M/S. VINAYAK HOUSE BUILDING COOPERATIVE SOCIETY LTD. A

v.

THE STATE OF KARNATAKA & ORS.

(Civil Appeal No. 3600 of 2011) B

AUGUST 26, 2019

[ARUN MISHRA, S. ABDUL NAZEER AND M. R. SHAH, JJ.]

Land Acquisition Act, 1894 – ss.4(1), 6(1) and 48 – Withdrawal notification of the acquired land – State Government acquired 78 acres 16 guntas of land for public purpose – The State executed an agreement of the said land in favour of the appellant-cooperative society which included survey no.30 measuring 5 acres 33 guntas – Respondent no.3 claimed to be the owner of the survey no.30 – Before the acquisition proceedings, respondent no.3 had sold a certain portions of land to a third party – Thereafter, respondent no.3 filed writ petition questioning the acquisition and later filed another writ petition questioning the award determining the market value of the land – Both writ petitions were dismissed by the High Court – Out of the total 5 acres 33 guntas, 2 acres 36 guntas of land was handed over to the appellant by the State – Respondent no.3 sought de-notification of the remaining 3 acres 5 guntas i.e. the disputed property in survey no.30 – Inspite of dismissal of writ petitions rejecting the challenge made by the respondent no.3, the State Government issued a withdrawal notification u/s. 48 of the Act in respect of the disputed property, even without affording an opportunity of being heard to the appellant – Aggrieved, appellant filed writ petition before the High Court, which was dismissed – Writ appeal was also dismissed – On appeal, held: It is clear that sub-section (1) of s.48 of the L.A. Act empowers the government to withdraw from acquisition proceedings of the land of which possession has not taken place – In the instant case, the State had acquired 78 acres 16 guntas of land in favour of appellant including the land in survey no.30 and possession was also taken except the disputed land to an extent of 3 acres 5 guntas in survey no.30 – Further, the lands were notified for public purposes – The approved layout plan was issued by the government in compliance C D E F G H

with the provisions of the BDA Act and the planning Act – The disputed property was within the layout – Materials on record also made clear that the disputed property was earmarked as civic amenity – If the order of the de-notification is allowed to stand, the very object of the planned development of the layout would be lost – Thus, order of de-notification passed by the State was without application of mind and was arbitrary in nature – Further, respondent no.3 had already sold 1/3rd of the 3 acres 5 guntas of land in survey no.30, so she could not have maintained the application for de-notification of the said portion of the land as she had no subsisting interest in the said land – Karnataka Town and Country Planning Act, 1961 – Bangalore Development Act, 1976.

Land Acquisition Act, 1894 – s.48 – Purpose of – Held: A combined reading of sub-section (1) and sub-section (2) of s.48 of the L.A. Act makes it clear that the purpose of s.48 was mainly to ensure that the State Government is not compelled to acquire the land when the acquisition ceases to be beneficial for the intended purpose – That is why, sub-section (2) of s.48 provides for payment of compensation to the owner, whose land was notified for acquisition but not acquired for the reason that such an acquisition is against the public interest and public revenue.

Land Acquisition Act, 1894 – s.48 – Precautions under – Held: The government should refrain from de-notifying or dropping any land being acquired for the formation of a layout, u/s.48 of the L.A Act or under any other law – The courts should also be very strict while considering the plea of the landowners seeking de-notification of the lands which are being acquired or quashing of the notification on the ground of lapsing of the scheme or on any other grounds in respect of the acquired lands for the formation of the layout – It has to be kept in mind that private interest always stands subordinated to the public good.

Disposing of the appeal, the Court

HELD: 1. It is clear that sub-section (1) of Section 48 of the Land Acquisition Act, 1894 empowers the government to withdraw from acquisition proceedings of the land of which possession has not been taken. It is further provided that when the government withdraws from acquisition, the Collector shall

determine the amount of compensation due for the damages suffered by the owner in consequence of notice or proceedings thereunder. A combined reading of sub-section (1) and sub-section (2) of Section 48 of the L.A. Act makes it clear that the purpose of Section 48 was mainly to ensure that the State Government is not compelled to acquire the land when the acquisition ceases to be beneficial for the intended purpose. That is why, sub-section (2) of Section 48 provides for payment of compensation to the owner, whose land was notified for acquisition but not acquired for the reason that such an acquisition is against the public interest and public revenue. [Para 27] [256-G-H; 257-A-C]

2. It has come to the notice of this Court that of late the State Government has been de-notifying the lands acquired for public purpose for the benefit of the authorities like BDA or other urban development authorities and for the formation of private housing layouts, adversely affecting the planned development of the city of Bangalore and other cities in the State of Karnataka. The instant case is a classic example where the power has been blatantly misused ignoring larger public interest. [Para 33] [259-C-D]

3. As noticed above, the State Government had accorded sanction for initiation of acquisition proceedings for the benefit of the appellant in the year 1982 itself. The State Government executed the agreement in the month of August 1984, undertaking to acquire 78 acres 16 guntas of land in favour of the appellant, including the land in Sy.No.30 belonging to the 3rd respondent. Notifications under Sections 4(1) and 6(1) of the L.A Act were issued and possession was taken except the disputed land to an extent of 3 acres 5 guntas. [Para 34] [259-E]

4. The approved layout plan was issued by the government in compliance with the provisions of the BDA Act and the Planning Act. The layout plan produced by the appellant would indicate that meticulous planning has been undertaken for planned development of the layout. The plan also indicates that lands have been reserved for civic amenities, open spaces and also for roads. The width of the street and its alignment, the building line and the proposed sites abutting the streets, have been perfectly drawn. [Para 35] [259-F-G]

5. The appellant has contended that the disputed property falls in the layout. It is also clear from the materials on record that a portion of the disputed property has been earmarked as a civic amenity and the remaining portion abutting the street has been proposed for residential sites. If the order of de-notification is allowed to stand, the very object of the planned development of the layout would be lost. There will be shortage of civic amenity sites in the layout and it would no longer be possible to set the street alignment and the building line as per the approved plan. This will have adverse impact on the planned development of the layout leading to public inconvenience. It will nullify the object and the purpose for which Planning Act and the BDA Act have been enacted by the Legislature. [Para 36] [259-H; 260-A-C]

6. This Court is of the considered view that the government should refrain from de-notifying or dropping any land being acquired for the formation of a layout, under Section 48 of the L.A Act or under any other law. The courts should also be very strict while considering the plea of the landowners seeking de-notification of the lands which are being acquired or quashing of the notification on the ground of lapsing of the scheme or on any other grounds in respect of the acquired lands for the formation of the layout. It has to be kept in mind that private interest always stands subordinated to the public good. [Para 38] [260-G-H; 261-A]

7. The appellant has opposed the proposal for de-notification by filing detailed objections. The conduct of 3rd respondent in filing case after case for quashing the notification issued by the State Government for acquisition of the land has been brought to the notice of the government. It was also stated that since the lands have been notified for acquisition for a public purpose, namely, for the formation of a layout, a portion of the said land cannot be de-notified as it will adversely affect the layout, causing public inconvenience. The 1st respondent, without adverting any of these contentions, has passed an order of de-notification. The said order has been passed without application of mind and it is arbitrary in nature. [Para 45] [263-A-B]

8. According to the appellant, the disputed property is vacant and no allotment/sale of the sites have been made out of this land. However, it is evident from the referred two letters

and other materials on record that the appellant has illegally formed the sites in the other lands reserved for civic amenities in the approved plan. In order to compensate for the loss of land reserved for civic amenities, it is just and proper to direct the appellant to reserve the entire disputed property measuring 3 acres 5 guntas in Sy.No.30 for civic amenities and play ground. Therefore, we direct the appellant to utilize the portion of the disputed property reserved as a civic amenity site in the layout plan for providing civic amenities. The competent authorities are directed to develop the balance of the disputed property as a park or a playground or both for the benefit of general public. The appellant shall not allot/sell the disputed property or any portion thereof either to its members or to any other parties. The Commissioner BDA is directed to ensure compliance of this order. [Para 55] [268-C-E]

Special Land Acquisition Officer, Bombay and Ors. v. M/s Godrej and Boyce **(1988) 1 SCC 50 : [1988] 1 SCR 590 – relied on.**

B.K. Srinivasan and Ors. v. State of Karnataka and Ors. **(1987) 1 SCC 658 : [1987] 1 SCR 1054 ;** *State Government Houseless Harijan Employees' Association v. State of Karnataka and Others* **(2001) 1 SCC 610 : [2000] 5 Suppl. SCR 483 – referred to.**

Case Law Reference

[1987] 1 SCR 1054	**referred to**	**Para 1**
[1988] 1 SCR 590	**relied on**	**Para 26**
[2000] 5 Suppl. SCR 483	**referred to**	**Para 28**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3600 of 2011.

From the Judgment and Order dated 07.08.2008 of the High Court of Karnataka at Bangalore in W.A. No. 2583 of 2004 (LA-HS)

With

Contempt Petition (C) No. 823 of 2018.

Basava Prabhu Patil, Huzefa Ahmadi Sr. Advs., Anand Sanjay M. Nuli, Suraj Kaushik, Ms. Rachita Hiremath (for M/s. Nuli & Nuli), Darpan K. M., Hetu Arora Sethi, Joseph Aristotle S., Mrs. Priya Aristotle,

A Rijuk Sarkar, Sanjay Jain, Yatinder Singh, T. R. B. Sivakumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.

B 1. "**Bangalore was a beautiful city – once**" said Justice O. Chinnappa Reddy, in one of his judgments of the year 1987 (B.K. Srinivasan and Ors. v. State of Karnataka and Ors.[1]). He went on to say "It was a city with magic and charm, with elegant avenues, gorgeous flowers, lovely gardens and plentiful spaces. Not now. That was before the invasion of concrete and steel, of soot and smoke, of high rise and
C the fast buck. Gone are the flowers, gone are the trees, gone are the avenues, gone are the spaces……" Indeed, Bangalore was a beautiful city. It had luscious gardens, beautiful lakes, well-laid roads, plenty of open spaces and wonderful weather throughout the year. It was one of the most beautiful cities in the country. It was rightly called the "Garden
D City" and a "Pensioner's Paradise". These are things of the past. The city's environment is degraded so much and so fast that the time will not be far away for us to say "**once upon a time Bangalore was a beautiful city**." Traffic jams, over-crowding, haphazard constructions, dying lakes, destruction of the flora, shrinking of lung spaces etc have
E become the order of the day. Its clear cool foggy air has turned into grey smoke and brown dust. All this has happened in the name of development. Of course, the development in today's time comes at a cost that the city of Bangalore has very dearly paid. What is lost has already been lost and no amount of work or effort can bring back the glorious garden days of Bangalore. The only thing that can be done and must be done is to
F at least wake up now, meticulously plan and develop the city in order to maintain whatever little is left of the old Bangalore city and develop the ever-growing city on the broad lines of the glorious days of the past.

2. Keeping the above in mind as a blue print, let us come to the
G facts of this case.

3. The appellant is a society registered under the Karnataka Co-operative Societies Act 1959, with the objective of *inter alia* acquiring lands for formation of house sites and for distributing the same to its

H [1] 1(1987) 1 SCC 658)

members. The appellant had requested the State Government to acquire an extent of 100 acres of land in Nagarabhavi Village, Yeswanthapura Hobli, Bangalore. In the year 1982, the State Government accorded sanction for initiation of proceedings for acquisition of 78 acres 16 guntas of land for the benefit of the appellant. It appears that even before the initiation of acquisition proceedings, Vijayanagar Industrial Workers Housing Co-operative Society Ltd had approached the appellant with a representation that it had already entered into an agreement dated 06.11.1982 with respondent No.3 to purchase the entire extent in Survey No.30, of which she claimed to be the owner. Accordingly, the said society requested the appellant to withdraw its request for acquisition of the said land. This is evident from the agreement at Annexure P1 entered into between the 3rd respondent and the said society. Under the said agreement, out of the total sale consideration of Rs.50,000/- per acre, respondent No.3 had received a sum of Rs.25,500/- and had parted with possession of the land in favour of the said society and stated that she had no objection to the land being acquired by the State Government.

4. In compliance with the procedure prescribed under Chapter VII of the Land Acquisition Act, 1894 (for short 'L.A. Act'), the State Government executed an agreement at Annexure P-2, undertaking to acquire land in favour of the appellant which included Sy.No.30 measuring 5 acres 33 guntas and 8 guntas of pot kharab land. On 16.01.1985, notification under Section 4(1) of the L.A. Act was issued proposing to acquire the required extent of land including Sy.No.30. An enquiry under Section 5A of the L.A Act was conducted and a report was submitted to the State Government recommending acquisition.

5. The State Government, having accepted the recommendation issued a declaration under Section 6(1) of the L.A Act on 04.03.1986, to the effect that several extent of land including Sy. No.30 was needed for the public purpose of the appellant society.

6. The 3rd respondent, claiming to be the owner of an extent 4 acre 16 guntas of land in Sy.No.30, filed W.P. No. 12566 of 1986 before the High Court of Karnataka questioning the notifications issued under Section 4(1) and 6(1) of the L.A Act and obtained an interim order dated 08.07.1986 staying dispossession. Acquisition was challenged on the ground that 3rd respondent was not issued with any notice; that no enquiry was held; and that acquisition was not for public purpose.

A 7. Subsequently, awards were passed which were approved by the State Government. In respect of Sy.No.30, an award was passed fixing compensation at the rate of Rs.45,000/- per acre. The Land Acquisition Officer in terms of his letter dated 06.04.1987 (Annexure P-5) called upon the appellant to deposit Rs.19,76,948/- including the general
B award amount, in compliance whereof the appellant has deposited the amount.

8. The 3rd respondent made a representation as per Annexure P-6 dated 26.08.1990 to the State Government for withdrawing the acquisition proceedings in respect of 3 acres 5 guntas of land in Sy.No.30
C (hereafter referred to as 'disputed property'). The representation of respondent No.3 stated that she had sold the land in Sy.No.30 long back. The purchasers of the sites had come forward to construct the houses on the sites which was objected to by the Land Acquisition Officer and the appellant. It was also contended that she had sold the sites as she had to maintain her family as her children were unemployed and that
D she had to perform the marriages of her sons and daughters.

9. The High Court by its order dated 22.02.1991 dismissed the writ petition by rejecting all the contentions of respondent No.3.

10. Soon after the dismissal of the writ petition, respondent No.3
E claiming to be the owner of 4 acres 16 guntas of land in Sy.No.30, again filed W.P. No. 5558 of 1991 before the High Court questioning the award determining the market value of the acquired land. On 12.03.1991, the High Court granted an interim order staying the dispossession. The State Government delivered possession of the land acquired in terms of the official memorandum dated 13/14.10.1992 to an extent of 68 acres 17
F guntas to the appellant. The extent delivered to the appellant included 1 acre 25 guntas in Sy. No.30 out of total extent 6 acres 1 gunta. Balance of disputed land measuring 4 acres 10 guntas in Sy.No.30 which formed subject matter of interim order of stay in W.P. No. 5558 of 1991 was not delivered to the appellant.

G 11. The High Court by order dated 15.07.1998 dismissed the writ petition W.P. No. 5558 of 1991 by imposing a cost of Rs.2,000/- on the ground that the appellant having suffered an order in W.P. No. 12566 of 1986, ought not to have filed another writ petition for the same relief. Respondent No.3 challenged this order in *intra* court appeal before the
H Division Bench of the High Court in W.A. No. 4245 of 1998.

12. In spite of dismissal of W.P. No. 12566 of 1986 and W.P. No. 5558 of 1991 rejecting the challenge made by the respondent No.3 to the acquisition, the State Government issued a withdrawal notification dated 19.08.1998 under Section 48 of the L.A Act in respect of the disputed property, even without affording an opportunity of being heard to the appellant. The appellant challenged this order by filing writ petition No. 26558 of 1998 before the High Court.

13. Writ appeal No. 4245 of 1998 filed by respondent No.3 came to be dismissed by the Division Bench in terms of the order dated 18.11.1998, thereby confirming the order in W.P. No. 5558 of 1991. On the same day, i.e. 18.11.1998, the High Court allowed W.P. No. 26558 of 1998 filed by the appellant on the ground that the appellant had not been heard in the matter before issuing the notification under Section 48 of the L.A Act and the matter was remitted to the State Government for reconsideration after affording opportunity to the appellant. It was directed that until the time State Government took fresh decision, the status quo as regards possession and nature of the property would be maintained.

14. Respondent No.3 had only sought de-notification of the disputed property, i.e. 3 acres and 5 guntas in Sy.No.30. However, even out of the balance 2 acres and 36 guntas, only 1 acre 25 guntas had been handed over to the appellant. Accordingly, after dismissal of the writ appeal W.A. No. 4245 of 1998 filed by respondent No.3, the appellant requested the State Government to deliver possession of further 1 acre 11 guntas in Sy. No.30 which did not form part of the request made by the respondent No.3 for de-notification. The State Government having failed to act, the appellant filed W.P. No. 2592 of 1999 before the High Court for necessary direction. The High Court in terms of the order dated 02.02.1999 allowed the said writ petition directing the State Government to hand over possession of 1 acre 11 guntas of land to the appellant and accordingly possession of the said extent was handed over to the appellant. Thus, a total extent of 2 acres 36 guntas of land was handed over to the appellant out of 5 acres 33 guntas. The review petition filed by respondent No.3 seeking review of the order dated 02.02.1999 in W.P. 2592 of 1999 was dismissed by the High Court imposing cost of Rs.2500/- with the following observations :

> "…thus it is clear that a clever attempt is being attempted to be made by the petitioner to get over an order this Court

A by creating an impression that the petitioner has attempted suppression of fact and has practiced fraud. On the contrary it is clear that the petitioner is playing fraud on this by means of representing that 1 acre 11 guntas of land restored to the 1st respondent form part of the property, claimed by the petitioner. This is a clear misrepresentation. I am of the opinion that this writ petition is totally misconceived and is made with oblique motive. Accordingly this Revision Petition is dismissed with costs of Rs.2,500/- payable to the 1st respondent."

15. After lapse of about 5 years of the order dated 18.11.1998 in W.P. No. 26558 of 1998, in terms whereof the notification under Section 48 of L.A Act in respect of the disputed property had been quashed, the State Government issued notice to the appellant regarding its proposal to de-notify the land. On 28.08.2003, the appellant filed detailed statement of objections to the proposed de-notification of the acquired land. Ignoring objection raised by the appellant, the State Government proceeded to pass an order deciding to withdraw the aforesaid land measuring 3 acres 5 guntas in Sy.No.30.

16. Being aggrieved by the government order dated 27.12.2003 and the consequential notification dated 12.01.2004 issued under Section 48 of the L.A Act, the appellant approached the learned Single Judge of the High Court by filing W.P. No. 4912 of 2004. The learned Single Judge dismissed the writ petition on 08.03.2004 and the writ appeal filed by the appellant in Writ Appeal No. 2583 of 2004 challenging the said order has been dismissed by the Division Bench on 07.08.2008. The appellant has called in question the legality and correctness of the said order in this appeal.

17. We have heard Mr. Basava Prabhu Patil, learned senior advocate for the appellant, Mr. Joseph Aristotle S., for respondent Nos. 1 and 2 and Mr. Huzefa Ahmadi, learned senior advocate for respondent No.3.

18. Mr. Patil, learned senior counsel, submits that the first respondent has exercised the power under Section 48 (1) of the L.A Act in an arbitrary and whimsical manner. The order prejudicially affects the interest of the appellant. The exercise of power lacks *bona fides* and suffers from vice of arbitrariness. It is further submitted that the disputed

property forms an integral part of the layout formed by the appellant. A portion of the disputed property is reserved for civic amenities. If the land in question is de-notified, it will have adverse impact on the planned development of the layout leading to public inconvenience. It is further submitted that the individual interest of respondent No.3 cannot come in the way of larger public interest. It is also submitted that according to the third respondent, she had already sold 1/3rd of 3.5 acres to the third parties by a registered sale deed on 28.05.1992. According to her representation, the purchaser has already formed sites in disputed property. She cannot maintain an application under Section 48(1) of the L.A Act for de-notification of the land already sold. Having failed in her challenge to the acquisition proceedings, she could not have maintained the application for de-notification. Section 48 (1) was basically meant for the State Government to de-notify the land from acquisition when it is not possible to acquire the said land and not meant for the owners, particularly when lands are being acquired for public purpose.

19. On the other hand, learned advocates appearing for the respondents have sought to justify the impugned order. Mr. Ahmadi, learned senior counsel, appearing for the 3rd respondent submits that the appellant society is not a *bona fide* housing society. It is submitted that there was no bar for the 3rd respondent to maintain an application for de-notification under Section 48 (1) of the L.A Act even though her writ petition challenging the acquisition proceedings has ended in dismissal. Taking into account the hardship suffered by the 3rd respondent, the State Government has de-notified the land in her favour. Accordingly, the 3rd respondent prays for dismissal of the appeal.

20. We have carefully considered the submissions of the learned counsel made at the Bar.

21. Section 48 of the L.A Act corresponds to Section 54 of the old Act 'X' of 1870. For ready reference Section 54 of the old Act is as under:

> "54. Except in the case provided for in s. 44, nothing in this Act shall be taken to compel the Govt. to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

A But whenever the Govt. declines to complete any acquisition, the Collector shall determine the amount of compensation due for the damage (if any), done to such land under s. 4 or s. 8 and not already paid for under s. 5, and shall pay such amount to the person injured".

B 22. Section 54 of the old Act gave power to the government for withdrawal of the land which it has proposed to acquire. This power had to be exercised before the award is made. This was causing great hardship to the government. The reasons for re-enacting the said provision in the L.A Act of 1894 can be gathered from the preliminary report of the Select Committee dated 2nd February, 1893, which is as under:

C

"Section 54 of the Act (10 of 1870) gives to the Govt. or the public bodies whom it represents the power of withdrawal from land it has proposed to acquire. This power, however, must be exercised before the award is made. After award, withdrawal is

D prohibited whatever may be the circumstances. Experience has shown that the only occasion on which powers of withdrawal, would be really useful are when an award has shown that the Govt. was seriously misled by an underestimate of the value of the land. A case has been reported in which a municipality has

E been nearly ruined by being compelled to proceed with an acquisition in which the award was inordinately in excess of the original valuation. We think, therefore, that power to withdraw should be given after, as well as before, the award, but that, if so exercised, it should only be on terms of the most liberal

F compensation to the owner and that, if he is dissatisfied with the Collector's offer, he should have the same rights of reference to the Judge as in case of acquisition".

(emphasis supplied)

23. The Select Committee in its second report dated 23rd March,

G 1893 has given certain clarifications, which are as under:

"We have altered the terms of the first clause of s. 48, which gives certain powers to Govt. to withdraw from a contemplated acquisition of land so as to make it clear that *this withdrawal may be made at any time before possession is taken but not*

H *afterwards.* Instances were quoted in our Preliminary Report in

which the Collector was proved by the Judge's award to have been seriously misled as to the value of the land and in which the Govt. would not have acquired the land had it received a correct appraisement. We think, that a Govt. which provides compensation from the taxes of the Empire should have larger powers of withdrawal than are given by the present Act, but we are of opinion that no such power should be given *after possession has once been taken* and that each Local Govt. must protect itself by executive instructions to Collectors to refrain from taking possession until after the award of the Judge, in every case in which there is a material difference between the Collector and the owner as to the value of the property".

(emphasis supplied)

24. Section 48 of the L.A. Act of 1894 is as under:

"**48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.--**(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section".

25. It is clear that an important change was affected in law in 1894 by enactment of this section. Under the previous Act, the government could not withdraw from the acquisition after an award had been made or a reference directed. This was causing hardship in cases where the land turned out to be more valuable than the acquisition was worth. The difficulty has been removed by fixing the bar at the taking of possession, an act which can be indefinitely postponed to meet the occasion. When possession under Section 16 of the L.A. Act is not

A taken, the government can withdraw from acquisition and the person interested would be entitled to compensation for the damage suffered in consequence of the acquisition proceedings and also to such costs of the proceedings as reasonably incurred by him. Section 48, however, will have no application when once the land has vested in the government under Section 16 of the L.A. Act.

B

26. The two reports referred to above indicate that the liberty to withdraw from acquisition under Section 48 (1) of L.A Act was made available prior to taking possession of the land in order to curtail payment of exorbitant award amount in cases where it was no longer possible for the government to effectuate the intended purpose of acquisition. In

C **Special Land Acquisition Officer, Bombay and Ors.** v. **M/s Godrej and Boyce**[2], this Court was considering the de-notification of land before taking its possession. In this case, the government had intended to acquire vast piece of land for construction of houses by the State Housing Board but this land had been overrun by slum dwellers to such an extent that it

D was no longer possible for the government to effectuate the intended purpose of acquisition. It was observed that the State Government was not responsible for the occupation of land by trespassers. Therefore, the State Government cannot be compelled to go ahead with the acquisition when the purpose of such acquisition could not be achieved. In this

E regard it is beneficial to note the observations of the Supreme Court:

> "Where slum dwellers on a large scale occupy pieces of land, social and human problems of such magnitude arise that it is virtually impossible for municipalities, and no mean task even for the government, to get the lands vacated. If the government is reluctant

F to go ahead with the acquisition in view of these genuine difficulties, it can hardly be blamed. We see no justification to direct the government to acquire the land and embark on such a venture. We are also of the opinion that the fact that the government exercised the power of withdrawal after the writ petition was filed does not spell mala fides once the existence of circumstances,

G which, in our opinion, justified the government's decision to withdraw, is acknowledged".

27. It is thus clear that sub-section (1) of Section 48 of the L.A Act empowers the government to withdraw from acquisition proceedings

H [2] 1988 (1) SCC 50

of the land of which possession has not been taken. It is further provided that when the government withdraws from acquisition, the Collector shall determine the amount of compensation due for the damages suffered by the owner in consequence of notice or proceedings thereunder. A combined reading of sub-section (1) and sub-section (2) of Section 48 of the L.A. Act makes it clear that the purpose of Section 48 was mainly to ensure that the State Government is not compelled to acquire the land when the acquisition ceases to be beneficial for the intended purpose. That is why, sub-section (2) of Section 48 provides for payment of compensation to the owner, whose land was notified for acquisition but not acquired for the reason that such an acquisition is against the public interest and public revenue.

28. However, from the language employed in sub-section (1) of Section 48, it can also be inferred that there is no bar to de-notify the land from acquisition at the request of the landowners. We are of the view that when an application is made for de-notification of the land, the government has to consider the same with great care and caution. The government has to consider the application keeping in mind the subservience of public interest because the lands are being acquired for public purpose. The government should not exercise this power in an arbitrary and whimsical manner. The decision of withdrawal from acquisition should be *bona fide* and backed by valid reasons. It is settled that the government could not withdraw land from acquisition without giving the beneficiary of acquisition an opportunity of being heard. (See: **State Government Houseless Harijan Employees' Association** v. **State of Karnataka and Others**[3])

29. It is also necessary to emphasize here the need to have planned development of the city and the importance of planning schemes and the ill-effects of de-notification of the land from the approved scheme/plan. Town planning schemes are made for the immediate need of the community. Town planning is meant for planned development of certain local areas in order to make utilities and facilities available to the general public. Planned development of the city is a *sine qua non* for its health and growth, given the rapid increase in population of the city on account of influx of thousands of people from other parts of the country.

[3] (2001) 1 SCC 610

A 30. The Karnataka Town and Country Planning Act, 1961 (for short 'Planning Act') and the Bangalore Development Act, 1976 (for short 'BDA Act') play an important role in the planned development of the city of Bangalore. The Planning Act was enacted by the State Legislature for the regulation of planned growth of land use and development and for executing town planning schemes in the State of Karnataka. The Planning Act has created a Planning Authority which has been given power to check, survey and locate the area for development by declaring it as a planning area. It also provides for preparation of master plan for development of the city after carrying out the survey of the area within its jurisdiction. The zoning regulations are made from time to time, classifying the land use in the planning area.

31. The State Legislature has enacted the BDA Act for the establishment of a development authority for the development of city of Bangalore and areas adjacent thereto and for matters connected therewith. The State Government has constituted Bangalore Development Authority to effectuate the purpose of the BDA Act. This authority is a Planning Authority for the city of Bangalore. The main object of the BDA Act is planned development of the city of Bangalore and to check haphazard and irregular growth of the city. BDA is the sole authority which draws the schemes for formation layouts within the Bangalore Metropolitan Area. This Act envisages development of two types of layouts. The first is formation of a layout by the BDA itself. For this purpose, BDA has to draw a development scheme. The particulars to be provided in the development scheme are enumerated in Section 16 of the BDA Act. The development scheme made by the BDA provides for acquisition of the land, laying and re-laying of all or any land including the construction and re-construction of buildings, formation and alteration of the streets, provision for drainage, water supply, electricity, reservation of not less than 15% of the area of the layout for public purpose and playground and an additional area of not less than 10% of the total area of the layout for civic amenities. Section 18 of the BDA Act provides for sanction of the scheme submitted by the BDA. After acquisition, State Government vests the acquired land with the BDA for formation of a layout strictly in accordance with the sanctioned scheme.

32. The second type of layout under the BDA Act is a private layout. Section 32 of the BDA Act provides for formation of private layouts. If any person intends to form an extension or a layout, he has to

make a written application with a plan to the Commissioner, BDA under sub-section (2) of Section 32. The said plan has to contain laying out sites of the area, reservation of land for open spaces, the intended level, direction and width of the street, street alignment and the building line and the proposed sites abutting streets, the arrangement for leveling, paving, metalling, flagging, channelling, sewering, draining, conserving and lighting the streets and for adequate drinking water supply. A private layout cannot be formed without the approval of the layout plan by the Commissioner, BDA and such layout has to be formed strictly in accordance with the approved plan. While forming the layout, the BDA or a private individual or a society, as the case may be, cannot deviate from the sanctioned scheme or the approved layout plan.

33. It has come to the notice of this Court that of late the State Government has been de-notifying the lands acquired for public purpose for the benefit of the authorities like BDA or other urban development authorities and for the formation of private housing layouts, adversely affecting the planned development of the city of Bangalore and other cities in the State of Karnataka. The instant case is a classic example where the power has been blatantly misused ignoring larger public interest.

34. As noticed above, the State Government had accorded sanction for initiation of acquisition proceedings for the benefit of the appellant in the year 1982 itself. The State Government executed the agreement in the month of August 1984, undertaking to acquire 78 acres 16 guntas of land in favour of the appellant, including the land in Sy.No.30 belonging to the 3rd respondent. Notifications under Sections 4(1) and 6(1) of the L.A Act were issued and possession was taken except the disputed land to an extent of 3 acres 5 guntas.

35. The approved layout plan was issued by the government in compliance with the provisions of the BDA Act and the Planning Act. The layout plan produced by the appellant at Annexure P-13 would indicate that meticulous planning has been undertaken for planned development of the layout. The plan also indicates that lands have been reserved for civic amenities, open spaces and also for roads. The width of the street and its alignment, the building line and the proposed sites abutting the streets, have been perfectly drawn.

36. The appellant has contended that the disputed property falls in the middle of the layout. However, the 3rd respondent has contended

A that the disputed property is situated in the southern end of the layout. Whether the disputed property falls in the middle of the layout or in the southern end makes no difference so long as it is within the layout. It is also clear from the materials on record that a portion of the disputed property has been earmarked as a civic amenity and the remaining portion abutting the street has been proposed for residential sites. If the order of
B de-notification is allowed to stand, the very object of the planned development of the layout would be lost. There will be shortage of civic amenity sites in the layout and it would no longer be possible to set the street alignment and the building line as per the approved plan. This will have adverse impact on the planned development of the layout leading
C to public inconvenience. It will nullify the object and the purpose for which Planning Act and the BDA Act have been enacted by the Legislature.

37. Experience has shown us that the lands are being de-notified before taking possession or dropped from acquisition before the issuance
D of declaration by the government are mostly at the instance of land mafias in connivance with influential persons; political or otherwise. These lands are generally situated within the layouts in major cities and specially in Bangalore city. After de-notification, multi-storied complexes come up on these lands comprising of large number of residential and
E non-residential units. This has a direct impact on the existing infrastructure consisting of water supply, sewerage and lighting. Similarly, the traffic movement facility suffers unbearable burden and is often thrown out of gear because the original scheme/layout plan did not envisage construction of these complexes. The civic amenities provided in the original layout plan were in proportion to the development proposed in the scheme/
F plan. The purchasers of residential sites, who wish to have a roof over their heads, fall prey to the designs of unscrupulous land mafias. We may not hesitate to add that irreparable damage has already been done to many layouts in Bangalore and in other places by allowing construction of multi-storied buildings within the layouts.

G 38. We are of the considered view that the government should refrain from de-notifying or dropping any land being acquired for the formation of a layout, under Section 48 of the L.A Act or under any other law. The courts should also be very strict while considering the plea of the landowners seeking de-notification of the lands which are
H being acquired or quashing of the notification on the ground of lapsing of

the scheme or on any other grounds in respect of the acquired lands for the formation of the layout. It has to be kept in mind that private interest always stands subordinated to the public good.

39. It is also to be noted here that the area reserved for civic amenity should not be diverted for any other purpose other than the purpose for which it was reserved in the sanctioned scheme or the approved layout plan. The plan for building in the layout should be sanctioned strictly in accordance with the building bye-laws. If a site is earmarked for residential purpose, no plan should be sanctioned for construction of a non-residential building at such site. The construction on the sites by the allottees should be made in accordance with the plan sanctioned by the competent authority.

40. It is no doubt true that right to build on one's own land is a right incidental to the ownership of the land. This right has been regulated in the interest of the community residing within the limits of the city in general and the layout in particular. This has to be strictly implemented for the planned development of the city. If it is not controlled, it will have tremendous burden on the infrastructure available in the layout.

41. We are of the view that Section 14-A of the Planning Act, which empowers the Planning Authority to grant permission for change of land use or development, has no application to the lands acquired under Sections 17 to 19 of the BDA Act for the implementation of the scheme or the layout approved under Section 32 of the said Act. The position is similar even in respect of the other Development Authorities in the State of Karnataka.

42. We make it clear that henceforth, the planning/development authorities in the State of Karnataka, including the BDA shall not permit change of land use within the layout formed by the BDA or a private layout formed under Section 32 of the BDA Act or the layout formed by any other authority contrary to the scheme sanctioned by the State Government or the layout plan approved by the competent authority. The BDA or the other planning/development authorities shall not venture to alter the sanctioned scheme/approved layout plan in any manner. The BDA and the other planning/development authorities, Bruhat Bangalore City Municipal Corporation Bangalore, or any other authorities in the State of Karnataka authorized to sanction the plan for construction of the buildings shall not sanction any plan for construction contrary to the

A sanctioned scheme/approved layout plan. The sites reserved for parks, playgrounds or for providing other amenities shall be used strictly for the purpose for which they were reserved. Be it noted that violation of any of these directions by the authorities will be viewed strictly.

43. It is also hereby clarified that if de-notified lands or the lands
B dropped from acquisition before the issuance of the declaration under the BDA Act or any other law are available within the BDA layout or the private layout approved by the BDA or the layout formed by any urban development authorities in the State of Karnataka, the said lands shall be utilized strictly in accordance with the land utilization proposed in the scheme/approved layout plan. Hence, building permission or the
C sanctioned plans to build on these lands shall not be issued by any authorities contrary to the land utilization proposed in the scheme/approved layout plan.

44. Now, let us focus on the conduct of the 3rd respondent who had managed to obtain an order of de-notification. It is clear from the
D materials on record that even prior to the issuance of preliminary notification, M/s. Vijayanagar Industrial Workers Housing Co-operative Society Ltd had entered into an agreement on 06.11.1982 with the 3rd respondent to purchase the land in question. In fact, the 3rd respondent had also received partial compensation from the said society. She has
E challenged the acquisition proceedings thereafter by filing writ petition in W.P. No. 12566 of 1986. During the pendency of this case, she filed a representation dated 26.09.1990, requesting the State Government to withdraw from acquisition of the said land. In the said representation, it was contended that she had sold the said land long back for the purpose of collecting funds to perform the marriage of her children and that she
F had divided the sale proceeds amongst her children. It was also contended that pursuant to the sale, the purchaser had come forward to construct houses and the Land Acquisition Officer and the appellant had objected to the same. On the said ground, she had sought de-notification of the land after the dismissal of W.P. No. 12566 of 1986. Therefore, the Land Acquisition Officer passed an award. She filed the second writ petition
G challenging the acquisition proceedings in W.P. No. 5558 of 1991, which was rightly dismissed by the High Court and intra court appeal filed by her challenging the said order was also dismissed by the Division Bench. It is obvious that in the said cases, she had raised the grounds which had been raised by her in her representation seeking de-notification of the
H disputed property.

45. The appellant has opposed the proposal for de-notification by filing detailed objections as per Annexure P-12. The conduct of 3rd respondent in filing case after case for quashing the notification issued by the State Government for acquisition of the land has been brought to the notice of the government. It was also stated that since the lands have been notified for acquisition for a public purpose, namely, for the formation of a layout, a portion of the said land cannot be de-notified as it will adversely affect the layout, causing public inconvenience. The 1st respondent, without adverting any of these contentions, has passed an order of de-notification. We are of the view that the said order has been passed without application of mind and it is arbitrary in nature.

46. In this appeal, the 4th respondent has filed an application contending that he had purchased certain extent of land out of the disputed property. In support of his contentions he has produced sale-deed dated 27.5.1992 executed by 3rd respondent in favour of his vendor, Smt. P.N. Kanthanna. In fact, the 3rd respondent in her statement of objections filed in this appeal has admitted having sold the land. However, it is pleaded that de-notification of the land is necessary in order to convey better title in favour of the purchasers. It is stated as under:

> "23. The contention that this respondent has no subsisting interest in the land in question as she has sold the land is totally false. This respondent has to convey better title in favour of the purchasers and therefore her request to denotify the land is not tainted with any malafides. As stated earlier, this respondent has sold certain land to sustain herself and her family."

47. Since the 3rd respondent has already sold certain portion of the land, she could not have maintained the application for de-notification of the said portion of the land as she has no subsisting interest in the said land. We are also of the view that even the subsequent purchaser of the land cannot seek de-notification of the land from acquisition as his sale-deed is void.

48. We have also noticed that the State Government has been de-notifying the lands under Section 48 (1) of the Act for the past 10-15 years and allegations have been made that these orders have been passed with ulterior motives. We are of the view that the State Government has to re-consider all these orders and take corrective steps in case it is

found that such orders have been passed in violation of the law. Perpetuation of illegality has to be ceased, desisted and deterred at any cost.

49. Mr. Ahmadi, learned senior counsel, submits that the appellant is not a *bona fide h*ousing society and that 90% of its members are not eligible to become its members and that they are not entitled for allotment of sites from the appellant. It is not possible to consider these contentions of Mr. Ahmadi in this appeal. However, if the 3rd respondent has any grievance in relation to the *bona fides* of the society, she may lodge a suitable complaint before the competent authority. If such complaint is filed, we direct the concerned authority to consider the same in accordance with law.

50. A contention has also been raised by the 3rd respondent that the appellant-society has sold sites meant for civic amenities illegally to various persons and the show-cause notice has been issued by the competent authority in this regard. The 3rd respondent has produced the notices issued by the Pattangere City Municipal Council, Bangalore dated 8.7.1998 at R-18 which is as under:

"Annexure R-18

Pattanagere City Municipal Council

Bangalore, Dated 08/07/1998

The President/Secretary,
Sri Vinayaka House Building
Co-operative Society Limited,
No.3, Adi chunchanagiri complex,
Vijayanagar, Bangalore -40

Sir,

Sub: Representation with regard to transfer of katha from the City Municipal Council fraudulently in respect of C.A. reserved sites to some of the members of your society contrary to law and rules of BDA in the layout formed at 2nd Stage, Nagarabhavi and suppressing the information.

—-

With relation to the above subject, the layout formed by Sri Vinayaka House Building Co-operative Society Ltd., is the layout which comes within Ward No.7 of our City Municipal Council limits. It is noticed that the sites have been developed, approval being obtained by the Bangalore Development authority, the sketch/plan has been got sanctioned and the sites have been allotted.

But, the Local City Municipal Council Member, Sri V. Prakash, B.Com., LL.B., Advocate has submitted the complaint in writing on behalf of the general public that the plan/sketch in respect of certain areas has not been sanctioned by the BDA and the area which has been reserved for civic amenities by the BDA have been formed in to sites and by giving wrong information to some of the members and in violation of the rules of government and BDA, the President, C.H. Subboji Rao and the Secretary M.S. Srinivasa Murthy have fraudulently registered the said civic amenities sites to the civilians and cheated the said persons.

Therefore, it has come to the notice of our City Municipal Council that kathas have been effected for 39 members by giving wrong information. I hereby order to give explanation as to why legal action should not be initiated against the President, Secretary and the members who have obtained the sites, within 7 days from the date of receipt of this notice.

Yours faithfully,

Sd/-

Commissioner
Pattangere CMC
Bangalore-39."

[Emphasis supplied]

51. The second notice at Annexure R-19 dated 03.08.1998 issued by the BDA to the Commissioner, City Municipal Corporation, Pattangere reads as under:

"Annexure R-19
M.R.C.R. Shopping Complex,
Vijayanagar,
Bangalore-560 040.
Dated: 03.08.1998

No.BDA/EE(W)/111/98-99.

A To:
The Commissioner,
City Municipal Corporation,
Pattanagere,
B Bangalore.

Sir,

Sub: Approval layout by Bangalore Development Authority in Sy. Nos. 17, 18, 19, 20, 30, 31, 32, 36/1, 37, 64, 71, 95 to 98, 112/19, 135 to 137(17) of Nagarabhavi Village, Yeshwanthapura Hobli, Bangalore North Taluk in favour of Vinayaka HBCS Reg.,
C

** ** **

With reference to the above subject, B.D.A. has approved layout
D plan in respect of Sy. Nos. 17, 18, 19, 20, 30, 31, 32, 36/1, 37, 64, 71, 95 to 98, 112/19, 135 to 137(17) of Nagarabhavi Village, Yeshwanthapura Hobli, to an extent of 78 Acres from a layout in favour of Sri.Vinayaka HBCS vide resolution No.883 dated 23.01.1988 with a condition after formation of Layout all the roads and C.A., Sites has mark to be handed
E over to B.D.A. through relinquishment.

Accordingly society has the layout and so for about 71% of sites has been released by B.D.A. and the rest of sites will be released to society after handling over of roads and C.A. site to B.D.A.

F But now it is learnt that the society has registered some sites with a Sub Numbers to their Members in the marked C.A. Area and in park Area and in the approved layout plan. This is illegal. Also it has come to know that Khathas and sanctioning of plan to these illegal site members are being processing in your office.

G In the light of the above information it is requested not to accord making any Khathas or sanctioning of any residential/commercial plans and also not be regularize any illegal holdings in the preserved area, as the area is can marked as park and civil amenities sites in C.D.P.

Also it is requested to restrain your officials Elected
H representatives that not to interfering in B.D.A. Jurisdiction.

Any clarification in this regard may please be obtained from the Executive Engineer (West) B.D.A. Vijayanagar, or Asst. Executive Engineer No.4 West Sub-division, B.D.A. before taking any approval or sanction.

Yours faithfully,
Sd/-
Bangalore Development Authority,
M.R.C.R. Complex, Vijayanagar,
Bangalore-560 040."
[Emphasis supplied]

52. The appellant has not denied the above contentions by filing a rejoinder. It is necessary to notice here that out of 5 acres 33 guntas and 8 guntas of port kharab land in Sy.No.30, possession of 2 acres 36 guntas has been taken by the State Government and delivered to the appellant. The subject matter of this appeal is only 3 acres 5 guntas of land in Sy.No.30. Admittedly, the possession of this land has not been taken so far. In the layout plan, a portion of this land is reserved for civic amenities and the balance of the land is meant for formation of house sites.

53. An intervener application has been filed by one Mrs. Bhavna Praveen contending that certain sites have been formed in the disputed property and possession of these sites have been given to members of the appellant-society, namely, R. Dhanabalan, D. Vinod Kumar and Mrs. D. Geetha. The sale-deeds have also been executed in respect of these sites in their favour.

54. A Contempt Petition (civil) No.823 of 2018 was filed by S. Krishnappa complaining of violation of the interim order of *status quo* granted by this Court in this Appeal dated 07.01.2009. It was alleged that the contemnors therein have trespassed into the disputed property and began to construct illegally on the said land. A reply was filed by the appellant herein contending that site Nos. 501, 526, 527, 528 and 529 have been formed out of 2 acres 36 guntas of land in Sy.No.30, the possession of which was already delivered to the appellant and that the sites formed in the said land have been allotted to the members of the society as per the plan approved by the BDA prior to the order of de-notification. Relevant portion of the objection is at paragraph 10 which is as under:

A "10. That, the said Sites No.501, 526, 527, 528 & 529 have been formed out of 2 acres 36 guntas of land in Survey No.30 which has been handed over in favour of the Society by the Order passed by the Hon'ble High Court of Karnataka in W.P. No. 10249/2003 and the same has been allotted in favour of the members of the society as per the approved BDA and that too, prior to the order of the de-notification dated 27.12.2003 and notification dated 12.01.2004 issued by the Government of Karnataka".

B

(Emphasis supplied)

55. Therefore, even according to the appellant, the disputed property is vacant and no allotment/sale of the sites have been made out of this land. However, it is evident from the above referred two letters and other materials on record that the appellant has illegally formed the sites in the other lands reserved for civic amenities in the approved plan. In order to compensate for the loss of land reserved for civic amenities, it is just and proper to direct the appellant to reserve the entire disputed property measuring 3 acres 5 guntas in Sy.No.30 for civic amenities and play ground. Therefore, we direct the appellant to utilize the portion of the disputed property reserved as a civic amenity site in the layout plan for providing civic amenities. The competent authorities are directed to develop the balance of the disputed property as a park or a playground or both for the benefit of general public. The appellant shall not allot/sell the disputed property or any portion thereof either to its members or to any other parties. The Commissioner BDA is directed to ensure compliance of this order.

C

D

E

56. If it is found that the appellant has allotted any site in the disputed property in favour of its members or any other parties, the appellant has to refund the consideration paid by them with interest @ 18% p.a. from the date of the allotment till the date of payment. Ordered accordingly.

F

57. The State Government is directed to take possession of the aforesaid disputed property and transfer the same to the appellant forthwith for its utilization in terms of paragraph 54 of this judgment.

G

58. In the light of the above discussions, we pass the following orders:

(i) The judgment and order of the Division Bench as also of the learned Single Judge impugned herein are hereby set aside.

H

(ii) The order passed by the 1st respondent dated 27.12.2003 and the consequent notification dated 12.01.2004 pertaining to the lands in dispute are hereby quashed. A

59. The appeal and all the pending applications are disposed of accordingly, without any order as to costs.

60. In view of the above, Contempt Petition(C) No.823 of 2018 in C.A. No.3600 of 2011 is also disposed of. B

61. The Registry is directed to send a copy of this judgment to the Commissioner, Bangalore Development Authority, Bangalore forthwith.

Ankit Gyan Appeal disposed of.