Point Nos. 1 and 2:

G Point nos. 1 and 2 are interrelated and are answered together as under:

27. Section 3(f)(vi) of the L.A. Act reads as under:

“(f) the expression “public purpose” includes-

.....

(vi) the provision of land for carrying out any educational, housing,

H ⁸(1995) 2 SCC 326

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

28. The respondent-Society and M/s Srinivasa Enterprises by its proprietor Mr. S. Rangarajan, entered into an agreement dated 13.03.1985. The relevant clauses from the said agreement are extracted hereunder:

“2. WHEREAS the second party is the contractors, Representatives, Estate agents and Builders, acting as agents for providing lands to Co-operative societies, has entered into sale agreements with owners of the lands in Sy. Nos. 64, 66/5, 66/7, 66/11, 66/13 and Sy. Nos. 50,53, 57/3, 57/4B, 57, 57/7 57/6, 90/1, 60/2, 60/5, 61/2, 61/3, 62, 63/2, 63/3, 64, 64/2, 65/1, 67, 67/4, 67/2, 3, 64/1, 67/3A, 68/I, 68/3 of Herohalli and Avalahally villages of Yelahanka Hobli, Bangalore North Taluk respectively and WHEREAS the second party has offered the first party its services in the matter of securing sale of the above said lands in the First Party from the owners thereof, free from encumbrances....”

5. The Second Party shall secure in the name of the First Party by way of acquisition to the First Party lands in Sy. Nos. 64, 66/5, 66/7, 66/11, 66/13 and Sy. Nos. 50, 53, 57/3, 57/4B, 57, 57/7 57/6, 60/1, 60/3, 60/2, 60/5, 61/2, 61/3, 62, 63/2, 63/3, 64, 64/2, 65/1, 67, 67/4, 67/2, 3, 64/1, 67/3A, 68/I, 68/3 measuring about 180 acres at Harohally and Avalahally villages of Yelahanka Hobli, Bangalore North Taluk respectively in one contiguous plot from the respective owners thereof...”

6.The Second Party shall arrange to initiate land Acquisition Proceedings as per the Karnataka Land Acquisition Act under Clause 4(1), 6(1) Notifications issued in the name of the First Party.”

7. All Acts, Deeds and things connected with the Acquisition of lands as aforesaid shall be got completed by the Second Party

A with a view to facilitate Acquisition of lands within a period of 18 months or any period to be extended in writing by the First Party.

B 8. The Second Party shall take necessary steps to get the said lands Acquired in the name of the First Party through the Government for the formation of residential sites and handover the possession of said lands in favour of the First Party within a period of 18 months from the date of this Agreement.”

C It becomes clear from a perusal of the aforesaid conditions incorporated in the agreement that M/S Srinivasa Enterprises, represented by its proprietor Mr. S. Rangarajan, had agreed to undertake the responsibility to get the lands mentioned therein acquired in favour of the respondent-Society from the state government and prepare a Layout Plan as per the regulations of the Bangalore Development Authority (hereinafter referred to as “BDA”) and Town Planning Authority, and to get the plan sanctioned by BDA in favour of the respondent-Society.

D In addition to the aforesaid responsibility, he had also undertaken to execute the layout work in accordance with the sanctioned layout plan under the supervision of the BDA and get the sites released from the said authority in favour of the respondent-Society. In terms of the agreement, Mr. S. Rangarajan was to be paid Rs. 160/- per square yard by the respondent-Society, the calculation of which was to be done at

E Rs. 100 per sq. yard and calculation of cost of land at Rs. 60 per sq. yard for the layout charges. The details of the payment plan are outlined as under:

- | | | | |
|---|----|--|--------------|
| | “ | | |
| | a. | Initial advance at the time of signing this agreement | Rs. 50,000/- |
| F | b. | On production of document of Title relating to the lands forming Subject matter of this agreement And after verification by the lawyers Of the society and at the time of Submission of Application for Acquisition. | 25% |
| G | c. | Upon section 4(1) notification is published in the official gazette | 30% |
| | d. | Upon section 6 (1) notification is published in official gazette | 30% |
| | e. | Upon approval of the plan of the Bangalore Development Authority | 15% |
| H | ” | | |

The aforementioned amount was enhanced to Rs. 170 per acre by way of supplementary agreement dated 05.03.1992. A

29. Thus, Mr. Rangarajan was essentially required to act as a middleman between the respondent-Society and the state government to ensure that lands are acquired in favour of the respondent-Society for the purpose of its housing project. Further, between the years 1985 and 1987, the respondent landowners had executed power of attorney(s) of the lands in favour of Mr. Rangarajan. A sample clause from these Power of Attorney(s) reads as under: B

“WHEREAS the schedule property has been sold by us under agreement to sell: AND we have also agreed and declared to relinquish our rights for acquiring the schedule property in favour of the Trinity House Building Co-Operative Society Ltd., Bangalore AND WHEREAS we have received the full consideration for the said schedule property as per Agreement under separate document and receipt. C

AND WHEREAS the registration formalities or the acquisition proceedings is yet to be completed AND WHEREAS the entire consideration/ compensation/ award has been received by us under separate documents as said above we hereby give this Power of Attorney in favour of SRI S. RANGARAJAN, S/o Late K.S.S. Naidu, as desired by the Trinity House Building Co-Operative Society Ltd., Bangalore.” D E

A perusal of the agreement executed between the respondent-Society and Mr. Rangarajan, as well as the power of attorney(s) executed by the landowners in favour of Mr. Rangarajan would clearly show that the ultimate intent of the parties was to get the lands of the landowners acquired in favour of the respondent-Society. F

30. It was also brought to our attention by the learned senior counsel appearing on behalf of the appellants that the fact that co-operative societies were indulging in malpractices had also come to the notice of the state government. Accordingly, the state government of Karnataka, on 23.06.1986 issued an order stating: G

“A large number of House Building Co-operative Societies in Bangalore were purchasing lands directly from the landlords or under Land Acquisition Act for formation of layout. This has resulted in uncontrolled, un-planned and haphazard growth of city of Bangalore. It also created acute problem of order to regulate H

A the orderly development of the city, it was felt that the activities of
 such societies should be restricted.....However it was proposed
 to continue acquisition of lands for 70 House Building Co-Operative
 Society subject to the clearance from the Three Men Committee
 appointed for scrutiny of such proposal. Additional 49 societies
 B listed in the schedule to this order could not come within the
 purview of the said Government Order....The cut-off date was
 fixed as 30-6-1984 for the purpose of Registration of societies
 and enrolment of members for the said purpose.....
 C It has been considered necessary to reconstitute the THREE MEN
 COMMITTEE for Verification and for reporting to the revenue
 Department regarding the extent of lands to be acquired for each
 society and for relaxation of cut-off date for registration of certain
 societies and for enrolment of members even beyond 30.06.1984.”

The G.V.K. Rao Committee report also mentions the irregularities
 in the functioning of the respondent-Society. The relevant portions of
 D the report are extracted as under:

“...it appears that the society had entered into an agreement
 with Estate Agents for acquisition of land under Land Acquisition
 Act and in the process, the amount being paid to the Estate Agents
 towards his service charges itself is more than the costs of the
 land under land acquisition. This is a clear case of the Society
 frittering away the advances collected from the members and the
 site deposit collected from the members are not employed in a
 E prudent manner.

.....
 F The society had admitted 18 members without applications for
 membership, 3 members with incomplete applications, at least 21
 members from out-side the jurisdiction of the society (all are from
 outside Bangalore) and 8 members without resolution of the
 committee.....At one stage he has also stated that many of their
 members are Senior Government Officers and this demolishes
 G the contention of the Vice-president that because of their
 inexperience and ignorance, they have committed the mistakes.
 The way society is admitting members from Bombay, Mangalore,
 Kolar, Andaman, Secunderabad etc, makes it clear that they have
 absolutely no intention of following their byelaws.

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When these lapses were brought to the notice of the Vice-President of the society he has explained that, in the initial stages, since they did not get the prescribed application forms printed, they had admitted a few members without applications and thereafter when they had asked the members to fill in the prescribed applications they have not filled in....Further he has stated that since there is a lot of pressure from the members of their community, they have admitted members from outside the jurisdiction (mostly outside the state) and subsequently, they made efforts to amend the Byelaws, the same has not been approved by the Department, and he has pleaded that because of the inexperience of the committee, some mistakes have been committed by the society while admitting the members and they will take steps to ensure that the same mistakes are not repeated.”

The G.V.K. Committee Report was considered by a Division Bench of the Karnataka High Court in the case of *Narayana Reddy v. State of Karnataka*⁹, wherein it was held as under:

“39. As regards the Agreements entered into between the six respondent-Societies and their agents, inter alia, for the purpose of influencing the Government and to procure the preliminary and the final notifications under Section 4 and 6 of the Land Acquisition Act, which they did procure and which are subject matter of challenge in these Petitions, the questions which arises for consideration is, if the agreements are hit by Section 23 of the Contract Act on the ground that they were opposed to public policy whether the impugned notifications are liable to be quashed on the grounds that they were the result of exercise of influence by the agents on the Government which submission of the petitioners stand substantiated by the approval given for acquisition is all such cases which has made the Government itself to realise that it has totally bungled in the matter as is evident from the G.V.K. Rao Committee.....As far as the question that the agreements in question are opposed to public policy is concerned, it is seen that the real purpose of the Agreement entered into between the respondent-Societies and their agents was that the agent should get the preliminary and the final notifications from the Government and for that purpose huge amounts were paid or agreed to be

⁹ ILR 1991 Kar 2248

A paid. Any power conferred on the Government under a statute
 like the power conferred under Section 4 and 6 of the Act has to
 be exercised bona fide and for the purpose for which it is
 conferred, therefore an agreement under which a party to the
 agreement is required to influence the statutory authority and to
 B procure a decision favourable to the other party, is certainly
 opposed to public policy.”

(emphasis laid by this Court)

The principle of law that an agreement under which a party to an
 agreement is required to influence a statutory authority and to procure a
 decision favourable to the other party, is certainly opposed to public policy,
 C has been elaborated by this Court in the case of *Rattan Chand Hira
 Chand v. Askar Nawaz Jung*¹⁰, wherein it was held as under:

“The contract such as the present one which is found by the City
 Civil Court as well as the High Court to have been entered into
 with the obvious purpose of influencing the authorities to procure
 D a verdict in favour of the late Nawab was obviously a “carrier”
 contract. To enforce such a contract although its tendencies to
 injure public wealth is manifest is not only to abdicate one’s public
 duty but to assist in the promotion of a pernicious practice of
 procuring decisions by influencing authorities when they should
 abide by the law. To strike down such contracts is not to invent a
 E new head of public policy but to give effect to its true implications.
 A democratic society is founded on the rule of law and any practice
 which seeks to subvert or circumvent the law strikes at its very
 root. When the Court discountenances such practice, it only
 safeguards the foundation of the society. Even assuming, therefore,
 F that the Court finds a new head of public policy to strike down
 such practice, its activism is not only warranted but desired.”

Further, in the first *HMT* case (supra), this Court has held as under:

“We are in agreement with the finding of the High Court that the
 statutory notifications issued under Sections 4(1) and 6(1) of
 the Act have been issued due to the role played by M/s S.R.
 G Constructions, respondent No. 11. On the materials on record,
 High Court was justified in coming to the conclusion that the
 proceedings for acquisition of the lands had not been initiated
 because the State Government was satisfied about the existence

H ¹⁰ (1991) 3 SCC 67

of the public purpose but at the instance of agent who had collected more than a crore of rupees for getting the lands acquired by the State Government.” A

31. In the instant case, the learned single Judge of the High Court rightly placed strong reliance upon the judgment in the first *H.M.T. House Building Co-operative Society case* (supra) and held that the said decision is applicable on all fours to the facts of the case on hand, holding that neither was a scheme framed by the respondent-Society nor prior approval granted by the state government. The said finding was erroneously reversed by the Division Bench of the High Court, which placed reliance upon the letter dated 26.11.1987 of the State Government addressed to the Special Deputy Commissioner, Bangalore District and held that facts of the instant case were similar to those of the decision of this Court in the case of *Kanaka Gruha* (supra), wherein it was held as under: B C

“For emphasizing that prior approval of the appropriate Government in the present case was not just an empty formality, we would refer to Annexure R-1, which is as under: “Dated: 14.11.85 The Revenue Commissioner and Secretary to Government, Bangalore. D

The Special Deputy Commissioner, Bangalore.

Sir, E

Sub: Acquisition of Land in Sy. Nos.19/2, 26, 29 of Kadirenahalli village and Sy. No.29/3 of Konanakunt village Bangalore South Taluk in favour of Kanaka Gruhaniramana Sahakara Sangha, Bangalore.

I am directed to convey the approval of Government to initiate acquisition proceedings by issuing 4(1) notification in respect of lands measuring 8 acres 03 guntas as recommended by the Official Committee in Sy. Nos.19/2, 26, 29 of Kadirenehalli village and Sy. No.29/3 of Kenanakunte village, Bangalore South Taluk in favour of Kanaka Gruha Nirmana Sahakara Sangha Bangalore. F G

Yours faithfully, Sd/-
(Mandi Hussain)

Under Secretary to Government Revenue Department.
Copy to the President, Kanaka Gruha Nirmana Sahakara No.435 Middle School Road, V.V. Puram, Bangalore-4.” H

A Considering the fact that State Government directed the Assistant Registrar of Co-operative Societies of Bangalore to verify the requirement of the members of the Society and also the fact that the matter was placed before the Committee of three Members for scrutiny and thereafter the State Government has conveyed its approval for initiating the proceedings for acquisition of the land in question by letter dated 14.11.1985, it cannot be said that there is lapse in observing the procedure prescribed under Section 3(f)(vi). Prior approval is granted after due verification and scrutiny.”

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C 32. The Division Bench of the High Court in the instant case, accordingly, held that the approval granted in the case on hand sufficiently satisfied the requirements of Section 3(f)(vi) of the L.A. Act. The Division Bench of the High Court, however, crucially fails to appreciate the fact that the said letter issued by the state Government to the Deputy Commissioner does not speak of either framing of a Housing Scheme as contemplated under Section 3(f)(vi) of the L.A. Act or approval of the same as has been interpreted by the three judge bench decision of this Court in the case of *H.M.T. House Building Co-operative Society* (supra), which has been reiterated by this Court in subsequent judgments on the similar set of facts including that of *Bangalore City Coop. Housing Society Ltd.*(supra), the relevant paragraphs of which are extracted hereunder:

D
E 20. Now the question which is to be answered is as to whether in view of the definition of “public purpose” introduced by the aforesaid amending Act 68 of 1984 in Section 3(f)(vi), is it open to the appropriate Government to acquire land for cooperative society for housing scheme without making proper enquiry about the members of the Society and without putting such housing co-operative society to term in respect of nature of construction, the area to be allotted to the members and restrictions on transfer thereof?

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G 22. In the present case, a hybrid procedure appears to have been followed. Initially, the appellant society through M/s. S.R. Constructions purported to acquire the lands by negotiation and sale by the land holders. Then from terms of the agreement dated 17.3.1988, it appears that the procedure prescribed in Part - VII was to be followed and the lands were to be acquired at the cost

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of the appellant society treating it to be a “company”. The allegation made on behalf of the appellant society that the housing scheme had been approved by the appropriate Government on 7.11.1984 shall not be deemed to be a prior approval within the meaning of Section 3(f)(vi) but an order giving previous consent as required by Section 39 of Part VII of the Act. In the agreement dated 17.3.1988 it has been specifically stated “And whereas the Government having caused inquiry to be made in conformity with the provisions of the said Act and being satisfied as a result of such inquiry that the acquisition of the said land is needed for the purpose referred to above has consented to the provisions of the said Act being in force in order to acquire the said land for the benefit of the society members to enter in the agreement hereinafter contained with the Government”. [emphasis supplied] But, ultimately, the lands have been acquired on behalf of the appropriate Government treating the requirement of the appellant society as for a public purpose within the meaning of Section 3(f)(vi), It is surprising as to how respondent M/s S.R. Constructions entered into agreement with the appellant society assuring it that the lands, details of which were given in the agreement itself, shall be acquired by the State Government by following the procedure of Sections 4(1) and 6(1) and for this, more than one crore of rupees was paid to M/s. S.R. Constructions (respondent No. 11)”

Further, in the case of *Vyalikaval House Building Coop. Society v. V. Chandrappa*¹¹, this Court held as under:

“109. The Court in Kanaka Gruha case noted that the Assistant Registrar of Cooperative Societies, Three-Man Committee and the State Level Committee had recommended the acquisition of land on behalf of the appellant and the Government had directed the Special Deputy Commissioner, Bangalore to initiate acquisition proceedings by issuing Section 4(1) notification and proceeded to observe:

‘17. Considering the fact that the State Government directed the Assistant Registrar of Cooperative Societies of Bangalore to verify the requirement of the members of the Society and also the fact that the matter was placed before the Committee of three members for scrutiny and thereafter the State

¹¹ (2007) 9 SCC 304

- A Government has conveyed its approval for initiating the proceedings for acquisition of the land in question by Letter dated 14-11-1985, it cannot be said that there is lapse in observing the procedure prescribed under Section 3(f)(vi). Prior approval is granted after due verification and scrutiny.’
- B 110. In our view, none of the orders and judgments referred to hereinabove can be relied upon for holding that even though the appellant had not framed any housing scheme, the acquisition in question should be deemed to have been made for a public purpose as defined in Section 3(f)(vi) simply because in the representation made by him to the Revenue Minister of the State, the Executive Director of the appellant had indicated that the land will be used for providing sites to poor and people belonging to Backward Class and on receipt of the recommendations of SLCC the State Government had directed the Special Deputy Commissioner to issue notification under Section 4(1) of the 1894 Act and that too by ignoring the ratio of the judgments of the three-Judge Benches in 1st H.M.T. and 2nd H.M.T. cases and the judgment of the two-Judge Bench in Vyalikaval House Building Coop. Society case.
- C
- D
- E 111. In majority of the cases decided by the High Court to which reference has been made hereinabove, the petitioners were non-suited on the ground of delay and laches or participation in the award proceedings. In Muniyappa case, the judgment in 1st H.M.T. case was distinguished on the premise that a scheme had been framed and the same had been approved by the State Government and further that the petitioner had failed to show that the approval was vitiated due to intervention of the extraneous consideration. In Sumitramma case this Court noted that in 1st H.M.T. case, no separate order was made by the Government for grant of approval whereas in Sumitramma case an order has been passed on 14-10-1985 conveying the Government’s approval for the issuance of Notification dated 21-1-1986 under Section 4(1) of the 1894 Act. In Kanaka Gruha case also, this Court treated the direction contained in letter dated 14-11-1985 of the Revenue Commissioner and Secretary to the Government to the Special Deputy Commissioner, Bangalore to initiate the acquisition proceedings by issuing notification under Section 4(1) as an approval within the meaning of Section 3(f)(vi).
- F
- G
- H

112. In none of the three cases, this Court was called upon to consider whether the decision taken by the Government to sanction the acquisition of land in the backdrop of an agreement executed by the society with a third party, as had happened in 1st H.M.T. and 2nd H.M.T. cases and the present case whereby the Estate Agent agreed to ensure the acquisition of land within a specified time-frame subject to payment of huge amount of money and the fact that the agreement entered into between the society and the Government was in the nature of an agreement contemplated by Part VII of the Act.”

113. While in 1st H.M.T. case the amount paid to M/s S.R. Constructions was rupees one crore, in the present case, the appellant had agreed to pay more than rupees five crores for facilitating issue of notifications under Sections 4(1) and 6(1) and sanction of the layouts and plans by BDA within a period of less than one year. Therefore, we have no hesitation to hold that the appellant’s case is squarely covered by the ratio of 1st H.M.T. and 2nd H.M.T. cases and the High Court did not commit any error by relying upon the judgment in 1st H.M.T. case for declaring that the acquisition was not for a public purpose.”

(emphasis laid by this Court)

33. The stand of the respondent-Society is that the acquisition of lands by the State Government is under Section 3 (f) (vi) of the L.A. Act and that a scheme has been submitted and the same has been approved. But from a perusal of the original acquisition file of the state government, it is clear that there is no such scheme and no prior approval of the same by the State Government as required under Section 3 (f)(vi) of the L.A. Act.

34. Thus, in the light of the judgments of this Court referred to supra, and in the absence of framing of scheme by the respondent-Society and approval of the same by the State Government as required under Section 3 (f)(vi) of the L.A. Act, the Division Bench, holding that the letter dated 26.11.1987 referred to supra amounts to approval of the scheme, is wholly erroneous in law for the reason that neither the Three Men Committee, nor the State Level Co-ordination Committee even adverted to the said letter in their proceedings. Further, no details are forthcoming from the original file regarding the details of the scheme, and the application of mind by the state government to approve the same. In the light of the decisions of this Court, as well as the wording of

A Section 3(f)(vi) of the L.A. Act, we are constrained to hold that the acquisition proceedings in the instant case cannot be said to be one for 'public purpose' as defined under Section 3 (f) (vi) of the L.A. Act, especially in the light of the fact that not only was there no scheme formulated by the respondent-Society and approved by the State Government for the said purpose before initiating the acquisition proceedings, but that the evidence on record clearly indicates that the respondent-Society paid consideration to Mr. S. Rangarajan to act as the agent between it and the state government, to ensure that the lands of the original land owners are acquired in its favour. Upholding such an acquisition would be akin to approving to such type of agreements which are opposed to public policy and the same cannot be allowed by this Court under any circumstances, as the concept of hiring middlemen to get lands of the poor agricultural workers acquired by the state government in favour of a Cooperative Society is abhorrent and cannot be granted the sanction of law.

D 35. Even as far as the terms of the so-called agreement are concerned, the parties failed to meet those as well. The relevant clause of the agreement is extracted as under:

E "7. All Acts, Deeds and things connected with the Acquisition of lands as aforesaid shall be got completed by the Second Party with a view to facilitate Acquisition of lands within a period of 18 months or any period to be extended in writing by the First Party.

F 8. The Second Party shall take necessary steps to get the said lands Acquired in the name of the First Party through the Government for the formation of residential sites and handover the possession of said lands in favour of the First Party within a period of 18 months from the date of this Agreement."

It is clear that the parties to the said agreement were not even able to honour the terms of the same. Thus, the acquisition of the lands cannot be allowed to sustain for that reason as well.

G 36. Further, the state government did not even take into consideration the finding of the G.V.K. Rao Committee report, which found that the respondent-Society was issuing membership to persons fraudulently, including to those persons who were not even residing within the area of operation of the jurisdiction of the society. Further, the acquisition of lands of two different villages by issuing the impugned notifications by the State Government in exercise of its eminent domain

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power at the instance of a middleman amounts to a mala fide exercise of power by the state government. This is further made clear from the stand of the state government reflected throughout the proceedings, not just before this Court, but also before the High Court, where it remained a silent spectator to the proceedings, and neither actively defended the acquisition of lands nor opposed it. Even in the affidavit dated 03.08.2016 submitted before this Court in these proceedings, the stand of the state government is merely that it will proceed to make an award under Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “New L.A. Act, 2013”), if the validity of the acquisition of the lands in question is upheld. This stand of the state government clearly goes to show the seriousness in which it has exercised its eminent domain power in such important case of acquisition of lands of poor agricultural workers in blatant violation of the provisions of the L.A. Act and law laid down by this Court.

37. Thus, the impugned notifications issued under Sections 4(1) and Section 6(1) of the L.A. Act are bad in law as the same suffer from not only legal mala fides but also legal malice, which amounts to colourable exercise of power by the state government and therefore, the same are liable to be quashed and accordingly quashed.

38. At this stage, it is also important to reflect on another argument advanced by the learned senior counsel appearing on behalf of the appellants, that since till date no award has been passed in favour of the landowners by the Land Acquisition Officer and therefore, the land acquisition proceedings are lapsed on that count also by virtue of Section 11A of the L.A. Act.

39. The learned senior counsel appearing on behalf of the appellants submit that since no award has been passed within two years from the date of the acquisition of the lands, which got over in April 1991, thus, by virtue of Section 11A of the L.A. Act, the acquisition proceedings are lapsed. A question which was sought to be examined was whether Section 24(1)(a) of the New L.A. Act, 2013, which came into force from 01.01.2014 would save the proceedings in the instant case, even if the award has not been passed within two years from the date of the acquisition of the lands. Before we deal with the argument advanced by the learned senior counsel appearing on behalf of the appellants, it would be useful to advert to the relevant statutory provisions.

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- A Section 11A of the L.A. Act reads as under:
 “11A. Period shall be which an award within made. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse....”
- B The relevant provisions of the New L.A. Act, 2013 read as under:
“24. Land acquisition process under Act No. 1 of 1894 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,—
- C (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

 ”
- D **“114. Repeal and saving.-**(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.
 (2) Save as otherwise provided in this Act the repeal under subsection (1) shall not be held to
 prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.
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- E Section 6 of the General Clauses Act reads as under:
“6. Effect of repeal- Where this Act, or any or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—
- F (a) revive anything not in force or existing at the time at which the repeal takes effect;
 (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
 (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;
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It was contended that when the New L.A. Act, 2013 came into force, the acquisition proceedings had already lapsed by virtue of Section 11A of the L.A. Act. Section 6 of the General Clauses Act clearly lays down that the repeal of the L.A. Act does not revive anything not in force or existing at the time the repeal takes effect. It is submitted that the repeal took effect on 01.01.2014 and as on that date, the acquisition proceedings were no longer alive. Thus, Section 24(1)(a) of the New L.A. Act, 2013 read with Section 6 of the General Clauses Act does not revive the acquisition proceedings which were dead long before coming into force of the New L.A. Act, 2013.

40. On the other hand, Mr. Shanti Bhushan, the learned senior counsel appearing on behalf of the respondent-Society very strongly opposed the said contention placing reliance upon Section 24(1)(a) of the New L.A. Act, 2013 and Section 11A of the L.A. Act that an Award could not be passed because of the *status quo* order passed by way of an interim order that had been passed during the pendency of the writ petitions, writ appeals and as well as the proceedings before this Court. Therefore, the acquisition proceedings cannot be said to have lapsed on that ground alone.

41. In view of the fact that for the reasons stated supra, we have already come to the conclusion that the acquisition proceedings in respect of the acquired lands are liable to be quashed and there is no need for us to render an opinion on this question of law in these cases, as interesting as it is.

Answer to Point nos. 3 and 4:

42. Having arrived at the conclusion on the points framed in these appeals for the reasons stated supra, the acquisition proceedings in the instant case are liable to be quashed, we now turn our attention to answer the question of the relief required to be granted by this Court in favour of the appellants in the appeals arising out of SLP (C) Nos. 13656-13684 of 2004 and the appeals arising out of SLP (C) Nos. 18090-18118 of 2004. The appellants in the connected third appeals arising out of SLP (C) No. 23336-23339 of 2004 are the original owners of lands who had approached the High Court after a long lapse of time. Therefore, Mr. Shanti Bhushan learned senior counsel appearing on behalf of the respondent-Society submits the appeals arising out of SLP (C) Nos. 23336-23339 of 2004 are liable to be dismissed on account of delay and laches as they have approached the High Court after long lapse of time without proper and sufficient explanation in approaching belatedly to the High Court by filing

A writ petitions. Mr. Shekhar Naphade, the learned senior counsel appearing on behalf of the said appellants-landowners has seriously opposed the above contention by contending that the said question has already been answered by this Court in *H.M.T. House Building Coop. Society* (supra) wherein it was held that once the proceedings are void ab initio in law for non-compliance with mandatory statutory requirement of prior approval of the Scheme, the original owners cannot be shut out from the Court in challenging the acquisition proceedings and therefore, they are entitled to challenge the same at any point of time even in the collateral proceedings. We have accepted the above contention as the same is well founded and tenable in law.

C 43. On the issue of whether the so called purchasers of the lands during the pendency of Writ petitions were entitled to relief as prayed for by them in the instant cases, our answer must be in the negative for the following reasons:

D The respondent-original landowners in the first appeal had executed power of attorney(s) in favour of Mr. S. Rangarajan to facilitate him to get the lands acquired in favour of the respondent-Society, the relevant terms of which have been extracted supra to show that they have not executed the power of attorney in his favour to sell their lands other than the respondent-Society. On the basis of the same the acquisition proceedings were initiated and the notifications under Section 4(1) and E 6(1) of the L.A. Act were issued. Some of the respondent-original landowners objected to the same by submitting their objections to the proposed acquisition of their lands before the Land Acquisition Officer after Section 4(1) notification was published. No doubt their objections have been mechanically overruled by the Land Acquisition Officer and F the State Government without application of mind to the facts of the case and the provisions of the L.A. Act. The fact that the report submitted by the Special Deputy Commissioner under Section 5A(2) of the L.A. Act has not been even considered by the State Government properly and objectively is evident from the original file produced in these cases. After the Writ Petitions were allowed by the learned single Judge of the G High Court, the middleman, Mr. S. Rangarajan played fraud on the land owners and the society by making use of said Power of Attorney(s) and executed the sale deeds in favour of his son, daughter and son-in-law who are the appellants in the appeals arising out of SLP (C) Nos. 13656-13684 of 2004, within a span of a few days from the date of passing the H judgment by the learned Single Judge in the writ petitions. The said action

of Mr. S. Rangarajan tantamounts to fraud played by him upon the respondent-original landowners and therefore, the said transaction of executing the sale deeds in favour of his son, daughter and son in law is *void ab initio* in law. A

44. As far as the sale in favour of the appellants in the appeals arising out of SLP (c) Nos. 18090-18118 of 2004 is concerned during the pendency of the writ petitions, the same is also *void ab initio* in law as the same happened during the pendency of the Writ Petition before the learned single Judge of the High Court. A Division Bench of this Court in the case of *Uddar Gagan Properties Ltd. v. Sant Singh & Ors.*¹² held that the sale transactions of a similar nature is *void ab initio* in law. Thus, the transactions of the alleged sales made during the pendency of the proceedings are wholly illegal and *void ab initio* in law and therefore the same cannot be allowed to sustain in law. The said sale transactions are also contrary to law which is in operation in respect of agricultural lands. B C

45. The Impleadment Application Nos. 74-102 of 2010 filed in the appeals arising out of the SLP (C) Nos. 13656-13684 of 2004 are also liable to be rejected, as the applicant therein claims to be the Power of Attorney(s) holder of some of the lands in question and agreements of sale. Since he neither approached the High Court, nor this Court by way of filing SLPs and neither the agreements of sale nor the power of attorney(s) confer any right upon him at this time, as the same is barred by the provisions of the Land Reforms Act, 1952, provisions of the Specific Relief Act as well as the Limitation Act, the applicant has no legal right to come on record to challenge the impugned judgment and therefore the Impleadment Applications are rejected, as the same are wholly unsustainable in law. D E F

46. For the reasons stated supra, we pass the following orders:

(a) The appeals filed by the so-called purchasers and some of the landowners seeking to set aside the common impugned judgment and order dated 06.05.2004 passed by the Division Bench of the High Court of Karnataka in Writ Appeal Nos. 7543-7557 of 1996 and other connected appeals are allowed to the extent as indicated below and the impugned judgment and order is hereby set aside. The common judgment and order dated 12.07.1996 passed by the learned single Judge of the High Court in Writ Petition No. 8188- G

¹² C. A. No. 5072 of 2016, decided on 13.05.2016

A 8201 of 1989 and other connected writ petitions in quashing the acquisition notifications and proceedings are restored.

B (b) We also hold that the transfer of the acquired lands by way of the alleged sale deeds executed by Mr. S. Rangarajan in favour of the appellants in the appeals arising out of SLP (C) Nos. 13656-13684 of 2004, as well as the transfer of lands by way of alleged sale deeds in favour of some of the appellant-purchasers in the appeals arising out of SLP (C) Nos. 18090-18118 of 2004 are illegal and *void ab initio* in law.

C (c) Since the learned single Judge of the High Court quashed the acquisition notifications and proceedings at the instance of the original landowners, which common judgment and order has been restored by this Court by setting aside the impugned judgment and order passed by the Division Bench of the High Court in the Writ Appeals filed by the respondent-Society, we grant the relief as has been granted by the learned single Judge in favour of the said original landowners, who are the respondents in the first two appeals before us and also allow the appeals filed by some of the landowners in the civil appeals arising out of SLP (C) No. 23336-23339 of 2004.

D (d) Since we have set aside the common impugned judgment and order of the Division Bench of the High Court of Karnataka, we consequently restore the common judgment and order of the learned single Judge passed in the Writ Petitions, wherein the acquisition notifications and proceedings in respect of the lands of some of original landowners have been quashed at their instance. The same shall now be enjoyed by them. So also the appellants in the appeals arising out of SLP (C) Nos. 23336-23339 of 2004 are entitled for the same relief as we quashed the acquisition notifications and proceedings. For this purpose, we direct the Deputy Commissioner of Bangalore, Urban District and also the Commissioner of Police/DGP to extend all such protection and assistance to the landowners to ensure that this judgment and order is implemented properly.

G 47. All pending applications are disposed of.