N. A. L. LAYOUT RESIDENTS ASSOCIATION A

v.

BANGALORE DEVELOPMENT AUTHORITY & ORS.

(Civil Appeal Nos. 9790-9791 of 2017)

AUGUST 09, 2017 B

[A.K. SIKRI AND ASHOK BHUSHAN, JJ.]

Land Acquisition Act, 1894 – ss. 4, 6, 16 and 48 – Land (including the suit land, survey no.50) acquired by the State – The State took over the possession of the suit land and handed over the same to C *Bangalore Development Authority – Acquisition of suit land was challenged by the land owners in several rounds of litigations which were dismissed by the High Court – Thereafter, land owners made representation before the State Government, which passed notification dated 12.04.2001 withdrawing the suit land (survey no.50) from acquisition – However, the State Government withdrew* D *the said notification dated 12.04.2001 vide notification dated 22.03.2005 – Writ petition challenging notification dated 22.03.2005, allowed by the single judge – Writ appeal dismissed – Propriety of – Held: Single Judge committed error by quashing order dated 22.03.2005 – Division Bench also committed error in* E *confirming the judgment of the single judge – In earlier judgments of High Court between the parties regarding the acquisition in question, a finding was returned that acquisition proceedings had become final and possession was taken from the land owners in the year 1984 – High court in writ petition arising out of a notification by the State dated 22.03.2005 could not have ignored or discarded* F *the said finding in earlier proceeding regarding delivery of possession – Single judge committed error in proceeding to re-examine the same issue and gave a contrary finding that possession was not taken – Further, land owners had earlier filed two writ petitions, seeking direction to the State to de-notify the suit land,* G *which were dismissed – Thereafter, the entire exercise by land owners of approaching the State Government to withdraw from acquisition of suit land was uncalled for and was not permissible in view of the dismissal of writ petitions – Res-judicata.*

H

A Allowing the appeals, the Court

HELD: 1. The Single Judge in judgment dated 30.03.2007 (W.P. No.13404 of 2005) has referred to earlier judgment dated 16.03.1998 (W.P. No.4042 of 1998) of High Court in which a finding was returned that possession of land has been taken in the year B 1984 and land has absolutely vested in the State. The Single Judge could not have returned a contrary finding that possession has not been taken from the petitioners. The dismissal of the earlier writ petitions (W.P. No.4042 of 1998 and W.P. Nos.14779-14781 of 2000 where land owners were seeking a direction to withdraw survey no.50 from acquisition on the ground that they C are still in possession) and finding to the effect that acquisition proceedings have become final and possession of the land was taken back in the year 1984 shall operate as *res-judicata* in subsequent writ petition filed by the land owners. Thus, the opinion of the High Court is unsustainable. [Paras 54, 55 and 61] D [1082-A-B; 1083-G-H]

2. The observation of the Single Judge that observation in earlier judgment dated 16.03.1998 (W.P. No.4042 of 1998) was made by Judge without reference to any of the record but only based on the contention of the parties is incorrect and unfounded. E The finding recorded by the High Court was on the basis of submissions of the parties based on the pleadings and materials which were placed on the record as well as on the notification dated 07.05.1985 issued under Section 16(2) evidencing taking of possession of land on 23.03.1984. Notification dated 07.05.1985 published in official Gazette on 24.10.1985 under Section 16(2) F of the Act 1894(as amended in Karnataka) was an evidence rightly relied by High Court for coming to the conclusion that possession was taken as notified in the notification. The Judgment of High Court dated 16.03.1998 was fully in accordance with the provisions of Section 16(2) of Act 1894, which provision has not G even adverted to either by Single Judge or the Division Bench in the impugned judgment. The findings recorded in the judgment dated 16.03.1998 could not have been discarded in such slipshod manner by Single Judge. [Para 57] [1082-G-H; 1083-A-B]

3. High Court lost sight of the fact that Notification dated H 12.04.2001(issued to withdraw survey no.50 from acquisition) was

issued after 16 years of taking of the possession. In the meantime, BDA has proceeded with the development of the land. Roads were constructed and society's allotment was also passed in the year 1985 itself, layout sanctioned in the year 1988 itself. [Para 60] [1083-E] A

4. There is one other reason due to which the Judgment of High Court cannot be sustained. Land owners have filed two Writ Petitions, seeking a direction to the State to de-notify the land i.e. Survey No.50 i.e. by exercising power under Section 48. Both the above Writ Petitions were dismissed. After dismissal of the aforesaid Writ Petitions where relief of withdrawing from the acquisition of the Survey No.50 was refused, land owners without disclosing the relevant facts approached the State Government in the year 2001 by submitting a representation that they are in possession and acquisition of Survey No.50 be withdrawn. [Paras 62, 67] [1084-C; 1086-D-E] B C

5. When the Writ Petitions, praying for similar relief i.e. withdrawal of Survey No.50 from acquisition have been dismissed by the High Court, the petitioners could not have approached the State Government praying for same relief. [Para 68][1086-E-F] D

6. Both the judgments of the High Court i.e. judgment dated 16.03.1998 in W.P. No.4042 of 1998 as well as judgment dated 16.08.2000 in Writ Petition Nos.14779-14781 of 2000 were not brought into notice of the State Government by the land owners and they succeeded obtaining a Notification on 12.04.2001 which was cancelled within one month. [Para 69] [1086-F-G] E

7. When the two Writ Petitions, filed by land owners for same relief have been dismissed by the High Court, the petitioners could not have approached the State Government by representation thereafter praying the State Government to exercise its power under Section 48 to withdraw Survey No.50 from acquisition. Thus, the entire exercise by the land owners of approaching the State Government to withdraw from acquisition of Survey No.50 was uncalled for and was not permissible in view of the dismissal of their Writ Petitions by High Court where the same relief was prayed and refused. [Para 70] [1086-G-H; 1087-A] F G

H

A *Balwant Narayan Bagde v. N. B. Bhagwat & Ors.* **(1976) 1 SCC 700 : [1975] Suppl. SCR 250**; *Balmokund Khatri Educational and Industrial Trust, Amritsar v. State of Punjab* **(1996) 4 SCC 212 : [1996] 2 SCR 643**; *Tamilnadu Housing Board v. A Wiswam* **(1996) 8 SCC 259 : [1996] 2 SCR 402**; *Sitaram Bhandar Society, New Delhi v. Lieutenant Governor, Government of NCT, Delhi & Ors.* **(2009) 10 SCC 501 : [2009] 14 SCR 507**; *Hubli-Dharwad Urban Development Authority v. Shekharagowda Chennabasannagowda Phakirgowdar* **(2016) 9 SCC 13**; *Larsen & Toubro Ltd. v. State of Gujarat and Others* **(1998) 4 SCC 387 : [1998] 2 SCR 339**; *State of Madhya Pradesh and Others v. Vishnu Prasad Sharma and Others* **AIR 1966 SC 1593 : [1966] SCR 557**; *Balwant Narayan Bhagde v. M.D.Bhagwat And Others* **(1976) 1 SCC 700 : [1975] Suppl. SCR 250**; *Balmokand Khatri Educational And Industrial Trust, Amritsar v. State Of Punjab and Others* **(1996) 4 SCC 212 : [1996] 2 SCR 643**; *Banda Development Authority, Banda v. Moti Lal Agarwal and Others* **(2011) 5 SCC 394 : [2011] 7 SCR 435**; *P.K. Kalburqi v. State of Karnataka and Others* **(2005) 12 SCC 489 – referred to.**

Case Law Reference

[1975] Suppl. SCR 250	**referred to**	**Para 16**
[1996] 2 SCR 643	**referred to**	**Para 16**
[1996] 2 SCR 402	**referred to**	**Para 16**
[2009] 14 SCR 507	**referred to**	**Para 16**
(2016) 9 SCC 13	**referred to**	**Para 16**
[1998] 2 SCR 339	**referred to**	**Para 31**
[1966] SCR 557	**referred to**	**Para 33**
[1996] 2 SCR 643	**referred to**	**Para 44**
[2011] 7 SCR 435	**referred to**	**Para 45**
(2005) 12 SCC 489	**referred to**	**Para 46**

H

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 9790-9791 of 2017 A

From the Judgment and Order dated 11.12.2008 in Writ Appeal No. 936 of 2007 and Writ Petition No. 6253 of 2004 of the High Court of Karnataka at Bangalore

WITH B

C. A. Nos. 9792-9793 of 2017.

Rajesh Mahale, M/s. Khaitan & Co., Advs. for the Appellants.

K. Radhakrishnan, Sr. Adv., Navin Prakash, Ms. N. Annapoorani, S. J. Amith, Dr. (Mrs.) Vipin Gupta, Ms. Anitha Shenoy, Raghvendra S. Srivastsa, S. K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, R. Gopalakrishnan, Joseph Aristotle S., Ms. Priya Aristotle, Ashish Yadav, Ms. Romsha Raj, Advs. for the Respondents. C

Respondent-in-person.

The Judgment of the Court was delivered by D

ASHOK BHUSHAN, J. 1. The issue raised in these two appeals centres around the Notification dated 12.04.2001, issued by State Government, withdrawing Survey No.50, area 6 acres, 20 guntas from the acquisition made by the State Government by Notification under Section 4 dated 19.09.1977 and declaration under Section 6 dated 07.02.1978 of the of the Land Acquisition Act, 1894 (hereinafter referred to as "Act 1894"). E

2. All the appeals have been filed against the Division Bench judgment dated 11.12.2008 dismissing the Writ Appeal filed against the judgment dated 30.03.2007 in Writ Petition No.13404 of 2005. Writ Petition No.13404 of 2005 was filed by the land owners challenging the Notification dated 22.03.2005 issued by the State Government by which the State Government had withdrawn the earlier Notification dated 12.04.2001. The learned Single Judge had allowed the Writ Petition, setting aside the Notification dated 22.03.2005 and restoring the earlier Notification dated 12.04.2001 by which Survey No.50 was withdrawn from acquisition. F G

3. Land acquisition proceeding for acquisition of various plots including Survey No.50 (which is the subject matter of dispute) has a chequered history. It is necessary to note the series of events and various

H

A litigations undertaken by the parties and their predecessors before we consider the issues raised in these appeals.

4. The Bangalore Development Authority framed a Scheme for formation of layout known as BTM layout which was sanctioned by State of Karnataka. For the above purpose the State of Karnataka decided
B to acquire land to the extent of 1703-10 acres. A Notification under Section 4 dated 19.09.1977 was published on 29.09.1977. Declaration under Section 6 dated 07.02.1978 was issued, which was published on 09.03.1978, acquiring large extent of land. The acquired land included Survey No.50, 51 and 52 of the Tavarekere Village. Notice under Section 9 of the Act was published on 05.06.1978. Land owners
C filed W.P.Nos.21097-21107 of 1983, praying for quashing the Notification dated 19.09.1977 under Section 4 and Notification dated 07.02.1978 under Section 6. The Writ Petitions were dismissed by the High Court *vide* its judgment and order dated 10.02.1984. Writ Appeal Nos.271-281 of 1984, challenging the judgment of the Single Judge were also dismissed. The
D award was passed on 08.02.1984, which was approved by the competent authority on 19.03.1984. On 23.03.1984, the possession of Survey No.50 at Tavarekere Village was taken and handed over to the Bangalore Development Authority by going on to the spot and preparing a Mahazer. Compensation for Survey No.50 was also deposited in the Civil Court. A Notification dated 07.05.1985 under Section 16(2) of the Act was also
E published in the Karnataka Gazette on 24.10.1985 notifying the taking of possession of the land.

5. The Writ Petition No.5508 of 1984 was filed by Munivenkatappa, one of the co-land owners, challenging Notification under Section 4 to 6. The Writ Petition was dismissed by Karnataka High Court *vide* its
F judgment dated 14.12.1984. The High Court in its judgment also held that the development plan has been completed by the Bangalore Development Authority and the Scheme is in process of implementation. N.A.L. Employees Co-operative Housing Society Ltd. had made a request to Bangalore Development Authority for allotment for forming a
G housing colony. BDA passed a resolution dated 17.11.1982, allotting an area of 8 acres of land for forming a housing colony. The Sale Deed dated 09.05.1985 was executed by BDA in favour of NAL Employees Co-operative Housing Society Ltd. which included land in Survey Nos.50, 51 and 52. In spite of sale, in favour of N.A.L. Employees Co-operative Housing Society Ltd.(hereinafter referred to as 'Society'), family
H

members of the owners attempted to interfere in the possession of the society. Hence, the OS No.1492 of 1985 was filed for permanent injunction. Trial Court granted a temporary injunction, which was confirmed by the order dated 04.01.1986. Munivenkatappa also filed OS No.2294 of 1988, claiming that he was in possession of the land, which was sold to society, which suit came to be dismissed. Allotment in favour of society was unsuccessfully challenged by Munivenkatappa by filing a W.P. No.18360 of 1988 which too was dismissed.

6. The daughter of Munivenkatappa, namely, Papamma filed a W.P. No.4042 of 1998, praying that respondents be directed not to proceed with the acquisition in respect of Survey No.50. It was claimed in the Writ Petition that recommendation dated 30.06.1981 by the Special Land Acquisition Officer has been sent for de-notifying the acquisition of 6 acres and 20 guntas of Survey No.50. In the said Writ Petition, it was submitted by the respondent that possession of the land was taken and Notification under Section 16(2) has already been issued on 07.05.1985. The High Court, noticing the aforesaid facts held that the acquisition proceeding has become final and the possession has already been taken as early as in 23.03.1984, the Writ Petition has no merit and was dismissed on 16.03.1998.

7. Further, W.P. Nos.14779-14781 of 2000 were filed by one S.M.Bhimanna @ Subbanna, S/o Munivenkatappa and two others, seeking a direction to respondents to consider the representation of the petitioners to drop the acquisition proceedings in respect of land in Survey No.50. In the said representation, it was contended on behalf of the BDA that after issuance of final Notification in 1978, the award was passed and possession was taken by publishing a Notification under Section 16(2), hence, the petitioners are not entitled to any relief. After considering the submission of the parties, the Writ Petition was dismissed by this Court *vide* its judgment and order dated 16.08.2000.

8. One K.R.Rajakumar proprietor of M/s Veeranjeya Auto Engineering Works, claiming to be a lessee vide Lease Deed dated 08.04.1985 from land owners of Survey Nos.50, 51 and 52, filed an OS No.5511 of 1995 for injunction against the land owners as well as the society, which was impleaded as defendant No.7. In the suit, defendant No.7 pleaded that possession of land was taken in the year 1984.

A Acquisition has become final. The suit for injunction was dismissed. R.F.A.No.58/99 was filed by Shri K.R.Rajakumar against the society which too was dismissed by Karnataka High Court *vide* its order dated 07.03.2000.

9. It appears that land owners having failed to obtain any favourable
B order against acquisition proceeding from the High Court or any order from the Civil Court approached the State Government by filing a representation, praying for withdrawal of acquisition in respect of Survey No.50. The State Government issued a Notification dated 12.04.2001, exercising its power under Section 48 of the Act, withdrawing Survey No.50 from acquisition. The Bangalore Development Authority which
C was not informed prior to issuance of order dated 12.04.2001, immediately, brought to notice of the State Government that possession of land has already been taken in the year 1984, no order can be passed under Section 48. The State Government immediately, issued another order on 09.05.2001, cancelling the Notification dated 12.04.2001.

D 10. Land owners challenged the order dated 09.05.2001 by filing a W.P. No.37577 of 2002, Shri Bhimanna @ Subbanna S/o Munivenkatappa vs. State of Karnataka. The Writ Petition was allowed by learned Single Judge *vide* its judgment dated 04.11.2003 on the ground that the State Government before taking a decision on 09.05.2001 has
E not issued a notice to the petitioner for whose benefit Notification under Section 48(1) dated 12.04.2001 was issued. On the above ground, the Notification dated 09.05.2001 was set aside and Writ Petition against the said order was allowed. Subsequent to the judgment of learned Single Judge dated 04.11.2003, the State Government issued notice to land owners and after taking into consideration the material on record issued
F a Notification dated 22.03.2005, withdrawing/ cancelling the Notification dated 12.04.2001.

11. Land owners filed a Writ Petition No.13404 of 2005, challenging the Notification dated 22.03.2005 issued by the State Government in which Writ Petition the allottees of society, namely, respondent Nos.3 to
G 21 got impleaded. The Writ Petition, after hearing the parties was allowed by the learned Single Judge *vide* its judgment and order dated 30.03.2007. The Bangalore Development Authority filed a Writ Appeal against judgment of learned Single Judge, which was dismissed by Division Bench of the Karnataka High Court *vide* dated 11.12.2008 against which
H judgment all the above Civil Appeals have been filed.

12. Civil Appeal arising out of SLP(C) Nos.29553–29554 of 2011 has been filed by the appellant, who claimed allotment of a part of land of Survey No.50 in public auction conducted on 30.07.2003. Appellant claimed to have paid the entire sale consideration of Rs.24,41,775/-. But the Sale Deed has yet not been executed in favour of appellant. Appellant claimed to have filed applications for impleadment i.e. I.A.Nos.3-4 of 2010 in SLP(C) Nos.20190-20191 of 2009 filed by Bangalore Development Authority in which notices were issued by this Court and order of status quo was granted. However, the said SLP(C) Nos.20190-20191 of 2009 have been withdrawn on 02.03.2011. Hence, the appellant has filed these appeals, questioning the judgment of the Division Bench dated 11.12.2008, affirming the judgment of the Single Judge dated 30.03.2007, quashing the notification dated 22.03.2005.

13. Civil Appeals filed by the P.M. Anoop Kumar refer to similar facts and grounds, challenging the judgments of the Karnataka High Court. Reference of pleadings and judgments in Civil Appeal Nos.9790-9791 of 2017 (arising out of SLP(C) Nos.5911-5912 of 2010) shall be sufficient for deciding all the Civil Appeals.

14. Shri B. H. Marlapalle, senior counsel appearing for the appellant submits that the appeal filed by appellant is fully maintainable and the appellant has *locus standi* to file this appeal, this Court has already granted permission to file SLP by its order dated 15.02.2010. BDA had allotted the land to N.A.L. Employees Co-operative Housing Society, the predecessors in interest of appellant. For espousing the cause of its members the appellant has ample *locus standi* to challenge the judgment of High Court, restoring the Notification dated 12.04.2001. It is submitted that the W.P. No.13404 of 2005 filed by Muniamma, the widow of late Bhimanna who was one of the three sons of Munivenkatappa, was not maintainable on the ground of doctrine of *stare decisis* and doctrine of *res judicata*. Further, there was delay and laches and non-joinder of necessary parties in the Writ Petition. The writ-petitioners never challenged the Notification dated 07.05.1985 issued under Section 16(2) of the Land Acquisition Act (Karnataka amendment). Hence, it was not open for the writ-petitioners to contend that possession of land was not taken over by the State. It is submitted that in W.P. No.4042 of 1998 filed by the Papamma, daughter of Munivenkatappa this Court, while dismissing the Writ Petition has held that acquisition proceedings having reached finality by taking possession of the land in March, 1984. Further,

A same finding of possession was taken in the year, 1984 was rendered by this Court in W.P. Nos. 14779-14781 of 2000.

15. The appellant was necessary party in the Writ Petition since, land in favour of the society was allotted by the BDA on 18.05.1985. The appellant is registered Association of members who have been
B allotted land in the above land and has sufficient interest to be necessary party, pertaining to any litigation of land in question.

.16. Learned counsel further contends that learned Single Judge committed an error in holding that actual possession was not taken by the State in March, 1984. It is submitted that possession was taken by
C Special Land Acquisition Officers of the State by going on to the spot on 23.03.1984. Learned counsel for the appellant, referring to Mahazer contends that it has been specifically recorded in the Mahazer that owners of the land and building were present and they refused to hand over the land and building. Learned counsel further relied on judgment of this
D Court in ***Balwant Narayan Bagde vs. N. B. Bhagwat & Ors. (1976) 1 SCC 700, Balmokund Khatri Educational and Industrial Trust, Amritsar vs. State of Punjab, (1996) 4 SCC 212, Tamilnadu Housing Board vs. A Wiswam (1996) 8 SCC 259, Sitaram Bhandar Society, New Delhi vs. Lieutenant Governor, Government of NCT, Delhi & Ors (2009) 10 SCC 501 and Hubli -Dharwad Urban Development***
E ***Authority vs. Shekharagowda Chennabasannagowda Phakirgowdar, (2016) 9 SCC 13.***

17. Learned counsel for the appellant has further attacked the Survey Report dated 01.04.2017 filed by the BDA, which was prepared in pursuance of the order dated 22.02.2017 passed in this appeal. He
F submits that the allegation that society has encroached 5 guntas in Survey No.50, in excess of what was allotted to it, is incorrect. It is submitted that Survey Nos.50, 51 and 52 were included in the registered Sale Deed dated 09.05.1985. The BDA cannot be allowed to make submission that appellant does not have any land in Survey No.50.

G 18. Shri K.V. Vishwanathan, senior counsel appearing for respondent Nos.2(a) to 2(g), refuting the submission of the learned counsel for the appellant contends that the appeals filed by the appellant are neither maintainable nor appellant has *locus standi* to challenge the judgment of the High Court. It is submitted that original allottee was N.A.L Employees Co-operative Housing Society which is a registered

H

Society having a separate and distinct identity from the appellant. In any view of the matter the appellant cannot espouse the cause beyond 8 acres of land which was originally allotted to Housing Society. Referring to Survey conducted by BDA on 22.03.2017 and its report, learned counsel submits that the appellant Association is in enjoyment of 8 acres 24 guntas as has been reported, which is against the sanctioned allotment of 8 acres. It is further submitted that BDA which was the beneficiary of acquisition having itself withdrawn the SLP(C) Nos.20190-20191 of 2009, the appellant cannot claim to be on better footing to challenge the impugned judgment. The Association having themselves wrongfully encroached upon the land no interference of this Court is called for in exercise of its jurisdiction under Article 136. Learned Single Judge after perusing the original records has returned the findings that physical possession was not taken by the State which findings have been affirmed by the Division Bench. When the physical possession was never taken by the State, there was no impediment in exercise of power under Section 48 of the Act, 1894. Both learned Single Judge and Division Bench have held that the symbolic/paper possession taken under Section 16 of the 1894 was not in conformity with Karnataka Amendment, where it is Deputy Commissioner to take possession and notify the same in the Official Gazette.

19. Learned counsel further submits that the learned Single Judge has also recorded a finding regarding discriminatory treatment to the land owners since various Survey Nos. which were acquired by the same acquisition Notifications were released from acquisition under Section 48 of Act, 1894 whereas respondent land owners were not extended the same benefit. Learned Counsel further contends that after issuance of Notification under Section 48(1) dated 12.04.2001, the said Notification could not have been withdrawn by the State. It is contended that Section 21 of General Clauses Act, 1897 was not applicable in the present case, so as to, empower the State to issue Notification dated 09.05.2001. It is submitted that at the time of the conducting the auction on 26.09.2002, 30.7.2003, 14.08.2003 and 26.08.2003, the Notification dated 12.04.2001 was in subsistence, hence, there is no legal sanctity to any of the acts of auction of the sites.

20. Replying the submission of the learned counsel for the appellant in Civil Appeals filed by P.M. Anupkumar, it is submitted that there is already an order dated 22.05.2009 in W.P. No.5814 of 2008, directing

A the BDA to execute the Sale Deed in favour of Anupkumar in respect of site No.58 and in view of the Survey No.50 being de-notified, the said order in W.P. No.5814 of 2008 cannot be implemented, by the BDA. It is further submitted that in the Writ Petition of Anupkumar answering respondents were not parties, the Special Leave Petitions filed by Anupkumar and SLP deserves to be dismissed.

B

21. Respondent Nos.3 to 21 have supported the submissions made by learned counsel for the appellant. Respondent No.21 who has appeared in person, has also adopted the submission made by learned counsel for the appellant. Respondent No.3 to 21 have further submitted that a joint memo in W.P. No.13404 of 2005 was filed by land owners and respondent Nos.3-21 wherein, it was agreed between the land owners and respondent Nos.3-21 that the rights and title of respondent Nos.3-21 shall not be affected in any manner and the land owners have recognized the rights of respondent Nos.3-21, who were auction purchaser of sites after investing the huge amount. It is submitted that learned Single Judge while disposing of the Writ Petition on 30.03.2007 has already held that right, title and interest acquired by respondent Nos.3-21 could not be affected by any of the observations made in the Writ Petition and the Writ Petition was disposed of in terms of the joint memo entered into between the writ-petitioner(land owners) and the respondent Nos.3-21(auction purchasers). It is thus submitted that in any view of the matter rights of the respondent Nos.3–21 are safe and protected. It is submitted that BDA has already executed Sale Deed in favour of the respondent Nos.3-21 and BDA has also issued a Possession Certificate in their favour. Residential Plots sold in public auction by the BDA in favour of respondent Nos.3 to 21 are all part of Survey No.50 and they are clearly demarcated as per the Allotment Plan prepared by the BDA.

C

D

E

F

22. We have considered the submissions of both the parties and have perused the record.

23. From the facts, as noted above following facts emerge:

G

(i) The Notification dated 19.09.1977 was issued under Section 4 of the Land Acquisition Act, proposing to acquire large chunk of land including Survey No.50, a declaration under Section 6 dated 07.02.1978 was issued acquiring the land for Bangalore Development Authority, including Survey No.50.

H

(ii) The State Government proceeded to take possession of Survey No.50 on 23.03.1984 and after taking over possession, handed over the same to Bangalore Development Authority.

(iii) The Land owners filed several Writ Petitions, challenging the Notification under Section 4 & 6, which were dismissed by this Court on 10.02.1984 and 14.12.1984.

(iv) The Society filed Suit No.1492 of 1984, seeking permanent injunction against the owners in which temporary injunction was confirmed and Suit decreed.

(v) A Civil Suit No.2294 of 1988 was filed by Munivenkatappa, a co-owner of the land, claiming to be in the possession, which was subsequently dismissed.

(vi) W.P.No.4042 of 1998 was filed by daughter of Munivenkatappa, seeking a direction to BDA not to proceed with the acquisition proceeding on the ground that an application before the Government for de-notifying the 6 acres 20 guntas of Survey No.50 had been made on which favourable recommendations have been obtained on 30.06.1981. The W.P. was dismissed on 16.03.1998.

(vii) Another W.P.Nos.14779-14781 of 2000 were filed by Munivenkatappa and another co-owners praying for a direction to the State to consider representation of land owners for dropping the acquisition proceedings with regard to Survey No.50. The Writ Petitions were dismissed on 16.08.2000.

(viii) A representation was submitted by the land owners in the year 2001 before the State Government. Notification under Section 48 of the Act dated 12.04.2001 was issued withdrawing Survey No.50 from acquisition without giving any notice or opportunity to the BDA for whose benefit the land was acquired.

(ix) On the State Government having been apprised about the correct fact by the BDA that acquisition has already been finalized and possession taken in the year 1984, the State Government, immediately, withdrew the Notification dated 12.04.2001 *vide* Notification dated 09.05.2001

A (x) W.P. NO.37577 of 2002 was filed by land owners, challenging the Notification dated 09.05.2001, which was allowed on 04.11.2003 by the High Court on the ground that before issuing the Notification dated 09.05.2001, no notice was given to the land owners.

B (xi) The state Government after giving notice to the land owners issued another Notification on 22.03.2005 withdrawing the Notification dated 12.04.2001. The State Government thus, refused to withdraw the Survey No.50 from acquisition in exercise of power under Section 48.

C (xii) The Writ Petition No.13404 of 2005 was filed by land owners, challenging the Notification dated 22.03.2005, which was allowed by learned Single Judge on 30.03.2007. Writ appeal filed by BDA was dismissed on 11.12.2008.

24. The sum total of aforesaid events indicate that acquisition of D Survey No.50 was challenged by land owners in several rounds which were repelled by the High Court.

25. The State Government initially issued an order on 12.04.2001, withdrawing Survey No.50 from the acquisition which order itself was withdrawn after notice to the land owners on 22.03.2005. The State E Government thus, refused to withdraw Survey No.50 from the acquisition.

26. The learned Single Judge allowed Writ Petition, quashing the order dated 22.03.2005. Basically, two reasons have been given by learned Single Judge for quashing the Notification dated 22.03.2005. Firstly, the possession of Survey No.50 was not taken by the State Government in F accordance with law and secondly, although, the State Government has withdrawn various survey numbers on the representation made by owners of the land, whereas, petitioners have been discriminated by refusing to give similar and equal treatment.

27. Shri K.V. Vishwanathan learned counsel appearing for land G owners has challenged the maintainability of the appeals as well as locus of appellant to file the appeals. Hence, it is necessary to consider the above preliminary submissions at the very outset. The appeals have been filed with the leave granted under Article 136 of Supreme Court of India. Although, the appellant was not party in the writ proceeding before the Karnataka High Court but this Court in its discretion by order dated

H

15.02.2010 granted permission to the appellant to file S.L.P. and this Court has granted leave on 25.07.2017. The Constitution did not for best of reasons choose to fetter or circumscribe the power exercisable under Article 136 in any way. The jurisdiction of this Court under Article 136 is discretionary and equitable in nature. Article 136 begins with *non obstante* clause "notwithstanding anything". The words 'notwithstanding anything' in Chapter IV of Part V are words of overriding effect and clearly indicate the intention of the framers of the Constitution that it is a special jurisdiction and residuary power unfettered by any statute or other provisions of Chapter IV of Part V of the Constitution. We thus do not find any substance in the arguments of the learned counsel for the respondent, questioning the maintainability of the appeals.

28. Now, we come to the submissions raised by the counsel for the respondent, questioning the locus of appellant to file the appeal. The appellant Association is a registered Association with Registration No.753/2003-04. As noted above, Bangalore Development Authority auctioned various sites in the year 2002-03 in the acquired land. The N.A.L. Employees Co-operative Housing Society after allotment of 8 acres land in Survey Nos.50, 51 and 52 has formed the layout which layout was sanctioned by the BDA on 15.06.1998. After the sites were auctioned to various individuals, they formed the appellant Association to espouse the cause of residents. The appellant has been espousing cause of its members, which has also been reflected from the various actions taken by it in the interest of members of the Association. In this context reference is made to the letter dated 06.07.2009, Annexure P.16 to the appeals filed by the Association, where Association has written to the Commissioner, BBMP, bringing in notice of the Commissioner regarding the health hazard due to inaction of the BBMP Officials.

29. The Association which has been espousing the cause of its members, who are allottees of different sites thus has sufficient locus to file this appeal. It is further relevant to note that against the judgment of the Division Bench, BDA has also filed SLP(C) Nos.20190-20191 of 2009. SLP(C) Nos.5911-5922 of 2010 were tagged with these vide order dated 15.02.2010. SLPs filed by BDA have been withdrawn on 02.03.2011. We thus find sufficient justification to accept the locus of the appellant to file the present appeal. We thus do not find any substance in preliminary objections raised by the learned counsel for the respondents.

A 30. Another submission raised by K.V. Vishwanathan learned senior counsel for the respondents needs to be considered. It is submitted by Shri K.V. Vishwanathan that after issuance of Notification dated 12.04.2001 under Section 48 of the Act, 1894, the State Government had no jurisdiction to withdraw such Notification. He contends that Section 21 of the General Clauses Act, 1897 is not applicable. He submits B that under Section 48 land vested already in the land owners, hence, recourse under Section 21 of the General Clauses Act to withdraw the Notification under Section 48 cannot be taken. Section 21 of General Clauses Act, 1897 provides as follows:

C *"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.-Where, by any [Central Act] or Regulations a power to [issue notifications,] orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to* D *add to, amend, vary or rescind any [notifications,] orders, rules or bye-laws so [issued]."*

31. According to Section 21 power to issue Notification conferred by any Central Act includes the power, exercisable in the like manner and subject to like sanctions and conditions, if any, to add to, amend, E vary or rescind any Notification so issued. Although, Section 48 does not refer to the issuance of any Notification, however, this Court has laid down in ***Larsen & Toubro Ltd. versus State of Gujarat and Others, (1998) 4 SCC 387*** that withdrawal from acquisition has to be notified. Following was stated in Para 30 & 31:

F *"**30.** It was submitted by Mr. Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition could be by order simpliciter. He said that Sections 4 and 6 talked of notifications being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when the statute did not require* G *to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under:*

"21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.—Where

H

by any Central Act, or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Mr Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulation and under this that power included power to withdraw or rescind any notification in a similar fashion. It was therefore submitted that when Section 48 did not empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before reaching the stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notifications withdrawing or rescinding earlier notifications and that would be the end to the acquisition proceedings. We do not think that Mr Salve is quite right in his submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal from acquisition has to be notified."

*"**31.**...Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken. An owner need not be given any notice of the intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. Rights of the owner are well protected by sub-section (2) of Section 48 of the Act and if he suffered any damage in*

A *consequence of the acquisition proceedings, he is to be compensated and sub-section (3) of Section 48 provides as to how such compensation is to be determined....."*

32. Applicability of Section 21 cannot be denied to any Central Act as defined in Section 3(7) of General Clauses Act, 1897. Section
B 3(7) is as follows:

"3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-

*** *** ***

C

"(7). "Central Act" shall mean an Act of Parliament, and shall include-

(a) an Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the
D *Constitution, and*

(b) an Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislature capacity;

*** *** *** "

E

33. The Land Acquisition Act, 1984 clearly falls within the definition of Central Act. The applicability of Section 21 of the General Clauses Act was considered by this Court in ***State of Madhya Pradesh and Others versus Vishnu Prasad Sharma and Others, AIR 1966 SC 1593***, where it is held that in a case where under Section 9 Notification
F has not been issued the Government can cancel the Notification under Section 4 and Section 6 by virtue of Section 21 General Clauses Act. It is useful to extract following observations made in paragraph 20:

*"**20.** Then reliance is placed on Section 48 which provides for withdrawal from acquisition. The argument is that Section*
G *48 is the only provision in the Act which deals with withdrawal from acquisition and that is the only way in which the Government can withdraw from the acquisition and unless action is taken under Section 48(1) the notification under Section 4(1) would remain (presumably for ever). It is urged that the only way in which the notification under Section 4(1)*
H *can come to an end is by withdrawal under Section 48(1). We*

are not impressed by this argument. In the first place, under Section 21 of the General Clauses Act, (10 of 1897), the power to issue a notification includes the power to rescind it. Therefore it is always open to government to rescind a notification under Section 4 or under Section 6, and withdrawal under Section 48(1) is not the only way in which a notification under Section 4 or Section 6 can be brought to an end. Section 48(1) confers a special power on the government of withdrawal from acquisition without canceling the notifications under Sections 4 and 6, provided it has not taken possession of the land covered by the notification under Section 6. In such circumstances the Government has to give compensation under Section 48(2)....."

34. The applicability of Section 21 in exercise of particular power granted by Central Act can be negated only when the statute in question itself expressly or implicitly indicates so. As noted above, this Court in ***Larsen & Toubro*** has rejected the submission of learned counsel that Notification under Section 4 and 6 with aid of Section 21 of General Clauses Act can be cancelled at any time. This Court held that when Notifications under Section 4 and 6 are issued and much has been done towards the acquisition process and that process cannot be reversed merely by rescinding this Notification.

35. However, when the State has exercised its power under Section 48(1) by withdrawing from acquisition there is nothing in the Land Acquisition Act, 1894 to indicate that such Notification cannot be amended varied or rescinded by issuing a notification in like manner. In the event, it is accepted that after issuance of Notification under Section 48, there is no power to amend, vary or rescind any such Notifications, it may cause undue hardship. Take an example of simple mistake whereby Notification under Section 48 has been issued where acquisition has been completed in all respects and acquired land had already been utilized. We are thus of the opinion that there may be several circumstances where Notifications under Section 48 may be required to be amended, modified or rescinded. As observed above, there is nothing in the Act, which indicates that after exercising power under Section 48, the State Government exhaust its jurisdiction to vary, amend, modify or rescind the notification. Thus, the applicability of Section 21 of General Clauses Act in exercise of power under Section 48 of Act 1894 by a Notification cannot be denied.

A 36. The discussion of the learned Single Judge, in its judgment mainly centred around to the claim of taking possession by the State Government on 23.03.1984. What is the procedure of taking possession of the land under the provisions of Land Acquisition Act, 1894 has to be first looked into.

B 37. The State is empowered to take possession under Section 16 of the Act. There is State amendment in Section 16, in so far as, the State of Karnataka is concerned by Act No.17 of 1961 w.e.f. 24.08.1961 by which Section 16 has been renumbered as sub Section (1) and after sub Section (1), sub Section (2) has been added. Thus, Section 16 as applicable in State of Karnataka is as follows:

C

"Section 16. Power to take possession:

(1) When the Deputy Commissioner has made award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the Government free from all

D *encumbrances.*

(2)The fact of such taking possession may be notified by the Deputy Commissioner in the official Gazette, and such Notification shall be evidenced of such fact."

38. In the present case, the award was passed on 08.02.1984 by

E Land Acquisition Officer, which was approved by the competent authority on 19.03.1984. The award was prepared, after issue of notice unless Section 9 and after considering the objections filed by the land owners, in reference to Notification dated 19.09.1977 and 17.2.1978. After the award was passed, possession was claimed to be taken on 23.03.1984

F by the State Government, which was also handed over to the BDA on the same date.

39. Notification dated 07.5.1985 was published in the Gazette on 24.10.1985, as contemplated by Section 16(2). The possession was taken by the authorities by going on the spot and preparing a Mahazer.

G 40. Learned Single Judge, has quoted the entire Mahazer dated 23.03.1984 in his judgment and order which is to the following effect:

"Office of the Spl. Land Acquisition Officer, Bangalore Development Authority. In the presence of the Revenue Inspector.

H

Mahazar written by gathering on Sy. No. 50, Tavarekere Village, Begur Hobli, Bangalore South Taluk.

Read the Order of the Spl. Land Acquisition Officer dated 19.8.1984 in LAC No. 266/78-79 passed for the purpose of making over possession to the Bangalore Development Authority in respect of Sy. No. 50 of Tavarekere Village to an extent of 6 acres 20 guntas which has been acquired for the purpose of formation of Byrasandra Tavrekere Madivala Layout and in respect of which compensation is already awarded. Today, BDA Officers of the Engineering Department have accompanied the Revenue Inspector and with assistance of Revenue Surveyor they have inspected the land. The Surveyor has measured the land and shown the boundaries to the Officers of the Engineering Department. Presently, the following buildings, malkies are existing on the land and people are residing in the buildings. Some merchants have also started shops therein and doing business.

Malkies:

1)	*Allahabad Guava*	*:*	*30*
2)	*Pannarale Trees*	*:*	*8*
3)	*Jackfruit Trees*	*:*	*8*
4)	*Tamrind Trees*	*:*	*16*
5)	*Coconut Trees*	*:*	*18*
6)	*Mango Trees*	*:*	*63*
7)	*Custard Apple Trees*	*:*	*15*
8)	*Nerale Trees*	*:*	*7*
9)	*Hippe Trees*	*:*	*1*
10)	*Chigare Trees*	*:*	*1*
11)	*Sweet Tamarind*	*:*	*6*
12)	*Chelli Trees*	*:*	*3*

Stone Walled Wells	:	*2*
Unauthorised Constructions		
1) Touring Talkies	:	*1*
2) Mosaic Tiles Factory	:	*1*
3) Car Garage	:	*1*
4) Lorry Garage	:	*1*
5) RCC Buildings	:	*3 (about4-7 height)*
6) Stone boundary Wall	:	

The above buildings are currently in use and amongst them, wood shop, kerosene godown, etc are present. Orders are passed in OS. No. 849/84, 850/84, 851/84, 852/84, on 20.03.1984 restraining Bangalore Development Authority from demolishing the buildings. That apart stay has been granted by the Hon. High Court of Karnataka in W.P. No. 5010/84 on 15.03.1984. The land owners were present at the land and the owners of the buildings and land owners have refused to hand over possession of both land and buildings.

Therefore, without any other recourse the possession of the land is taken under Section 16 of the Land Acquisition Act and handed over to the Engineering Department. Therefore, from now on, the said Sy. No. 50 has been handed over to the possession of the Bangalore Development Authority as evidenced by this Mahazer.

	Read over and certified to be correct"
Taken possession	*Sd/-Narayan Reddy*
Sd/-	*sd/-Daval Khan*
(HG Hanumaiah	*sd /-Kanayaka Naidu*
Assistant Executive	*sd/- Kaleemulla*
Engineerl, 2, South	
Sub, Dn. BDA,	

Bangalore – 90 *Before Me* A

Sd/-R.I. Spl. LAO, BDA"

41. The Land Acquisition Act does not provide any manner or procedure of taking possession of the acquired land. The question as to how the possession of acquired land is to be taken under the Land Acquisition Act came for consideration before this Court in large number of cases. B

42. The Three Judge Bench in ***Balwant Narayan Bhagde versus M. D. Bhagwat And Others, (1976) 1 SCC 700,*** had occasion to consider the said issue. Justice Untwalia's view at Para 25 in the above case, is as follows: C

"25. When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there should be no question of resisting or impeding the taking of possession. Delivery or giving of possession by D *the owner or the occupant of the land is not required. The Collector can enforce the surrender of the land to himself under section 47 of the Act if impeded in taking possession. On publication of the notice under section 9(1) claims to compensation for all interests in the land has to be made ; be* E *it the interest of the owner or of a person entitled to the occupation of the land. On the taking of possession of the land under section 16 or 17(1) it vests absolutely in the Government free from all encumbrances. It is, therefore, clear that taking of possession within the meaning of section 16 or* F *17(1) means taking of possession on the spot. It is neither a possession on paper nor a "symbolical" possession as generally understood in Civil Law. But the question is what is the mode of taking possession ? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously* G *would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written*

H

A *declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking, of possession is not necessary. No further notice beyond that under section 9(1) of the act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government.*"

B

43. **Bhagwati, J.** by giving a concurring opinion on his behalf and on behalf of Justice A. C. Gupta had laid down the following in para 27:

"*27....We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or*

C

D

E

F

G

H

the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

44. In ***Balmokand Khatri Educational And Industrial Trust, Amritsar versus State Of Punjab and Others, (1996) 4 SCC 212,*** this Court had laid down that normal mode of taking possession is drafting the Panchnama in presence of Panches and taking possession and giving delivery to the Officials. Para 4 of the judgment is as follows:

"4.....It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

45. In ***Banda Development Authority, Banda versus Moti Lal Agarwal and Others, (2011) 5 SCC 394,*** this Court has considered the question of taking up possession of acquired land after noticing all earlier judgments of this Court. This Court culled out the principles in Para 37 of the judgment, which is quoted as below:

"37. The principles which can be culled out from the abovenoted judgments are:

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

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

iii) If crop is standing on the acquired land or building/ structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking

A *possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/*
B *structure may not lead to an inference that the possession of the acquired land has not been taken.*

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

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

46. In the present case Notification under Section 16(2) dated 07.05.1985 was published in the Karnataka Gazette of 24.10.1985. Publication in the Gazette is evidence of the fact that possession has been taken as is statutorily provided by Section 16 (2). This Court has
F occasion to consider Section 16(2) (as amended in Karnataka ***in P.K. Kalburqi versus State of Karnataka and Others, (2005) 12 SCC 489***. This Court considered the relevance of Notification under Section 16(2) and held that such Notification could be evidence of fact that possession was taken, though not conclusive and in absence of such notification, the Court can consider the other fact on record which has a
G bearing on this question. Following is stated in Para 9:

> "***9.*** *A plain reading of the said section would indicate that the power conferred on the Deputy Commissioner is enabling in nature, and if such a notification is issued it shall be evidence of the fact that possession was taken, though not conclusive.*

H

Such a notification would be a piece of evidence which may establish that possession of the lands was in fact taken. It is not as if in the absence of such a notification the Court cannot consider the other evidence on record which has a bearing on this question. We are, therefore, satisfied that the High Court was right in coming to the conclusion that possession of the lands was taken by the State and there was therefore no authority in the State Government to issue a notification denotifying the lands under Section 19(7) of the Karnataka Urban Development Authorities Act, 1987."

47. The present is a case where on the land various trees were standing, which has been noted in the Mahazer. Certain other constructions, as referred to in the Mahazer as unauthorised construction were also noticed. The Mahazer further noticed that land owners and owners of the building were also present at the land and land owners and owners of building refused to hand over the possession of land and building. The Mahazer was signed by Revenue Inspector, Special LAO, Engineer of BDA as well as four other persons.

48. Present is a case where land was acquired for a public authority and Bangalore Development Authority has prepared the BMT Scheme layout which was sanctioned. Society was allotted the land on 18.05.1985 and the society also got its allotment sanctioned.

49. It is useful to notice as to what was recorded by High Court on 14.12.1984 while dismissing the Writ Petition filed by land owners being W.P. No.5508 of 1984. While dismissing the above Writ Petition, High Court has held the following, in the aforesaid judgment:

"....Though he has taken a specific contention that the land in question was not covered by the development scheme prepared by the BDA, the records produced by the learned counsel for BDA show that the land bearing S. Nos. 50, 51 and 52 form part and parcel of the BDA Scheme. This scheme covers a very large extent of land and the lands of a number of persons had been acquired under the said scheme and the acquisition proceedings regarding these lands have become final. The development plan has been completed by the BDA and the scheme is in the process of implementation.

A *In the circumstances and for the reasons stated by this court in the order in the aforesaid writ petitions, this petition fails and accordingly it is rejected at the stage of preliminary hearing...."*

50. One of the main submissions, which has been pressed by B counsel for the appellant is that in different Writ Petitions filed by the land owners themselves, this Court has accepted the contention of the BDA that possession of the land was already taken on 23.03.1984 and the land has vested in the BDA.

51. It is contended that there being findings recorded in judgment C of this Court in earlier litigation between the parties, learned Single Judge in the judgment dated 30.03.2007 could not have recorded different findings regarding the possession. The possession having taken over by the State Government, which was handed over to BDA the land vested in the State Government free from all encumbrances and power under Section 48 could not have been invoked. For appreciating the aforesaid D submission, it is necessary to look into the judgment of the High Court where it is claimed that with regard to possession, finding has already been returned that possession had been taken by the State in the year 1984.

52. In above context following judgments of the High Court need E to to be specifically noted:

(a) The W.P. No.18360 of 1988 was filed by Shri S.M.Bhimanna @ Subbanna and two others, challenging the order passed by the Minister for Urban Development, dismissing the Writ Petition by which, allotment in favour of society was sought to be cancelled. F This Court after noticing the earlier judgment of High Court in W.P.No.5508 of 1984 dated 14.12.1984 made the following observations:

"The order made in W.P. No. 5508/83 has become final as far as the legality of the acquisition proceedings is G *concerned. Accordingly the land in question became vested in the Bangalore Development Authority. It is for the Bangalore Development Authority to allot the land in accordance with the provisions framed under the Bangalore Development Authority Act....."*

H (underlined by us)

(b) The Writ Petition No.4042 of 1998 Smt. Papamma versus The Special Land Acquisition Officer, was filed seeking a direction to the respondents not to proceed with the acquisition in respect to Survey No.50. Following was stated in Para 8:

"8. I do not find any merit in this petition. This petition is liable to be rejected on every one of the grounds urged by the learned counsel for the Respondents. As noticed by me earlier, the notification under subsection(1) of Section 17 of the Act was issued on 19th September 1987 and Notification under subsection(1) of Section 19 of the Act was issued on 9th March 1978 and award was passed on 8th February 1984 and a Notification evidencing taking possession of the said land on 19th March 1984 came to be issued on 7th May 1985 as per Annexure-R1. In this petition, the Petitioner has not challenged the correctness of the said notifications. On the other hand the prayer of the Petitioner is for a direction to the Respondents not to proceed with the acquisition proceedings. The narration of facts stated above clearly shows that the acquisition proceedings have become final and the possession of the land was taken as back as 19th March 1984. Under these circumstances, I am unable to understand as to how the Petitioner can seek for a direction to the Respondents not to proceed with the acquisition proceedings without challenging the acquisition proceedings without challenging the acquisition proceedings and more particularly the Notifications issued under Section 17(1) and 19(1) of the Act. On this short ground alone this petition is liable to be dismissed. Further, as rightly pointed out by Sri Hegde, the acquisition proceedings having reached finality by taking possession of the said land on 19th March, 1984, the Petitioner cannot be, at this stage, permitted to challenge the acquisition proceedings."

(underlined by us)

53. The above two Writ Petitions were filed by Writ Petitioners where the Special LAO as well as BDA both were parties to the proceedings. In Writ Petition filed by S.M.Bhimanna, the State of Karnataka as well as Society(N.A.L.) was also respondents.

54. The Court after considering the submissions of the parties and material on record has returned the finding that possession of land has been taken in the year 1984 and land has absolutely vested in the State.

55. The learned Single Judge in its judgment dated 30.03.2007 has not given due weight to the aforesaid findings. The learned Single Judge in its judgment dated 30.03.2007 could not have returned a contrary finding that possession has not been taken from the petitioners. The learned Single Judge, in its judgment has referred to earlier judgment of the High Court in W.P. No.4042 of 1998, Smt. Papamma versus Special Land Acquisition Officer in which judgment, a finding was returned by the High Court that possession has already been taken.

56. The High Court has discarded the finding returned in the above judgment of this Court dated 16.03.1998 by making following observations:

> *"33.....Copy of the judgment in Writ Petition No.4042 of 1998 is perused. At Paragraph-8 while discussing with regard to validity of acquisition a reference was made to a notification dated 07.05.1985 evidencing taking possession of the said land on 19.03.1984. The learned judge opines narration of facts clearly shows that the acquisition proceedings have become final and the possession of the land was taken over as on 19.03.1984. This observation was made by Court without reference to any of the records but only based on the contentions of the parties. At that point of time, there was neither de-notification of the land from acquisition nor withdrawal of the order of de-notification. As a matter of fact, petitioner did contend being in possession and enjoyment of the land all through."*

57. The observation of the learned Single Judge that observation in judgment dated 16.03.1998 was made by Learned Judge without reference to any of the record but only based on the contention of the parties is incorrect and unfounded. The finding recorded by the High Court was on the basis of submissions of the parties based on the pleadings and materials which were placed on the record as well as on the notification dated 07.05.1985 issued under Section 16(2) evidencing taking of possession of land on 23.03.1984. Notification dated 07.05.1985 published in official Gazette on 24.10.1985 under Section 16(2) of the

Act 1894(as amended in Karnataka) was an evidence rightly relied by High Court for coming to the conclusion that possession was taken as notified in the notification. The Judgment of High Court dated 16.03.1998 was fully in accordance with the provisions of Section 16(2) of Act 1894, which provision has not even adverted to either by learned Single Judge or the Division Bench in the impugned judgment. The findings recorded in the judgment dated 16.03.1998 could not have been discarded in such slipshod manner by learned Single Judge.

58. We are thus of the view that in earlier judgments of the High Court between the parties regarding the acquisition in question a finding was returned that possession was taken from the land owners in the year 1984.

59. High Court in subsequent Writ Petition filed by land owners, even though, arising out of a Notification by the State, by which it had cancelled earlier Notification withdrawing from the acquisition, the said finding in earlier proceeding regarding delivery of possession could not have been ignored or discarded. Learned Single Judge committed error in proceeding to re-examine the issue with regard to which finding was recorded in earlier proceeding that possession was already taken by the State in the year 1984 and the land absolutely vests in the State.

60. High Court lost sight of the fact that Notification dated 12.04.2001 was issued after 16 years of taking of the possession. In the meantime, BDA has proceeded with the development of the land. Roads were constructed and society's allotment was also passed in the year 1985 itself, layout sanctioned in the year 1988 itself.

61. Thus, we are of the opinion that High Court instead of relying on the earlier findings recorded by the High Court as noted above that the possession of land has already been taken by the State and handed over to the BDA in the year 1984, gave a contrary finding that possession was not taken, which is unsustainable. The issue as to whether possession of Survey No.50 was already taken by the State and handed over to BDA in the year 1984 which was directly and substantially in issue in the earlier writ proceedings initiated by the land owners, especially in W.P. No.4042 of 1998 and W.P. Nos.14779-14781 of 2000 where land owners were seeking a direction to withdraw Survey No.50 from acquisition on the ground that they are still in possession. The dismissal of aforesaid writ petitions and finding to the effect that acquisition

A proceedings have become final and possession of the land was taken back in the year 1984 shall operate as *res-judicata* in subsequent W.P. No.13404 of 2005 filed by the land owner. The findings of Karnataka High Court that possession of the land has already been taken in the year 1984 as recorded in writ petitions as noted above precluded the
B learned Single Judge in W.P. No.13404 of 2005 to take a contrary decision. We thus find that submission of learned counsel for the appellant that the decision on the issue of taking possession by the State as rendered in earlier writ petitions filed by land owners shall operate as *res-judicata* in subsequent writ petition filed by land owner being W.P. No.13404 of 2005 and judgment of learned Single Judge as affirmed by the Division
C Bench deserves to be set aside on this ground.

62. There is one other reason due to which the judgment of the High court cannot be sustained. The land owners had filed W.P. No.4042 of 1998 where a direction was sought for BDA not to proceed with the acquisition proceeding on the ground that an application before the
D Government for de-notifying Survey No.50 has been filed. The copy of the judgment dated 16.03.1998 in the aforesaid Writ Petition has been brought on the paper-book at page No.96 to 105. The opening part of the judgment is as follows:

> *"This writ petition is filed under articles 226 and 227 of the*
> E *Constitution of India praying to direct the Respondents not to proceed with the acquisition in respect of Sy. No.50 of Tavarekere Village, Bangalore South Taluk and etc..."*

63. The High Court has also in the same judgment noticed the claim of petitioner that a communication was issued on 30.06.1981 by
F Special LAO to the State Government praying for de-notification of Survey No.50 and the prayer of the petitioner that State be directed to de-notify the land. The said facts have been noticed in Para 2 which are to the following effect:

> *"2. In this petition, the Petitioner has sought for a direction*
> G *to the Respondents not to proceed with the acquisition in respect of the said land. Sri Suresh Joshi, Learned counsel for the Petitioner made two submissions. Firstly, he submitted that since the Petitioner was not served with the notice and was not heard in the course of Section 5A enquiry and also at the stage of passing of the award, the Respondents have*

H

no authority in law to proceed with the acquisition proceedings; and therefore the entire acquisition proceedings are required to be declared as illegal. Secondly, he submitted since a communication was issued to the Petitioner on 30th June 1981, a copy of which has been produced as Annexure-C stating that the recommendations were made by the 2nd Respondent to the State Government to de-notify 6 acres and 20 guntas of land in Sy.No.50 where structures and garden are existing, the Respondents must be directed to de-notify the land in question from the acquisition proceedings. According to the learned counsel the recommendation made by the 2nd Respondent as per Annexure-C is pending consideration before the State Government. He further submitted that under similar circumstances, the Government has de-notified the lands of several others recently. In support of this plea he relied upon the Circular dated 15th November 1978 and 1st January 1987, copies of which have been produced as Annexures-B and D respectively wherein the Government has notified that wherever the land proposed to be acquired by the Bangalore Development Authority consists of garden and nursery, the said lands should be dropped from acquisition proceedings."

64. The High Court has dismissed the above Writ Petition in which following was observed:

"....the narration of facts stated above, clearly shows that the acquisition proceedings have become final and the possession of the land was taken as back as 19.03.1984. Under these circumstances, I am unable to understand as to how the petitioners can seek for a direction to the respondents, not to proceed with the acquisition proceedings...."

(underlined by us)

The Writ Petition seeking direction to the State Government to withdraw from acquistion with regard to Survey No.50 was thus dismissed.

65. Similarly, another Writ Petition Nos.14779-14781 of 2000, S.M. Bhimanna versus Bangalore Development Authority was also filed where following reliefs were claimed:

A *"(a) a direction to respondents to consider their representations and drop the acquisition proceedings in respect of land measuring 6 acres 20 guntas in Sy. No. 50 of Tavarkere Village, Begur Hobli, Bangalore, South Taluk.*

(b) a direction to second respondent not to demolish the
B *structures in the petition schedule property pending consideration of their applications for regularization (Annexure-E, E1 and E2 dated 30.04.1994."*

66. The aforesaid Writ Petition was contested by BDA by pleading that possession of the land was already taken in the year 1984 and a
C Notification under Section 16(2) has been published on 24.10.1985 and the land absolutely vested in the State. Noticing the aforesaid contention ultimately, the Writ Petition was dismissed by Division Bench of Karnataka High Court *vide* judgment dated 16.08.2000.

67. Thus, land owners have filed two Writ Petitions, seeking a
D direction to the State to de-notify the land i.e. Survey No.50 i.e. By exercising power under Section 48. Both the above Writ Petitions were dismissed. After dismissal of the aforesaid Writ Petitions where relief of withdrawing from the acquisition of the Survey No.50 was refused, land owners without disclosing the relevant facts approached the State Government in the year 2001 by submitting a representation that they
E are in possession and acquisition of Survey No.50 be withdrawn.

68. When the Writ Petitions, praying for similar relief i.e. withdrawal of Survey No.50 from acquisition have been dismissed by the Karnataka High Court, as noticed above, the petitioners could not have approached the State Government praying for same relief.

F

69. Both the judgments of the High Court i.e. judgment dated 16.03.1998 in W.P. No.4042 of 1998 as well as judgment dated 16.08.2000 in Writ Petition Nos.14779-14781 of 2000 were not brought into notice of the State Government by the land owners and they succeeded obtaining a Notification on 12.04.2001 which was cancelled within one month.

G

70. Thus, when the two Writ Petitions as noted above, filed by land owners for same relief have been dismissed by the Karnataka High Court, we fail to see how the petitioners could have approached the State Government by representation thereafter praying the State Government to exercise its power under Section 48 to withdraw Survey

H

No.50 from acquisition. Thus, the entire excercise by the land owners of approaching the State Government to withdraw from acquisition of Survey No.50 was uncalled for and was not permissible in view of the dismissal of their Writ Petitions by Karnataka High Court where the same relief was prayed and refused.

71. Learned Single Judge *vide* its judgment dated 30.03.2007 has not adverted to the aforesaid two judgments of High Court dated 16.03.1998 and 16.08.2000 which was passed in the Writ Petition filed by the land owners itself where same relief for withdrawl of Survey No.50 from acquisition was refused. The Division Bench has also not adverted to the aforesaid aspects of the matter while dismissing the Writ Appeal.

72. It has to be noted that in the Writ Petition the land owners before learned Single Judge has also pleaded that State has withdrawn acquisition with regard to various Survey Nos. whereas writ-petitioner has been discriminated by refusing to give similar and equal treatment.

73. Be as it may, when the High Court in earlier proceedings has already held that possession was taken up by the State Government and land vested in the State free from any encumbrances, power under Section 48 could not have been exercised by the State. Hence, it is not necessary for us to dwell on the aforesaid reasons given by the learned Single Judge any further.

74. We are thus of the view that State Government having withdrawn the Notification dated 12.04.2001 and having refused to withdraw Survey No.50 from acquisition which had already become final sixteen years ago, when the possession was taken by the State and handed it over to BDA in the year 1984, which fact was notified in the official Gazette on 24.10.1985, Learned Single Judge committed an error in allowing the Writ Petition by quashing order of the State Government dated 22.03.2005.

75. Division Bench also did not advert to the relevant aspects and committed error in confirming the judgment of the learned Single Judge.

76. This Court vide its order dated 22.02.2017 has directed learned counsel for the BDA to inform the Court as to how much land is allotted to the appellant-Society by the BDA and how much land is in actual possession. BDA in pursuance of the order of this Court conducted a

A survey and submitted its report dated 01.04.2017. In the Survey Report, it has been mentioned that total allotment of land in favour of N.L.A. Co-operative Society was 8 acres and members of the appellant-Society are in possession of more area then allotted to it. It is not necessary for us to consider or express any opinion in the above regard. In the event members of the appellant-Society are in possession of any excess area, it is always open for the BDA to take such steps as permissible in law.

B

77. In result, Civil Appeals Nos.9790-9791 of 2017 arising out of SLP(C) Nos.5911-12 of 2010 are allowed. Judgment of Division Bench dated 11.12.2008 as well as judgment of the learned Single Judge dated 30.03.2007 are set aside and W.P. No.13404 of 2005 is dismissed.

C

78. For the above reasons, Civil Appeal Nos.9792-9793 of 2017 arising out of SLP(C) Nos.29553-29554 of 2011 are also allowed.

Ankit Gyan

Appeals allowed.