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## Chapter-4

### LAND DEVELOPMENT AND LEGAL PROCESSES/STRATEGIES

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The precondition for any venture into the configuration of ‘real space’ (i.e., the physical space- the land) has been the ‘abstract space’ (i.e., planning and the plan) and its logic and the laws that determine it. One of the most often deployed laws by the government to procure land is ‘The Land Acquisition Act, 1894’ (L.A. Act). The L.A. Act makes ‘plan’ which is a corollary of ‘planning’, a prerequisite for any authority to acquire land to produce different kinds of usable or exchangeable spaces. According to Section 8 of the L.A. Act- “The Collector shall thereupon cause the land (unless it has been already marked out under Section 4) to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same”<sup>1</sup>. Again land acquisition is reciprocally embedded in the planning law, i.e., in ‘The Karnataka Town & Country Planning Act, 1961’ (KTCP). The Section 69 of KTCP is an intermesh which says that- “The Planning Authority may acquire any land designated in a Master Plan for specified purpose...by agreement or under the Land Acquisition Act, 1894 (Central Act 1 of 1894), as in force in the State”<sup>2</sup>. Provisions of ‘The Bangalore Development Authority Act, 1976’ (BDA Act) too are intertwined with L.A. Acts’ provisions. According to Section 36 of the BDA Act-

Provisions applicable to the acquisition of land otherwise than by agreement.- (1) The acquisition of land under this Act otherwise than by agreement within or without the Bangalore Metropolitan Area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894.

(2) For the purpose of sub-section (2) of section 50 of the Land Acquisition Act, 1894, the Authority shall be deemed to be the local authority concerned.

(3) After the land vests in the Government under section 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Authority agreeing to pay any further costs which may be incurred on account of the acquisition, transfer the land to the Authority, and the land shall thereupon vest in the Authority.<sup>3</sup>

On paper, laws present a kind of a unity in their approach and the modalities involved in procuring land. Apart from that, one has already taken note in the Chapter 3, that the delimitation of boundaries of the city is legalized and such an area has been termed LPA. The internal operations of the plan within the legal boundaries and its land requirements are clearly defined by the way of laws acting as catalysts to procure land. Thus the legally defined field of procurement of land was open for various kinds of operations in land development over decades in the post-independence period.

Beyond that legal unity, urban planning and land development processes involve various sets of actors who not only possess and own land but also those who control or limit the uses and transactions of land. Myriad of actors are involved in the land development process in and around the expanding city. Planners, various governmental agencies, land owners, land developers, housing cooperatives, small-scale private layout developers, buyers, etc., are in the process of acquiring, possessing, developing, selling, etc., the urbanizable land for various developmental or speculative purposes. Land is the prime economic resource that enables the process of the expansion of the city. The force that underlies expansion of the city is urbanization. Urbanization creates an ever increasing demand for land. The supply of land is sought to be regulated by the process of planning. An ever increasing demand and the regulated supply of the land have created the scarcity of urbanizable land. Multiplicity of laws and acts prescribe the way land ought to be treated, used and developed. Regulated availability of land has given rise to a highly contentious land development process.

The contentious issues of land development seek the interventions of law. Courts give space to multiplicity of actors and laws when questions of urbanizable land are raised. Land being the source of contention draws the attention of the adjudicative mechanisms. Adjudicative processes resolve dispute according to the given legal provision. The legal process is also mainly interpretative in nature which would give rise to new approaches that evolve and emerge in different ways. Thus the legal process in turn moulds the land development in its finality overtime. Since law and adjudicative process shape the city in significant ways. Disputes which enter the arbitration process on the one hand espouse legal frameworks that will have to underpin urban planning and land development and on the other, simultaneously demonstrate the issues involved in the dynamics of land development and the city growth itself.

In this chapter, the focus will be on the different kinds of laws which have been in operation in various kinds of land developments and issues have given rise to the legal operations. Further, the chapter explores disputes in the context of a plethora of acts and laws framed for the 'orderly' growth and development of city. The nature of the object is sought in the materials which are available for the study. The set of materials are legislations and the disputes which are available in the form of cases.

## The Laws

Before we analyze the content of the cases, it is essential to briefly take note of the relevant acts which have been legislated over a period of time. These laws can be classified as Planning Law, Land Acquisition Laws, and the recently repealed Land Ceilings Law which was to control accumulation of land expected and speculation in land transactions and to bring orderly growth of the city. Each of these types of law is not exclusive. Some of issues are interconnected and overlapping. In a functional sense laws share a common ground viz., land acquisition and confiscation; in various degrees, they take note of “haphazardly” growth of the city and espouse the orderly growth. Most of these laws on the one hand proscribe disorderly growth and development of the city and on the other perform repressive and nominal compensatory functions.

### The Karnataka Town & Country Planning Act, 1961

If plan is a precondition for land acquisition, *The Karnataka Town & Country Planning Act, 1961* becomes a legal basis for its formulation. The KTCP prescribes the drawing of Local Planning Area (LPA) to plan; to set up a planning institution and the terms on which personnel of the planning authority are recruited, their status and roles and powers, etc. The technical bureaucracy of the planning body is legally rationalized. Preparation of land use map and master plan and their content and intent, specifications to enforce the master plan, town planning schemes and their intent and content, and land acquisition for the schemes etc., are defined and specified. The important item on the KTCP's list is the ‘master plan’ and its contents, because that has a major bearing on the laws which acquire space for the plan's needs. These are procedural matters related to the limits of time to delimit expandable boundaries of city, let people know the operations of planning, and the logistics and method of planning. First step in the preparation of master plan is that every planning authority has to demarcate the boundaries of the LPA and submit it to the government and the same is to be informed to the public through local newspapers and published in the State Gazette to elicit public opinion within 60 days from its publication. Such suggestions from public maybe considered by the authority before sending the report to the government for approval. The second step is to carry out surveys of the LPA. The third step is to prepare a series of maps and documents for the implementation of the plan in a regulated manner. All that would include-

- (a) zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other purposes together with Zoning Regulations;
- (b) a complete street pattern, indicating major and minor roads, national highways, and state highways, and traffic circulation pattern, for meeting immediate and future requirements with proposals for improvements;
- (c) areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic developments;
- (d) areas earmarked for future development and expansion;
- (e) reservation of land for the purposes of Central Government, the State Government, Planning Authority or public utility undertaking or any other authority established by Law, and the designation of lands being subject to acquisition for public purposes or as specified in Master Plan or securing the use of the land in the manner provided by or under this Act;
- (f) declaring certain areas, as areas of special control and development in such areas being subject to such regulations as may be made in regard to building line, height of the building, floor area ratio, architectural features and such other particulars as may be prescribed;
- (g) stages by which the plan is to be carried out.<sup>4</sup>

The above spatial contents of the master plan indicate clearly the greater need for land. There were two ways suggested for the government to have access to land; one is by agreement and two, by land acquisition as indicated in the beginning of the chapter. Most of the times land has been acquired through compulsory acquisition to provide space for various uses and exchanges. All the needs of space are termed 'public purpose'. Let us take a look at various kinds of acquisition and institutional acts.

#### Land Acquisition Act, 1894

The L.A. Act was passed in 1894 and it was conceived as an instrument to acquire land for 'public works'. In the post-independence period it was adopted with amendments but the main aim of the Act remained the same i.e., 'public purpose'. The Central Government amended the Act thrice in 1962<sup>5</sup>, 1967<sup>6</sup>, and 1984<sup>7</sup> and all other States followed suit with amendments. Karnataka adopted the Act as Land Acquisition (Mysore Extension Amendment) Act 17 of 1961. With the 1984 Amendment by the Central Government, States have again adopted the amendment accordingly.

The L. A. Act is a general piece of procedural legislation to acquire land. It has been quite often and generally employed by the government to acquire land for various kinds of public purposes and companies. L. A. Act is divided into eight parts. Part one is the title of the Act, the name of the Act and various definitions<sup>8</sup> of various- elements- "land", "company", etc., actors- "local authority", "person interested", "Collector" or "Deputy Commissioner", "Court", etc., and the public purpose for which the land is assigned to beneficiaries through the land acquisition process. The Act visualizes the purpose by heeding to the demand for land through the land acquisition and its allocation to different kinds of collectives, associations and institutions who might seek land from the government. In a way the Act lists the social constituents, and provides insulation against the contingencies that might arise during the land acquisition

proceedings. The legal idea of public purpose addresses the collectives or social groups, associations, organizations and institutions. Existing social collectives which exhibit social relationships of mostly secondary, tertiary, and at times primary in nature, are given a legal form i.e., the public purpose and their need for land is legalized and hence socially legitimated. The land they seek for housing purpose is a public purpose. The spatial content of governmental welfare programmes, at Bangalore city level, is supported mostly through land acquisition, although there are provisions in the BDA Act, to negotiate and enter into agreements with the land owners to procure land. Land is also acquired under the contingencies like natural disasters viz., floods, for temporary governmental uses, etc., too.

Though the idea of public purpose remains common to all the states, the items listed under it differ from state to state. Section 3, clause (f) of the L.A. Act explicates the idea of 'public purpose' in Karnataka which includes the provision of land for- (1) village sites; (2) planned development from public funds and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned; (3) town or rural planning under any law relating to such planning; (4) carrying out any housing scheme or health scheme sponsored by the Central Government or any State Government or any local authority; (5) clearing slum areas; (6) relieving congestion; (7) housing poor, landless, or displaced persons or persons residing in areas affected by floods; (8) residence for any person holding an office of profit under the Central Government or a State Government, or accredited as a diplomatic consular or trade representative of a foreign Government; (9) building locating a public office; corporations owned or controlled by the State, or other nationalized industries or concerns; (10) any local authority and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development; (11) a company- where the land is needed for the construction of some work and such work is likely to prove substantially useful to the public and building co-operative society or corporation for the construction of houses and; (12) any charitable trust.<sup>9</sup> Government's developmental initiatives and programmes in the post-independence period have given rise to the need for land to establish, mainly, residential layouts and industries in the context of expanding Bangalore city. Land acquisition process is an enforced process and is justified on the principle of 'public purpose' or the 'common good'. It is generally viewed that land acquired for the public purpose or the common good is of greater value, therefore an individual will have to sacrifice the property for the purpose. Individuals' land which is expropriated compulsorily for the public purpose is compensated by the Government. Apart from the question of common good, government has an embodied right flowing from its sovereign power i.e., the 'eminent domain', to acquire the land.

Part two of the Act is with regard to land acquisition procedures which are to be followed by the Government's official representatives/functionaries, within the specified time framework. People are coerced into an engagement into acquisition proceedings.<sup>10</sup> Part three of the Act is the procedures<sup>11</sup> to approach the court if the interested parties are in dispute, and specifies courts' role and sets terms of settlement. More significant of all the sections are actually the Sections 23 and 24 which set terms to restrict the role of courts by prescribing and proscribing terms with limited court's role to settle the disputes. The courts' role is limited to assess the economic values of the land per se and other economic contingencies which may arise in the process of land acquisition. The criterion for the Court to take into account while adjudicating the disputes to fix the compensation are - (1) the market-value<sup>12</sup> of land at the date of the publication of the preliminary notification of land acquisition under Section 4 (1) of the Act; (2) if any damage value of the any standing crops or trees while taking possession of the land; (3) if any damage value of land severed from the other land; (4) damage value of the property movable or immovable property or earnings, if any, while taking possession of the land; (5) if the interested person in the land is compelled to relocate the residence or business will have to be compensated, and (6) the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.<sup>13</sup> According to Section 24 of the Act- (1) the degree of urgency which has led to the acquisition; (2) persons who are disinclined to part their land for acquisition; (3) damages created by the private persons during the acquisition would not be accountable for legal proceedings; (4) 'any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under Section 6, by or in consequence of the use to which it will be put'; (5) 'any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired'; (6) 'any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put'; (7) court shall not take into consideration the improvements or expenditure on the land acquired after the notification under Section 4 (1) of the Act i.e., preliminary notification has come into effect, and; (8) 'any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy'.<sup>14</sup> Further, according to Section 25 of the act the court cannot fix the amount of compensation lower than the price fixed by the Collector.<sup>15</sup> The remaining sections of Part III of the Act, further deal with the procedures for the courts to follow or adhere with regard to attestation by the concerned Judge in validating the awards made by considering questions such as who would bear the costs of the legal proceedings, who are eligible to be part of the legal

proceedings at the later stage and who are out of the purview of the concerned legal proceedings but are part of the same land acquisition process, and so on<sup>16</sup>.

Part IV of the Act specifies a procedure to apportion the compensation and if any disputes arising in the process, court is called upon to judge such cases.<sup>17</sup> Part V is with regard to the procedures and modalities of payment of compensation and the contingencies which might arise during the apportionment or sharing of the compensation among the parties interested in the compensation.<sup>18</sup> Since land ownership is shared among the families or households, which could be intra-household/family or inter-household/family matter, has greater potential for disputes in the share of compensation. Land ownership among rural communities is a much complex picture. Land is owned across two generations and more and ownership happens within the extended joint families and so on. So when land is acquired, sharing of the compensation draws attention, of the executive and judiciary, into the genealogies of the families/households and ownership, for an economic settlement of the relationships than anything else.

Part VI of the Act specifies procedures and conditions under which government can occupy land temporarily and restore the land back to the owners. The act gives government the power to acquire, either arable or wasteland, for the public purpose or for a company not exceeding three years.<sup>19</sup> Part VII of the act is the provision made for acquisition of land for the companies. This part mainly focuses (a) on the provision made to all companies to acquire land to make provision for housing to its workers and (b) much broader provision for the government to acquire land for its companies, industrial establishments, housing, etc. Principle that underlies all these provisions is public purpose.<sup>20</sup> Part VIII is termed miscellaneous sections dealing with who is authorized to serve the notice and who authorized to receive the notice, penalties to be imposed if one were to obstruct the land acquisition, power of the government to withdraw from the land acquisition process, etc.<sup>21</sup>

Connected to L.A. Act are the House Building Cooperative Societies (HBCS) the quasi-legal bodies which seek land acquisition from government and planning inputs from Bangalore Development Authority (BDA). HBCS can be viewed as quasi-legal bodies because they are formed/constituted by social groups on voluntary basis. The house building activities and membership of a cooperative society will have to adhere to the legal strictures. Thus these cooperative associations come together for a purpose. Therefore they are 'social' they will have to adhere to the provisions of the law and therefore they are 'legal'. This combination of both social and legal character of the associations gives them the quasi-legal character. According to Section 4 of The

Karnataka Co-operative Societies Act, 1959 “a co-operative society which has its objects the promotions of the economic interests or general welfare of its members, or of the public, in accordance with co-operative principles, or a co-operative society established with the object of facilitating the operations of such a society”.<sup>22</sup> Co-operative societies are of various kinds- producers, consumers, marketing, banking, housing, etc.<sup>23</sup> House Building Cooperative Society has been a quasi-legal entity registered under The Karnataka Co-operative Societies Act, 1959 and The Karnataka Co-operative Societies Rules, 1960 apply to the registered body. Government has made provision for the HBCS land development in the L.A. Act. The Section 3 of Land Acquisition (Mysore Extension Amendment) Act 17 of 1961 classifies a co-operative society, among other things, under a category of Company<sup>24</sup>. The Section 3(f)(vi) of Land Acquisition (Amendment) Act, 1894 (amended in 1984), similarly classifies a co-operative society, among other things, under the category of Company<sup>25</sup>.

The large-scale involvement of HBCS in the land development activity in Bangalore started only during the last quarter of the 20<sup>th</sup> century. Even though the earliest recorded HBCS was in 1927<sup>26</sup>, the first reference to it was made in the *Report of the Bangalore Development Committee (1954)* in the context of the shortages in housing site. At that time, apart from the Mysore Provincial Co-operative House Building Corporation which was a Central Government institution, there were 15 House Building Societies in Bangalore City.<sup>27</sup> However HBCS had become an alternative or a parallel land development institution by the 1980s apart from the governmental land development in the form of extensions/layouts or housing projects. By 1988 about 100 HBCS were involved in the parallel land development process. This kind of land development process was aided by governmental support by means of land acquisition for residential purposes. This kind of a joint or quasi-governmental effort to develop land has its own modalities. The concerned HBCS negotiates the price of the land with the government and the landowners and major part of costs of the land and land development are met by HBCS according to the town planning norms which are approved by BDA. Government according to the procedures prescribed by the L.A. Act acquires land for the HBCS and disburses the compensation for the acquisition to the concerned landowners. This kind of acquisition process and land development has given rise to disputes between various parties involved in the process and litigations.

#### Bangalore Development Authority Act, 1976 (BDA Act)

What is the conceived role of BDA in structuring the city and what is the avowed purpose of the law? There is a background to the BDA Act in 1971, a meeting

of the Ministers of Housing and Urban Development was held in Delhi in which it was agreed to set up. Bangalore, just by then, had acquired metropolitan status in accordance with the calculation of spatial expanse and its demographic proportion as prescribed. And during those times multiple authorities were at the helm in administering and planning the city viz., City of Bangalore Municipal Corporation, the City Improvement Trust Board, the Karnataka Industrial Area Development Board, the Housing Board and the Bangalore City Planning Authority. All these governmental institutions were performing overlapping functions within the same jurisdiction of the city which gave rise to ‘confusion’ and hindered the co-ordinated development of the city. Thus it was decided to set up an authority in each of the metropolitan city in India on the model of Delhi Development Authority. The new authority was to administer and plan the adjacent areas of the city and to prevent ‘haphazard and irregular growth’.<sup>28</sup> That was the rationale given for setting up of Bangalore Development Authority (BDA).<sup>29</sup>

What does the Act enunciate? The Act is divided into eight chapters. Chapter one is about the title of the act and definition of various terms. Chapter 2 elaborates on the organization of the bureaucratic structure and power distribution among the incumbents according to their roles in the institution. Chapter 3 lists different kinds of developmental schemes the authority takes up, procedures involved in designing and implementing projects, the power of the authority to undertake works and incur expenditures, powers to levy different taxes, etc. Chapter 4 is about the powers of the authority to acquire land to implement the schemes designed and planned by it. Chapter 5 deals with management of property and finances of BDA. Chapter 6 is to do with the powers and procedures to appoint different incumbents of the authority. Chapter 7 outlines the role of an Art Commission to maintain and prepare an urban-aesthetic design for the city. Chapter 8 brings together miscellaneous entries on the powers of the authority to authorize any person to enter into any land or building with or without appointed assistants or workmen to make enquiry, inspection, measure, survey, etc. The authority could issue directions to other government bodies which manage water supply, electricity, etc. It also covers the penal functions of the authority against the offences/violations and so on.

From the point of view of the present work, what is significant in the Act is the preamble of the Act. It is titled as *The Bangalore Development Authority Act, 1976* and reiterates the purpose for which Bangalore Development Authority is set up. Chapter 1 of the Act defines various concepts like ‘amenity’, ‘civic amenity’, ‘Bangalore Metropolitan Area’, ‘betterment tax’, ‘building’, ‘corporation’, ‘development’, etc. According to the Act, “‘development’ with its grammatical variations means the

carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment”.<sup>30</sup> The object of the authority is to ‘promote and secure the development of the Bangalore Metropolitan Area.’ To serve such purpose the authority exercises “power to acquire, hold, manage and dispose of moveable and immovable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purposes of such development and for purposes incidental thereto.”<sup>31</sup> Three aspects of the law are interesting to take note of. They are: a. the nature of development schemes conceived; b. acquisition of lands; and c. the aesthetic it wants to retain and develop it further for the city. The law provides a charter or list of powers bestowed on BDA to produce a kind of a city. Key to such a development process is the availability and procurability of land. BDA has two ways to procure land. One, is by entering into agreements with the land owners and purchase the lands. Two, BDA in its Act, is designated as the local authority as required by the L.A Act to acquire lands for public purposes. Thus BDA may invoke the L.A. Act to acquire lands. BDA can implement its development schemes based on the availability of lands. BDA performs three major functions- planning, production of various kinds of infrastructures and housing, and distribution. A typical BDA scheme consists of- acquisition of land, ‘laying and re-laying out’ land, construction and reconstruction of buildings, provision for drainage, water supply and electricity, creation of public parks, playgrounds, and other civic amenities. Apart from that during recent times BDA is involved in building of flyovers, underpasses, etc. Much more interesting about the law is its disposition against unplanned developments- such as slums, unauthorized layouts, etc. How is it expressed? It is expressed in the following terms-

Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.<sup>32</sup>

This above quote from a sub-section of the BDA Act is a clear indication of the BDA's approach to already urbanized areas when one takes note of increasing number of unauthorized layouts, slums, etc. It indicates the programme of renewal. It indicates the programme of appropriation of areas into the fold of planning. It imposes or coercively brings already developed areas to adhere to planning norms and acquires the vacant/fallow/agricultural lands to develop it for various purposes and so on. There are

many esoteric sections in the Act, such as quoted above, which indirectly address such issues.

The above mentioned development schemes taken up by BDA, are supposed to address the declared aesthetic considerations that are part of law. The Act provides for a commission termed “The Bangalore Urban Art Commission” which is supposed to mainly attend to the aspects of- a. ‘visual arts or architecture’- ‘the planning and development of future urban design and of the environment’; ‘Indian History or Archaeology’- ‘the restoration and conservation of archaeological and historical sites and sites of high scenic beauty’ and the ‘environment’- ‘restoration and conservation of urban design and of the environment in the development areas’.<sup>33</sup> A kind of aesthetic is given the legal sanction in a rationalized form. Given this aesthetic perspective, the areas which don’t conform to the legalized aesthetics are named as slums, unauthorized layouts, etc. In that sense these areas go against the aesthetic-legal-rationalized formulations of the law. However, “nonconforming” areas have their own causes for their existence in a given socio-spatial form. Apart from that the city has been expanded through the realization and production of planned BDA layouts in a legal-rational-aesthetic form.

#### The Urban Land (Ceiling & Regulation) Act, 1976 (ULCRA)

Around the same time when BDA was established in 1976, the new Act known as *The Urban Land (Ceiling and Regulation) Act, 1976* was passed at the national level, to which again Karnataka was a subscriber. The Act says:

After the imposition of a ceiling on agricultural lands by the State Governments, the demand for imposing a ceiling on urban properties was also raised. With the growth of population and increasing urbanisation, a need for *orderly development of urban areas* had been felt. It was, therefore, considered necessary to take measures for *exercising social control over the scarce resource of Urban Land* with a view to ensuring its *equitable distribution*. To ensure uniformity in approach Government of India address the State Governments in this regard. Certain States had passed resolutions empowering Parliament to undertake legislation in this behalf.<sup>34</sup>(emphasis added)

The Act was for the ‘orderly development of urban areas’ under the conditions of accretion of population and consequent increasing demand for the urban land. Therefore, ‘social control’ over the ‘equitable distribution’ of the ‘scarce resource’ was conceived. Such controls planners thought, would, establish an urban order. Implicit in this formulation was the urban disorder caused by accumulation and inequitable distribution of the scarce resource- the urban land. Thus it was sought to change the pattern of property ownership and impose limits on the same. Thus, to change the

pattern of ownership of property, legislation was sought “to bring about socialization of urban land in urban agglomerations to sub serve the common good by ensuring its equitable distribution”<sup>35</sup> . The Act was to control ‘speculative transactions and profiteering’ in urban land, by limiting/ceiling the accumulation of urban land, “to discourage construction of luxury housing leading to conspicuous consumption of scarce building materials and to ensure the equitable utilization of such materials”<sup>36</sup>. Ownership of land in excess to the ceilings was supposed to be acquired by the Government and that was to be distributed to subserve the common good. Transfer of vacant land and built-up land within the ceiling limit was to be regulated.<sup>37</sup> The law, further, elaborates on the procedures, the powers of the authority, the measures of the ceilings, the powers of authority, the penal prescriptions in the law, the compensation, the scope for litigations, the regulation on the transfer of the land which is in excess by of sale, mortgage, gift, lease, etc., and so on.

ARTICLE- 226 of the Constitution of India

The above described laws are all the instruments for the State or the Government to acquire or confiscate excess ownership of urban land or property. The only law which gives the aggrieved who lose lands in the process of acquisition or confiscation is the Article 226 of Constitution of India which gives scope to approach in the courts. Article 226 is about seeking directions, writs or orders from the High Courts to be issued to any person or authority to enforce the rights as bestowed upon the citizens in the Part III of the Constitution. In the context of the governmental authority dealing with a host of urban issues, there have been writ petitions filed by the people, in the High Court and sometimes in the Supreme Court, seeking orders or directions against the government to protect and exercise or enjoy their constitutional rights.

The laws described and analyzed above are of two types and contain broadly the planning and the acquisition/confiscation part. The KTCP and BDA Acts, on the one hand give an overview of how the planning should be done and what plan should contain, to give material shape to the city, and on the other hand indicate the ways to find the land. Whereas the laws of the L.A. Act and ULCRA specify and delineate procedures based on the rationale of plans to acquire or confiscate land, respectively, for various public purposes.

## Nature of Disputes and their Classifications

An attempt is made here to concentrate on the kinds of disputes that the acquisition processes had given rise to and the modes of acquiring or accessing land by different institutions, individuals, social groups, associations, etc. For the purpose, a survey of two journals was made to identify issues related to Bangalore city's land. These journals publish landmark judgments which give a comprehensive view of disputes and the significant interpretations of laws. The journals are (1) All India Reporter (AIR) and (2) Mysore Law Journal (Mys. L. J)/Karnataka Law Journal (K. L. J). A total of 137 reported land dispute cases related to Bangalore city were available from the two law journals. For analytical purposes, the cases had to be classified under various clusters of laws and acts, which would clearly distinguish the disputes which focus on acquisition, modes of acquiring land and other issues. Of the 137 cases, 42 were related to disputes related to the allotment of sites, transfer of property between individuals, claims of same property by different individuals, planning and environmental issues, etc. Of the 42 disputes/cases, 22 were about the demand for allotment of sites or land by the CITB and BDA. Both individuals and members of HBCS were in dispute with CITB and later BDA, with regard to the allotment of sites. Six cases were directly related to planning, zoning and environmental issues. They did not question the planning as such, but were raising issues in the manner in which various spaces meant for civic amenity sites were put to use. In the dispute between *Capt. M.V. Subbarayappa v Bharath Electronics Employees Co-op. House Building Society Ltd. & Others (1990)*<sup>38</sup> petitioner had questioned the setting up of sewerage treatment plan on a "Civic Amenity Site" which would create a health hazard to the locality residents. The dispute between *Major Gen. M. K. Paul and Others v Bangalore City Corporation, Bangalore and Others (1994)*<sup>39</sup> was against the license given for the construction of multi-storeyed building by a co-operative housing society. The dispute between *The Residents of Mico Layout, II Stage, Bangalore and Others v J.S.S. Mahavidya Peetha, Mysore and Others (1997)*<sup>40</sup> was about the allotment of civic amenity site to set up a college, etc. The cases which questioned planning in a major way were with regard to spatial jurisdiction and the acquisition, issues of land development within the green belt, etc. Three disputes were about transfer of property. Among the remaining cases, the issues were discrete. A dispute was about unauthorized extended use of Corporation Property even after the expiry date. The second was about a case against the withdrawal of license to construct a building on a site. The third was about property tax, etc.

**Table 5.1**

Cases Reported in AIR, Mys.L.J. &amp; K.L.J

Disputes and the Laws	1940s	1950s	1960s	1970s	1980s	1990s	Total
Land Acquisition Act & other Related Acts, Rules, Etc.	1	4	4	11	7	24	51
City of Bangalore Improvement Act & Other Related Acts, Rules, Etc.	0	1	9	6	1	2	19
Bangalore Development Authority Act & Other Related Acts, Rules, Etc.	0	0	0	0	9	28	37
Constitution of India, Article 226 & other Related Acts, Rules, Etc.	0	0	1	1	3	5	10
Miscellaneous	0	1	1	4	2	12	20
<b>Total</b>	1	6	15	22	22	71	137

**Table 5.2**

Cases related to Land Acquisition for various Land Development purposes

Sl. No.	Land Development Purposes	Total
1	Formation of Extensions/Layouts	9
2	Housing Co-operatives Layouts	12
3	To extend and Develop Civic Amenities	9
4	Industrial Development	5
5	Development of House Sites for Weaker Sections	6
6	Slum Clearance & Improvement	2
7	For Government Institutions (Both Union and State Governments)	2
8	Land Development- Miscellaneous and Purposes Unstated in the Cases	6
	<b>Total</b>	<b>51</b>

The disputes have been broadly organized for description and analysis, under major issues. Further those cases which were decided in favour of petitioners and appellants are separated from the disputes which were decided in favour of respondents - state or government or its institutions or legally supported and government aided associations or organizations. That apart, the discussion on legal and land development processes would also focus on classifying the land acquisitions for planned and unplanned land developments and legal processes.

### **Legal Contests Against Land Acquisitions for Planned Land Development**

Before 1980 in most of the disputes claiming enhancement of compensation the judgment went in favour of the citizens who lost the land. One could start with those cases.

## Valuation of Land and the Compensation

Among the available 90 cases of land acquisition 13 are related to valuation of land.

The dispute between *The Bangalore Municipality's Commissioner vs The Sub-divisional Officer, Bangalore, and Five Other Respondents, (1946)*<sup>41</sup> with regard to land acquisition to set the tone during the post-independence period with regard to determination of compensation. In the cases related to compensation, the *value* of land became central. In this case the land Acquisition Officer had categorized land use as agricultural and accordingly had fixed the compensation for the land acquired. Dissatisfied with the compensation awarded, the petitioners had pleaded for the enhancement of compensation. The District Judge gave the order in favor of petitioners. Challenging the judgment, Bangalore Municipality approached the higher court. The court interpreted the potential value as the value of developable urban land. In determining the market value, court relied on the decision taken in another case.

It is perhaps desirable in this connection to say something about this expression the 'market price'. There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by the 'market value' in Section 23 [of the Land Acquisition Act]. But sometimes it happens that the land to be valued possesses some unusual, and it may be, unique features as regards its position or its potentialities. In such a case the arbitrator in determining its value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with those particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined...but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self evident one.<sup>42</sup>

It is further said-

No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be. It is plain that in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account.<sup>43</sup>

In the case, Section 23 of the L.A. Act was referred to determine the 'market value' by emphasizing the 'uses to which it [land] is reasonably capable of being put in the future'<sup>44</sup>. Similarly in the cases *Adinarayana Setty v Special Land Acquisition Officer, (1954)*<sup>45</sup> and *The Special Land Acquisition Officer, Bangalore v T. Adinarayan Setty, (1959)*<sup>46</sup>, Section 23 of the L.A. Act was invoked to interpret the market value, but with a difference. The high court took the view in *Adinarayana Setty v Special Land Acquisition Officer, (1954)*<sup>47</sup> that the land acquisition officer had taken into account the 1935 price of land when the land owner bought the land. Court observed that the land

prices had increased 5 to 10 times in the city by the end of the World War II.<sup>48</sup> Thus the judgment was in the favor of the appellant. In this particular case, the court emphasized the appreciation of time as the value of the land in question. This case did not end there it was taken to Supreme Court. This time Special Land Acquisition Officer was appellant against the High Court decision. The Supreme Court in *The Special Land Acquisition Officer, Bangalore v T. Adinarayan Setty, (1959)*, only reaffirmed the judgment of the High Court by adding that the 'opinion of experts' and 'the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages, and...a number of years' purchase of the actual or immediately prospective profits of the lands acquired'<sup>49</sup> will have to be taken into account. Thus the preceding three cases were to become part of the procedures generally in the later disputes too.

In other cases<sup>50</sup> too the issue was the 'market value' of land like the cases described above. In all the cases, except one, the courts had directed the government to increase compensation by many folds. In *Additional Special Land Acquisition Officer, Bangalore v A. Thakoredas and others(1977)*, the court revised the judgment passed by the lower court, with regard to the matters of compensation. The lower court had found that the respondents of this case were the owners of land of 1 acre 35 guntas at Binnamangala Manavartekaval which was notified for acquisition in 1964 and final declaration of acquisition came about in 1970. The land owners being dissatisfied submitted an application, as required by the Section 18 (3) (b) of L.A. Act to refer it to the court within the stipulated time period of 90 days from the day of declaration of the award (compensation). The land acquisition officer argued that the court should not allow the application because the land owners had not submitted the application within the stipulated period. Thus under Article 137 of Limitation Act, 1963, the case was not to be allowed for hearing. The lower court had found according to the given evidences that the Land Acquisition Officer had not referred the application to the court within the given stipulated 90 days. After the violation was established, the court ordered to allow an application for hearing in 1975 for the proper assessment of compensation rate by the court. Aggrieved by the decision of the lower court, the Land Acquisition Officer approached the High Court with the revision petition not to allow the petition for hearing because it violated the stipulated time period of 90 days. The High Court took note of the proceedings in the lower court and the evidences as considered by the lower court and judged that the Article 137 of Limitation Act would be inapplicable to this case given the violations on the part of the concerned authority. Therefore the application for hearing for the enhancement of compensation was judged valid.<sup>51</sup> In only one case, i.e., *G. Gurubasappa v Special Land Acquisition Officer, City Municipality and others(1959)*, the court did not allow increase in compensation

because of lack of evidence to show the market value claimed by the appellant. Therefore the appeal was dismissed.<sup>52</sup> In the dispute between *Land Acquisition Officer, CITB v Narayanaiah K., (1976)*<sup>53</sup>, City of Bangalore Improvement Act, 1945 came into question because it did not include sections to determine market value. Court then directed/instructed the concerned authorities to follow the Section 23 of the General Law of L.A. Act to determine the value of the land and compensation. Similarly, in the case- *Gangadharappa G & Others v State of Karnataka & Another, (1979)*, court instructed the government to fix the 'market value' for the land which was acquired through contract. Court emphasized that it was not an 'ordinary contract' but a 'statutory contract' and therefore government was bound by legal obligation to follow provisions of the Section 27 (1) and (2) under Karnataka Industrial Areas Development Act, 1966 to determine the market value.<sup>54</sup>

The issue of valuation of land was again questioned in *Smt. Pullamma and Others v The Additional Special Land Acquisition Officer, Bangalore and Others (1977)*<sup>55</sup>. Usually when the award is made by the Collector against the land acquired, if it is not acceptable, he refers it to the court according to the S. 18<sup>56</sup> of the L.A. Act. In this case similar reference was made to the court and the claimants or the land owner-appellants were absent during the proceedings. So by default those references were dismissed. Against those orders the claimants applied to the court for the restoration of the references made to the court by the collector by invoking the provisions of Section 151<sup>57</sup> and Rule 9<sup>58</sup> of Code of Civil Procedure (CPC). Court again directed the lower a new court to start the proceedings.

The above cases reveal that there was a huge gap between monetary compensation and the actual value of land. There were similar cases demanding higher compensation during the 1980s and the 1990s.

### **Causes against Land Acquisition**

To bring clarity to the analysis, the petitions or appeals lost and won are classified into two sections, and further under each of those categories different kinds of contentions are sub-classified according to different disputes. Petitions against land acquisition have been defeated or won in the courts for various reasons. It would be useful to distinguish these reasons to find out the grounds of the judgments and their validity. Apart from that there also has been a phase or a period, during which there were disputes related to unauthorized residential formations and private layout. These will be discussed in a different section. These different distinctions would perhaps

reflect different tendencies of legality in the Bangalore city's formation, land development and expansion.

### **Procedural Issues:Lost Causes Against Land Acquisition**

The context of development and expansion of Bangalore City and policies and programmes of the government, have had legal consequences. This section deals with the cases involving procedural issues. The following analysis of the legal disputes gives a picture of encounters of the issues of procedural violations or adherence.

1. Land Acquisition Notice and Notification: Failure of serving the personal notice to the land owners and other interested parties has been contentious. Contentions were about the way notification of land acquisition was publicized. Contentions were also about alleged failure serving the notice in the stipulated mandatory time period to the landowner or property owners. So those were the issues which were dominating the legal proceedings in the cases listed below. For those failures the petitioners or appellants were demanding the courts to quash the land acquisition proceedings. It is noticeable below that the points of law deployed have changed over a period of time with the changes in the institutions, but sources of contentions have remained the same.

Entitlement to get the notice: In *M. Manicklal v The State of Mysore & others*<sup>59</sup> (1967),<sup>60</sup> one of the contentions was that the City Improvement Trust Board (CITB) had not adhered to the provisions of S. 16(2) of City of Bangalore Improvement Act, 1945 (CBIA) of serving notice to all those land owners whose names appeared in the Land Revenue Register. After the detailed examination, the court came to the conclusion that the notice should be served to those individual land owners whose names were found in the Land Revenue Register. In *M. Manicklal v The State of Mysore & others* (1968) similarly, the petitioner had bought the lands from two of his predecessors who had the title of ownership of the lands. Those owners had sold the lands to the petitioner through sale deeds. The previous land owners were cultivators of Inamthi lands. After government abolished Inams under the Inams Abolition Act, the relationship of landlord and tenant came to an end. Thus under provisions of the Act, the previous tenants were relieved from the landlords. The tenants were entitled to get the titles of the ownership on payment of the revenue to the government. In support of the first contention, the petitioner had provided the "khata"<sup>61</sup> with revenue payment receipts issued by the village accountant in names of previous land owners. According to the needs of the S. 16(2) CBIA the notices must be served on every person whose name

appeared in the land revenue register<sup>62</sup>. So khata is not land revenue register. Since the petitioner could not produce the necessary evidence to prove that khatedars' names were found in the land revenue register the contention was dismissed. In yet another similar dispute between *M.B. Ramachandran v State of Karnataka and Others*<sup>63</sup>(1991)<sup>64</sup>, the names of the petitioners were not found in the land revenue register. So notice was served only to those whose names which appeared in the land revenue register. Thus the contention of not serving the notice was dismissed.

In the dispute between *Venkataramaih M. v State of Karnataka & others*<sup>65</sup> 1988<sup>66</sup>, it was found that even before land acquisition proceeding started, the land had already been converted for non-agricultural purposes and divided and sold to two individuals. In response to the contentions the court said that the land owners' (Khatedars) latest residential addresses were not found in the registers of payment of land assessment and property tax. Thus it was concluded that it was impossible for the authority to serve the notice. Thus the contention was dismissed. And in the dispute between *B.T. Sakku v Commissioner, Bangalore Development Authority and Another*<sup>67</sup> (1995), court while addressing the contentions found that at the time of preliminary notification land belonged to someone else and by the time appellant had filed the suit the property had changed two hands. According to Section 17(5) of the BDA Act, the appellant had failed to prove that she was the owner of land for the notice to be served within the 30 days of the publication of notification of the acquisition in the Gazette according to Section 17(5) of the Act. Thus the contention was dismissed.<sup>68</sup>

Evidence of notice being served: In certain cases the petitioners had claimed that they were not served notice before the land acquisition began as required by law. In such cases, court relied on the evidence that the other landowners of the same proceedings were served the notices. In the dispute between *Pillayya Nagamangala Venkatappa v State of Mysore*<sup>69</sup>(1969)<sup>70</sup>, court found the evidence with regard to the notice being served and notifying it in the public to the concerned land owners about acquisition (according to section 4 of L.A. Act). Thus the violation was not established. In the dispute between *Mahendra Enterprises (R) v Commissioner, Bangalore City Corporation & Others*<sup>71</sup>(1987)<sup>72</sup>, Government according to procedure had issued the notices to the interested individuals and notice of acquisition was displayed in the convenient places for the people to know about the acquisition. Similarly, in a dispute between *Venkataramaih M. v State of Karnataka & others* (1988) the contention was that the notification of acquisition was not published in three consecutive issues of official Gazette of Karnataka and the notification was not affixed in "some conspicuous" part of the BDA Office, Deputy Commissioner's office, and Office of the Corporation. The court argued that though evidence was not available regarding the

notification, publication of it was also impossible to maintain or preserve the evidence. And in the context where large scale acquisition of adjacent lands were in progress, “to say that the Khatedars of adjoining lands...the petitioner had no such knowledge is unbelievable. On facts, it is difficult to accept the plea of innocence or ignorance”<sup>73</sup>. Thus it was considered that there was no substance in the contentions which invoked Section 17(2,3, & 5).

Delay in serving the initial notice-In the dispute between *Muniveerappa v State of Karnataka & Others*<sup>74</sup>(1991)<sup>75</sup>, it was alleged that the petitioners were not served the notice within the stipulated period. According to Section 17(3) of the BDA Act the notice of acquisition was to be served within 30 days from the date of publication of the acquisition notice. Court found that the allegation was proved right that the notice was not served within the stipulated limits, but that particular provision of law was seen as only ‘directory’ provision than ‘mandatory’. Court observed that--“Whether a particular provision is mandatory or directory depends, not only upon the contents of that provision but also the object behind that provision.”<sup>76</sup> The object of the acquisition of land for the formation residential layout was considered to be of prime importance than adhering to the stipulated time period to serve notice to the concerned. Similarly, in a dispute between *Smt. Venkamma and Others v Deputy Commissioner, Bangalore and Others*<sup>77</sup>(1995)<sup>78</sup> with regard to delayed serving of the notices and not serving personal notices as required by *Rule 4 of Karnataka. Acquisition of Land for Grant of House Sites Rules, 1973*. Regarding this contention the court took the view that “the principle that where a mode of performing a duty is laid down by law, it must be performed in that mode or not at all, is held to be subservient to the basic principle that courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat them”<sup>79</sup>. Thus the court set aside such violation as insignificant, because the main intent or purpose of the legislation was important than the insignificant procedural irregularity.

Delay in issuing final notification: In a dispute between *Hanumanthappa M. v State of Karnataka & others* (1987)<sup>80</sup> the issue was about inordinate delay in issuing final notification under Section 19 of the BDA Act. According to Section 11-A of the LA. Act, the award should be passed within two years from the date of final declaration. The petitioner had argued that the concerned delay would vitiate the proceedings and lead to lapse in entire acquisition proceedings. The petitioner had pointed out that there was a delay of seven years between the preliminary notification and the final declaration. Against the contentions the judgment argued that there was no provision in the BDA Act which would address the question of delay. Therefore the contention

against delay could not arise and the sections of L.A. Act could not be the grounds to judge acquisition proceedings which were taken up under BDA Act. Thus the petition was dismissed.

Failure to give an opportunity of statutory mandatory personal hearing or to submit objections to the appointed governmental authority during the acquisition proceedings by the landowners or property owners or slum dwellers: In the dispute between *Pillayya Nagamangala Venkatappa v State of Mysore*<sup>81</sup>, (1969)<sup>82</sup> objection was with regard to the exclusion of enquiry from the proceedings. The court found in this case that the enquiry became mandatory according to the Section 5-A (1) of the L.A. Act only when objections had been filed. In this case since the objections were not filed there was no question of exclusion of enquiry from the proceedings. The objection was so dismissed.

Declaration of land needed for public purpose without conducting prior enquiry or receiving objection from the property owners or landowners: In the dispute between *Pillayya Nagamangala Venkatappa v State of Mysore*<sup>83</sup>, (1969) objection was with regard to the omission of investigation to be made by the appointed official according to Section 6 of the L.A. Act. In this case court found that such an investigation could be conducted before the final declaration which was yet to be done. Thus the contention was dismissed

#### Disputes with Regard to Various Procedural Delays

Delay in the publication of Declaration: In the dispute between *Mahalakshmi Keshava Rao v State of Karnataka & Another*, (1990)<sup>84</sup> the contention was that the declaration made under Section 6 of the L.A. Act of that land which was required for the public purpose and accordingly to be published in the Gazette within 3 years from the date of preliminary notification and the declaration to follow was not done within the stipulated time period. The Court took the view that the declaration made under Section 6 of the L. A. Act of land needed for the public purpose made within a period of three years from the date of publication of preliminary notification under Section 4 of the Act was valid and it would not become invalid if it was published in the official gazette after the expiry of three years from the date of publication of preliminary notification. Therefore the writ petition was dismissed.

Delay in taking possession of the land: In a dispute between *Sri Shanidevara Seva Mandali, Bangalore v Commissioner, Bangalore City Corporation, Bangalore and Another* (1995), the contention was whether the delay in the taking of the possession of the acquired piece of land was valid? Against that question, court found that the title of

the property did not vest with the appellant and acquisition proceedings were complete. Thus the court applied the principle that “the law presumes and the law proceeds on the footing that the action is legal. That is because there is a legal presumption of legality in respect of such acts and it must therefore, be demonstrated that the acquisition in question has either been challenged or that it has been set aside. In the absence thereof, the court has to proceed on the presumption of legality and has to apply the rule of finality”<sup>85</sup>. Thus the appeal was dismissed.

Stipulated time period to make an award: In disputes between *A. Krishnamurthy (Since Deceased) by L.Rs. v Bangalore Development Authority and Others*<sup>86</sup> (1996)<sup>87</sup>, *Ramachandrappa and Others v State of Karnataka and Others* (1996) and *Poornaprajna House Building Co-operative Society, Bangalore v Bailamma @ DoddaBailamma and Others* (1998) the issue was about the delay in passing awards. In the first case, the petitioners had cited provision Section 11-A of L.A. Act against which court ruled that it was inappropriate to invoke provisions of L.A. Act, because land was acquired under BDA Act. In the latter two cases the court had ruled against the contention for the reason that alleged procedural lapse of ‘expiry of mandatory period of two years’ to make an award for the land acquired, was not found to be factually correct. The representative of the government had signed the award within the given mandatory period of two years before sending the award report to the government. The delay caused by the petitioner approaching the lower court and the high court was to be discounted. Thus the date of signing of the award by the government representative was valid.<sup>88</sup>

Delay in scheme completion: In a dispute between *Chayadevi & another v State of Karnataka & another* (1988)<sup>89</sup> the contention was that according to Section 27 of the BDA Act the scheme was not substantially implemented. The court found that the scheme was substantially implemented with layout being formed, the sites being sold by the BDA and houses being built in the layout within 5 years as a statutory requirement. Thus the contention was invalid. In other cases, the judgments gave other reasons to nullify the effect or nominalize the given provision of the BDA Act. They gave importance to the purpose of the act. The following instances of disputes would indicate that clearly. In the dispute between *Kanthamma & Others v State of Karnataka & Another*<sup>90</sup> (1984), against the contention whether the Scheme would lapse if not implemented within the time period of five years as fixed by S. 27 of BDA Act, the judge said: “The petitioners, who are owners of about 10 acres of land included in the vast ocean of land, have approached this court challenging the validity of the acquisition solely on the ground that there has been no compliance with the provision of

Section 27 of the BDA Act, 1976”<sup>91</sup>. Court while interpreting the law said that since there was no “dereliction of statutory duties without justification” and a mere delay could not be a ground to cancel the acquisition. It also observed: “the “substantial execution” in the context depends upon the magnitude of the scheme and the nature of the work executed and remains to be executed. In the very nature of the project in question, it is almost impossible for the High Court to embark upon an enquiry on the contention raised”<sup>92</sup>. Thus the appeals were dismissed. Similarly in a dispute between *M.B. Ramachandran v State of Karnataka and Others (1991)*<sup>93</sup> with regard to the issue of delay in implementing the scheme which according to the petitioners interpretation of S. 27 of the BDA Act was liable to lapse since it had exceeded 5 years of legal limit. The court argued that the question of delay did not arise because the implementation of the scheme should be counted from the day BDA takes possession of lands and the time consumed for other procedural formalities like preliminary notification, passing of the award, etc, should not be included in five years. Thus the alleged delay of “dereliction of statutory duties” had no substance. For all these reasons, petitions were dismissed. In the dispute between *A. Krishnamurthy (Since Deceased) by L.Rs. v Bangalore Development Authority and Others (1996)*, again the court argued against a similar contention that the acquisition would lapse for not completing the scheme within the 5 years time as stipulated by S. 27 of the BDA Act. It said that there was no dereliction of statutory duties and mere delay in the execution of the scheme could not be a valid ground to cancel acquisition and substantial execution depended on the magnitude of the scheme and nature of the work to be executed.

The cases illustrated in the preceding discussion belong to different kinds of land acquisition for different uses- civic, industrial, residential, etc. Though the purpose is common, the contentions vary. There was a dispute which embodied most of those contentions discussed above. The dispute was between *Mahendra Enterprises (R) v Commissioner, Bangalore City Corporation & Others (1987)*. This instance had a long history. A crowded street in the Central Business District of the city- Srinivasachar Street was sought to be expanded to ease the traffic congestion in 1950, but that did not happen till the early 1970s. The Government and the Bangalore City Corporation finally decided in 1974 to acquire buildings along the street to expand it. It was a long drawn and a delayed process because there was much at stake for small businesses. Petitioners had alleged that notice was not served to the petitioners according Section 4 L.A. Act after preliminary notification and also with regard to the award (compensation). Court examined the records maintained by the government in detail to ascertain if all the procedures were followed. The Government according to procedure had issued the notices to the interested individuals and notice of acquisition had been

displayed in the important places for the people to know about the acquisition. Various individuals had filed the objections with the authority concerned and enquiry had been conducted. After all that the Government and the Bangalore City Corporation had decided to acquire the land for the expansion of the road. The shop owners along the street had formed an association, named as *Street Tenants' Association*. The members of association were residents, businesspersons and tenants. They organized themselves with a "view to safeguard and protect their interest" with reference to the impugned acquisition proceedings. To fight against the land acquisition, the petitioners had sought the interventions of the Chief Minister and other political interventions too. The assurance given by the Chief Minister which had been released to the press was produced as evidences. The association had also approached the Commissioner of the Corporation with a representation against the acquisition. The shop owners worked as a pressure group. Both the parties had delayed in approaching the court. Petitioners had alleged the collusion between the officials and land owners. The court found that the contention of collusion between the landowners and the corporation officials was only an afterthought because the petitioners had not mentioned any of these issues in the objections filed with the land acquisition officials. Thus the contention was ruled out. With regard to the contention that the petitioners were not notified with regard to acquisition and the compensation, the court found that the petitioners had known the acquisition proceedings because they had filed the objections and there was evidence that the acquisition was notified in the convenient public places which was accessible to all those concerned with the acquisition. And mere failure to serve the award notice did not invalidate the land acquisition and the petitioners had all the right to claim the enhanced compensation. Court mainly took into consideration the question of purpose. It took note of the Comprehensive Development Plan prepared by the Bangalore Development Authority which had clearly shown in its findings that the central business district areas and central administrative district areas and the roads leading to these places were facing frequent traffic congestions. Apart from that since the acquisition was notified in the Karnataka State Gazette which proved to be the conclusive evidence that the land proposed to be acquired was public purpose. The petitioners also alleged hostile discrimination because out of nine preliminary notifications, two were not published. Hence all the notifications were pleaded to be dismissed. In response to this question, the court felt that the response of the Bangalore City Corporation was delayed because of the delay in the course of proceedings in the subordinate offices. These notifications were not merely about the petitioners' properties but also others properties which were acquired for the purpose. So in this case court felt 'Perhaps, there might have been some confusion or oversight in the Corporation Office since this is a case where the Corporation was not dealing with one notification, but a large number of notifications bearing different dates'.<sup>94</sup> Thus this particular case did not attract

Constitutional guarantee under Article 14 of the Constitution, since there was no intentional unequal treatment of persons similarly placed. For these reasons the petitions were dismissed.

## 2. Land Acquisition and Jurisdictional Problems

The spatial jurisdiction of the operations of land development taken up by the BDA was in question in the dispute between *Vishwabharathi House Building Co-operative Society Ltd. v Bangalore Development Authority (1989)*<sup>95</sup>. The question was whether BDA had the jurisdiction to prepare, frame or draw up a “development scheme” generally called as “improvement scheme” with respect to adjacent area of the “Bangalore Metropolitan Area”? Petitioners had referred to the preamble of the BDA Act’s definition clause (c)<sup>96</sup> relating to ‘Bangalore Metropolitan Area’ in Section 2 of the Act and Sub-Section (2)<sup>97</sup> of Section 3, clause (a) of Sub-Section (1) of Section 15<sup>98</sup>, Sections 25(1)<sup>99</sup> and 35<sup>100</sup> of the BDA Act to oppose the land acquisition. 1843 acres and 6 guntas of lands spread across many villages- Uttarahalli, Marasandra, Vaddarapalya, Doddakallasandra, Yelachenahally, Halagederahally, Channasandra, Bikasipura, Vasanthapur and Konanakunte- were acquired for the formation of residential layout known as “Banashankari V Stage Layout in 1989 by the BDA. During the same year 1333 acres and 34 guntas of lands spread across many villages- Konnanakunte, Raghuvananhally, Alahalli, Thippasandra, Doddakallasandra, Arakere, Hulimavu, Vajrahalli and Raguvanapalya- were acquired for the formation of the residential layout. The BDA’s development schemes were to be limited to the Bangalore Metropolitan Area only. These two large scale acquisitions were the source of contention because these areas were beyond the limits of the Bangalore Metropolitan Area. The petitioner Vishwabharathi House Building Co-operative Society had entered into agreements with many landowners of the Halagevaderahally which was being acquired by the BDA to form “Banashankari V Stage Layout”. The petitioners had intended to form a private layout “V phase of Vishwabharathi Housing Complex”. So the society had approached the State Government to acquire the lands for the Society. Since already the BDA had included those lands in its notification which were sought by the said society, writ petitions were filed against the BDA’s plans. In response to the claims and contentions of the petitioners, the Court found that Clause (a) of Sub-Section (1) of Section 15 of the BDA Act gave BDA the power to prepare a development scheme for the development of the Bangalore Metropolitan Area. The contention of the petitioners was that the BDA had the power to prepare improvement scheme only within the defined boundaries of the Bangalore Metropolitan Area and not the adjacent areas. Court took the main purpose of the Act into consideration which according to

clause (a) of Sub-Section (1) of Section 15 of the Act facilitates the Authority to prepare a 'development scheme' for the development of the Bangalore Metropolitan Area and the Section 14 authorises BDA to prepare the 'development schemes' for the development of the Bangalore Metropolitan Area 'by acquiring, holding, managing and disposing of the property *within or outside the Bangalore Metropolitan Area*'<sup>101</sup> (emphasis added). Thus the contention was dismissed.

Similar to, but the variant of the above kind of a case, was the issue of land situated in the green belt. In the dispute between *Smt. Venkamma and Others v Deputy Commissioner, Bangalore and Others (1995)*<sup>102</sup> the question was whether government's Gazette notification to acquire land under Section 3(1) Karnataka Acquisition of Land for Grant of House Sites Act, 1972, was valid since the land proposed to be acquired was situated within the green belt area according to Comprehensive Development Plan (CDP). Responding to the question of lands of Balageri village being situated in the green belt, the court reaffirmed the power of *eminent domain* of the government in making changes in the land use. Given the acute shortage of land in the city, the conversion of land in the green belt was justified. Thus the contention did not find the favour. In the previous case the violation was related to environmental issue and planning, whereas in the dispute between *S.S. Darshan v State of Karnataka and Others*<sup>103</sup> (1995) the point of planning law itself was invoked. Petitioner's lands were situated in the green belt and the acquisition according to the provisions Section 14 of KTCP, was termed illegal. Court against the contention ruled that though the petitioner's land was situated in the green belt, the Section 14 of the Act provided the government to relax such zoning regulation to develop industries.<sup>104</sup> Zoning was within the realms of Government's quasi-judicial powers.

3. Withdrawal from Land Acquisition: The decision of the government to withdraw from land acquisition was in dispute. In the two cases which are available for analysis on the issue of withdrawal from acquisition process by the authority, there were two kinds of responses which belong to different times and different kinds of actors were involved in the process. In the dispute between *Muninanjappa v State of Karnataka & Another*<sup>105</sup> (1980)<sup>106</sup>, the issue to be decided in the dispute was when withdrawal from acquisition was legal. The petitioner opposed the withdrawal and wanted his land to be acquired and the compensation to be settled. Under Sections 16 and 17 Government in the case of urgency can acquire and withdraw. So the petitioner's insistence to acquire land was judged invalid. Thus petition was dismissed. That was direct contest between the government and individual land owner, and land acquisition and withdrawal from it by the government had taken place during the times when the transactions in land had not become manifest. In the dispute between *R.M.S. Telephone Employees' House*

*Building Co-operative Society Limited, Bangalore v Government of Karnataka and Others (1997)*, the petitioner-HBCS contended that government had not given the chance to be heard before withdrawing from the acquisition by the Government. Government was acquiring land for the petitioner-HBCS from the landowners of the village. The demand for procurement of land through the government by the HBCS was happening when transactions in land in Bangalore city were on the increase. Government had withdrawn from the land acquisition proceedings by invoking Section 48(1) of L.A. Act. The court found that according Section 48(1) of the Land Acquisition Act, it was not mandatory on the part of Government to hear anyone before the Government took into its possession the lands which were to be acquired. Since Government had not taken the lands to be acquired into its possession, there was nothing left to be answered and it was left to the *discretion* of the Government. On those grounds the petition was dismissed.<sup>107</sup>

Denotification: The land acquisition authorities' decision to denotify the lands acquired was in dispute. Such issue arose in the context of decision taken by the government to denotify acquired lands on large scale. Denotification was taking place during times which were most favorable for highly profitable transactions in land. There were two disputes under this category which could be considered significant or representative of denotification. The dispute arose when the BDA acquired agricultural lands on a large scale to form an expansive residential layout and denotified portion of land which had benefited the neighbours of the petitioner. That became contentious, therefore the dispute between *Bangalore Development Authority v Dr. H. S. Hanumanthappa (1996)*. But before this legal proceeding, the land owner had earlier approached the High Court mainly demanding his acquired land to be denotified too. The land owner had claimed that the neighbours' land which was part of the acquisition was de-notified and was restored back. Totally 700 acres of land which were part of 1334 acres 12 guntas of land proposed for acquisition were claimed to be de-notified and restored back to the owners. The petitioner-landowner had argued that if neighbours' lands were restored back, then there was no justifiable rationale for the authority to withhold his land from releasing it back to him. Since 700 acres of lands were restored back to the land owners the whole scheme was, as claimed by the petitioner, unenforceable. Withholding his lands stood in violation of Articles 14<sup>108</sup> and 300-A<sup>109</sup> of the Constitution.

The land owner/respondent contended that since the authority/BDA with the assistance of the State Government had denotified land, the implementation of the scheme in principle would amount to withdrawing from the scheme completely. According to the Section 27 of the BDA Act a scheme should be implemented within five years otherwise the scheme would lapse and would be inoperative. Since the

scheme was not implemented within the prescribed time, the scheme was claimed to have lapsed and become inoperative.<sup>110</sup> In deciding upon these contentions raised by the petitioner, the court took note of petitioner's contention that since the lands included in the final notification were denotified by the Government the 'action was arbitrary and also amounted to fraud on the power'. Therefore under those circumstances Articles 14 and 300-A of Constitution of India were applicable to nullify the whole of the land acquisition proceedings.<sup>111</sup>

First of all, court had to ascertain on what grounds and circumstances did Government restore land to one of the land owners. The Government had withdrawn from the land acquisition owing to a land development proposed by an individual for establishing an Education Foundation and the necessary building construction. Before government made the concession for the establishment of the educational institution, the individual was a land owner whose lands were acquired by BDA. As a consequence he approached the court to restrain the authority from acquiring the land. Subsequently the land owner withdrew his petition and approached the government to exempt his land under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976. Accordingly his lands were released for the purpose of establishment of the educational institution. Apart from that what prompted the government to drop the acquisition proceedings was that another land owner had petitioned in the High Court against the same land acquisition proceedings in 1981. Court in 1984 judgment had struck down the acquisition proceedings which had further added to the complication. In this context concessions were made by the government by withdrawing from the acquisition proceedings of certain individuals who had challenged and had got court decisions in their favour.<sup>112</sup> Given these complexities court pointed out the imperfections involved in land development, and highlighted the role of the Government and its agencies:

The State Government passed order on May 14, 1991, and the State Government not only granted exemption in respect of the excess vacant land, but also directed the authority [BDA] to drop the acquisition proceedings...The reason which prompted the state Government to give such direction was that the final notification was challenged by one of the landowners by filing Writ Petition...[in] 1981...[which was] by judgment dated July 27, 1984, [had] struck down the entire final notification even though it was challenged by only one of the landowners. The State Government felt that as the entire notification was struck down, the acquisition of lands undertaken by the authority in respect of the holding of [an individual could not be continued]...It was extremely unfortunate that the Government did not bother to ascertain what has happened in respect of the judgment delivered by the learned Single Judge. An application was filed before the learned Single Judge for review of the judgment and a April 13, 1992, the review petition was allowed and the final notification was quashed only in respect of the lands involved in the petition. It seems that the Government was anxious to grant the relief sought by M.S. Ramaiah. It cannot be overlooked that the State Government was a party to the proceedings before the learned Single Judge and also in the review petition. In spite of that, if the direction is given to the authority to drop the authority to drop the acquisition proceedings, such direction is of no value. Indeed, it is difficult to appreciate how on an application filed for grant of exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976, the State Government can proceed to give direction to the authority to drop the acquisition proceedings.<sup>113</sup>

If the government wanted to withdraw from the acquisition proceedings, according to Section 48 of the L.A. Act, it could have done so, whereas in this case

there was violation of law by just giving direction to the BDA to drop the acquisition proceedings. It was also pointed out in the court proceedings that acquired lands of few other individuals were also to be restored. Court in response to that contention found that denotifying and returning lands to the owners was not arbitrary and the Government had exercised that power only according the procedure of Section 48 of the Land Acquisition Act.<sup>114</sup>

Further with regard to question of delay in the implementation and non-implementation of the scheme, court observed that Section 27 of the BDA Act would be applicable only if the author was in a position to implement the scheme and failure to do so would lead to lapse of acquisition. In this case the delays were caused by series of prolonged legal proceedings leading to failure to complete the project within the given period of 5 years.

Given all these complexities involved in the creation of a big layout and large scale land acquisitions, the court observed ‘that sometimes while taking a pragmatic and progressive action under a statute in the general public interest, the Government succumbs to internal and external pressures by a citizen or groups of citizens, so as to show special favour to them, which destroys the laudable object of the nature of action. It was pointed out that such a course adopted by the Government to help a few chosen friends at the cost of the people in general, frustrates the very object of the meaningful State action.’<sup>115</sup>

What is the ‘meaningful’ State action then? The court took the view that the authority first of all had committed illegal action by releasing the lands to a few individuals. The court followed the Supreme Courts’ observations.

Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be illegal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.

The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law, but even if it cannot be corrected, it cannot be made a basis for its repetition.<sup>116</sup>

The court subscribed to the view of correctional course to the multi-layered illegalities and breaking vicious circle of illegalities. Under these considerations and in the interest of ‘public interest’ court allowed the appeals of BDA and the allottees.

Despite the appeals being allowed by the High Court in favour of the BDA and

others in the previous case<sup>117</sup>, another petition was filed by Dr. H. S. Hanumanthappa against the same land acquisition proceedings related to the formation of Rajmahal Vilas II Stage layout formation. Dr. H. S. Hanumanthappa petitioned<sup>118</sup> in the High Court claiming that he still had rights over the land acquired by the BDA. BDA as a part of large scale acquisitions had acquired lands of the petitioner at various places. Lands of various survey numbers had been acquired at various places spread over a wide area, comprising of many villages located in Kasaba Hobli, Bangalore North Taluk owned by the petitioner. Petitioner claimed rights over the lands on the basis of the Government cancelling the land acquisition. Apart from that allottees of the BDA sites also filed a petition against the denotification. This petition was also heard along with the land owners' petition. In the land owners petition it was contended that Government had withdrawn from the acquisition by exercising the power in accordance with the application of Section 48 of the L.A. Act. Accordingly the lands were restored back to the owners. The subsequent notification which followed was issued by the Government which stated the cancellation of the previous notification of withdrawal from acquisition with regard to petitioners' lands. The landowner-petitioner contended that, once the Government withdrew from land acquisition proceeding in accordance with the Section 48 of the L.A. Act, ownership rights were restored back to the land owners. It was also contended that once the lands were restored back to the owners, the government should not have withdrawn the withdrawal notification from land acquisition proceedings without giving a hearing to the land owners.<sup>119</sup>

The court while responding to the petitions found that from the records it was evident that the petitioner-landowner had written a letter to Chief Minister (CM) to denotify his acquired lands which had a bearing on the withdrawal from the acquisition proceedings. In the letter he had brought to the notice of the CM that his writ petition of 1989 was decided in his favour by the Single Judge. Facts highlighted in the letter were that certain extent of lands were being allotted to various Housing Cooperative Societies which was not the aim of the acquisition. The petitioner-landowner had urged that the writ appeal filed by the BDA and others which was still pending in the court against the previous decision given in his favour would fail because there were no "valid and legal grounds". Therefore the appeal deserved to be withdrawn and give effect to the already passed order by the court. Further from the records it was evident that the then Chairman of the BDA had written a letter addressed to Secretary of Housing and Urban Development to bring to the notice of the Government that BDA had preferred an appeal which was pending in the High Court. It was with regard to the formation of layout and sites and the allotment. The Chairman had emphasized that "any move by the Government to denotify the lands belonging to the [landowner] would amount to undermining the interest of the BDA and it [would] cause irreparable

damage to the BDA” and had urged the Government not to denotify lands acquired “in the interest of BDA and also [to] keep up its image in public”.<sup>120</sup> the CM relied on the order of the judgment referred to him by the petitioner-landowner and had observed “there are no good reasons why acquisition should not be given up...acquisition of the said lands cannot be said to be in public interest.”<sup>121</sup> Thus the CM had ordered the denotification of the lands.

Court found that denotification was a violation. Violation because the denotification was undoing the previous court judgments one passed by the Division bench of the High Court and another by the Supreme Court, in which both had held the land acquisition to be valid given the facts of the case. The petitioner-landowners’ claims were dismissed.

The site allottee-petitioners had questioned the legality and validity of notification of the Governments’ withdrawal from the acquisition proceedings. Against the site allottee-petitioners’ contention, the landowner-petitioner had argued that allottees had no *locus standi* to challenge the government’s withdrawal from the acquisition. Lands were acquired by the BDA and formed the layout and sites. Thus the BDA should have been the aggrieved party instead of site allottee-petitioners. Since the BDA itself had not challenged the validity of the notification, site allottees had no *locus standi*. After delving on the question of *locus standi*, court had observed that- “The narrow concept of *locus standi* has been in a state of flux and has lost its original characteristics and now any person who has sufficient interest in the subject-matter of the litigation is entitled to maintain the writ petition.”<sup>122</sup> Since the petitioner-allottees who were allotted sites in the formed residential layout had ‘sufficient interest’ the retraction from the acquisition proceedings by the Government would have rendered the allotment of sites in their favour ‘farce’.<sup>123</sup>

#### 4. Contentions with Reference to the Application of Substitutive of Laws

There are land acquisition disputes which have questioned the appropriateness of a particular law applied in their cases. In a dispute between *M. P. Narasimha Murthy v State of Mysore (1967)*<sup>124</sup> the issue was about whether the land acquisition was valid since it was not done under CBIA and also about whether the State of Mysore was a competent authority to take up acquisition under the provisions of the L.A. Act? In this case the Government had planned to acquire lands for the formation of residential layout, on the southern side of Mount-Joy in Bangalore. The petitioners were the site-owners who had bought sites from a private layout which had become a part of the proposed land to be acquired. With regard to the question of validity of the acquisition

under L.A. Act instead of CBIA, the court held that State was competent to take up acquisition for the CITB under L.A. The provisions of L.A. Act and the CBIA were not contradictory. Given the stated purpose within the legal framework of the CBIA it was considered valid public purpose to form layouts and sell sites under the law by the CITB. Thus for these reasons the petitions were rejected. In another legal dispute between P. Achiah vs State of Mysore (1962) the merits of applying CBIA won the legal contest for the petitioners. In the former dispute the judgment was contrary. The conditions and background of the facts are more or less similar, except for the high social profile of the contestant petitioners.

Further, in a dispute between *Muthyala Reddy v. State of Mysore and Another*(1968) similar in terms of a issues of applying L.A. Act or CBIA but contention of the particulars of particular law were specific and therefore different from the previous disputes which were contested on the basis of merits of applications of the laws were in general. The issue was whether S. 16(2) of CBIA i.e., the notices must be served on every person whose name as it appears in the land revenue register, is constitutionally valid when compared to S. 4(1) of the L.A. Act which provides for service of notice on owners and occupiers of property or land? Court in response to the contention decisively argued that, following the same logic of the decision of previous case discussed above, it is left to the discretion of the government to apply any of the laws to acquire the land. Thus court emphasized clearly that ‘right to such an opportunity’ for the land owner to determine the application of law to acquire his/her land ‘has no right to any particular procedural adherence to which the property could be acquired’. Though the purpose of CBIA was not the same as the purpose of the L.A. Act, or application of either of the laws were not discriminatory<sup>125</sup>, given all that the petition was dismissed.

Again in the dispute between *S. S. Darshan v State of Karnataka and Others* (1995) one of the issues was about the demand for the application of a particular law to acquire lands. The land was proposed to be acquired for the Information Technology Park Limited. For the creation of the industrial estate Karnataka Industrial Areas Development Board had proposed to acquire land measuring two hundred acres spread over many villages in Bangalore South Taluk. The petitioner-landowners’ lands measuring 10 acres 30 guntas were part of the total acquisition process for the purpose. The petitioner contended that land acquired was by invoking L.A. Act, whereas it should have been acquired under the Karnataka Industrial Areas Development Act, 1966 (KIADA). In response to that contention the court again reiterated that it was left to the Government’s discretion to choose either of the acts to acquire lands. Again, in *S. A. Jalaluddin v Bangalore Development Authority and Another* (1995)<sup>126</sup>, the

contention- Whether the notification published under Section 18(1)(a) of the CBIA, is barred under the provisions of the Land Acquisition (Karnataka Amendment and Validation) Act, 1967 prescribing a period of two years for issuance of a declaration under S. 6 of the Acquisition Act? The court equated and substituted Section 4 to Section 6 of L.A. Act; Sections 14 to 18 of CBIA; and Sections 16 to 19 of BDA Act, 1976 and said they all have same meanings for actions. Thus the appeal was dismissed.

The dispute between *Khoday Distilleries Limited, Bangalore v State of Karnataka and Others (1997)* brought forth a much broader discussion which was much wider in scope. Given the BDA Act which being a composite legislation consisting of both improvement and acquisition listed under Entry 5<sup>127</sup> of List II and Entry 42<sup>128</sup> of List III, of Constitution of India, the provisions of which are contained in the BDA Act which relate to land acquisition. The same are explicitly covered by the L.A. Act and by reason of the subsequent amendment to L.A. Act, there could be no acquisition of the land pursuant to BDA Act. This case is among a batch of petitions which relate to land acquisition proceeding initiated by BDA to form a residential layout known as Jayaprakash Narayan Nagar 9<sup>th</sup> Stage Layout. While addressing the petitions, the court probed deeply into various constitutional provisions, L.A. Act and its roots in the constitutional provisions, BDA and its roots, in the Constitutional provisions and compared L.A. Act and the BDA Act. In a way the court also outlined the 'development of law' with regard to acquisition to find out what was or could have been appropriate point of law in the given instance of acquisition.<sup>129</sup> To the contention that provisions of Land Acquisition Act should apply because of the Central amendment and the provisions of the centre should prevail over the state law, for that argument court adopted doctrinal argument of "pith and substance"<sup>130</sup>.

The purpose of the BDA Act had been to "implement certain development schemes and acquisition of land as such is not the main purpose"<sup>131</sup>. "Provisions of Land Acquisition Act, 1894 cannot prevail over those of Bangalore Development Authority Act, as acts derive powers from different sources and are for different purposes"<sup>132</sup>. Thus the question of contradiction will not arise at all. For all these reasons petition was dismissed.

##### 5. Land Acquisition Issues and The Constitution of India

In some disputes illustrated below, the questions became critical because of human insecurity. The issues of discriminations, deprivations, livelihood questions, etc., became central to the disputes. People invoked some of the fundamental provisions of

the Constitution of India which attempt to construct the existence and definition of a human being.

Equality Before the Law or the Equal Protection of the laws: In four of the disputes outlined below, Article 14 of the Constitution of India was invoked. According to Article 14- “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” In a dispute between *Mahendra Enterprises (R) v Commissioner, Bangalore City Corporation & Others (1987)*—petitioners felt the hostile discrimination because out of nine preliminary notifications for acquisition of the properties to expand the road, two were not published. Hence all the notifications were pleaded to be dismissed. Thus they cited Article 14. In response to this question, the court found that the response of Bangalore City Corporation was delayed for the delays in the course of proceedings in the subordinate offices. These notifications were not merely about the petitioners properties but also other sets of properties which were acquired for the purpose and work was in progress within the prescribed time. So in this particular case the court said: “Perhaps, there might have been *some confusion or oversight* in the Corporation Office since this is a case where the Corporation was not dealing with one notification but a large number of notifications bearing different dates”<sup>133</sup> (emphasis added). Thus this particular case did not attract Constitutional guarantee under Article 14 of the Constitution, since there was no intentional unequal treatment of persons similarly placed. For all these reasons petitions were dismissed.

In the dispute between *S. S. Darshan v State of Karnataka and Others, (1995)* different lands were acquired for the same public purpose, but different laws were cited for different lands which were viewed by the petitioner as discriminatory. Thus, the concerned land acquisition violated Article 14 of Constitution of India because petitioner’s ‘legitimate expectations’ were not given due consideration, in the sense that state was acquiring lands of different individuals for same public purpose by invoking one enactment in case of some individuals and another enactment in the case of another violating Article 14 of the Constitution of India. In response to that court argued that the ‘[C]oncept of legitimate expectation lies in the matter of exercise of powers of an authority and the extent to which arbitrariness arise in such manner. In judging whether the legitimate expectation of a party has been appropriately dealt with or not would only relate to administrative action and not to a *statutory or quasi-judicial power* exercised in the manner provided thereto’<sup>134</sup> (emphasis added).

The dispute between *Khoday Distilleries Limited, Bangalore v State of Karnataka and Others (1997)* threw up an issue of calculating compensation amount in

the context of newly amended L.A. Act. The amount of compensation was more before the amendment of L.A. Act. When the land was acquired this was discriminatory and violated Article 14 of the Constitution of India. The court said: “it is too hazardous to enter upon that discussion because the purpose of the Act is to implement certain development schemes and acquisition of land as such is not the main purpose. It is one of the *incidental aspects of the scheme*”<sup>135</sup> (emphasis added). Thus there was no scope for discrimination at all.

In another dispute between *Chikkamuniyappa Memorial Trust, Bangalore v State of Karnataka and Others (1998)* petitioner had sought a writ of mandamus (mandatory directions or orders sought from the court by the petitioner to the authorities) to direct the state government to take necessary action in pursuance of the resolution made by the Bangalore Development Authority with regard to reconveyance of sites in other cases which was denied to him. This was considered as discriminatory according to Constitution of India Article 14. In this case land was not reconveyed without assigning any reason. This was a dispute about the land acquisition notification issued by the BDA in 1977 and final notification in 1980. A public trust was formed and registered in 1984 known as Chikkamuniyappa Memorial Trust. The president of the trust filed a petition against the 3 acres 4 guntas land situated at Kacharakahalli Village, Bangalore North Taluk which was acquired by the BDA. He claimed that the acquired land was apportioned by Doddamuniyappa to the trust, but the court did not find any evidence to such a claim. The BDA first notified the land in 1977. In 1980 final notification was published in the gazette and in 1983 the land was taken into possession and converted into sites and were distributed to the allottees in 1985 by the authority. This was much before the trust was formed. Due to this, Doddamuniyappa could not apportion the land in favour of the trust. Thus the contention of questioning the legality of notification was nullified. Secondly, the petitioner referred resolution to the reconveyance of land passed by the BDA in favour of the trust in 1987. To this contention court found that, according to Section 38-C of BDA Act, the authority had power to make allotment in certain cases on the condition that “it is not practicable to include such a site for the purpose of Development Scheme. The allotment of such a site could be made in favour of such person from whom the land had been acquired”<sup>136</sup>. Such reconveyance or allotment could only be by way of sale or lease to the allottee after paying such charges as levied by the authority and should be within the land ceiling limits. Section 9 of the amended BDA Act of 1994 validates such allotments which were done after 20-12-1973 and before 8-5-1986. The petitioners’ allotment resolution was passed by BDA on 7-8-1987. The petitioner had pointed out similar instances of reconveyance, thus it would be discriminatory on the part of BDA under Article 14 of the Constitution of India. For that the court reiterated one of the

pronouncements of Supreme Court which in essence meant that “Wrong action taken by the authorities will not clothe others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination”<sup>137</sup>

Livelihood Questions: For the agriculturists livelihood which is essential for survival becomes critical when their lands are acquired and that too when the lands are situated in the vicinity of the city. This question in a way has been asked implicitly in the context of the determination of compensation. In two of the contentions, they had invoked Article 21 of the Constitution of India which states: “No person shall be deprived of his life or personal liberty except according to procedure established by law.” In the dispute between *Annayya & others v State of Karnataka & Others (1988)*<sup>138</sup> petitioners had claimed that since they were poor farmers, the land acquisition would deprive them of their livelihood. They had sought protection from Article 21 of Constitution of India. For that court concluded that they were eligible for compensation which was statutory and compensation was not “illusory”. Compensation was supposed to answer all the livelihood problems. Similarly, court was much more categorical in the dispute between *H. N. Nanjgowda and Another v State of Karnataka and Others (1996)*. Petitioners had complained that the location of the airport would deprive large number of people of their livelihood. In the petition it was stated that acquisition of land affected the people of the State of Karnataka, especially the innumerable number of small land holders, agricultural labourers, household workers and small cultivators who were granted occupancy rights under the Land Reforms Act. Small landholders would not be in a position to earn their livelihood and rehabilitate on their own even after getting compensation. The court said “So long as the exercise of the power is for public purpose, the individuals right of an owner must yield place to the larger public purpose.”<sup>139</sup> Individuals who were losing the property would be compensated with additional amounts. Court again underlined the States’ ‘power of eminent domain for public purpose’. In a dispute between *M. Laxmiah v State of Mysore & others (1966)*<sup>140</sup> court long back had decided that the Article 31(2) of Constitution of India prescribes compulsory acquisition only for the public purpose and by authority of law which provides for the compensation and specifies the principal basis for fixing the compensation for the property acquired and no such law shall be called into question in any court on the ground that the compensation provided by that law is not adequate.

Concurrent list and overlapping functions of different laws: In a dispute between *M. Laxmiah v State of Mysore & others (1966)* the question was whether the land acquisition taken up by improvement trusts is valid when the L.A. Act which is on the concurrent list for the same purpose exists hence overrides the act passed by the state

legislature? Court emphasized the need and role of the legislation for the CITB to be for the purpose of acquiring land for expanding the city by planning schemes according to Section 18(1) of CBIA. The CBIA passed by State Legislature relates to the subject of improvement trusts and the power to legislate on improvement trust and it was exclusively for the State Legislatures to pass law under Entry 5, List II of Schedule VII of the Constitution of India. So whenever CITB proposed to acquire land it was under CBIA and not under the provisions of L.A. Act. Though there was reference to L.A. Act in section 27 of the CBIA, but it was not meant to take up acquisition under L.A. Act. Section 27 of CBIA only incorporated provisions of L.A. Act for the purpose of acquisition. It was clarified that the purposes of CBIA and L.A. Act differed in purposes and actors who would use them to acquire lands. The former law was used by CITB and LA Act was used by government to acquire lands. In pith and substance, CBIA was intended to bring about improvement to the city of Bangalore and for the future expansion and land acquisition in the process was only incidental where as it was vice versa in the case of Land Acquisition Act. As implied anyone can acquire land under the article, and it is not exclusive to the government only to compulsorily acquire the land, but the conditions will have to be fulfilled. By implication though CITB had a role of expansion of city and with public purpose of “special character”, it had the authority of law, thus CBIA cannot be enumerated under concurrent list and therefore the question of being in violation of Article 254 of the Constitution of India never arose. Thus the contention was dismissed.

Powers of the State Government to Acquire Lands for the Union Government: In a dispute between *H. N. Nanjgowda and Another v State of Karnataka and Others (1996)*, in the context of acquisition of lands to build a airport, a fundamental question arose. That was whether State Government had the powers to acquire land for the Union Government? Petitioners had challenged the acquisition on the grounds that it violated the Entry 29<sup>141</sup>List I of the Schedule VII of the Constitution. The matters listed under it for which State government did not have powers to acquire the land. The Union government alone had power under Entry 29 of List I to make provision for aerodromes, regulation and organization of air traffic and of aerodromes. The court made a distinction between the power of regulation and organization of air traffic and aerodromes or making provisions for aerodromes from the power of acquiring land. Given that rationale, it was judged that the state government had powers to acquire land for the airport, which had not violated any Constitutional provisions because it was listed under Concurrent List Entry 42<sup>142</sup> of List III of Seventh Schedule of the Constitution.

## 6. Planning Issues

Competence of the Authority to Grant Permission for Conversion of Revenue Land: In a dispute between *Venkataramaih M. v State of Karnataka & others (1988)*<sup>143</sup> the question was whether the revenue authorities were competent to grant conversion after the publication of Outline Development Plan (ODP). The day, the revenue authorities passed the order under Section 95 of the Land Revenue Act, that particular village was included in the Bangalore City Planning Area. Thus the conversion of land for non-agricultural purposes by the revenue authorities was not legally appropriate. Therefore the only competent authority to convert lands was BDA. But in the acquisition notification it was still termed as agricultural lands. Therefore it was considered legal for the revenue authorities to give permission to convert land for non-agricultural purposes.

*Jurisdictional issue-* In a dispute between *H. N. Nanjgowda and Another v State of Karnataka and Others (1996)* acquisition was questioned because the land acquired was within the Bangalore Metropolitan Region limits. The petitioners contended that permission should have been taken from the concerned authority as provided in Section 10 of the Bangalore Metropolitan Region Development Authority Act. Section 10 of the Act mentions that such permission is necessary only if it was specified in the notification published in the Gazette. Since petitioners counsel did not produce any notification with such specification, the contention was set aside.

7. No Application of Mind by the Authority or Government- In a dispute between *Shambuvaiah v Deputy Commissioner, Bangalore (1980)*<sup>144</sup> the petitioner questioned the validity of acquisition proceedings on the grounds that Deputy Commissioner- the land acquiring authority did not apply “his mind to the facts of the case” because sites were allotted to beneficiaries from villages even though there was the government land which could have been acquired to form sites for distribution. Three acres and 30 guntas were acquired by the government to form a layout to allot sites to persons without sites. Court found that Deputy Commissioner applied his mind which was evident in a note the officer prepared. Secondly, there was no provision in the law that would prevent persons from joint family and those belonging to other villages not to avail such sites. Thirdly, the vacant government land was reserved for school, playground, etc. Thus the petition was dismissed.

In questioning the mind of the officials, the scope and scale was different a dispute between *H. N. Nanjgowda and Another v State of Karnataka and Others (1996)*. In this case petitioners pointed out that that government was not sure about the

exact measure of land needed for the airport which amounted to “total non-application of mind” both as regards to the location of the airport and the extent of the land needed for the purpose. This case was a public interest litigation related to the notification issued in 1994 under Section 28(1) of Karnataka Industrial Areas Development Act, 1966, to acquire 5033 acres 36 guntas of land in Bangalore North Taluk and Devanahalli Taluk which was spread over ten villages in Devanahalli Taluk and four in Bangalore North Taluk. Land that was being acquired was supposed to be used for industrial and infrastructural purpose and other projects related to International Airport which would cause depletion of water resources and create pollution in the Arakavathi and Dakshina Pinakini river valleys. Certain parts of government land was forest land which was being acquired for the purpose which would create imbalance in the ecology of the area. In response to the contentions, the court found that a Committee known as *Ramanathan Committee* appointed by the government had examined all these aspects and had submitted a detailed report to the government. Based on the findings of the committee, the government was proceeding with the project. Thus government had applied its mind. And with regard to the environmental question, the court held the view that the Central Government and the National Airport Authority while giving permission to the State Government to go ahead with the project had taken permission from the Ministry of Environment. The court felt that there were enough safeguards and laws to protect the environment. Therefore the question of non-application of mind by the government did not arise.

8. Material Incognizance/Dissonance: The governmental schemes of urban cultural-material environment puzzled in a few instances presented below. The land losers in the acquisition process were agriculturists and their picture of the city perhaps was different.

In a dispute between *M.B. Ramachandran v State of Karnataka and Others (1991)* the land was acquired for the formation of a mini-forest which was termed an amenity, was in question. The court was of the view that “Amenity” should be interpreted as an “extensive definition”. Mini forest was characterized as an amenity. “Mini Forest” is an amenity because for a city dweller who is far away from the forest and whose children would not have an opportunity to see a forest unless they go far away from the city into a forest. If BDA develops a “Mini Forest” to provide amusement to the city-dwellers and their children, it definitely provides an “amenity” to the city-dwellers<sup>145</sup>. Amenity is a composite word that is inclusive of various categories such as road, street, lighting, etc., but they do not belong to the same genus. Thus the contention that the definition of the word “amenity” as it existed in Karnataka Act No. 17/1984 had to be read by applying “*ejusden generis*”<sup>146</sup> was judged invalid.

*Whether airport could be considered as an industry or not?* In a dispute between *H. N. Nanjgowda and Another v State of Karnataka and Others (1996)* it was questioned whether airport could be considered as an industry or not. Petitioners argued that under Section 28 of KIADA land acquisition was allowed to set up industries. Since airport did not constitute an industry the land acquired under KIADA was invalid. The court formed the view by drawing parallels with the Central Silk Board Act. According to the Act, industry comprised of raw materials, process of manufacture or production and distribution of products of the industry. Thus distribution of products of the industry was part of industrial activity and airport played a similar role. Therefore it should be considered as an industry under Section 28 of KIADA. Thus the contention was dismissed.

#### 9. Questions about Different Kinds of Governmental Practices

Issues of Policy: Petitioners were against the private parties involved in the development process when land was acquired for “public purpose”. In a dispute between *Vishwabharathi House Building Co-operative Society Ltd. v Bangalore Development Authority (1989)* the court observed a tendency of the “privatization of public work” which was in practice for a long time and it was left to the government’s discretion in making such choices. Again in the dispute between *H. N. Nanjgowda and Another v State of Karnataka and Others (1996)* the issue of “privatization” arose. In answering the question of handing over of the acquired land to the private corporate, the court judged that the government as a matter of policy had all the powers to make the industries or corporate bodies or even jointly avail the land acquired. Therefore it was considered by the court as a policy matter. The court felt that “Privatisation is a fundamental concept underlying the questions about the power to make economic decisions”<sup>147</sup>, which is ought to be answered by the ‘vigilant’ parliament than by the courts.

Environmental Issues: Boundary for city expansion was in dispute. The line of actual space for development was perceived to disturb the environment, not just the physical environment, but also the quality of the life of the village communities. The idea of green belt itself was meant to maintain ‘healthy’ environment by allowing ‘natural’ form of vegetation and agriculture to exist. The petitioners of the dispute *Smt. Venkamma and Others v Deputy Commissioner, Bangalore and Others (1995)* pointed out that the land under acquisition was included in the green belt and such acquisition was characterized as *mala fide* because such conversion of the lands in the green belt would affect the environment. Responding to the question of lands being in the green

belt, the court reaffirmed the power of eminent domain of the government in making changes in the land use. Given the acute shortage of land in the city the conversion of land in the green belt was justified and conversion of small piece of land would not make much difference to the environment. Thus for the preceding reasons the contention did not find the favour.

**Land Ceiling and Governmental institutions:** In a dispute between *Venkataramaih M. v State of Karnataka & others (1988)* the contention was with regard to the ceiling limits for acquiring land by BDA. Court viewed that the provisions of ULCRA did not have any relation or bearing over the land acquisition proceedings under the BDA Act.

**Land Acquisition for Statutory Corporations:** In a dispute between *Annayya & others v State of Karnataka & Others (1988)* lands of Kodihalli were acquired for the purpose of setting up a golf course and a five star hotel. Many petitions were filed at various levels. In response to the contention, the court found that agricultural lands were acquired for a statutory corporation- Karnataka State Tourism Development Corporation. The provisions of S.109 of Karnataka Land Reforms Act allow for land acquisition for statutory corporations and Karnataka State Tourism Development Corporation was not a company.

**Transfer of Acquired Land from One Authority to Another or the Third Party:** In the dispute between *M. Manicklal v The State of Mysore & Others*<sup>148</sup> (1968) the Trust Board had acquired land for its own purpose but later had transferred it to the Mysore Housing Board. The court took the view that the transfer of acquired land from the Trust Board to the Housing Board under the Mysore Housing Board Act was not considered invalid because the purpose of the allotment of land to the Housing Board was not considered different from the public purpose of the acquisition. Since the Trust Board had the statutory powers to dispose of sites. Thus allotting land to a statutory body- the Housing Board involved stood with the whole purpose of the Act. In another dispute between *Annayya & Others v State of Karnataka & Others (1988)* the complaint was that land acquired for the company was leased to third parties. Therefore acquisition proceedings were initiated for some extraneous purposes and not for the public purpose. Lands were acquired for setting up a five star hotel, but the acquired lands were allotted to a HBCS and a company of private land developers. The court found that some of the lands which were acquired were in fact diverted to the private parties, but there was no evidence to prove that the acquired lands of the petitioners were actually diverted to other private purposes.

*Locus Standi*: The dispute between *M/s Manjog Builders, Bangalore v Vyalikaval Co-operative Housing Society Limited (1998)* was related to the nature of transactions in land and the acquisition process, and locus standi of land ownerships itself. The issue was about whether the petitioner had the interest or right to challenge the acquisition. In this dispute between a builder-petitioner and HBCS-respondent the court found that the builder had bought the land from a landowner whose land was already acquired and the landowner had sold the land after it was notified. The court ruled that the land acquired would belong to HBCS and the builder did not have any *locus standi* to challenge the land acquisition despite having the title in the builder's name.<sup>149</sup>

The dispute between *B.T. Sakku v Commissioner, Bangalore Development Authority and Another*<sup>150</sup> (1995) was more complicated than the previous case due to the issue of ownership of land. The acquired area was built up and the buildings were to be demolished. Land of the appellant-landowner was acquired by the BDA. Appellant had bought 1 acre 36 guntas of land at Kacharakanahalli village of Bangalore North Taluk. BDA had notified the land in 1977 itself to form Banaswadi-Hennur Road Layout. The appellant had made many representations to the BDA Commissioner to drop the acquisition proceedings and regularize the property since it was a built up area having an RCC building with 3 floors, poultry sheds, servants' quarters, a factory etc. The concerned structure was built in 1982-83. The appellant claimed that according to government order of 1987 buildings could neither be acquired nor be demolished. The appellant claimed that the land which was acquired was covered by the provisions of Land Revenue Act. BDA despite all these legal restrictions was trying to demolish the appellant's properties. The court while addressing the contention found that at the time of preliminary notification land belonged to someone else and by the time appellant filed the suit the property had changed two hands. Given that according to S. 17(5) of the BDA Act, the appellant had failed to prove that she was the owner of land. The notice had to be served within the 30 days of the publication of notification of the acquisition in the Gazette. So the first contention was dismissed.<sup>151</sup> Though the acquired lands could have been acquired under ULCRA, there was restriction on the concerned authority to acquire lands under any other enactment.<sup>152</sup> The court found that the property became a built-up area only in 1983-84, which was after the BDA had taken possession of the land. The appellant had applied for regularization despite knowing that the BDA was in possession of the land. The appellant had constructed unauthorized buildings. Thus the court decided that the demolition of the buildings by the BDA was legal. For all these reasons, appeal was dismissed because petitioner did not have *locus standi* to question the acquisition proceedings.

In the dispute between *Vinayaka Griha Nirmana Sahakara Sangha Limited v Karnataka Appellate Tribunal and Others (1995)*<sup>153</sup> the question was whether the Deputy Registrar of the Co-operative Societies had *locus standi* to deal with the disputes with regard to the title of the land owned? This was a case related to the lands acquired in Nagarabhavi village for a HBCS. The land was acquired according to the procedure of the L.A. Act and possession was handed over to the HBCS. Land acquisition for the petitioner-society was done in 1985 and the possession of the land took place in 1992. The third respondent to this case claimed title to the same land by virtue of a sale deed. The petitioner-society approached the second respondent to this case-the Deputy Registrar of Co-operative Societies, to find a solution to the dispute. The second respondent ruled that the petitioner-society was the absolute owner of the land. After that, the third respondent filed an appeal with the 1<sup>st</sup> respondent-Karnataka Appellate Tribunal. The Tribunal in its verdict ruled that second Respondent- Dy. Registrar of Coop. Societies had no jurisdiction to enquire and settle matters with regard to title and the possession of property disputes. Aggrieved by such an order, the petitioner-society approached the High Court. The court found that according to Section 70(1) of Karnataka Cooperative Societies Act, the Deputy Registrar had jurisdiction over the matters touching upon constitution, management or business of Co-operative Society, whereas disputes relating to title and possession of land was a civil dispute which could not be dealt by the Registrar. And secondly, according to Section 70(3) of Karnataka Cooperative Societies Act though the decision of Registrar is the disputants can approach appellate authority under Section 105 of the same Act. Thus the petition was dismissed. This case again brought to the surface the complexities involved in the quasi-governmental interventions and the deals which happen with regard to lands.

#### 10. Land Acquisition Act, 1894 and Public Purpose

There were rarely any contentions with reference to the public purpose of land acquisition in the preceding decades of the 1980s. With the changes in the mode of land development from major governmental production of residential space to quasi-governmental production, the doctrine of public purpose was seriously challenged. In other words, the parting/sharing of the power of eminent domain of the sovereign power in alignment with government recognized quasi-legal associations to acquire land was challenged. The following legal disputes give a clear picture of not only the issues arising out of sharing of the power by the government/state but also the very being of associations and their activities.

Public purpose has been questioned fundamentally whenever government has acquired lands of individuals to allocate them to individuals, associations or organizations, and institutions which were perceived as private by the litigant-landowners. In the pre-1980s scenario, acquisitions were mainly taken up by the government, and the issues were different. Among the cases, there was only one dispute that belonged to the pre-1980s that questioned the public purpose which was defeated. The dispute between *M. P. Narasimha Murthy v State of Mysore*<sup>154</sup> (1967)<sup>155</sup> was about whether acquisition of property to sell sites to others was for public purpose? The main purpose as stated in the CBIA was to form layouts and sell sites by the CITB. Therefore such a process and action were driven by public purpose. Thus the contention was dismissed. The issues of public purpose of land acquisition have taken a much more explicit form in the following cases during the 1980s and 1990s, under the regime of quasi-governmental production of space.

It all began with the questioning of acquisition for a company as being illegitimate and illegal. In the dispute between *Annayya & Others v State of Karnataka & Others* (1988) one of the contentions was that acquisition for companies should be taken up under Chapter VII of L.A. Act because lands were acquired for setting up a five star hotel, but were allotted to an HBCS and a company of private land developers. Actually the government had allocated the land for private development for tourism. In this instance, it was alleged that provisions of L.A. Act and Rules framed for it were not followed and the acquisition was termed “bad in law”. The court found that since lands were acquired for a statutory corporation of the state i.e., Karnataka State Tourism Development Corporation and government had spent money for the acquisition process for public purpose under Section 6 of the L.A. Act. Thus Chapter VII of the L.A. Act was considered inapplicable and the contention was dismissed.

The landmark dispute which addressed mainly the idea *public purpose* was between *Narayan Raju v State of Karnataka & others* (1988) which questioned “public purpose” at the principle/doctrinal level confronted the very legitimacy of the actors-beneficiaries. There were different issues but were connected to the same problem. The question was whether the land acquired concurred to the definition of public purpose according to section 3(f) of L.A. Act? Or whether the beneficiaries of acquired land were eligible according to the definition of public purpose? These set of petitions pointed out that the amended L.A. Act 1984 clearly demonstrated “the clear dichotomy...between the purposes of acquisition and therefore, and acquisition for a ‘company’ (a term which includes a co-operative society) can be made only by following the procedure prescribed under Part VII of the Act, and no acquisition of land can be made for a company calling it a ‘public purpose’”<sup>156</sup>. Acquisition for a Housing

Co-operative Society which is a Company is not for “public purpose”. The petitioners were the landowners of the Bilekahalli Village whose lands were acquired for the benefit of Vijaya Bank Employees Housing Co-operative Society Ltd. These legal proceedings against the Housing Co-operative Society, for the first time, seriously questioned the idea/doctrine of “public purpose”. Since the Amendment Act had already been enforced when the case was going on, the petitioners had pleaded the court to apply the newly amended act in retrospect to their legal proceedings too. Petitioners argued that since the housing society was a company, according to the new amendment the acquisition should have been done according to the Part VII of the L.A. Act, 1894 which elaborates on the procedures, modalities, preconditions, the incurrence of cost for the acquisition, etc. The petitions questioned the preliminary notifications issued under section 4(1) of the act drawing from section 3(f) of the Act to acquire lands as ‘public purpose’, for the society which is private company by spending government funds. According to the Part VII of the act, the cost should be incurred by the company to acquire lands. Since government partially had incurred from its funds for the acquisition for the housing society, the acquisition was dubbed as ‘colourable exercise of power’. Against this contention, court took a view that incurring costs, partially or in full from the government funds according to the section 6(1) is mandatory before the declaration is made. The intention of making a contribution, and how it manifests is left to the discretion of the government, thus the contention of the petitioners was nullified. In the context of the dispute court elaborated that the definition of “public purpose” continued to be an “inclusive one having wide connotation”. The Section 3(f) of L.A. Act which elaborates on the beneficiaries of public purpose and the court demonstrated that the government was correct in relying on Section 3(f) of L.A. Act to acquire lands. Section 3(f) of the L.A. Act has a long list of beneficiaries, and clause (vi) of it enlists co-operative society too, and thus the term ‘public purpose’ is inclusive. Apart from that, the government was satisfied that it was meant for a public purpose. Government had appointed a three member committee according to the requirements of the section 5A of the L.A. Act to examine the question independently with regard to the housing scheme; implementation of scheme in question was guaranteed by the society by entering into two agreements with the government and vast amounts of money was already deposited towards the cost of acquisition by the society, thus the government was satisfied that the land was required for construction of houses for the members of the society. Court had the evidence that from publication of preliminary notification in the Gazette as required by Section 4(1), the enquiry according to Section 5A, and the declaration of the land need for public purpose according Section 6 of L.A. Act were complied within the prescribed time limits, thus the petitions were dismissed. In the dispute between *Narayana Reddy & Another v State of Karnataka and Others (1991)* the legitimacy of public purpose was again questioned. Though the case was decided in

favour of petitioners<sup>157</sup> on other grounds, but to the question against the public purpose, the court reaffirmed the decision of the previous case discussed above.

Again the same contentions reappeared questioning acquisition for a Housing Co-operative Society. In the cases –*Ramachandrappa and Others v State of Karnataka and Others*(1996)<sup>158</sup> and *Venkataswamappa v Special Deputy Commissioner (Revenue)*(1997)<sup>159</sup> – the court observed that according to Section 3 (f) (vi) of the L.A. Act the acquisition of land for the HBCS was considered as ‘public purpose’. Housing Scheme sponsored by Co-operative Society for the benefit of its members which was approved by the government was within the meaning and purview of the ‘public purpose’. Thus notification issued, declaration published and award made were not ambiguous or vague, thus acquisition proceedings were not considered ‘colourable exercise of power’ or ‘mala fide’.

#### Issue of Ineligible Membership within HBCS

Ineligibility as the criterion to contest against land allotments was preceded by the judgment in the dispute between *Narayana Reddy & Another v State of Karnataka and Others* (1991) which had indicted the HBCS in general. Similarly in a dispute between *B. Krishnappa & Another v State of Karnataka and Others* (1994) the petitioner had pleaded the court to invalidate the acquisition proceedings which was done under Section 4(1) Notification and 6(1) Declaration, because lands acquired for the HBCS was being allotted to the ineligible members which was against the public purpose. The lands were acquired for the residential purposes for the housing needs of the HBCS of employees of RMS and Telephone Wings of P & T. Lands were already acquired, taken into position and the land owners had received compensation too. The court took note of all these facts and dismissed the petitions on two grounds- a. since the whole process is complete “those notifications cannot legally exist in the eye of law, as on today[then]” and b. the petitioners have no “*locus standi*/sufficient interest”<sup>160</sup>.

In such a context of contending eligibility criterion, the very institution of judiciary and its personnel were itself questioned for their alleged role in accessing land through illegal means. More or less the contest was on the lines of *Narayana Reddy & Another v State of Karnataka and Others* (1991), but the results of the contests were not the same as one would see later. Further, the dispute also highlighted the conditions of the landowners and the role of the state. In the dispute between *Subramaniam v Union of India and Others* (1995) three public interest litigations were filed at the High Court against the Karnataka State Judicial Employees’ House Building Cooperative Society Limited (KSJEHBCSL), Bangalore. KSJEHBCSL was registered in 1983 under the

Karnataka Co-operative Societies Act, 1959 for purpose of forming a layout for the employees of judicial department, subordinate judiciary and also certain sitting judges, and transferred and retired judges of the High Court of Karnataka. Initially the KSJEHBCSL had planned to purchase lands on its own in the open market by entering into agreements with land owners. Later the society changed its plan and requested the government to acquire lands for the society. In response to the request, the government started the acquisition proceedings in 1988 and finalized acquisition of land measuring 159 acres 261/4 guntas of land at Allalasanra Village in 1991. In 1986 KSJEHBCSL made an agreement with a developer to form a layout. In 1992 according to the statutory requirements the BDA approved the plan of the layout. In 1993 layout was formed and 1700 sites were distributed to the members of the society.

Apart from Constitutional violations, petitioners pointed out procedural failures on the one hand and many policies, social and moral questions stemming from the constitutional provisions on the other. It was alleged that Judges who already owned houses in Bangalore City were members of the Society. In the first petition it was alleged that acquisition violated Articles 14<sup>161</sup>, 19<sup>162</sup>, and 21<sup>163</sup> and Articles 38<sup>164</sup> and 39<sup>165</sup> of the Directive Principles of State Policy of the Constitution of India. The petitioner challenged against the Section 3(f)<sup>166</sup> of the amended Land Acquisition Act-Karnataka Act No. 17 of 1961 and amended Central Act No. 68 of 1984. It was alleged that Section 3(f) was contradictory to Article 19(1) (g) of the Constitution of India- in the sense that acquisition dispossessed the lands of thousands of small landowners who solely depended on the agricultural income and the compensation paid was a “pittance” and the major consequence would be loss of lands, profession and employment. Further it was contended that Section 3 (f) lacked guidelines “on the basis of which the State may exercise their discretion to choose as to which of those Co-operative Societies deserve the facility of compulsory acquisition based on the status of income of the members of the Co-operative Society.”<sup>167</sup> Further, it was stated that the ‘sum and substance’ of contentions reflected that L.A. Act was invoked to acquire lands without keeping in mind the ‘economic status’ of the members of the society which created a process of making the ‘rich richer’ and the ‘poor poorer’ which violated the Articles 38 and 39 of Constitution of India.<sup>168</sup> Judges of District Court, High Court, and Supreme Court, both sitting and retired, appointed by the President of India, ‘by no stretch of imagination’ could be considered the employees of judicial department of the Government of Karnataka or of any other State government. Judges being the members of the society were infringing on the rights of the land owners- in the sense that they would not be able to get protection of law and equality under different laws. Besides judges seeking allotment of sites would not serve the public purpose. Therefore it was termed “colourable exercise of power”.<sup>169</sup> This particular acquisition was also alleged

to be the “fraud on the exercise of the powers of the authorities concerned with the land acquisition” because it was seen as contrary to the co-operative principles set forth by the Karnataka Co-operative Societies Act, 1959. The society should have negotiated the land deal directly with the land owners for a price in an ‘open market with voluntary exchange of agreements and contracts’ than arbitrarily availing the facility of compulsory acquisition.<sup>170</sup>

In the second petition of the same proceedings petitioner observed that- the KSJEHBCSL by allowing judges as its members “indirectly” influenced the government and its statutory bodies to sanction the permission of acquisition and the formation of layout and distribution of sites. Judges were the principal beneficiaries of the society who were allotted larger and largest dimension sites which measured 100’x 100’ and 120’ x 100’ square feet. The “laudable object” of the society was to provide house sites to the low paid employees of the judicial department at affordable rates, whereas allotment of sites to the judges was against such an objective. KSJEHBCSL employed middlemen by paying them a huge sum of money<sup>171</sup> which was not accounted and was used to pay ‘persons in power to get the acquisition notification issued in respect of the lands wherein agreements [had] had been entered with the land owners’<sup>172</sup>. The agreement with middlemen was perceived as against the public policy which in this particular case led to the “innocent” landlords being deprived of their lands. Judges were accused of submitting the false affidavits in which they had sworn that they did not own any sites or houses in the Bangalore city which was against Section 8 (A) of the Bye-law of the Society. The judges had ‘breached the oath taken by them’ and they were a “class” who could not have had been members of a society. Thus petitioner demanded to test judges “on the touchstone of legality, morality, propriety and judicial integrity”<sup>173</sup>. They claimed under the circumstances land acquisition as “bad in law” and were not public purpose which amounted to “colourable exercise of power”. Apart from that it was against the co-operative principles since it included the judges as members of the society. Its Bye-laws needed amendment and such an amendment would “defeat the very object of the Society” and Section 12 of the Co-operative Societies Act<sup>174</sup>.

The third petitioner, who challenged the land acquisition for KSJEHBCSL, was the owner of 9 acres 34 guntas of land at Allalasanra Village, YelahankaHobli, Bangalore North Taluk whose lands were acquired for the purpose. The petitioner characterized acquisition proceedings as “fraud” since house building co-operative societies as “fraudulent” institutions which were not functioning on the basis of the objectives of the co-operative movement. On the contrary ‘vested interests’ were at work, who were up to “grab the lands by back door methods and to amass wealth by

indulging in the real estate business”.<sup>175</sup> Middlemen were employed by the society by paying exorbitant amount of money to influence the authority to acquire for the concerned society. The petitioner doubted that the judges would not be able to deliver an unbiased judgment. The President of the concerned society requested the petitioner not to challenge the acquisition in the court in exchange for reconveyance of 2½ acres of land to the petitioner. Apart from the other lapses highlighted, the petitioner pointed out the procedural and purposive lapses in terms of the society- ignoring the requirement of obtaining the permission to acquire land as contemplated by the Section 3(f)(vi) of the L.A. Act. Thus the land acquisition was not serving the public purpose and violated Section 11 of L.A. Act since award was not passed within the stipulated period. Therefore the whole of acquisition was termed as ‘bad in law’. The petitioner also characterized the acquisition process as ‘*arbitrary, capricious and tainted by mala fides*’ because the acquisition was only meant for commercial purpose. Thus the governments’ act was characterized as ‘favouritism’.<sup>176</sup>

In response to different petitions KJEHBCSL questioned the petitions on the grounds that- a. the petitioner was not a member of the Society and had no interest in the acquired lands or sites. Therefore he could not have invoked the jurisdiction of the Court under Article 226 of the Constitution. It was contested that public did not have *locus standi* to challenge the ‘acts and omissions’ of the Society. The respondent society was prepared to buy lands at market value but “*in order to solve the problem arising under the Land Reforms Act and questions of title at a later stage it was felt that it would be better to get the lands under the provisions of the Land Acquisition Act, 1894.*”<sup>177</sup> Therefore the concerned society approached the government to acquire lands for them. Regarding the issue of the middlemen, the court found that the concerned builders were a firm of engineering contractors who used the money to develop lands and formed the layout and they had nothing to do with the acquisition of lands. Concerning the false affidavits by the judges regarding the ownership of the house in Bangalore city, the court elaborated that- G.V.K. Rao Committee Report had not made any unfavorable remarks about the society. It was found ‘absolutely false’ that the judges had submitted the false affidavits. There was no criterion to disqualify if an individual owned a house and sought the allotment of the site from the society. Not all judges owned houses in the city. Law did not prevent judges from being members of a society and seek allotment of sites. L.A. Act was fully complied with, in terms of required notification and declaration passed according to the law. All the landowners had entered into agreements and had received the compensation, except the two landowners. Except one of the landowner, none of them had approached the court questioning the land acquisition or the land development process.<sup>178</sup> The court found that Section 3(f) (vi) of L.A. Act supported the acquisition for the co-operative society

as valid public purpose. Regarding the issue of lack of guidelines to acquire land for the same, the court observed that it was left to Government's discretion to decide whether there was a "public purpose" or not and since land was acquired for the public purpose of the allotment of sites to Karnataka judicial employees the contention was set aside.<sup>179</sup>

The court considered the issues of "fraud on power" and "colourable exercise of power" since some of the judges were members of the society and were allotted the sites which was considered bad in law. The Court observed that- "We are not able to understand this argument, nor there is any material to accept this argument."<sup>180</sup> It was further observed that given the facts, the sites were allotted mostly to the judicial department's employees and some to the judges cannot be considered 'colourable exercise of power'. Thus land acquired was utilized for the 'public purpose'. The contention that the judges being the members of society tried to accelerate the acquisition process was seen as 'far-fetched'. Regarding the contention that the acquisition was against the Directive Principles of the State policy of the Constitution of India, it was observed: 'No where it is stated that agricultural lands should not be acquired' and 'lands of the poorer section of the society cannot be acquired for the purpose of the Co-operative society'. Thus on these counts too the concerned land acquisition had not violated the provisions of the Constitution of India.<sup>181</sup>

The "main plank of attack" was regarding the HBCS hiring 'middlemen' to aid and hasten the acquisition process in general, which was considered illegal in the previous cases. The court compared lengthy agreements reached between the HBCS and 'middlemen' in the previous cases where the agreements and actions of the middlemen and the respective HBCS were found illegal and the agreement of the KJEHBCSL with the 'middlemen'. It was found that the KJEHBCSL had not hired 'middlemen' in the acquisition process. It had only entered into an agreement with developers only to develop land and not for acquiring land.<sup>182</sup> In one of the writ petitions, the petitioner had pointed out that the approval of any housing scheme by an appropriate Government was a pre-requisite according Section 3(f)(vi), which was not obtained by the KJEHBCSL. Thus the acquisition was considered 'bad in law'. But the court considered that the petition had 'to fail on the grounds of laches, delay and conduct of the petitioners'.<sup>183</sup> About the question of judges submitting the false affidavits concerning the ownership of house in the city, the court found that there was no column in the application to furnish the details of the ownership of house anywhere else in Bangalore city. Thus the allegations were termed by the court as "absolutely baseless".<sup>184</sup> And with reference to the question of 'propriety', the court observed that propriety was different from that of legality, and since legal provisions were absent to question the conduct of judges, the court was not in a position to pass a judgment over

the matter and was beyond its jurisdiction. The court was apprehensive about the nature of 'reckless' allegations without the verification of facts by the petitioners against judges about the 'false declarations' related to the ownership of house in the Bangalore city. Before passing the judgment, the court stated: "The constitutional protection to Judges is not for their personal benefit, but is one of the means of protecting the judiciary and its independence and is, therefore, in the larger public interest."<sup>185</sup> For all the above reasons the petitions were dismissed.

### **Planned Acquisitions- Won Causes**

The cases won by the petitioners/appellants provide a diversity of quasi-legal causes in their rulings. Few of the judgments which were in favour of petitioners indicate the non-legal factors viz., power, influence, class, etc., which were affecting the judgments unconsciously. There were also some of the judgments which probed the situations of land developments than merely expressing the legal points of view. In some of the instances the violations on the part of the government/state and its institutions were obvious, but in some other instances judgments were tentative which gave space for governmental maneuvers. The instances also open a window to the dynamics of land developments which courts in their judgments and assessments gave out their observations.

1. Issue of Application of Substitutive Laws in Land Acquisition: The general acquisition law prescribed the procedures and modalities to acquire land for public purposes. The law specifically meant for the city had a component of acquisition among other things within the law for the improvement of the city. The general law of acquisition and the specific component of the law of city improvement were viewed as contradictory and became a source of contention in some cases. Apart from all that, there were also private efforts to create layouts which were in conflict with the law. The first case which set the tone for such contentions was the dispute between *P. Achiah Chetty and Other v State of Mysore (1962)*. This case was about land acquisition proceedings which were taken up at Raj Mahal Village, Kasba Hobli, Bangalore North Taluk, to form the Raj Mahal Vilas Layout by CITB. The lands which were proposed to be acquired originally belonged to the erstwhile Maharaja of Mysore, who had transferred the land through the sale of plots and as gifts. There were many individuals belonging to different classes who already had stake in the land.

a. One of the petitioners had bought a plot from Maharaja to construct houses for his company's officers.

b. Another petitioner had obtained a sanction from the concerned authorities for converting the land from agricultural to non-agricultural purpose and for that purpose

had paid conversion fine and special assessment charges. Two other petitioners had not succeeded in obtaining the permission for conversion of land use.

c. Three of the petitioners had bought land to form a private layout of building sites- Private layout makers were supposed to sign an agreement with the CITB. The CITB had issued a notice to them not to proceed further without obtaining the permission. Accordingly private layout makers had signed an agreement with the CITB and had paid supervision charges. Deputy Commissioner had sanctioned private layout on the recommendation given by the CITB and on the payment of conversion fine. Accordingly, private layout makers had formed layout and had sold some of the plots and entered into sale agreements of some plots.

d. Two petitioners were not residents of Bangalore- one was the wife of an embassy official at Washington and another was the wife of a doctor in Madras. An agent on behalf of the petitioners, who had power of attorney, had submitted an application to government to withdraw from acquisition. In reply to that the government and Special Land Acquisition Officer had announced the compensation for the acquisition of their part of land.

e. A petitioner had dissented acquisition but the objection were neither heard nor considered.

f. Finally, a petitioner was the wife of Deputy Secretary in the Ministry of External Affairs of Government. She had stated that notice reached her when she was in Delhi. The Special Land Acquisition Officer had asked her to make claim for the compensation.

In the midst of all those happenings, the land acquisition proceedings had begun and were termed by the petitioners as 'incompetent' and were viewed as 'opposed to law'.<sup>186</sup> The petitioners characterized the whole of land acquisition proceedings as invalid for the below reasons: a. Whether acquisition proceedings could totally rely on the provisions of the L.A. Act without invoking any of the provisions of the City of Bangalore Improvement Act of 1945.<sup>187</sup>

b. The Government of Mysore had issued an Ordinance in 1960 effecting an amendment to the CBIA with retrospect effect from the beginning of the Act. The petitioners contended that the said Ordinance was 'invalid' because land acquisition had not complied with the provisions of the Article 213 and 254(1) of the Constitution of India. The Ordinance was also questioned because it was also in violation of the Article 14 of the Constitution of India.<sup>188</sup>

In its judgment, the court found that the lands which existed within the Municipal limits of the City of Bangalore and were sought for acquisition for public purpose i.e. for the formation of a layout and improvement, were supposed to be within

the jurisdiction of Board of Trustees. The authority had to acquire land by invoking the CBIA. Since the lands were acquired as per within the municipal limits, the Section 52 of CBIA, the land acquisition under the L.A. Act was considered 'invalid in law'<sup>189</sup>. The court found many differences between various sections of L.A. Act and the CBIA.<sup>190</sup>

2. Failures to serve the personal notice or the appropriate notice to the land owners and other interested parties in the land under acquisition: Laws invoked for such failures were Section 4 (1) & (2) of L.A. Act, S. 17 of the BDA Act. In the dispute involving *Krishnamurthy v State of Mysore & Others (1970)*<sup>191</sup> the petitioner was not served the appropriate notice of the preliminary notification in which a particular portion of the land which was to be acquired of the total extent of 3 acres 25 guntas of land its boundaries were not clear, thus not adhering to the Section 4(2) of L.A. Act. The court took a view that non-mention of the portion of the land to be acquired did not warrant the cancellation of the preliminary notification. The authority responsible for it was given a direction to correct and inform the landowner-petitioner.

In a case involving *Reckitt & Colman of India Ltd. v Bangalore Development Authority & Others (1983)*<sup>192</sup>, the petitioner demanded that acquisition proceedings to be cancelled since the land owner was not served the notice of acquisition according to the requisites of Section 17 of the BDA Act. Regarding the Section 17 of the BDA Act, it was mandatory to serve notice of acquisition to all the interested parties. So the notification of acquisition was cancelled. But the court gave a chance to BDA to start acquisition proceedings afresh within 30 days from the date of order by complying with all the necessary legal procedures.

In a dispute between *Chayadevi & Another v State of Karnataka & Another (1988)*<sup>193</sup>, the respondents-the authorities did not file any statement of objections refuting the charges made by the petitioners. In this case, a statutory requirement of serving the notice to the landowner-petitioner according 17(5) of the BDA Act was not followed by the land acquiring authority. But the authority argued that by the time petitioners approached the court many people had built houses. The court took a position that many houses built in the vast layout formed by BDA did not preclude the owner of the land to be in possession of land and petitioners were still in possession of land. The court allowed the contention and acquisition proceedings and preliminary and final notification of lands to the petitioners were quashed.

3. Failure of not giving an opportunity or chance of statutory mandatory personal hearing or submission of objections to the appointed governmental authority during the

acquisition proceedings by the landowners or property owners or slum dwellers who would lose their property or land. Laws invoked for such failures are Section 5-A(1) and (2) of L.A. Act, Rule 6, 8, Karnataka Acquisition of Land for Grant of House Sites Rules, 1973, Section 17 of (1) Karnataka Slum Area (Improvement & Clearance) Act, 1973.

In the dispute involving *Krishnamurthy v State of Mysore & Others (1970)*<sup>194</sup> the content of recommendations submitted to the government was not informed to the land owners with reference to their objections and the official report, according to Section 5-A(2) of L.A. Act. The court held the view that it was mandatory on the part of the officials concerned to inform the land owners about the recommendations submitted to the government according to the Section 5 A (2) of the L.A. Act. Thus the final notification was ordered to be cancelled.

Another variant of interaction and communicative mode prescribed by 5-A (1) of L.A. Act was listening and considering the objection filed by the landowners against the acquisition. In the dispute between *D.R. Kodandarama Reddy v Deputy Commissioner, Bangalore and Others (1995)*<sup>195</sup>, the court found that the acquisition proceedings were held without giving a chance of hearing which under the law was mandatory and a prerequisite. Therefore acquisition was considered invalid and was quashed. But the court suggested to the government that it could take up again the acquisition at a later date, by fulfilling all the procedural prerequisites as prescribed by the law.

The disputes of – *Patel Munireddy v Deputy Commissioner, Bangalore & Others*<sup>196</sup> and *Archak Rangachar v Deputy Commissioner, Bangalore District & others (1976)*<sup>197</sup> – were about mandatory personal hearing which was not complied with, according to Rule 6 of Karnataka Acquisition of Land for Grant of House Sites Rules, 1973. The court found that the petitioner had submitted the objections to the concerned authority within the stipulated time as prescribed by the law. The concerned government official had to mandatorily give the personal hearing to the individuals who had filed the objections according to Rule 6 of the law, which was not complied with. Apart from that the petitioner in the latter case had brought to the notice of the court that there was already acquired land which was yet to be developed. So, further acquisition of land was found unnecessary. Thus court ordered fresh enquiry by SLAO regarding the undeveloped land. For all these reasons writs were allowed and the acquisition proceedings were cancelled.

In the petition involving- *Bhavasara Kshatriya Samaj v State of Karnataka & Others (1985)*<sup>198</sup> the petitioner complained that acquisition proceedings were “bad in

law” because the petitioner-society was unaware and was not issued any notice according to the requirements of Section 17 of (1) Karnataka Slum Area (Improvement & Clearance) Act, 1973. Acquisition proceedings were cancelled by the court because as required by the Section 17 (1) of the Act, the government had to call upon the owner and also the interested party who was occupying the land before acquiring the land for slum clearance. According to Section 17 (1) of the Act, the “Government shall call upon the owner or any other person who, in the opinion of the government, may be interested in such land” before acquisition. The court said that the government had the responsibility to consult both the owner and the occupant of the land before the start of acquisition proceedings. Since the government did not follow the elaborate procedure and since there was no evidence, the acquisition proceedings were cancelled.

Similarly, though another point of law was invoked and discussed, under similar circumstances of violation, the contention and effect of the judgment was the same in *M/s. Shakthivelnagara Gudisalu Nivasigala Kshembhivrudhi Sangha, Bangalore v State of Karnataka and Others (1997)*<sup>199</sup>. The petitioners, in this case, argued that before the final declaration was made according to the Section 11 of L.A. Act, the interested parties were to be served the notice. The slum had 153 families with a population of 800 living there for 40 years. They were not given a chance to be heard. The court confirmed from the records that the notice had been served to the petitioners. The court ordered that though the statute did not provide for hearing. Since the slum dwellers were being affected they were the interested parties. Therefore it was considered the requirement of the natural justice that a citizen who was going to be adversely affected should be heard even though it is not provided in the statute. The court dismissed the notification and gave a chance to the petitioners to file objections to the concerned authority within four weeks to be heard.

4. Issue of Denotification: The dispute involving *B. Munegowda v State of Karnataka & Others (1990)*, was about a notification under Section 3(1) of Karnataka Acquisition of Land for Grant of House Sites Act, 1972 which was initiated in 1977 to acquire lands. In response to that the land owner filed the objections. In 1980 the lands were denotified (acquisition cancelled) and the denotification was published in Karnataka Gazette. Again in 1984 under the Section 3(4) of the same act a notification was issued to complete the acquisition. The petitioner characterized such proceedings as contrary to the established law and displayed thorough ignorance of the proceedings. Therefore filed a petition to cancel the land acquisition. Court found that the concerned officials had conducted the process in a ‘casual’ manner “which requires to be condemned out right. This is not the case where the mighty power of eminent domain has to be exercised. There must be caution, circumspection as well as thinking before embarking

upon these procedures which have been delineated under the Act<sup>200</sup>. The land acquisition notification was cancelled.

5. Issue of Withdrawal from Land Acquisition- In a dispute involving *The Agricultural Produce Market Committee, Yeshwanthpur, Bangalore v State of Karnataka and Others (1997)*<sup>201</sup>, the question was whether the government had the power to withdraw from the land acquisition proceedings according to Section 48 of L.A. Act after the final declaration of the acquisition was made according to Section 6(1) of L.A. Act. The Government had acquired 23 guntas of land for setting up of a market yard at Byatarayanapura village. There was writ petition against it and government had to negotiate with the petitioner and decided to withdraw from the proceedings. The Agricultural Produce Market Committee which was supposed to benefit from the acquired land had petitioned that the government should not withdraw from the proceedings since had already been final declaration made. The court found that government had come up with final declaration of land acquisition according to Section 6 (1) of the L.A. Act as required for the public purpose. One of the respondents had submitted the application to the government stating that the government had all the powers to withdraw from the acquisition proceedings when Section 15 A read with Section 48(1) of the L. A. Act. Thus accordingly government had agreed to withdraw from the proceedings. The court in its verdict said that government though had the powers to withdraw from the acquisition before taking possession of the land according to 48(1) of the Act if it found that there was no merit of public purpose for which land was proposed to be acquired even after the final notification. It also has powers to review orders to ensure regularity, propriety and legality of the appointed official to oversee the acquisition process. But in the present case since the government though had proposed to withdraw from the acquisition proceedings, it had not notified the withdrawal which was a requirement according to Section 48 (1) of the Act. In that sense Government's decision to withdraw from acquisition was inappropriate. Thus the petition was allowed and the government order was dismissed.

6. Demand for Complete Acquisition of Property- The dispute between *Additional Special Land Acquisition Officer, Bangalore v A. Thakoredas and Others (1977)* was about an objection against not acquiring the property completely by referring to Section 49 of L.A. Act. The owner of the property was of the view that the remaining property was useless to him and had asked for complete acquisition. This dispute was about the portion of property which was acquired along the Lalbagh Road, Bangalore City for a public purpose. Declaration was made under Section 6 of the L.A. Act for the public purpose and under Section 9 of the same Act notice was served to the property owner. The respondent pleaded the government to acquire the property completely because the

remaining portion was useless to him and invoked Section 49 of the L.A. Act. It was contended by the respondents that it was a delayed response from the petitioner. Thus the argument was untenable after declaration was made under Section 6 of L.A. Act. The court found that the argument was tenable because it was made before the award was passed. Thus the petition was allowed.

7. Powers for the Bulk Allotment of Acquired Lands: The dispute described below brought many issues of middle class participation in housing associations in the residential land development. In a dispute between *Vishwabharathi House Building Co-operative Society Ltd. v State of Karnataka and Others (1991)* the question was whether the BDA had powers to make bulk allotments of the lands to a Housing Cooperative Societies? The VBHBCSL was working on forming residential layouts and selling the sites to its members. The contentions were about the permission to purchase lands by the VBHBCSL at Gerehally village in Bangalore North Taluk and Hosakerehally village in Bangalore South Taluk. It had passed through the official process of “No Objection Certificate” and BDA had passed resolution in permitting the purchase of land for the formation of a residential layout. The VBHBCSL had begun the process in the early 1970s itself.

The housing society based on the permission from the BDA, had entered into agreements and paid huge advances of money to purchase lands. In 1976 government took over the VBHBCSL into its direct control and supersession order was passed under Section 30-A of the Karnataka Co-operative Societies Act and Secretary of the housing society was detained under MISA. Later it seems the VBHBCSL was denationalized. In the intervening period the Special Land Acquisition Officer who was in charge of the proceedings of the nationalized housing society served notices to the concerned landowners and passed awards. But with regard to some survey numbers, land awards were not passed yet. The owners of non-awarded lands approached the court with writ petitions in 1978 to prevent giving effect to 1971 notification by the authority, because BDA had failed to complete the scheme within the stipulated time period of 5 years according to Section 27 of BDA Act. The writ petition was dismissed on the basis of laches (long delay in questioning the land acquisition). The contention was with regard to some survey numbers for which land awards were not yet passed. There was a statutory prohibition which prevented HBCSs from holding any vacant land or agricultural land for the benefit of the members of such societies. But the Government formulated the policy to acquire lands in and around Bangalore city for *bona fide* HBCSs and accordingly 128 HBCSs were identified and the VBHBCSL was one among them. The HBCSs had entered into agreements to purchase lands parting huge sums of money to buy land and form layouts, but were not in a position to

complete the process of purchase. It was under these conditions of “predicament” as the court termed it, the government formulated guidelines to acquire lands for HBCSs ‘while taking note of the fact that vast tracts of land had already been acquired by the BDA and yet the very same lands were the subject matter of agreements of sale between the owners and the Co-operative Societies’ in 1987. In 1983 the petitioner had applied to the Special Deputy Commissioner and the State Government for the acquisition of lands for the VBHBCSL situated at Patnageri, Halagewadayarahalli, Avalahalli, Hosakerehally and Gerehally villages. In 1987 the VBHBCSL had filed another petition with regard to the sanction of lands, and the same high court had issued directions to *Three Members Committee* set up by the government to process the application of the petitioner at the earliest. But giving effect to the court’s direction was delayed because the *Three Members Committee* had yet to be reconstituted.

The petitioner had highlighted that VBHBCSL had 10000 members and it could only fulfill the demands of 10% of site needs of its members. In such a context, the petitioner had pointed out that Special Land Acquisition Officer of BDA was contemplating of passing awards in haste without even issuing notices as required under L.A. Act to the landowners. Such an action by the government official would defeat the purposes of the VBHBCSL and would not allow it to take the benefit of the new government order of aiding the HBCSs generally. The petitioner also claimed that the VBHBCSL was discriminated because it was singled out, whereas all other HBCSs were benefitted from the Government order.

Given the above contentions, the court had three issues to consider. One, the powers of the Government to issue order to the BDA. According to Section 65 of the BDA Act, the government had powers to issue directions to the BDA which was expedient and necessary to carry out schemes according to the conceived purposes of the act. In the light of the order passed by the government of aiding HBCSs and dropping the acquisition proceedings taken up by the BDA in the cases where awards had not been passed, the court characterized them as a ‘discretionary decision’ which had to have effect on the BDA acquisition proceedings. Two, court took the view that since the petitioner was not allowed to the benefits of the government order whereas the other HBCSs were allowed, it amounted to hostile discrimination towards the VBHBCSL which was in violation of Article of 14 of the Constitution of India. Therefore the BDA had to drop acquisition of lands which were in contention. And three, with regard to promissory estoppels the court took the view that- “Considerations of reasonableness and fairness in the exercise of statutory discretion ought to prevail over arbitrariness and irrationality”<sup>202</sup>. Thus the Government order and BDA’s No Objection Certificate were to benefit the petitioner according to the court rulings.

8. Demand for Natural Justice: In the disputes of acquisition between *ArchakRangachar v Deputy Commissioner, Bangalore District & others (1989)*<sup>203</sup> and *M/s. ShakthivelnagaraGudisaluNivasigalaKshemabhivrudhiSangha, Bangalore v State of Karnataka and Others (1997)*<sup>204</sup>, the Special Land Acquisition Officer had not given enough opportunity for further cross examination of the witnesses during the course of enquiry which amounted to the denial of 'natural justice' in the former case. In the latter case since the slum dwellers were the interested parties, they should have got a hearing by the concerned authority in question. The court while concurring with the contentions of the petitioners, had ordered commencement of hearings before acquiring the lands.

9. Exemption to Sell Land under the Provisions of Urban Land (Ceiling and Regulation) Act: The dispute between *M/s Revajeethu Builders & Developers & Others v S. Vasudeva & Others (1991)* described below gives the idea of quasi-judicial decisions and their justifications in the judgment against land confiscation. The question was whether Section 20<sup>205</sup> of ULCRA was violated by the State Government in the context of Central Government's directions to be implemented by exempting ceiling limits to sell the land by its owners. The issue was whether there were any *mala fides* or *colourable exercise of power* with the involvement of Chief Minister of Karnataka and Minister of Urban Land in clinching a business deal for real estate and land development by Revajeethu's firm. This was a high profile case which brought heads of the Government, in a land development issue. A large extension of land which was more than five acres, in the context of the continuously appreciating land values and location of land in the prime locality- Jayanagar VI Block, Bangalore, and the large scale land developers of those times being involved in the process of large-scale residential development were in contention. The whole object of contention was a large piece of land which was exempted by the Government from ULCRA to sell the land by its owners to land developers to build an expansive and huge housing estate. The precedent to the dispute was the writ petition filed by an individual-advocate and individuals belonging to a Congress I political party. The writ petition was adjudicated by a single judge of the High Court in which he had dismissed the entire concession ordered by the Government, on the interpretation of Section 20 of ULCRA. A set of writ appeals were filed at the High Court for the consideration by two judges' Division Bench. The Division Bench examined the judgment passed by a single judge. The analysis and reinterpretation of Sections 20, 35<sup>206</sup> and 36<sup>207</sup> of UCLRA were central to the judgment. The State Government had given exemption to the land owners to sell the land according to Sections 20 of the ULCRA Act. The land owners had sold the land to Revajeethu Developers for Rupees 90 lakhs. The main source of contention was

the exemption granted to the land owners by the government to sell the lands on the grounds of “undue hardship” as per Section 20 ULCRA. Though the court attempted at the interpretation of the term “undue hardship”, it was of the view that it was left to the discretion of the State Government to rule and assess the “undue hardship” of the concerned landowner. Further court interpreted that it was for the State Government to record the satisfaction of “undue hardship”<sup>208</sup> to exempt the land owner to sell the excess land which was above the ceiling limits, because the law was “quasi-judicial” in nature. Connected to this was the ruling made on the role of Central Government in giving the directions to the State Government with regard to the issues of urban land ceiling and regulation. The single judge ruled that State Government had violated the directions given by the Central Government. Central Government had given direction to the States that while giving exemption and permission to sell it should be allowed to be sold to a house building cooperative society for group housing, whereas, in this case the land was allowed to be sold to a partnership firm- Revajeethu which was against the given directions of the Central Government. While examining the issue again, in response to the appeals, the Division Bench referred to Sections 35 and 36 of ULCRA, and interpreted that the Central Government could give directions to any State Government according to the provisions of the law, but could not substitute itself in place of State Government to play its role. Since Section 20 of ULCRA confers quasi-judicial authority over the State Government, the authority “is unfettered by any guidelines or anything in the nature of guidelines issued by the Central Government which the State Government may well ignore in the exercise of its quasi-judicial function”<sup>209</sup>. The court found that there was nothing in the law or the guidelines of Central Government which would prevent the State Government to preclude the private parties apart from the House Building Cooperative Societies, by transferring excess land to them to build houses under Group Housing schemes.

#### 10. Land Acquisition and Public Purpose:

Declaration of Land needed for Public Purpose According to Section 6 of L.A. Act: In the dispute between *The Bangalore City Municipality and Another v K. Rangappa, Respondent (1953)* the issue was whether compulsorily acquired properties for a public purpose according to Section 6 of the L.A. Act to widen the road, could be allotted for the benefit of a private religious institution/association- a monastery.<sup>210</sup> The court judged such acquisition as void for the reasons that Section 6 of Land Acquisition Act specifies that- (a) ‘Government must be satisfied that the land to be acquired is needed for a public purpose or for a Company’ and (b) compensation for the land acquired is to be met by the Company or wholly or partly out of the public funds.<sup>211</sup> The concerned acquisition proceeding was not in agreement with the rationale of the

two conditions of the L.A. Act. Apart from that the acquisition did not satisfy the conditions of Municipalities Act. According to the Municipalities Act, land acquired should vest with the municipal council or in other words, Municipality cannot acquire the land for 'somebody else' and municipality cannot pay compensation or other charges. Therefore acquisition was declared void and the case was decided in favor of the respondent and property was to continue to remain in his possession.

By the late 1980s, the predicament of production of space, its distribution and exchange was aggravated with the "privatization" of almost two decades (through the 1970s and 1980s) of land development as characterized by the court in the judgment *Vishwabharathi House Building Co-operative Society Ltd. v Bangalore Development Authority (1989)*<sup>212</sup>. This case brought to the surface the activities and role of the BDA. The following cases had brought to the fore the processes at work. The principle basis of public purpose was questioned in the changing context with the entry of new actors like HBCSs, private land developers, etc. In following cases, the idea of public purpose was questioned and contested. The dispute that actually shook the legal circles was *Narayana Reddy & Another v State of Karnataka and Others*<sup>213</sup>.

The above mentioned case brought to the fore the whole issue of land development process and its institutional mechanisms. The land acquisitions for multiple HBCS were challenged in the High Court on the following grounds:

[T]hough apparently the acquisition of lands [was] stated to be for carrying out housing schemes sponsored by them [HBCS] for the benefit of their members, in truth, it [was] not so, and that the persons in charge of management of the society [had] joined hands with builders and contractors to do real estate business with the object of making enormous profit taking advantage of the demand for building sites in the city and in spite of the said factual position the State Government [had] proceeded to acquire the land under the Act and therefore the notifications are liable to be quashed on the ground that it [was] an instance of *colourable exercise of power*.<sup>214</sup> (emphasised)

The lapses were not only procedural and purposive, but also gross violations which were against public policy and redundancy of the Bangalore Development Authority.<sup>215</sup> The contentions raised were related to the following aspects: a. according to the amended L.A. Act, the co-operative societies are under two categories of 'state' under Article 12<sup>216</sup> of the Constitution of India and the challenged acquisition proceedings was alleged to be invalid because according to the Part-VII of the L.A. Act, acquisition was sought for a private company; b. if land acquired was for a company as defined by the L.A. Act, then before giving consent to acquisition, the Karnataka Land Acquisition (Companies) rules, 1973 should have been adhered to. Since acquisition was not in consonance to the given rules, acquisition should be judged invalid; c. even if the HBCS was a company and land acquisition was for a public purpose, a housing scheme prepared had to be approved by the government. But that did not take place in this

particular case, thus acquisition would be invalid; d. landowners should have been heard according to the rules of 'natural justice' before issuing preliminary notifications which was violated. Therefore it was claimed that the acquisition proceedings should be invalid; and e. enquiry officer should have considered and answered all the objections raised by the land owners, according to the Karnataka Land Acquisition Rules, Rule 7. This was not complied with, so the enquiry conducted under Section 5-A of the Land Acquisition Act was alleged to be invalid.

Apart from the procedural lapses, the petitioners raised two other issues related to HBCS 'enterprise' and the course the institution of land development was taking. The allegations were:

f. The acquisition of land in favour of the respondent-house building societies, is not for allotment of sites to their *bona fide* members for their *bona fide* purpose, for the reason, these societies are indulging in big commercial venture of sale of sites for which purpose the societies have entered into agreements with builders and contractors and had enrolled large numbers of bogus members and associate members for achieving illegitimate object, and the decision of the State Government to accord previous approval and sanction for acquisition of the land was bad not only on account of non-consideration of those relevant facts but also on the ground that the impugned acquisition is a clear case of colourable exercise of power.

g. The extent of large scale acquisition of land in favour of respondents-house building co-operative societies are such as would at once show that there has been large scale abuse and arbitrary exercise of power to acquire the lands under the Land Acquisition Act, which has the effect of circumventing and defeating the provisions of the Bangalore Development Authority Act, 1976, under which the power and obligation to develop the City of Bangalore and areas adjacent thereto and matters connected therewith, and thereby rendering the constitution of the Bangalore Development Authority purposeless.<sup>217</sup>

In response to the first two contentions, the court found that the according to the Section 3(e) of the L.A. Act the housing scheme sponsored by a housing co-operative society which is termed as 'company' would also be a 'public purpose' with the prior permission from the State Government, which is different from the 'company' as categorized under Part- VII of the Act, and Companies rules of 1973. Therefore the first two contentions were set aside.<sup>218</sup> Third contention was with regard to the non-compliance with the prior approval of housing scheme by the Government. The court observed that there were no specific rules existing to gather the particulars that were required to be approved by the Government. So it was suggested to the Government to frame such rules. Regarding the fourth contention concerning the violation of 'natural justice', the court observed that it was enough if the petitioner-landowners were heard in the course of enquiry according to the Section 5A of the L.A. Act after issuing of the notification, than to be heard before issuing of the preliminary notification of the land acquisition. Thus this contention was dismissed.<sup>219</sup> For the fifth contention, enquiry under Section 5-A of the L.A. Act would suffice. Thus the acquisition was not be considered invalid.

The sixth allegation was pointing at the ‘amassed unaccounted black money’ flow into the real estate business and its intrusion into the HBCS and the emerging ‘racket’ of collusion of HBCS, ‘corrupt politicians’, ‘corrupt bureaucrats’ and ‘estate agents’ in the land development process. One of the respondent-HBCS was accused of not being a *bona fide* house building co-operative society because it was a “false front” established by individuals “with the sole object of grabbing the lands for the purpose of amassing wealth at the cost of the poor owners of the lands.”<sup>220</sup> Society was devoid of members; it had employed promoters to arrange individuals who were on the lookout for the sites to take membership for the grant of house sites. Aiding this process of land development was the *Three-Men Committee* appointed by the Government which was at the helm of affairs to approve the HBCS layout formation. The committee was characterized as- “Three-Men Committee is again a fraud on law and public because it was handy to the Government...to get any extent of lands acquired in favour of the House Building Co-operative Societies, through the Three-Men Committee, which was only playing lackey to the dictates of its political bosses. In fact, the Three-Men Committee never took a decision on its own but it was only functioning as per the dictates of the external forces.”<sup>221</sup> The *modus-operandi* of the HBCS was to appoint the agents who were the go-between the HBCS and the Government. Agents were supplied with the huge amounts of money to get the lands acquired, layout plans approved, etc. Main operation of the agents was to influence the government to issue the notification under Section 4(1) of the Land Acquisition Act ‘primarily for the purpose of scaring the owners of the lands and pressurize them to submit to the dictates of the...House Building Co-operative Society, and several other societies’.<sup>222</sup>

The court took note all these allegations and relied on the investigation conducted by the G.V.K. Rao Committee appointed by Registrar of Co-operative Societies on behalf of the Government to inquire the land development activities by the HBCS. The G.V.K Rao Committee had investigated and held HBCSs responsible for the illegal land development activities in the Bangalore Metropolitan Planning Area. The accused HBCS of the case were part of the general investigation were found to be violating the rules which were in contravention to the Karnataka Co-operative Societies Act, 1959.

In brief the irregularities committed by the societies are mainly in the nature of:

1. Procedural irregularities in admission of members.
2. Admission of ineligible persons as members.
3. Admission of associate members without necessary provisions in the byelaws.
4. To acquire the lands outside their jurisdiction.
5. To collect site deposits from Associate members though the objective of the society is to form layout and distribute sites only to the members.
6. Entering into agreements with landlords and agents indiscriminately and in some cases unwarranted agreements.
7. Payment of exorbitant advances to the agents without proper securities, and
8. Collection of site deposits from the members without reference to the payments to be made to various agencies.<sup>223</sup>

The ‘irregularities’ were mainly in the management and the admission of members to the HBCS while seeking land acquisition for the formation of layout and distribution of sites for the purpose of house building activities. The contentions raised in the case against respondent-HBCS<sup>224</sup> were concurring with the findings in the G.V.K Rao report that vast extent of lands acquired was ‘under the guise that the lands were required for a housing scheme for its members and to carry on the business in the sale of sites and to make money as alleged by the petitioners, for which purpose they entered into agreements with builders and contractors.’<sup>225</sup> The court mainly took note of the irregularities of admitting bogus members into the HBCS and deployment of agents to obtain preliminary and final notifications under L.A. Act from the Government to acquire lands for the HBCS which was viewed as “opposed to public policy and totally expose the want of *bona fides* on the part of the housing scheme sponsored by the societies”<sup>226</sup> and “injurious to public interest and detrimental to purity of administration”<sup>227</sup>. According to G.V.K Rao investigation, the land acquired for the respondent-HBCSs- Vyalikaval Housing Building Co-operative Society, H.M.T. Employees’ Co-operative Society, Bank Officers’ Co-operative Society, REMCO Employees’ House Building Co-operative Society, Amarajyothi Co-operative Society and Bangalore Chickpet House Building Co-operative Society, were channelized into the *real estate business*.

[I]n the sale of sites in the guise of allotment in favour of either bogus members or in favour of intending purchasers by enrolling them as associate members for the purpose, and making money by those incharge of the societies and their agents with whom the societies had entered into agreements, by exploiting the existence of the great demand for sites and sky rocketing price for them in the city.<sup>228</sup>

The court found that given the increasing demand for sites and the consequent propelling prices of sites was the favourable condition which was utilized by the set of actors – the Government, the HBCS, and the agents – to make profits. The whole of the land development process was judged by the court as *colourable exercise of power* and *suffered from legal mala fides* because the stated public purpose for *bona fide* housing schemes was not served.

Apart from these procedural violations and the motives, the court had considered the contentions related to the planning violations and the institution – Bangalore Development Authority (BDA) – its role as an agency to produce space to expand the Bangalore City. Many of the HBCS had violated the zoning regulations by acquiring land allotted in Comprehensive Development Plan for other purposes. Vyalikaval House Building Co-operative Society was sanctioned 123 acres of land by the government without consulting the Bangalore Development Authority, in

sanctioning 123 acres of which 71 acres and 11 guntas were already allocated for parks in the Comprehensive Development Plan. This act was considered by the court enough reason to dismiss the acquisition proceedings.<sup>229</sup> The Court while dealing with the case of large scale acquisition of lands by 100 HBCS, was seriously questioned the role of the BDA. The BDA as an institution was established to perform the role of planning and systematic production of space to expand Bangalore city on the one hand and on the other to distribute the produced space to the various classes of citizens, workers etc. The Government was sanctioning the acquisition of lands to the HBCSs by circumventing BDA thus rendering the institution purposeless. Government was violating the BDA Act by arbitrarily sanctioning the land. Therefore it was violative of Article 14 of the Constitution of India<sup>230</sup>. The Court observed:

[T]he formation of layouts for housing within the Bangalore Metropolitan Area as a rule must be undertaken by the Bangalore Development Authority and acquisition of land in favour of any society, if considered feasible, must be only as an exception. Acquisition of large extent of land in the area for which the Bangalore Development Authority is established, in favour of so many housing societies renders the establishment of Bangalore Development Authority under a special law futile and as a result the investment made on the Bangalore Development Authority has gone waste to a great extent, for a little scope is left to the Bangalore Development Authority for carrying out its obligations under the Act. This is a matter for serious consideration by the Cabinet Sub-Committee and the Government, in the light of this Judgment.<sup>231</sup>

For all the above reasons the land acquisition for the respondent-HBCS was set aside.

Aggrieved by the judgment the HBCSs approached the Supreme Court. In this case – *H.M.T. House Building Co-operative Society Limited, Bangalore v Syed Khader and Others*<sup>232</sup>– the Supreme Court upheld the judgment of the High Court of Karnataka which had set aside the land acquisition for the HBCS. the Supreme Court reconfirmed that the land acquired by the HBCSs were being put to commercial ventures, land was not allotted to the *bona fide* members of the societies, and societies had involved agents by paying huge amounts of money to influence the government to acquire lands for the HBCS. Thus extraneous considerations vitiated acquisition proceedings for the ‘public purpose’ which was nothing but the “colourable exercise of power”.

Similarly, around the same times, in another dispute between *Mrs. Behroze Ramyar Batha and Others v The Special Land Acquisition Officer and Others*<sup>233</sup> again the legal circles were shaken and “public purpose” was questioned seriously. This case brought to light the whole nexus between the business interests and the Government in the land development process. The land acquisition spread across many villages

including Kodihalli, Challaghatta and Kodihalli for industrial purposes. It was alleged that irregularities in the land development process were characterized by individual benefit or profit that amounted to 'fraud on power'. Lands acquired at various places were for the Karnataka State Tourism Development Corporation (KSTDC) to develop land to set up a tourist resort, an amusement park for the domestic tourist, an international hotel, etc. Since KSTDC did not have necessary finances to acquire necessary land, it approached Dayananda Pai who was representing the landowners and who already entered into agreements with landowners, for the finances to fund acquisition. As a quid pro quo Dayananda Pai was particular about a block of land measuring 12 acres 34 guntas to be released in his favour to put up a Group Housing Scheme. The building units were to be sold only to the employees of Central and State public sector employees in equal proportions. He had put forward a condition that the details of the scheme would be published in the prominent local newspapers. If there was not enough demand then the residential flats would be kept open to the general public to purchase. It was also part of the plan that ground floor area of the complex was to abut the main road which was to be used for the commercial purposes. In return Dayananda Pai had agreed to deposit the specified amount on behalf of the KSTDC to the Deputy Commissioner to acquire lands on condition that the KSTDC had to give bank guarantee to him to the extent of land to be acquired for them, so that the amount would be returned to him within six months with interest.

The court expressed shock to learn that the KSTDC lacked finances and had entered into an agreement with Dayananda Pai who had already purchased land as early as 1981 which were to be acquired. In 1987 the KSTDC passed a resolution that Dayananda Pai would persuade power of attorney holders, khathadars/landlords to withdraw from the legal proceeding against the KSTDC and Revenue Department. In return out of the 39 acres 27 guntas of land that was to be acquired 12 acres 34 guntas were to be released to Dayananda Pai for group housing project which was to be approved by the BDA. Since the KSTDC could not give bank guarantee to Dayananda Pai, the money required for the cost of acquisition could not be secured from him. Therefore KSTDC had to go for institutional borrowings from Canara Bank. It was decided that the entire cost of interest burden and repayment for the portion of 12 acres 34 guntas of lands which were proposed to be transferred to Dayananda Pai were to be met by him in return. After procuring the loan from the bank and depositing it with the

Deputy Commissioner, the Special Land Acquisition Officer began to pay the landholders and the acquired lands were handed over to the KSTDC. At this juncture land holders of various survey numbers belonging to Behroze Ramyar Batha and others who were not the nominees or khatedars of Dayananda Pai approached the High Court with writ appeals to get an interim stay against the acquisition proceedings. Dayananda Pai had promised to 'do his best to get the land acquired smoothly', but he could not do that. Despite his failure his portion of the lands according to the agreement with the KSTDC were transferred to him.

In writ appeals, it was alleged that the land acquisition was actuated by *mala fides* though the Section 4(1) Notification and Section 6(1) Declaration under L.A. Act. A public purpose and agreement was made even before taking possession of the land(12 acres 34 guntas)in favour of Dayananda Pai. with 'the object of providing lands to a private individual if acquisition proceedings are resorted to or the power of eminent domain comes to be exercised, it would be nothing more than fraud on power.'<sup>234</sup> Second, appellants had accused that there was no valid award for the acquisitions. Given the background of the land acquisition the court came to the conclusion that the transactions and agreement entered into with Dayananda Pai by the KSTDC was "nothing more than a conspiracy to deprive the owners of the lands by use of the power of the eminent domain which is to be used for an avowedly public purpose and for strong compelling reasons and not whimsically or to satisfy the private needs of the individual."<sup>235</sup>The court dismissed the land acquisition notification.

In another case – *Kanaka Gruha Nirmana Sahakara Sangha v Kota Srinivas Murthy*<sup>236</sup> – the court upheld the landowners "Right to Property" in the context of compulsory land acquisition for the "public purpose". To underline the citizen's right to property, Articles 300-A,<sup>237</sup> and 39(b)<sup>238</sup> of the Constitution of India and Sections<sup>239</sup>- 3(f), 4(1) and 6(1) of the L.A. Act were invoked. Though land could be acquired for the HBCS according to Section 3(f) of L.A. Act, the land acquisition which was in contention failed due to gross procedural lapses- Housing scheme sponsored by the Co-operative Society did not have the approval or signature of the appropriate authority (the Deputy Commissioner or Collector). The appellant had only the letter signed by the Under Secretary of the Government in the Secretariat who had directed Deputy Commissioner to acquire lands. According to the Section 4(1) of the L.A. Act, the land

was supposed to be notified by the government and by the appropriate authority and according to the 6(1) of the L.A. Act the declaration should have been passed by the government. The court observed that though the object of Article 39(b) of the Constitution of India was for the state to control and own the material resources of community which would be to distributed in a manner that would ‘subserve the common good’ of the community, the L.A. Act was viewed as ‘expropriatory’ in character which would deprive the citizen of the property due to compulsory acquisition of land.<sup>240</sup> It further observed: “The purpose of providing house sites to the needy intending members of the society is no doubt laudable but under the cloak of such a proclaimed purpose no one could be permitted to deal with the property of the citizen in a casual manner apparently with the object of conferring benefits upon others for the reasons which, though not stated, yet can be deduced and presumed.”<sup>241</sup> For all these reasons the appeal was dismissed by the court.

The role and existence of BDA came into question seriously in the context of illegalities committed by the HBCSsin the ways and means adopted in the production, exchange and distribution of space. In such a context the court had passed directions to the government to find solutions to the problem. The government abandoned the policy of pursuing partial role in land acquiring at times and gave complete freedom to the BDA. An amendment was made to the BDA Act in 1994, giving land acquiring role to the BDA, a kind of a catalyzing role, a medium to acquire and pass on the land for the HBCS. Following was the amendment:

**Amending Act 17 of 1994.-** Some of the bulk allotments made by the Authority in favour of the State and Central Government Organisations, House Building Co-operative Societies etc., have been quashed by the High Court of Karnataka in various Writ Petitions because there is no provision in the Act for making bulk allotment. Therefore, it was considered necessary to amend the Bangalore Development Authority Act,-

(i) to take power to make bulk allotment;

(ii) to validate bulk allotment made earlier.

Opportunities are also taken to make certain consequential amendments.

Hence this Bill.<sup>242</sup>

### **Planned Private Layouts and Unauthorized Private Layouts: Conversion of land from Agricultural to Non-Agricultural purposes**

Here in this section I would like to cover legal attempts to form private layouts and the ensuing disputes. The nature of disputes referred here, are related to legal and planning aspects. The issues are centered on powers of the government authority,

powers/rights of the landowners or individuals to form private layouts, legal and planning issues, and natural justice. Some issues were procedural and some were substantive.

The conversion of agricultural lands to non-agricultural purposes has been one of the ways to develop land legally and illegally. Formation of the residential private layouts has been prevalent throughout the 20<sup>th</sup> century. Bangalore city's development and expansion has varied in scales and intensities during various points in time. In Chapter 3 one has taken note of phases of regularization of wide-spread illegal land developments across Bangalore city. Though the magnitude of the problem has been considerably high, accurate picture of the problem has not been available. The number of cases available for the study too is few as one can see below. This Section gives a glimpse of legal or other issues related to disputes.

1. Attempts to Form Private Layouts:The dispute between *Government of Mysore v Mavalli Thimmiah (1951)* belongs to the immediate post-independence period. During that time, perhaps still the colonial hangover of treating the illegal issues of land development as criminal issues than civil ones was still in vogue. In the dispute named above, the appellant-government had claimed that the accused respondent-individual land owner had committed offence by attempting to form a private layout by demarcating sites, which was within the jurisdiction of the operation of Section 25(1) of CBIA from 18-3-1949. The Second Magistrate, Bangalore had acquitted the land owner of an offence under Section of 25(1) of CBIA. This appeal against the land owner who was accused of forming a residential layout by demarcating sites which was against the Section 25(1) of CBIA which states that- "No person shall form or attempt to form any extension or lay-out for the purpose of constructing buildings there."<sup>243</sup> The appellant-government had claimed that the accused respondent-individual land owner had committed offence by attempting to form a private layout by demarcating sites, which was within the jurisdiction of the operation of Section 25(1) of CBIA from 18-3-1949. The respondent had only admitted that he had involved himself in the formation of layout only before laws' jurisdiction to his land was extended. It was established and proved by evidences that the land owner had attempted to form layout even after the law came into force. There was plan and the witnesses who corroborated about the formation of layout even after law was enforced. The court overturned the judgment of the Second Magistrate because in the judgment it was not admitted that the available evidence was credible or otherwise, and did not draw inferences from the evidence available and had acquitted. Thus according to Section 417 Criminal P. C. 1898 appeal was directed against the decision in the High Court. Court argued that according to law, the attempt to form a layout would amount to an offence even if buildings were not

constructed. Thus the guilty had to pay a fine of Rs. 100 under Section 25(1) of CBIA to be paid to the credit of City of Bangalore Improvement Fund.

If the above dispute indicates the individual attempt, the case below indicates the expanding interests and politics involved in the land development process in the following decades. In a dispute between *M. P. Narasimha Murthy v State of Mysore (1967)*<sup>244</sup> the question was whether the minister's assurance in a public meeting to regularize the private layout would amount to government's estoppels. The Government had planned to acquire lands for public purpose in this instance for the formation of residential layout, on the southern side of Mount-Joy in Bangalore city. The petitioners were the site-owners who had already bought from the private layout formed which was part of the proposed land to be acquired. These private site owners had formed a registered association named as Srinagar Association to solve water and electricity problems. According to the petitioner-site owners, on the occasion of the first anniversary of the Association, the Minister for Local Self-Government had presided over the function and then had assured the site owners of regularization of their sites and the civic amenities. Given the Ministers' assurance they had deposited the initial amounts to buy the sites and the layout preparation with the formation of the roads, drains, etc., were underway. Under those circumstances the land was proposed to be acquired by the government. The petitioners first had relied on the minister's assurance. For the contention with regard to the issue of estoppel, the court had decided that any assurance given by a Minister and receipt of layout charges by the CITB would not prevent government and the CITB from acquiring land nor would amount to abandonment of acquisition because it was not the formal assurance of the government or of the CITB.

Issues of private layout were becoming more complicated again when government was planning to acquire lands. The attempt to acquire lands was met with the challenge because not only the proposed extent of lands was under private layout formation but also other lands too. In the two disputes between *M. Manicklal v The State of Mysore & others (1967)* and *B. Changaiah v State of Mysore & Others (1970)*<sup>245</sup> the contentions were similar. The contention of the first petitioner was that there was no public purpose in supporting the land acquisition because acquisition was abandoned in many cases and people were allowed to form private layouts on the same lands which were proposed for acquisition earlier. The petitioners had applied for the formation of private layout by converting the same land for non-agricultural purpose whereas their lands were proposed to be acquired. CITB had taken more than year to reply to his application. The petitioner had contended that according to the Section 25(8) of CBIA, CITB had to convey the decision of allowing or disallowing the

application within 6 months from the date of the submission of the application. Since the reply of disallowing was conveyed after more than year, it was assumed according to Section 25(8) of CBIA that CITB had allowed the petitioner-landowner to form the layout and the acquisition proceedings were to accordingly lapse. For this contention, the court argued that Section 25(8) CBIA Act is attached to a condition in another section of the CBIA i.e., Section 25(2) which prescribes that if- “Any person intending to form an extension or lay-out or to make a new private street, shall send to the Chairman a written application with plans and sections showing the following particulars...the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewerage, draining, conserving and lighting of the streets and for adequate drinking water supply.”<sup>246</sup> Since the petitioners application did not contain the substantial details, there was no question of further processing of the application within the given time period. Section 25(8) holds well if substantial details as required by Section 25(2) are submitted in the application for approval. Thus for all the above reasons the petition was dismissed. Similarly, in the second dispute, the petitioner had complained of discrimination against him by allowing others to form the layout whereas he was excluded from it. The issue of abandonment which brought into question the public purpose, had to be proved, and the application of Section 25(8) of CBIA with the fulfillment of the conditions as prescribed in the Section 25(2) of CBIA. Here in this case Section 25(2) was not fulfilled because the petitioner had asked for the sanction to set up Wood industry, whereas the sanction was only for residential purposes. Thus the contention was dismissed. Though the contentions were mainly seeking judgment against the discrimination, the S. 25(2) of CBIA was brought into the focus of judgment, which dealt with the questions of planning, land use, and design of the layout.

2. Powers of the Authority: In two of the cases *T. C. Srikantappa & Others v CITB & Another (1969)*<sup>247</sup> and *Aildas G & Others v Chairman, CITB & Others (1975)*<sup>248</sup> the questions were procedural. In the former case the issue was about whether CITB had powers to withdraw the order passed by the government to permit the petitioner to form a private layout on the grounds that he had not produced the conversion certificate? And in the latter case, it was about whether the State Government had statutory powers to interfere in the CITB's decisions in the matter of sanctioning the private layout? Infringement over the share of powers between government and its institutions became an issue. In the dispute between *T. C. Srikantappa & Others v CITB & Another (1969)* which seemed like a procedural issue, but actually conversion of agricultural to non-agricultural purpose and residential layout formation was at stake. The Government had passed an order sanctioning the petitioner to form a private layout according to Section 25 of CBIA. After seven years the CITB withdrew the order on the ground that the landowner-petitioner had not produced the conversion certificate according to the

provisions of Land Revenue Act for the conversion of land from agricultural to non-agricultural purposes. The court found that Government only had the powers to withdraw the sanction and the CITB did not have to powers to withdraw. The respondent-CITB had contended that the petitioner-landowner had not paid the entire layout charges as directed by the Government order, thus CITB would have to incur 'abnormally increased' amount towards the charges. In response court ordered that the petitioner should pay the additional layout charges on the "no profit and no loss" basis to be computed by the CITB and such charges would have to be paid within three months from the date of the quantification of the layout charges by the CITB. The petitioner had the right to question the correctness of the determination of the layout charges, if dissatisfied. He had to produce conversion certificate with additional layout charges; and the CITB's order of cancellation of private layout formation was ordered to be withdrawn and cancelled and set aside. Thus petition was allowed to succeed.

Similarly the dispute between *Aildas G & Others v Chairman, CITB & Others (1975)* was about the conversion of agricultural to non-agricultural purpose and residential layout formation was in question. The petitioner-landowner of three and a half acres at Kempapura Agrahara was sanctioned by the CITB to form the private layout after all the essential procedures according to the law were followed i.e., approving of the layout plan by the CITB through its resolution, approval of modifications sought by the land owner, payment of layout charges, etc. After the whole process of sanction was over, the CITB had conveyed the petitioner-landowner of the government's decision to reject the sanction by the CITB for the formation of private layout and had returned the layout charges paid by the landowner. In the petition landowner had argued that the State Government did not have power to interfere with the statutory powers of the Board and had sought mandamus from the court to direct CITB to restore the sanction. The court had found that Government could play an arbitrators role only when there were differences between the CITB and the Corporation of the City of Bangalore with regard to the sanctioning of the private layout within the corporation limits or jurisdiction. According to the second provision of Sub-Section (1) of S. 25 of CBIA, the government had no powers to interfere in the statutory powers of the CITB to sanction the private layout. Though government had the powers under S. 42 of CBIA to issue guidelines to regulate the sanction of private layouts by CITB. In the present case the guidelines given by the government were not in the form of rules for the guidance of the CITB as prescribed under Section of 42(a) of the CBIA. Thus the order of the Government was declared illegal and invalid. Therefore for all these reasons a writ petition was allowed.

The above discussed cases were about, apparently, the respective powers and decisions of the government and its agencies but actually it was land and its development which was at stake. The times (of 1960s and 1970s) of two cases discussed above were the times when the developments were in congruence with residential purposes and the development was at a small scale and the land market had not seen speculation and profiteering. Perhaps Bangalore city was still in regulatable condition, i.e., commensurability of governmental mechanisms in implementing the planning norms than the capacity to produce space in the planned form. But later (in the 1980s and the following decades) the questions arose much directly in the changed conditions of business purpose, speculation and profiteering in land development. And the scales of land development too had become large. The regulation of growing city limits and much more diminishing capacity of the government agencies to produce space for public purposes for various reasons had consequences for planning, production of spaces and the expansion of the city. The private land development which was promoted by the government and the law had given rise to new contradictions. Public purpose had become mask for land development for profit. The idea and practice of fulfilling the “needs” and its “affordability” was giving way to business idea and practice in land development thus changing the way one would view rules and resources in principle. Government’s idea of allowing the private parties to produce land for housing needs had gone awry. This can be observed in the nature of contentions centring on the land itself, much more explicitly and substantially on the one hand and stirring up planning issues on the other. The dispute between *Vishwabharathi House Building Co-operative Society Ltd. v Bangalore Development Authority (1989)* contended the very basis of the existence of the BDA. The contention was whether the BDA could impose certain conditions which were termed “unreasonable and beyond the competence of the authority” which would defeat the very purpose of S. 32 of BDA Act<sup>249</sup>? This case indicated a different phase of land development during the post-independence period. Firstly, it was taken up by a HBCS. Secondly, the scale of development conceived by private land development was incomparably bigger when compared to the CITB (BDA’s predecessor) phase till the mid-1970s. Though such a development had begun to be initiated towards the mid-1970s, it took shape after the establishment of BDA. Thirdly, the very existence of state’s parastatal institution and planning and land development institution was called in question in relation to the activities of HBCS. With regard to law, the court saw the progression in the following way:

The Act [Bangalore Development Authority Act, 1976] is an updated version of the earlier City of Bangalore Improvement Act and the authority under the Act is the successor to the former Trust Board. By the repealing provisions, the acts done under the old Act are saved and deemed to have been done under the Act...in regard to the permission granted under the erstwhile Act for forming private layouts by the Society. The object of Section 32 of the Act is clear and it is in conformity with the object of the rest of the Act.

Section 32 enables private owners of land to assist the development of the City of Bangalore in an orderly fashion by obtaining the permission of the authority to form the layout. Similar provisions were available under the previous Act for the development of the City of Bangalore. This would reduce 33% of the work of the erstwhile Trust Board or the present authority from taking up all developments work exclusively by itself. In fact, this may be described as the trend of *privatization of public work*.<sup>250</sup> (emphasis added)

The court further endorsed and interpreted that it was in that sense, *privatization of public work*, and Section 32 of the BDA Act was to be understood.

Vishwabharathi House Building Co-operative Society Ltd., (VHBCS) began the process of taking legal permission from the CITB in 1973 to form a private layout over 300 acres of lands. These lands were purchased in Avalahalli and Hosakerehalli in Bangalore South Taluk and Gerehally in Bangalore North Taluk. In 1973, the CITB had granted the No Objection Certificate to convert agricultural lands to non-agricultural purposes, and after that those lands were converted and a private layout was allowed to be formed according to the plan approved by the CITB in a letter of 1975. Similarly the CITB's successor the BDA too had allowed the VHBCS to form private layouts. The petitioner-society was aggrieved by the conditions put forth by the BDA to form private layouts. Those conditions were: a. "To allow the Second Party [BDA] to form a layout in conformity with the plan approved or modified from time to time as per policy or rules by the Second Party and handed over the above land to the Second Party to form the layout", b. "To hand over such portions of the lands as is required for the roads and civic amenities etc., as per approved plan to the Second Party free of cost, before release of sites, by executing a relinquishment deed duly registered at the cost of Society", c. "Allotment of Sites shall be as per Bangalore Development Authority Allotment of Sites Rules, 1982", and d. "Before allotment of sites, list shall be submitted to the Bangalore Development Authority and got approved."<sup>251</sup>

Given the view of the *privatization of public work*, the Section 32 of the BDA Act would mean two options either allow the private party to form the layout according to the specifications given by the Authority or allow the Authority to make the layout on behalf of the private parties if they are ready to incur charges. While addressing the contentions, the court found that VHBCS had already formed layouts. Therefore there was no question of taking over the possession of land and handing it over to the second party (BDA) to form the layout. Thus the first condition put forth in the agreement was ruled out. Similarly the condition that handing over the lands required for roads and civic amenities to the BDA free of cost, before release of sites, etc., was out of question. With regard to the contention of allotment of sites according to BDA Rules, it was judged that it was beyond the competence of the BDA because the VHBCS had already taken the permission or approval according to the Section 32 of the BDA Act. Any more imposition of conditions would impinge on the constitutional rights and the legal

rights of the owners of the private layout or a company. For the last contention of the necessity of submitting the list of allottees before the allotment of sites by the petitioner-society for the BDA's approval, the court said that it was necessary for two reasons. One, it was essential according to the BDA Act, the BDA had the right to impose such a condition to know the names of members to whom the sites in the private layout are allotted by the petitioner-Society to ascertain the eligibility of the allottees. Two, if such a condition was not imposed, it would have given room for numerous forms of malpractices which might finally defeat the very object of the Act.

The legal contests took much aggravated form. The cases between *Vishwabharathi House Building Co-operative Society Ltd. v Bangalore Development Authority* (1990) and *Bangalore Development Authority v Vishwa Bharathi House Building Cooperative Society Ltd.*, (1992)<sup>252</sup> clearly indicate the processes at work. In the former dispute - 1. Petitioner-VBHBCS and others had claimed that it cannot be accused for its conduct of activities because it had already taken permission from erstwhile CITB in 1974 to purchase lands which were in dispute through the mode of registered sale-deeds. 2. BDA had acquired and planned a scheme by acquiring the same survey number lands under Section 18 of the BDA Act which the petitioner-VBHBCS had already bought. The contention of the petitioner was that BDA had failed to complete the scheme within the stipulated period of 5 years as required by Section 27 of BDA Act, thus the scheme had lapsed. Since already the petitioner was given the permission to purchase lands itself was enough to draw the inference that BDA had not intended to implement the scheme with regard to those survey number lands which were in dispute, therefore it was put forward that BDA was estopped refusing permission would amount to reasons which are extraneous to Section 32(6) of the BDA Act. 3. The petitioner was ready to share any information with regard to the sale transactions and deeds with BDA but without seeking the information the application of the petitioner was rejected. 4. Petitioner had contended that lands which were under dispute did not attract Section 95 of the Land Revenue Act, 1964 because lands were within the planning area and Section 14 of the KTCP Act was inapplicable to the same lands because the land use proposed in the ODP and CDP are not different from the purposes which was planned to put to use. The planning had already conceived those lands as meant to be put to residential use. The petitioner landowners-VBHBCS and All Karnataka Young Writers' and Artists Association, Bangalore, had submitted application to BDA to form a private layout on the lands of Avalahalli Village, Kengeri Hobli, Bangalore South Taluk. Court in its ruling referred to Section 34(4) of BDA Act which regulates exercise of discretion vested in the Authority. Rejection of the application by BDA for the reason that the applicant had not furnished the essential documents and information without giving a chance to be heard was

judged as “bad” and violative of principle of “natural justice” on the one hand and on the other, it was considered that it was obligatory on the part of the authority to provide an opportunity to furnish the essential information or documents, since BDA did not provide such opportunity, it was not “compatible with rule of fairness or reasonableness and as an instance of arbitrary exercise of power”.<sup>253</sup> With respect, to the issue of taking permission from BDA to convert land was necessary or not, the court found that, since already lands were earmarked for residential purposes in the ODP and CDP for the Metropolitan Planning Area of Bangalore, thus the petitioner had not have had to take a written permission. Court finally reminded that given the task to use of power for the public good, the discretion of public authorities was not unfettered. For all these reasons petition was allowed.

In the latter case *Bangalore Development Authority v VishwaBharathi House Building Cooperative Society Ltd.(VBHBCS) (1992)*, the Division Bench of High Court reaffirmed the judgment of the Single Judge. In this appeal the appellant-BDA had emphasized two points apart from the contentions in the previous case. One, since land in question was being an agricultural land, the VBHBCS was prohibited from buying under Section 79-B of the Karnataka Land Reforms Act, 1961, therefore transactions were pleaded to be termed as unlawful, null and void, notwithstanding the permission accorded by the CITB. Two, since the concerned land was included in ODP and CDP under the KTCP, the written permission of the BDA (Planning Authority) was essential to make changes in the land use. Against the first contention court ruled that BDA did not have the power to declare the transaction as null or void or bad in law. Even if the respondent-HBCS had held the land illegally under Section 79-B of the Land Reforms Act, such land could not have been *ipso facto* reasoned that the State had authority over the land which was in contention. According to Section 79-B (3), it was for the concerned official to conduct an enquiry and declare, before the state has its authority over the land. Further if so declared, according to Section 79-B (4) State has to pay compensation to the land owner, until all the process is over, the title of the land would have had to be with the land owner, and thus the first contention was ruled out. Since the lands were within the boundary of the planning area as marked and allocated as residential land use in the ODP and CDP, there was no need for the respondent-VBHBCS to take permission from the authority in writing and also since lands were not under agriculture, the contention was dismissed. The petition on the whole was dismissed.

3. Issues of Regularisation- Apart from such issues there were also issues arising out of the regularization of private layouts. It is already delineated in the Chapter 3, the rationale or the justification of not wasting the ‘national wealth’ by demolishing the

residential private layouts. For that purpose, among other measures, the legislation was passed which was termed as *Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991*. Again the legislation reiterated the view of avoiding the wastage of 'national wealth'. Therefore the view was,

Bangalore Development Authority and other local bodies have been finding it difficult in their task of meeting the increasing demand for residential sites due to disproportionately high number of unauthorised constructions on urban land. The unauthorised constructions which already have come up over the years cannot possibly be demolished and any *wholesale demolition would not only amount to wastage of national wealth but may in some amount to wastage of national wealth but may in some cases also create law and order problems*. Keeping in view the above points, it is felt necessary to have a comprehensive legislation for regularisation of certain types of un-authorised constructions.

Hence this Bill.<sup>254</sup>(emphasis added)

The *law and order* problem indicates the magnitude of the problem of uncontrolled growth of city in an unplanned manner; the law also foresaw the kind of uprising that could be of uncontrollable proportions in the context of lack of legitimacy for the concept and practice of planning which was a without any cohesion. Then planning was addressing the needs of certain classes of people, as one has taken note already in Chapter 3, excluding major portions of the population having access to produced planned space. Urban planning, instead of acting as a need based system it had become an aesthetic and an uneconomical instrument. Apart from such economic consideration and the prediction of unrest or anomic condition, the social structures of the economy and the way it functions at the broader level and in particular with the unplanned land development, were completely ignored. The kind of emphasis on planning and planned growth seemed to have disappeared like by the last decade of the 20<sup>th</sup> century and also it meant, except for various discourses or rhetoric on planning, all through it was all the same. The short piece of legislation conceived few prescriptions for regularization. Central to the legislation are three sections of the law which have been a source of the contentions and part of the judicial process. The components of *Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991* which were central to disputes were: (a) Section 3 is about the 'regularization' of 'unauthorised constructions', (b) Section is about 'unauthorised constructions' which were not to be regularized, and (c) Section 5 is about 'conditions' for regularization. Regularisation was to be allowed of any unauthorised construction which was done before 31<sup>st</sup> March, 1990, by any person on the land belonging to the State Government, revenue site, and proposed land acquisition under BDA Act, 1976, Urban Development Authorities, Act, 1987, etc. But these unauthorised constructions were not to stand in the way of existing or proposed roads and railway lines, communications and other civic facilities or public utilities or land which is earmarked for the same facilities or on the forest land or tank bed or in the green belt as marked in the CDP or ODP, etc.,; constructions which stood without ownership titles and on the

lands belonging to BDA or a local authority; constructions which on the lands beyond ceiling limits as prescribed by Urban (Land Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976); and constructions on any land reserved for parks, play grounds, open places or for providing any civic amenities- were all fixed as unauthorized constructions which were not to be regularized. And the regularization was connected to kinship and family relations- only a member of the family was allowed to seek regularization of a property in a given urban area.<sup>255</sup> The preconditions were mostly about the ownership and its limits to the land, and the planning regulations which were to determine the exemptions. It all meant that the ownership of land was more dispersed than was in a concentrated form in few hands. Given that condition, governmental land acquisitions which did not, first of all, make any economic sense for the people who were losing lands and let alone other problems engendered by land acquisitions which were unaddressed by any laws, thus there were wide spread formations of unauthorized constructions.

Further, one of the judgments outlined the context of the law and disputes. The intention of the act broadly was to protect the ‘life, liberty, reputation and property of its citizens [which] has always been considered as one of the fundamental functions of a democratic government’<sup>256</sup>. Given that, at the fundamental level any government order or statute that supports or permits any individual to illegally trespass and claim the ownership to the property, was again declared, by the court as “anathema” to the rule of law.

B.D.A. and other authorities involved in formation of layouts and distribution of sites, acquire vast tracts of land running into thousands of acres. It is virtually impossible to protect or safeguard lands vested in them, against encroachment or unauthorized construction. It is well known that considerable time elapses between vesting of land in an authority, consequent upon acquisition and delivery of possession, and the formation of layouts and allotment of sites. An unscrupulous erstwhile owner who encroaches upon such land and puts up an unauthorized structure will not be entitled to an order of stay of demolition from this Court; grant of any such order would amount to permitting him to benefit from this unlawful and unscrupulous action.<sup>257</sup>

‘The right to obtain regularization of an unauthorized construction is a special relief under the Act. It is different from the right to obtain an order prohibiting an authority from demolishing an unauthorized structure.’<sup>258</sup> If the court has to intervene, the petitioner shall have to prepare a ‘*prima facie*’ case to stake a claim to the right to obtain regularization.

Actually court played a quasi-governmental role in constructing the object of the context and background to the unauthorized existence of constructions and regularization. It set out the rationale for the government and exhorted the government to take note of the situatedness of the problem in the context of mechanisms and the production of space. Court declared that- “It is the ultimate aim of every Bangalorean

to own a house. It is virtually impossible for a person, who does not own a site in Bangalore, to approach an authority, agency, developer or dealer and purchase a site across the counter by paying its price.”<sup>259</sup> Declaration identified various actors and laws, and their role in the whole crisis of urban land availability, production and development, and its distribution, the kind of causal analysis indicted everyone in the process and identified the pitfalls in their conduct each of actors and their actions.

Firstly, with reference to law, court took an overview of various laws and found that the combination of effects created by various laws was blocking supplies of urban land. The Karnataka Land Revenue Act, 1964-prohibited conversion of agricultural lands for residential purposes, Karnataka Land Reforms Act, 1961-prohibited non-agriculturists from acquiring agricultural land and prohibited alienation of land in respect of which occupancy rights which had been granted, for a specified period, the Karnataka Town and Country Planning Act 1961-prohibits the land being used for a purpose other than the reserved land use, and the Urban Land (Ceiling & Regulation) Act, 1976-takes away any urban vacant land in excess of 1000 sq. m.<sup>260</sup> Broadly the laws were creating blocks to private land development and offer sites for sale in many ways given the visions of the laws.

Second, the scarcity created by the anomalous supply. Individual applicants had to wait for several years to be allotted site by the B.D.A., and by seeking membership of a Housing Co-operative Society by exposing oneself to the ‘risks, uncertainties, vicissitudes and delays’. B.D.A. and Housing Societies had been able to meet the requirements of very few of the large number of aspirants for sites. There was no scope to buy a site than relying on sites sold in the unauthorized layouts because it was not possible to acquire a site otherwise, unless one was prepared to purchase a site from individuals who already owned sites in the city, at exorbitant prices. “A person belonging to a middle class or lower middle class or weaker section of society cannot think of such purchase at exorbitant price.”<sup>261</sup>

Given that condition, generally the “vicious” modus operandi of land development and its distribution and exchange was explained by the court in the following terms:

As the difference between demand and availability of sites is so great, it is virtually impossible for a common man/[woman] to get a site. Hence, it is forced to go to land sharks and middlemen who have created the pernicious system of sale of ‘Revenue sites’ and ‘illegal sites’ in and around Bangalore. The poor and the needy, anxious to own sites, are sold sites, which are portions of land which is either unconverted agricultural land situated in the green belt area, or land earmarked for purpose other than residential use, or land which has already purpose other than residential use, or land which has already been acquired for some authority or society or land which is in the process of acquisition. As transactions relating to such sites are illegal and prohibited, no sale deed is executed and the unfortunate purchaser is given an ‘agreement of sale’ and a ‘power of Attorney’ and ‘possession of the site. He gets no title, but doubtful possession. The dealer

suppresses the true facts and informs the ignorant purchasers that they can put up sheds overnight and that if they are in possession and apply for regularisation, the Government will ultimately regularize their constructions and give them title to the sites. The several orders issued by the Government from time to time providing for regularization and extending the cut-off date for regularisation of constructions, have come in handy to the unscrupulous dealers to persuade the purchasers that they will also get regularisation and title. Acting on the dealers' misrepresentations, anxious gullible and ignorant members of the public, mostly from the lower middle-class or weaker sections, part with their hard-earned money, in the hope of owning a piece of land and having a shelter, in an undeveloped or non-developed layout without amenities or facilities. The layout itself is imaginary and illegal and mostly exists only on paper. The result is mushrooming of small temporary sheds, thousands in number, erected without licences or sanctioned plans all around Bangalore in a haphazard manner, leading to a planner's nightmare.<sup>262</sup>

Court while reflecting on the whole condition of land development, it asked- "Who is to be blamed for this state of affairs? The greedy dealers in unauthorised sites? The gullible public who purchase such unauthorised sites? B.D.A which has failed to make available adequate sites and failed to prevent the unauthorised structures?"<sup>263</sup> Among those actors in whole drama, the violators were in a way ranked, as the court declared that-

One, - the easily identified violator, the court announced that- "There can be no doubt that the dealers in revenue sites and illegal sites are largely to be blamed for the existing state of affairs."<sup>264</sup>

Two, - Next were - "The members of public, who in their anxiety to own a site, ignore the legal requirements and purchase illegal sites, are also partly to be blamed."<sup>265</sup>

Three, - The position of planning and land development institution drew more empathy and sympathy from the court than other actors. Thus the court drew attention to the constitution and the activities of the BDA. In a way exonerates BDA from the blame. Thus the court elaborated that-

The tendency to place the entire blame on B.D.A. is however not proper. It [is] true that under the Bangalore Development Authority Act, 1976, B.D.A. is empowered to acquire lands around Bangalore and form layouts and allot them to needy applicants. It may be true that if B.D.A. has efficiently discharged its function by proper planning, by making available adequate number of sites and by expeditiously sanctioned private layouts, the market in revenue sites and illegal sites would not have come into existence at all. But formation of proper layouts is a time-consuming and complex task involving planning, levelling of land and execution of development works like roads, drains, culverts, bridges in uneven and undulating terrain. The delay in formation of layout is aggravated by lack of adequate co-ordination and co-operation among several wings and departments of B.D.A. as also other statutory bodies like K.E.B. and B.W.S. &SB. There are also considerable delays on account of litigations by land owners, unauthorised constructions by encroachers, ex-owners and revenue site holders and stay orders by Courts. Sometimes the acquired lands consist in its midst, clusters of habitations, and the owner/occupants of the buildings resist acquisition and also initiate litigation. The layout and development works cannot be completed unless the pockets of resistance involving lands which are subject matters of stay orders and lands occupied by unauthorised structures and inhabited clusters are removed. This results in the entire layout work being delayed for long periods and further developmental activities come to a grinding halt. What development work and activities are stopped for long period, that gives room for further encroachments and illegal constructions followed by applications for regularisation. It is impossible for B.D.A. to police its vast lands day and nights continuously for years to prevent overnight unauthorised constructions. Hence, the blame cannot be placed wholly at the doors of B.D.A.<sup>266</sup>

Four, - Court absolved the government too from the blame, except for being lax with regularization process. While expressing its empathy towards the government, the court said-

The Government also has a difficult task. The number of members of public who have resorted to such illegal purchases and unauthorised constructions are too large to be ignored and the sheer number of public involved in such acts, has virtually converted what will be a law and order situation into a human and social problem. The Government has been attempting to find a solution by forming schemes for regularisation by

several orders, followed by the Act, whereby several cut-off dates for regularisation have been fixed. But repeated extensions of such cut-off date for regularisation of unauthorised constructions have been counter-productive as repeated extensions send wrong signals to the persons indulging in sale of illegal sites and construction of unauthorised structures, to believe that if the persons involved are too many after some time, there will be one more round of condonation and regularisation. Unless it is made clear that the date for regularising unauthorised constructions will not be further extended and effective steps are taken to prevent further extended and effective steps are taken to prevent further unauthorised constructions and encroachments, the very purpose of regularisation will be defeated.<sup>267</sup>

However, the court had to take note and concede that periphery of Bangalore city were completely occupied unauthorised layouts which had given rise to ‘unorganized, undisciplined and haphazard growth’. In contrast to that the ‘authorized and developed layouts of B.D.A. and HBCS’ were too few. The unauthorised buildings did not allow room for proper roads, drains, civic amenities, open spaces, parks or for providing proper infrastructural facilities.<sup>268</sup> Given that problem, court had suggested the kind of a punitive and offensive strategy to the government. Court pronounced that government can

find a proper and satisfactory solution by forming a comprehensive programme involving at least a three-pronged attack – (a) dealing with the existing unauthorised structures by disposing of the pending applications for regularisation without delay but without sacrificing or affecting the orderly and planned development of the city; (b) preventing further unauthorised structures and encroachments by strict preventive and punitive action; (c) making available sites and low cost houses in a large number, by B.D.A. or other authorities forming layouts so that the public do not find the need to resort to purchase of illegal sites or unauthorised constructions. The task is of course, herculean.<sup>269</sup>

Court was still doubtful about the completeness of its delineation of the problem. It conceded that- ‘There may be several other facets to the problem which may require consideration and solution. It is for the legislature and executive to take necessary steps and find suitable solutions.’<sup>270</sup> But this discourse was necessitated, by the court, for the reason that there was ‘increasing litigation in this field’.<sup>271</sup>

In the preceding passages, though court did touch upon certain facts like “exorbitant prices”, “land owners”, etc., but it was still unconscious or was still blind to the larger processes at work and all those issues. Who are these “unscrupulous” “dealers in revenue sites and illegal sites? Who are they and why do they form illegal layouts? Who are these “land owners and litigants”? Which are these “clusters of habitations”? These different actors find only mention in the above passages of articulation of the discourse delineated by the court. Among the four sets of actors in the scene of land development, the least elaborated and understood about their existence are these actors. Though one can give an economic rationale to such a combination of forces coming together, apparently, under the conditions of scarcity, seeking higher profits, in producing small parcels of land to sell it to the “gullible public”, but it still does not give the picture of the social structures of such economy owned and acted upon by various actors. As one has taken note already in the section on the issues of compensation and one would see later that these actors are villagers whose lands are

drawn into the vortex of the dynamics of expanding city. If one can be reminded again, the question of compensation and the demand for its increase, great gap between the invisible market rate and the registered market rate, the elaborate and protracted legal battles, etc., were only making matters more complicated leading to a kind of subversion in the production of space.

Among the disputes that figure in the available cases, in a dispute between *Fathimabi and Others v State of Karnataka and Others (1993)* the issue at stake was that petitioners were residents of Bangalore and they had already built over the sites in question, before 31<sup>st</sup> March, 1990 which was the last date by which buildings were unauthorizedly built were to be regularized, according to Section 3 of the Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991. Petitioners had also claimed that they had also submitted the application in that regard to regularize their built properties. BDA had planned to acquire their property-land which it claimed it belonged to it and thus the whole construction was to be termed unauthorized which in effect would be ineligible for regularization therefore the occupant would not benefit from the Section 3 of Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991. Court in its judgment elaborated the procedure as enunciated in the law as the basis to allow the writ petitions. It was judged that the procedure as prescribed under Section 6 of the act for Screening Committee which had to be set up and it shall have had to scrutinize the application of regularization sought by the petitioners. Screening Committee would have had to treat the application on the merits of the properties of the petitioners which attracted Section 3 for exemption or Section 4 for prohibition, of regularization. Accordingly the petitioner or the respondent would have had to accept the verdict of the committee which would be based on the facts to establish eligibility or ineligibility. In the meanwhile court imposed restrictions on both petitioners and respondents. Petitioners were not to put up more constructions on the site anymore until the findings and verdict of the screening committee were released; and BDA was to restrain from making claims over the property.

The previous case seemed to be a clear case of problems involved in evaluation of putting into practice the procedures of regularization to work. In the next dispute available- *K.C. Raju Reddy v The Commissioner, Bangalore Development Authority (1995)*, the issues brought to the fore were far more complicated. The petitioner had claimed that he had applied for regularization of the property in question thus court should stay the demolition proceedings of the buildings initiated by BDA until the decision is taken by Screening Committee on the petitioner's application. Whereas BDA had claimed that the lands in dispute of survey number 52 of Hennur village measuring 2 acre 7 guntas was preliminarily notified for acquisition in 1978, the final

notification was issued in 1984 stating that the lands were required for the formation of the Hennur-Bellary Road, I Stage Layout, according to procedures the same was publicized in the newspapers Deccan Herald (English daily) and Kannada Prabha (Kannada daily) in 1985. In response to all that the petitioner had filed objections in 1985 by stating that the land was still under agricultural use and against all that an award was passed in 1987. In the 1987 itself BDA had taken possession of the acquired land and had formed the layout and had distributed sites to its applicants and the land in dispute was too within that formed layout. The petitioners had approached the court with a writ petition in 1989 against the land acquisition. In response to that the court in 1990 dismissed the case on the grounds of delay and laches because court had found that the petitioners were aware of the land acquisition proceedings and had approached the court after four years after the acquisition had taken place. Against that decision, the petitioner had again approached the court with writ appeal in 1991; again the court dismissed the appeal on the same ground as it was against the previous writ petition. Subsequently, again in 1991, the petitioner had filed a suit in the City Civil Court against BDA's plan to demolish their buildings, thus had sought temporary injunction, but in response court had rejected that in 1993. Given all those facts, without even disclosing all the previous proceedings, the petitioners had filed the petitions against the demolition in the High Court again. The land records too confirmed that BDA was the owner of survey number 52. The petitioner had relied on Section 3 of Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991 (Regularisation Act). Court found that since BDA had already owned the lands and the unauthorized constructions and occupation would not belong to any of the categories under Section 3 of the regularization act. In fact, according the provisions of Section 4 (viii) of regularization act would disqualify the petitioners' application because it prohibited any unauthorized constructions on the lands owned by authority or local authority, and since BDA belonged to such a category of authority and land was owned by it, the application for regularization should be rejected. Given those facts and legal standpoints, according to the court, petitioner had failed to make out a *prima facie* case for regularization and besides petitioner had suppressed earlier litigation, thus for all those reasons, the petition was dismissed. The petitioner had reminded the court of the previous judgment of the dispute between *Fathimabi and Others v State of Karnataka and Others (1993)*<sup>272</sup> which had decided that Screening Committee was to be first allowed to do its job to process the application of unauthorized construction than court doing the job. In response to such reference, the court had argued the facts and circumstances of the case was different, whereas in the present case, the petitioner had concealed the previous legal proceedings which were held in the same court and obviously the provisions discussed above would not allow for regularization.

The dispute between *Munimasthaiah v State of Karnataka and Others (1996)* had similar stakes, but with a difference that the unauthorised occupant had bought a site, which was sold as revenue site to him, after all the acquisition proceedings were over and same site was already part of BDA layout and it was allotted to one of the BDAs' applicant. Like the previous case, the lands of Jarakabande Kaval village was in dispute, in this case too land acquisition was initiated through a preliminary notification in 1977 by the BDA. Lands were being acquired for the formation of residential layout named as Nandini Layout. To further give effect to the acquisition process, final notification was issued in 1979, award was made in 1985, government had approved the acquisition in 1986 and finally in the same year land was taken into possession by BDA. Given all that, court this time much clearly stated that- He must establish that he is in occupation of an unauthorised construction made prior to 31-3-1990, on a land belonging to the Government or on a revenue site owned by him or a land belonging to him which is proposed for acquisition but not yet vested in the authority, in whose favour the acquisition proposal was made and he shall also file his application within the period prescribed. Since the petitioner claims met none of the criterion, thus the demand for consideration by the screening committee in respect of such established fact was termed as an "empty formality", thus the petition was dismissed.

Yet another dispute between *M. Ramachandra v Deputy Commissioner (Land Acquisition), Bangalore Development Authority, Bangalore and Others (1998)*<sup>273</sup> found the same result, but under different circumstances of ownerships of land. The land owner-petitioner who had unauthorized building, was the original owner of the agricultural land which belonged to Yellukunte Village, BegurHobli, Bangalore. The land owner had built the house in 1983 itself, even before BDA had proposed to acquire lands in 1986 and the final notification was issued in 1988, which was well before the cut off date of 31<sup>st</sup> March, 1990. Since on paper BDA had already completed the proceedings of acquisition the land vested with it, the land did not belong to any of the categories as suggested in the Section 3 of Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991 (Regularisation Act) and its clauses and since already acquisition proceedings were complete and land vested with BDA, thus the issue that was to sorted out was in terms of section 4 (viii) i.e., land was already vested in the local authority, thus the petition had to fail.

Common to all the disputes are the embedded buildings which had already become lived spaces on the lands without being taken into possession by BDA. In the all the cases delineated, it is taken note that the land ownership and acquisition by BDA has been a formal process. The whole discourse about saving national wealth and of saving human life and dignity had only become rhetoric. This rhetoric should be

viewed in the context, which court itself had admitted ‘increasing litigation in this field’,<sup>274</sup> which had become a bottleneck to produce land in a planned manner by BDA for certain classes. Increasing litigation was not only from the owners of the unauthorized constructions, but also the BDA’s legitimacy was questioned and even legally defeated by a kind of legal movement by the middle classes as evidenced in the illustrated cases of private layout makers of those classes in the preceding sub-section. Foreseeing the law and order problem from below if BDA or Government were to take up any direct action of demolition of unauthorized occupation of buildings, the new regularization law was introduced into the field to make land acquisition operations easier for the authorities. The regularization act was a kind of a lure to divert the unity of unauthorized owners of the buildings which actually individualizes the problem and legal solution is a clear indication. In the context of the city growth and expansion, people already own land, any such attempts to acquire such lands have always been met with resistance from multiple corners- the original landowners-agriculturists and revenue site buyers, because the land produced by BDA would not in any way be distributed to them. In such a context, the makers of regularization act, apart from the rhetoric, had been having clauses which have acted like traps to fail such unauthorized ownerships. For example, the distinction made between Section 3 (i) of the act i.e., the land owned by the Government and Section 4 (viii) of the act i.e., the land vested in any authority or local authority is superficial because for the reasons that- a. Government owned lands in the city would be very few, when compared to local landowners and the BDA and b. local authority or any authority too are part of the government itself. Thus regularization act has had been a strategic instrument through which land could be recovered by the authorities. And, as an ideal it is self-defeating, because there is a greater gap between the ideal it proposes and its other following sections and too many clauses which are vicious and the opposite to the pronounced ideal, in a way it scuttles the very ideals when all that is put into practice. Thus the ideal of the act was a kind of a smoke-screen, within itself was contradictory.

### Conclusion

The logic of the planning for the Bangalore city has been the *expandability* of various kinds of developments as spatialized which was clearly advocated by the BDC (1954) and the existing logic to operate and make space for such operations were the existing laws of L.A. act 1894 and the CBIA 1945. Those were the two laws which were mainly acquisitive in nature, though the latter one was rudimentarily the planning law too until KTCP 1961 was brought into force in the following decades of the post-independence period. CITB in consent with the government was the institution which had been giving effect to CBIA, L.A. Act, and KTCP, until BDA established. KTCP

clearly had prescribed accessing land for planning through acquisitions though consent was still an option. Apart from that KTCP had also prescribed to set up a planning institution for the development of the city in a planned manner. Thus the logical offshoot was the coming into existence of BDA by superseding CITB. The establishment of BDA – the planning and land development institution which would give effect to KTCP –with passing of the law- BDA Act, 1976. BDA Act again was to perform triple functions of planning, land development and acquisition. In the post-independence period the whole gamut of laws had been mainly acquisitive in nature. In addition to these laws was the ULCRA 1976 which was confiscating in nature to prevent concentration of land with the few. Even the well intentioned Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991 was on the path to recover land for the government than allowing people to use it or exchange it, in a given developed form. All these laws were enunciating a planned development of Bangalore city. The acquisitive nature of laws gives least scope to the private planning and land development in principle, except for the investors should be quasi-legal bodies or private individuals or corporate who would adhere to planning and its rules of law.

The laws work to control, provide, and regulate city's development, growth and expansion. Laws are characterized by not just by *eminent domain*; they create conditions of dominance to impose the sovereign-will which is hidden in the term “public purpose” as a justification to put into practice. Most of the times the content of the contentions are merely “incidental” to the actions of law thus insignificant when compared to the purpose of the law and the content of the planning. Legal judgments cannot have a say on the quasi-judicial actions or decisions of the authorities. Authorities have discretionary powers to deploy and employ laws of their choice in operations to strategize in regulating land acquisitions or developments. Issues of time/duration and jurisdiction are all incidental and flexible in developmental projects of the city thus are non-issues to be judged through a legal process. Issues of environment, viability of the projects, etc., are not be judged by the courts, they are all technically assessed and decisions are taken, thus they belong to the realms of technocratic understanding. Again issues of policy are unquestionable in the court of law, because it is left to the discretion or judgment of the government or the parliament and so on. Legal reflexes were shook very few times when there were obvious violations by the authority. By late 1980s and through the 1990s the government and the courts became more conscious of the dynamics of land development. But still the approach to the disputes and contentions did not change drastically. Government and laws, neither of it, could contain speculation and profiteering in land development and business. Given the ways of individualizing the property by the law, it was only propelling all through the perceived illegitimate and illegal market dynamics. People

doing business in urban land mostly negotiate with the institutions and the powerful actors have the chances to influence the decisions of the institutions to work in their favour. One knows now, planning within the districts have proceeded by allowing private actors to do business in lands, it is partly due to the policy and also due to other influences. Planners have always been proud of their middle class settlements and private investments in creation of such settlements were not undesirable. Those options existed for newly emerging associations and relatively big investors (see chapter 3). Small investors and land owners with small holdings seem to have lost in the process and have been subjected to land acquisitions.

The only effective and generally expected and accepted way to agitate, protest, oppose, etc., against land acquisitions or regularization were mainly in the courts. In the whole process the problem to oppose or to protest or to even accept anything is individualized and fragmented, whereas the logic of planning, law and its purpose pose a unity. They attempt to derive and demonstrate the cohesion of the imposing state. Apart from that, laws and its authorities, and its planners, expect and assume that people should have a clear understanding of not only the law but also the purpose of the land acquisition or regularization. The law, courts, authorities, etc., who all work in tandem expect the property or land losers to be not only aware of the laws and its purpose, but also submit to it. It might be useful to quote of the respondents who angrily responded in the fieldwork situation of the study- “Who are these people to ask me to do what I have to do with my land and on my land? I get very angry when I am told not to build a house on my land. How can I know what regularization is?”<sup>275</sup> The response indicates, many a times as it happens that, communities which are untouched by the government or law, when they come into direct contact they are caught *unawares*.

Land acquisitions operate on the whole of the communities, mainly the village communities in the context of Bangalore city’s expansion, to acquire land in bulk. The only option available for the property or land losers is the access to the lawyers who can inform their land-loser clients and the court or and the other authorities of law. Perhaps they are supposed to act as a bridge. All that happens within the context of a particular economy of hiring the lawyers, by the property and land losers

Given all that, the return for the land acquisition has been only the compensation which had been the source of contention for a while and perhaps since it is incommensurable loss to the individuals land itself has been central to disputes, directly or indirectly, and in the cases of regularization it has been mainly paying fines and in the lost illegal cases they had to face demolitions of their buildings. The conceptual

scheme of perceiving the loss of land or property seems to be inadequate. Among the available cases, in only one case the attempt to assess the loss an attempt has been made. It is as follows:

The expression 'undue hardship' was the point which fell for consideration of the learned Judges. It was held that 'undue hardship was not mere hardship. Undue hardship definitely cannot be hardship ordinarily so expressed. Any difficulty is hardship as a standard English Dictionary would indicate the meaning. Undue hardship, therefore, must be a hardship which is out of the ordinary or extraordinary. We must not lose sight of the fact that under the scheme of the Act, person holding land in excess of the ceiling limit will be deprived of it and a fixed compensation subject to a maximum limit alone is liable to be paid. Any loss of property, particularly immoveable property, in itself is a hardship. Therefore, the expression 'undue hardship' has special significance. For instance even under other laws dealing with compulsory acquisition of land for public purposes, legislature has always taken notice of the hardship caused to the person who has been deprived of the land for a public purpose. While he may be adequately compensated in accordance with the provisions of the law under which the acquisition is made, the provision... is always or invariably made for payment of solatium in addition to the value of land acquired. The payment of solatium is to offer solace to the person who has suffered hardship by losing his land which in the context of our country means displacement in many cases of a person from the land forcing him to shift to another land or another place. Therefore, undue hardship must necessarily be more than the hardship caused by mere deprivation of property...what constitutes undue hardship[?]...the learned Judges of the Gujarat High Court has clearly state that it is not possible to exhaustively enumerate what would be undue hardship which would cover all cases. Undue hardship would certainly vary from case to case.<sup>276</sup>

The L.A. Act merely enlists what constitutes the "public" and hence that public deserves the land sacrifice for the "purpose". Monetary compensation provides restitution instead of resuscitation. In that sense land is merely seen a convertible and exchangeable thing. In socio-spatial sense land which is part of social organization and a structuring resource is reduced to the level of economic compensation or nominalization. Land which forms the base/source for Agriculture, in that sense it has been part of the educational and learning process which has been passed on from many previous generations and whole lifeworld is constructed around that, is destroyed. Survival of communities without land becomes very difficult. What is the new learning process without land, in the new context, with economic compensation what one can do and such questions, become relevant in the context of land acquisition. How do the communities cope with the loss of land is dealt with in the next chapter.

## Appendix- 1: The Land Acquisition Act, 1894 (As amended in 1984)

(a) "land" would mean all the benefits which land could yield and things which exist attached to the earth permanently (things which are valuable); (b) "local authority" would specify the local town planning authority, with whatever name variants, established by the law of the given times; (c) "person interested" indicates the individuals who have stakes in the land when acquired to claim compensation, and those individuals who would be affected since they had the right to cross or use the land to be acquired for a particular purpose; (d) an appropriate authority to be appointed by the government termed as "Collector" or "Deputy Commissioner" to oversee the given land acquisition proceedings; (e) the government corporation or institution which would acquire land- "corporation owned or controlled by the State" or a cooperative society in which government has 51% its share capital; 'court' means a Civil Court or the judicial officer to adjudicate the proceedings with reference to land acquisition and the ensuing disputes; "company" means the company as defined in the section of 3 of companies act of 1956 which is other than the government company; 'a society' which is registered under the Societies Registration Act, 1860, etc.; (f) the expression of "public purpose" has been inclusive of- the provision of land for- village sites; planned development from public funds and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned; town or rural planning under any law relating to such planning; carrying out any housing scheme or health scheme sponsored by the Central Government or any State Government or any local authority; clearing slum areas; relieving congestion; housing poor, landless, or displaced persons or persons residing in areas affected by floods; residence for any person holding an office of profit under the Central Government or a State Government, or accredited as a diplomatic consular or trade representative of a foreign Government; building locating a public office; corporations owned or controlled by the State, or other nationalized industries or concerns; any local authority and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development; a company- where the land is needed for the construction of some work and such work is likely to prove substantially useful to the public and building co-operative society or corporation for the construction of houses and; any charitable trust (Puranik 1989: 22; The Land Acquisition Act, 1894: 13-14).

Section 4(1) and (2) pertains to the preliminary notification of the intent to acquire land for public purpose by the government has to appear in the convenient places of the locality, the same should be published in the gazette and should be announced in the two of the local regional newspaper dailies. And to conduct preliminary investigation into the nature of land to- ascertain if the land to be acquired whether it would suit the purpose, prepare land by clearing vegetation, delimit the boundaries of the land, and to notify the one who is already in occupation of the land about the proposed acquisition of the concerned land seven days in advance before the initiation of the proceedings. Section 5 is about the payment for the damage created during initial process of land acquisition if created by the visiting officials, to the concerned persons. If the dispute arises with regard to the amount of compensation, it has to be settled by the Collector or Chief Revenue Officer which is final settlement. According to Section 5-A, whosoever is interested in the land has objections against the acquisition for public purpose or Company could submit the objections to the Collector within the thirty days from the date of notification to acquire concerned lands. The Collector will have to give an opportunity to the objectors to be heard or their pleader on their behalf. After the inquiry the Collector will have to prepare a report containing recommendations and submit it to the government concerned and the government's decision on the matter would be final. And compensation is the only relief against the acquisition of the land for the concerned interested party. Section 6 concerns the declaration of the intention of land acquisition for a public purpose. After government takes the decision after considering the recommendations by the concerned officer as mentioned above, on the land that is essential for the public purpose or for a Company. The decision of the government will have to be undersigned by the Secretary to the concerned government or an authorized officer appointed by the government and different parcels of land could be declared in different notifications though all those lands were notified under section 4(1) and one or different reports were submitted as a requisite condition under section 5-A (1). Section 7 the concerned authority (the collector) is directed to take the government order of the concerned land acquisition after the declaration of its public purpose. Section 8 gives a direction to the concerned authority to measure, mark out, and plan the acquired land to put to use. Section 9 is about the procedure announcing the concerned acquired land to be taken into the possession by the concerned government authority, thus notice to that effect has to be announced to the interested parties of the land, and the public notice has to be displayed at "convenient places" or on the land which is to be acquired, or notice to be sent through the Indian Post Office to the interested parties if they reside elsewhere and also the notice is to be served to all the persons interested in the land. Further such public notice invites the interested parties of the land acquired to make claims of compensation from the concerned authority. The concerned authority in the notice 'shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.' In a way the authority has to ascertain and arbitrate the disputes, if any, before taking possession of the acquired land. Section 10 further suggests a probe by the authority to get details about the parties even if remotely interested in land viz., 'co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of statement', with regard to the land acquisition.

Section 11 is about the modalities of enquiry into objections related to 'true area' of the land, and its value awarded as compensation and apportionment of the compensation among the interested parties of the land by the Collector. Such award will have to have prior approval by the appropriate government or the authorized officer appointed by the government. Further connected to this section is Section 11 –A which determines the time period for the award to be made. Collector has to make an award within 'a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse'. Section 12 is about the direction given to the collector to create a file in the office of such award made as conclusive evidence with regard to the interaction between the collector and the interested parties of the acquired land, true area of the land, value of the land and apportionment of the compensation award among the interested parties; and the collector is to send notice immediately to the persons or their representative interested in the land are absent are to be sent notice about the award when it is made. Section 13 gives leverage to adjourn the enquiry proceedings and fix fresh dates for it again. Section 13-A (1) gives powers to the collector to correct the clerical errors, arithmetical mistakes, etc., within the stipulated six months from the date of the award or take the permission of the court under Section 18 of the act to make corrections: 'Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.'; (2) it is mandatory on the part of the Collector to immediately send notice of any correction to all the persons interested and; (3) as a result of correction of error if the Collector finds

that the interested party was paid in excess the amount shall be held accountable to be refund the amount or in the case of default or refusal to pay, the same may be recovered as an arrear of land revenue. Section 14 is about Collector's powers to summon and enforce attendance of witnesses and interested parties and production of documents exactly the kind submitted in the Civil Court for adjudication. Section 15 is about the determination of compensation as guided and contained in Section 23 and 24. Section 15-A is about the governmental power to call for any records or proceedings from the Collector before making an award of compensation to ascertain the 'legality or propriety' of any finding or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit on the condition that government should not pass or issue any order or direction prejudicial to any person without giving a chance to a person as reasonable opportunity of being heard. Section 16 is about the power of the Collector to take possession of the land acquired after the award is made and such land vests absolutely with the government free from all encumbrances. Section 17 endows special powers on the government to direct the collector to take possession of land in the cases of urgency even without complying with section 9 (1), such land vests absolutely with the government free from all encumbrances.

Section 18 begins with the procedure of reference to the court by the interested parties who are not ready to accept the award. The procedure for such parties is that they should submit an application to the Collector that the matter be referred to the court with regard to objections relating to measurement of land, amount of compensation, to the persons to whom it is payable, or the apportionment of the compensation among the persons who are interested. The applications would be considered on the grounds that if the objector was present or represented when the Collector made the concerned award within the six weeks from the date of the Collector's award and; in other cases who were not present nor their representatives according to section 12 (2) of the act, within six weeks of the receipt of the notice from the collector or within six months from the date of collector's award. Following is Section 19, the procedure for the collector to make a statement to court, under his/her writing with regard to state of affairs of land acquisition and extent of land and the particulars of what it had contained with like trees, buildings, standing crops, etc., name of persons who are interested in the land, amount awarded for damages, amount of compensation, etc.; and the schedule shall be attached with particulars of notices served upon, and of the statements in writing made or delivered by, the parties interested respectively. According to the Section 20 Court is expected to serve notice to the with particulars of the date of the proceedings in the court with regard to objections and notices shall be served to the applicant, persons interested in the objection, and to collector if the objection is with regard to the areas of the land or the amount of the compensation. Section 21 of the act restricts the scope of court proceedings by limiting it to 'a consideration of the interests of the persons affected by the objections' and according to section 22 all such court proceedings should be open for all persons entitled to practice in any Civil Court in the State shall be entitled to appear, plead and act in such proceedings.

Section 26 is the procedure for (1) the Judge to sign by him/her in writing for the award that is made as specified under first clause Section 23 (1) and also amounts, if any, respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts. (2) Every award which is a decree and a statement of the grounds of each and every award should on the grounds and meaning as enunciated by Section 2, clause (2), and Section 2, clause (9), respectively, of the Code of Civil Procedure, 1908. Section 27 is about (1) the costs incurred in the proceedings of every award which is in dispute of which Judge has to elicit and make a statement and (2) Judgment is also about when the award of the Collector is not upheld the costs will be borne by the Collector and so on. Section 28 directs the collector to pay interest on the excess of award made by court, from the date on which collector took possession of the land to the date of payment of such excess, at the rate of nine percent per annum. Court may decide that nine percent of interest over excess would only stand if the interest on the excess compensation is deposited in the court within one year, if otherwise, the collector will have to pay 15 percent per annum interest to the excess from the date of expiry to the remaining period until excess amount and the interest is deposited from the date of the land taken into possession. According to Section 28-A (1) even aggrieved individuals who were not part of the court proceedings are eligible to the excess of compensation as decided by the court and shall come under redetermination if persons who under the same notification, even if they had not approached the collector within three months from the date of the award of the court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court. And three months period to submit application collector and requisite time to obtain a copy of the award from the collector are excluded. (2) Collector will have to address the applicants, conduct an enquiry by providing reasonable opportunity of being heard, and make an award again in the light of newly decided compensation by the court. (3) If any of persons who have not accepted the award, may again by written application be able to submit it to the collector who in turn would route it to the court for again further proceedings and consideration.

Section 29 under this part is about the particulars of such persons who agree in the apportionment of the compensation, and these particulars will have to be specified in the award and would be a conclusive evidence of the correctness of the apportionment. And according to Section 30 if there is dispute with regard to apportionment, the Collector may refer such dispute to the Court's consideration.

Section 31 is about the payment of the compensation to the concerned persons or deposit the same monies in the court if there are disputes with regard to apportionment of compensation, if there be no person competent to alienate the land, sufficiency of the amount, etc. and so on. Section 32 is with regard to the person who had no power to alienate the land. In such cases court has the option of investments to be made of the deposited money (a) to purchase of other land to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held and (b) if such purchase of land cannot be effected immediately the money would be invested in the government or in the securities according to the discretion of the court. And court shall direct the payment of interest or the proceeds of the lands to the concerned persons, and so on. Section 33 is about the other cases the money deposited in the court on application from the interested parties in such money shall be according to the discretion of the court shall be invested in the government or the appropriate securities. The proceeds or interest of such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be. Section 34 is about the 9% interest to be paid in addition to the compensation if the Collector had not paid compensation on or before taking the possession of land acquired and until the compensation is deposited or paid. And if the compensation is not paid within one year of from the date of taking the possession of land acquired, 15% per annum will have to be added to the compensation amount to be paid or deposited from the date of expiry.

Section 35 of the act is about the government's power to acquire either arable or wasteland for the public purpose or for a company not exceeding three years. The proceeding of such acquisition is conducted by Collector by giving notice in writing to the persons interested in such land and pays the compensation which shall be agreed upon in writing between collector and persons interested.

If there is dispute regarding sufficiency of compensation or the apportionment then the collector would refer it to the court to judge. Section 36 gives powers to the government to take possession of land after the agreement is reached between the interested parties in the land and on payment of compensation. With the expiry of the agreement period the collector shall restore the land to the concerned persons and pay for the damages done to the land. After the land put to the public purposes by the government which makes it permanently unfit for the purposes for which it was used immediately before the beginning of the term and if the persons demand in the same condition, in such cases the government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a company. And, Section 37 makes provision for the concerned parties to approach court at the expiry of the agreement, if there are differences over the condition of the land or with regard to the any of the matters connected to the agreement.

Section 38 allows the government to authorize a Company to enter and survey the land. And Section 38-A allows any industrial concern employing not less than 100 workers which intends to acquire land for the provision of housing to its workers could acquire land with the consent of the government to ascertain the public purpose and all other procedures of land acquisition apply too. Further Section 39 makes it mandatory to take previous consent of the appropriate government necessary to execute any agreement to acquire land. Section 40 further lists down the procedures to acquire land for the company. Government gives consent to land acquisition based on the report of enquiry conducted by Collector. The enquiry should ascertain that (a) the purpose of the acquisition of land serve the purpose of housing the workers of the company and its accompanying amenities or (b) acquisition serve the purpose of construction of some building or work for a company which is engaging in a industry which is for public purpose or (c) acquisition is necessary for construction of some work and such work is likely to prove useful to the public and so on and so forth. Section 41 further in continuation based on the enquiry of the Collector the concerned company will have to enter into an agreement with the government with regard to matters of- (a) payment of the cost of acquisition, (b) transfer of land on such payment to the government, (c) the terms on which land will held by the company, and so on which fulfill the conditions of public purpose. Such an agreement between the parties will have to be published in the Official Gazette according to Section 42. Sections 39 to 42 would not apply to the government where government already has the obligation to provide land to railways or other companies where any state or central government involved, according to section 43 and 44. Section 44 only specifies about how agreement with Railway Company would be proved by the production of a printed copy thereof purporting to be printed by order of Government. Section 44-A restricts the companies to sell, mortgage, gift, and lease the land acquired or otherwise prior permission of the government is essential. And section 44-B restricts government from land acquisition for the private company under this part except to make provision for the workers housing and amenities of the private companies.

Section 45 is about, who can issue orders of notice and to whom such notices are ought to be issued. The authorized official incumbents of the government who can order to serve notice are generally the Collector or the Judge, and it should be served through registered post (which is according to Sections 28 and 29 of Indian Post Office Act, 1898). The notices are to be issued to the concerned person named. If the concerned person cannot be found, the notice should be made on any adult male member of his family residing with him. Or if such adult male member is not available to be served such notice should be fixed on the outdoor of the house concerned or notice should be fixed in some conspicuous place of the concerned officer or the court house and so on. Section 46 is about the penalty to be imposed on whosoever would obstruct acquisition of land. The penalty would be imprisonment of one month or fine not exceeding five hundred rupees or both, on the conviction before a Magistrate. Further, Section 47 provides scope for coercion in land acquisition process. Magistrate can enforce the surrender of land by the party concerned if the collector is unable to take possession of land. Government has not only absolute power to acquire land, it has also according to Section 48 not to complete the process of land acquisition, but such withdrawal from the process is with costs by the way of paying for the damage suffered by the land owners as a consequence. There is also restriction of the powers of the government while acquiring land. Acquisition of house, manufactory or any other building, partially or otherwise, according Section 49 of the act is not allowed, except under the condition that the owner of a house or any building voluntarily submits in writing to the acquisition, then the government can acquire such land. Another rider which is added is that if the land acquisition is questioned on the grounds that the proposed acquisition has a building or house, then the concerned authority will have to refer that to the court to decide the matter. The Court's job in this regard is to only ascertain that 'the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building' and so on. Section 50 of the act specifies as to the local authority or the company for whom the land is being acquired accordingly would bear the cost of land acquisition. In the case of proceeding held before the collector or the court, the local authority or the company concerned may appear and provide the rationale and the evidence for the purpose of land acquisition and the amount of compensation determined. Section 51 exempts the claimants of the award and agreement reached between the parties from the stamp-duty and fees. Section 52 specifies that any proceedings under this act will become evidence when the certified copy of a document is registered under the Registration Act, 1908. Section 52 stipulates the time period of one month to serve a notice before a suit or proceedings to commence or to prosecute against any person for anything done in pursuance of this act.

(The Land Acquisition Act, 1894 (2000, twelfth edition) Eastern Book Company,)

## Appendix- 2: The Bangalore Development Authority Act, 1976

Section "2. Definitions-.... (c) 'Bangalore Metropolitan Area' means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 (Mysore Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Mysore Act 5 of 1945) was immediately before the commencement of this Act in force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify;"

Section "3. Constitution and incorporation of the Authority.- ...(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both moveable and immoveable and to contract and shall by the said name sue or be sued."

Section "14. Objects of the Authority.- The objects of the Authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of moveable and immoveable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and

other operations and generally to do all things necessary or expedient for the purposes of such development and for purposes incidental thereto.”

Section “**15. Power of Authority to undertake works and incur expenditure for development, etc.**-(1) The Authority may,-  
(a) draw up detailed schemes (hereinafter referred to as “development scheme”) for the development of the Bangalore Metropolitan Area ;”

Section “**25. Power of Authority to take up works for further development.**-(1) Notwithstanding anything contained in any other provision of this Act, the Authority may, with the previous sanction of the Government, take up such works as the Authority considers necessary or desirable for the further development of any area within the Bangalore Metropolitan Area :  
Provided that the Corporation shall be consulted if such area lies within the limits of the City of Bangalore.” (BDA Act, 1976)

Section “**35. Authority to have power to acquire land by agreement.**- Subject to the provisions of this Act and with the previous approval of the Government, the Authority may enter into an agreement with the owner of any land or any interest therein, whether situated within or without the Bangalore Development Authority [1976: KAR. ACT 12 136] Bangalore Metropolitan Area for the purchase of such land or interest therein for the purpose of this Act.”

### **Appendix-3: Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991**(As quoted in *Munimasthaiah v State of Karnataka and Others (1996)*)

Section “**3.Regularisation:-** Notwithstanding anything contained in any law, but subject to such rules as may be prescribed, any unauthorised construction made in any urban area, except those specified in Section 4, made prior to the Thirty-first day of March, 1990, by any person, on land,-

- (i) belonging to the State Government; or
- (ii) which is a revenue site owned by him; or
- (iii) belonging to him which is proposed to be acquired in connection with any development scheme of an Authority, in relation to which a notification under the Bangalore Development Authority Act, 1976, or under Section 17 of the Karnataka Urban Development Authorities Act, 1987, or under Section 15 of the Karnataka Improvement Boards Act, 1976, is published and which has not vested in favour of any Authority for which the acquisition is proposed, may, on the application of such person made within sixty days of the commencement of this Act, be regularized in accordance with the provisions of the Act.”

Section “**4.Unauthorised constructions which shall not be regularised.-** The following unauthorised constructions shall not be regularised; namely:-

- (i) unauthorised constructions coming in the way of existing or proposed roads and railway lines, communications and other civic facilities or public utilities;
- (ii) unauthorized construction or any portion thereof falling within the required set off, if any, from roads, railway lines, communications and other civic facilities or public utilities under the rules, bye-laws or regulations governing buildings;
- (iii) unauthorised constructions made in forest land or on tank bed;
- (iv) unauthorized constructions made in the area specified as green belt in the comprehensive development plan or outline development plan prepared under the Karnataka Town and Country Planning Act, 1961 (Karnataka Act 11 of 1963) or declared as green belt under sub-section (3-A) of Section 95 of Karnataka Land Revenue Act, 1964 (Karnataka Act 12 of 1964);
- (v) unauthorised constructions made by any person on the land belonging to another person over which former has no title;
- (vi) unauthorized construction having more than two floors including the ground floor;
- (vii) unauthorised constructions made in violation of Urban (Land Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976);
- (viii) unauthorised constructions made on the land belonging to or vested in any Authority or a local authority; and
- (ix) unauthorised constructions on any land reserved for parks, play grounds, open places or for providing any civic amenities.”

“**5. Conditions for regularisation.-** (1) No unauthorised construction shall be regularised if the person who has applied for regularisation or any member of his family owns any building or site within the urban area in which the unauthorised construction sought to be regularised is situated.

(2) No person shall be eligible to seek regularisation of more than one unauthorised construction either in his name or in the name of any member of his family.”

## References and Notes

<sup>1</sup> *Land Acquisition Act, 1894* (2000) Eastern Book Company, Lucknow, p. 37.

<sup>2</sup> SathpalPulliani ed. (2005), *The Karnataka Town and Country Planning Act, 1961*, Karnataka Law Journal Publications, Bangalore, p. 68.

<sup>3</sup> [http://www.karnataka.gov.in/dpal/pdf\\_files%5CBANGALORE%20DEVELOPMENT%20AUTHORITY%20ACT,%201976%20\(BM\).pdf](http://www.karnataka.gov.in/dpal/pdf_files%5CBANGALORE%20DEVELOPMENT%20AUTHORITY%20ACT,%201976%20(BM).pdf) (BDA Act, 1976), p. 136 (accessed on 21<sup>st</sup> May, 2009).

<sup>4</sup> SathpalPulliani ed. (2005), *The Karnataka Town and Country Planning Act*, pp.24-25.

<sup>5</sup> This amendment perceived that land acquisition for the companies as public purpose. The rationale given to consider it so is that setting up of industry would employ people and it would aid public in realizing the right to work which is beneficial. Setting up of industries would promote economic development of the country (A. B. Puranik. 1989, *The Law of Land Acquisition and Compensation- Commentaries on The Land Acquisition Act, 1894* along with State Amendments, Allahabad: Ashoka Law House, p. 3).

<sup>6</sup> The 1967 amendment refers to the procedural changes with regard to the matters of the acquisition proceedings to be conducted as a single process by deploying various sections of the Land Acquisition Act. “[I]n view of the urgency of the situation affecting many important projects, the Land Acquisition Act, 1894, was amended with retrospective effect by the promulgation of the Land Acquisition (Amendment and Validation) Ordinance, 1967...to provide for submission of either one report in respect of the land which has been notified under Section 4 (1) or different reports in respect of different parcels of such land to the appropriate Government containing the recommendations of the Collector(s) on the objections submitted by the interested persons under Section 5-A (1) of the Act to the acquisition of the land covered by the notification under Section 4 (1) or of any land in the locality, as the case may be. The Ordinance specifically provides that, if necessary, more than one declaration may be issued from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1) of the Act irrespective of the fact whether one report or different reports has or have been made under Section 5-A, subsection (2) of the Act.

At the same, time care has been taken to ensure that land acquisition proceedings do not linger on for unduly long time. The aforesaid Ordinance, therefore, provides that no declaration under Section 6 of the Act should be issued in respect of any particular land covered by a notification under Section 4 (1) published after the commencement of the Ordinance, after the expiry of three years from date of such publication. In case of pending proceedings it has been provided that no declaration under Section 6 of the Act in respect of any land which has been notified before the commencement of the above Ordinance, under sub-section (1) of Section 4 of the Act may be issued after the expiry of two years from the commencement of the Ordinance.” (Published in Gazette of India, dated 18<sup>th</sup> March, 1967, Part II, Section 2 (Extraordinary), p. 9 as quoted in Puranik 1989: 3-4)

<sup>7</sup> In the context of the greater expansion of the State’s role in advancing the public welfare and economic development in the post independence acquisition of land - for public purposes, industrialization, building of institutions, etc., - has been ever multiplying than before and had become inevitable. The main purpose of the amendment was to strike a balance between public purpose and rights of the individual whose land is acquired. Acquisition of land for private enterprises was not to be treated on the same footing as acquisition of land for the State or its enterprises. The amendment to Land acquisition Act of 1984 took note of the fact that the land acquired from an individual or institution would be deprived and livelihood, given this condition they should be ‘adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interest of the community’ and the long delays in the acquisition proceeding were causing hardship to the affected parties by rendering the scale of compensation offered to them unrealistic. (Puranik 1989: 5-6)

<sup>8</sup> See Appendix- 1 from more details.

<sup>9</sup> A. B. Puranik. 1989, *The Law of Land Acquisition and Compensation- Commentaries on The Land Acquisition Act, 1894*, p.22.

<sup>10</sup> See Appendix- 1 for more details.

<sup>11</sup> See Appendix- 1 for more details.

<sup>12</sup> Two riders are added to market value. According to Section 23 (1-A) of the L.A. Act, in all the cases of the award twelve percent per annum of the market value will have to added for the period commencing on and from the date of the publication of the notification under Section 4 (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. In the cases of court stay or injunction such period would be excluded. And the rider (2) adds that court shall in every case award a sum of thirty percent on such market value, in consideration of the compulsory nature of the acquisition. The Act also provides proscriptions for the Court and also is applicable for the Collector to follow (*The Land Acquisition Act, 1894*, (2000), pp. 76-77).

<sup>13</sup> Ibid: p. 76.

<sup>14</sup> Ibid: p. 98.

<sup>15</sup> Ibid: p. 107.

<sup>16</sup> See Appendix- 1 for more details.

<sup>17</sup> See Appendix- 1 for more details.

<sup>18</sup> See Appendix- 1 for more details.

<sup>19</sup> See Appendix- 1 for more details.

<sup>20</sup> See Appendix- 1 for more details.

<sup>21</sup> See Appendix- 1 for more details.

<sup>22</sup> *The Karnataka Co-operative Societies Act, 1959*, Department of Law and Parliamentary Affairs, Government of Karnataka, p. 11.

<sup>23</sup> *Ibid*: pp. 218-220.

<sup>24</sup> A. B. Puranik. 1989, *The Law of Land Acquisition and Compensation- Commentaries on The Land Acquisition Act, 1894*, pp. 18-19.

<sup>25</sup> *Ibid*: pp. 433-434.

<sup>26</sup> *Report on the Enquiry conducted under Section 64 of Karnataka Co-operative Societies Act, 1959 into the activities of certain House Building Co-operative Societies of Bangalore City, 1989*, Annex- p.9.

<sup>27</sup> *Report of the Bangalore Development Committee 1954*, p. 26.

<sup>28</sup> [http://www.karnataka.gov.in/dpal/pdf\\_files%5CBANGALORE%20DEVELOPMENT%20AUTHORITY%20ACT.%201976%20\(BM\).pdf](http://www.karnataka.gov.in/dpal/pdf_files%5CBANGALORE%20DEVELOPMENT%20AUTHORITY%20ACT.%201976%20(BM).pdf), pp. 102-103.

<sup>29</sup> Apart from that, the conceived law was also to address the concerns of the governmental programme of the times, namely, the 'twenty point programme'. The points like 'poverty eradication', 'power to people', 'support to farmers', 'labour welfare', 'food security', 'housing for all', 'clean drinking water', 'health for all', 'education for all', 'welfare of scheduled castes, scheduled tribes, minorities and OBCs', 'women welfare', 'child welfare', 'youth development', 'improvement of slums', 'environment protection and afforestation', etc. [http://www.mplads.gov.in/tpp2006/tpp\\_guidelines\\_2006.pdf](http://www.mplads.gov.in/tpp2006/tpp_guidelines_2006.pdf) (accessed on 22nd May, 2009)

<sup>30</sup> [http://www.karnataka.gov.in/dpal/pdf\\_files%5CBANGALORE%20DEVELOPMENT%20AUTHORITY%20ACT.%201976%20\(BM\).pdf](http://www.karnataka.gov.in/dpal/pdf_files%5CBANGALORE%20DEVELOPMENT%20AUTHORITY%20ACT.%201976%20(BM).pdf), p. 114.

<sup>31</sup> *Ibid*: p. 122.

<sup>32</sup> *Ibid*: p. 124.

<sup>33</sup> *Ibid*: pp. 143-144.

<sup>34</sup> *The Urban Land (Ceiling and Regulation) Act, 1976*, (2005) Universal Law Publishing Co. Pvt. Ltd., Delhi, p. 1.

<sup>35</sup> *Ibid*: p. 1.

<sup>36</sup> *Ibid*: p. 1.

<sup>37</sup> *Ibid*: pp. 1-2.

<sup>38</sup> Capt. M.V. Subbarayappa v Bharath Electronics Employees Co-op. House Building Society Ltd. & Others, 1990, Writ Petition No.6286/1989, *The High Court of Karnataka/Karnataka Law Journal*, [1990(3)].

<sup>39</sup> Major Gen. M. K. Paul and Others v Bangalore City Corporation, Bangalore and Others, 1994, *The High Court of Karnataka/Karnataka Law Journal*, [1994(2)].

<sup>40</sup> The Residents of Mico Layout, II Stage, Bangalore and Others v J.S.S. MahavidyaPeetha, Mysore and Others, 1997, Writ Petition No. 26957/1995, *The High Court of Karnataka/Karnataka Law Journal*, [1997(4)].

<sup>41</sup> *The Bangalore Municipality's Commissioner v The Sub-division Officer, Bangalore, and Five other respondents*, Regular Appeal No. 105/Case No. 2 of 1943-44, Appellate Civil/ *The Mysore Law Journal Reports*[Vol. XXVII], 1946.

<sup>42</sup> *Ibid*: As quoted by the Judges from the Lord Romer's judgment in NarayanaGajapatiraju v. Revenue Divisional Officer, Vizagapatam: p. 148

<sup>43</sup> *Ibid*: p. 146.

<sup>44</sup> *Ibid*: p. 142.

<sup>45</sup> AdinarayanaSetty v Special Land Acquisition Officer, 1954, Regular Appeal No. 255 of 1950-51, D/- 5-10-53, *Mysore High Court/The All India Reporter*, [Vol. 41].

<sup>46</sup> The Special Land Acquisition Officer, Bangalore v T. AdinarayanSetty, 1959, Civil Appeal No. 138 of 1955/Case No. 39, 1947-48, *Supreme Court/Mysore Law Journal*, 1959.

<sup>47</sup>*AdinarayanaSetty v Special Land Acquisition Officer*, 1954, Regular Appeal No. 255 of 1950-51, D/- 5-10-53, Mysore High Court/*The All India Reporter*, [Vol. 41].

<sup>48</sup>*Ibid*: p. 71.

<sup>49</sup>*The Special Land Acquisition Officer, Bangalore v T. AdinarayanSetty*, 1959, Civil Appeal No. 138 of 1955/Case No. 39, 1947-48, *Supreme Court/Mysore Law Journal*, p. 453.

<sup>50</sup>*AdinarayanaSetty v Special Land Acquisition Officer*, 1954; *The Special Land Acquisition Officer, Bangalore v T. AdinarayanSetty*, 1959; *G. Gurubasappa v Special Land Acquisition Officer, City Municipality and others*, 1959, *Mysore High Court/The All India Reporter*, [Vol. 46]; *M. S. Nanjappa v Special Land Acquisition Officer, CITB, Bangalore*, 1966, Regular Appeal No. 147, *The High Court of Mysore/AIR 1966 (V 53 C 17)*; *Special Land Acquisition Officer, CITB, Bangalore v Chikkaboranna*, 1968, Second Appeal No. 43, *The High Court of Mysore/AIR 1968, Vol. 55*; *Union of India & Others v Narasiyappa& Others*, 1970, MFA Nos. 33 to 58, etc., of 1967, *The High Court of Mysore/Mysore Law Journal*, [1970(1)]; *Special Land Acquisition Officer, CITB, Bangalore v J. B. KempannaSetty Charities*, 1973, M. F. A. Nos. 7, 8, 9, and 232/1968, *The High Court of Mysore/AIR 1973, Vol. 60*; *A. K. Ahmed v Special Land Acquisition Officer, CITB*, 1974, MFA. No. 677/1971, *The High Court of Mysore/Mysore Law Journal*, [1974(2)]; *G. Venkatesh v Special Land Acquisition Officer*, 1975, MFA Nos. 75 to 77/1971, *The High Court of Mysore/AIR 1975, Vol. 62*; *Land Acquisition Officer, CITB v Narayanaiah K.*, 1976, CA Nos. 644 to 650/1974, *The High Court of Mysore/Mysore Law Journal*, [1976(2)]; *Smt. SaraswathiSundaram and another v The Asstt.Commissioner and Land Acquisition Officer, Bangalore Sub-Dn, Bangalore*, 1976, MFA No. 667/1974, *The High Court of Mysore/AIR 1976, Vol. 63*; *Additional Special Land Acquisition Officer, Bangalore v A. Thakoredas and others*, 1977, Civil Revision Petition No. 1577/1976, *The High Court of Karnataka/AIR 1977, Vol. 64*; *Gangadharappa G & Others v State of Karnataka & Another*, 1979, Writ Petition No. 8891/77, *The High Court of Karnataka/Karnataka Law Journal*, [1979(2)].

47. *H. Narayaniah v LAO, CITB, Bangalore*, 1980, Appeal MFA 277, 444 to 460/70, *The High Court of Karnataka/Karnataka Law Journal*, [1980(2)]; *V. T. Velu and Others v Special Land Acquisition Officer, Bangalore & Another*, 1991, Appeals- MFA Nos. 111 & 112/1983, *The High Court of Karnataka/Karnataka Law Journal*, [1991(3)].

<sup>51</sup>*Additional Special Land Acquisition Officer, Bangalore v A. Thakoredas and others*, 1977, pp. 42-45.

<sup>52</sup>*G. Gurubasappa v Special Land Acquisition Officer, City Municipality and others*, 1959, , pp. 93-94.

<sup>53</sup>*Land Acquisition Officer, CITB v Narayanaiah K.*, 1976.

<sup>54</sup>*Gangadharappa G & Others v State of Karnataka & Another*, 1979, pp. 324-325.

<sup>55</sup>*Smt. Pullamma and others v The Additional Special Land Acquisition Officer, Bangalore and others*, 1977, MFA Nos. 767/1974, etc., *The High Court of Karnataka/AIR 1977, [ 64]*.

<sup>56</sup>Section 18 begins with the procedure of reference to the court by the interested parties who are not ready to accept the award. The procedure for such parties is that they should submit an application to the Collector that the matter be referred to the court with regard to objections relating to measurement of land, amount of compensation, to the persons to whom it is payable, or the apportionment of the compensation among the persons who are interested. The applications would considered on the grounds that if the objector was present or represented when the Collector made the concerned award within the six weeks from the date of the Collector's award and; in other cases who were not present nor their representatives according to section 12 (2) of the act, within six weeks of the receipt of the notice from the collector or within six months from the date of collector's award.

<sup>57</sup>"Saving of inherent powers of Court? Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court" (Section 151 of Code of Civil Procedure, 1908).

<sup>58</sup>"Courts to try all civil suits unless barred? The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred" (Rule 9 of Code of Civil Procedure, 1908).

<sup>59</sup>This writ petition was filed against lands acquired at Yediur village for a residential scheme known as "Banashankari and Mysore Road-II Stage", by CITB.

<sup>60</sup>*M. Manicklal v The State of Mysore & others*, 1967, Writ Petition No. 674/65, *The High Court of Mysore/Mysore Law Journal*, [1967 (2)].

<sup>61</sup>The definition is as follows- "Khata: Ledger of receipts and disbursements. It consists of firstly the Government account in which the amounts for recovery under the heads of (i) Land Revenue, (ii) Local Funds, (iii) Takavi, (iv) amarai, (v) Pasture, etc., are credited and remittances from the village to the Taluk Treasury of cash recovered are debited; and secondly of raiyatsaccounts in which each raiyat is debited with his liabilities and collections of revenue are credited, whenever they take place" (*M. Manicklal v. State of Mysore* 1968, Writ Petition No. 1168/1965, *The High Court of Mysore/Mysore Law Journal*, [1968 (1)]: 424).

<sup>62</sup>Land Revenue Register refers to land revenue assessment to be paid which is founded on the principle that "the process of expropriation should include an opportunity for opposition by the person affected by the proposed expropriation. In the case of a land for which land revenue is payable, its registered occupant is the person who is obviously so affected, and, that explains the requirement that he should be notified. There may be others having other or subsidiary interests, but S. 16(2) restricts the service of notice on the known registered occupant, whose identity is revealed by the land revenue register. And, for that purpose, the Trust Board has to find the name which is entered in that register against the land proposed to be acquired, as it registered occupant" (*ibid*: 424).

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- <sup>63</sup> Land acquired by BDA was to create a mini forest scheme.
- <sup>64</sup> M.B. Ramachandran v State of Karnataka and Others, 1991, Writ Petition Nos. 18891, 18892, 18981 to 18983 of 1986 and 9260 & 9261/1988, *The High Court of Karnataka/Karnataka Law Journal*, [1991(3)].
- <sup>65</sup> Land was being acquired for residential purposes.
- <sup>66</sup> Venkataramaih M. v State of Karnataka & others, 1988, Writ Petition No. 8133/1986, *The High Court of Karnataka/Karnataka Law Journal*, [1988(1)].
- <sup>67</sup> BDA had notified the land in 1977 itself as a part of the formation of Banaswadi-Hennur Road Layout.
- <sup>68</sup> B.T. Saku v Commissioner, Bangalore Development Authority and Another (1995), Regular First Appeal No. 223/1993, *The High Court of Karnataka/Karnataka Law Journal*, [1995(1)], pp. 373-74.
- <sup>69</sup> Land acquisition was for a residential layout.
- <sup>70</sup> PillayyaNagamangalaVenkatappa v State of Mysore, 1969, Writ Petition No. 854, *The High Court of Mysore/AIR 1969, Vol. 56*.
- <sup>71</sup> This instance of the case has had a long history. A crowded street in the Central Business District of the city was sought to be expanded to ease the traffic congestion in 1950 itself, but that did not happen till early 1970s. Government and the Corporation finally decided in 1974 to acquire building along the street to expand it. It was a long drawn and a delayed process because there was much at stake for small businesses.
- <sup>72</sup> Mahendra Enterprises (R) v Commissioner, Bangalore City Corporation & Others, 1987, Writ Appeal Nos. 9167, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1987(3)].
- <sup>73</sup> Venkataramaih M. v State of Karnataka & others (1988), Writ Petition No. 8133/1986, *The High Court of Karnataka/Karnataka Law Journal*, [1988(1)], p. 193.
- <sup>74</sup> Land acquisition initiated by BDA was to form a residential layout at Nagarabahavi village of YeshwantpurHobli.
- <sup>75</sup> Muniveerappa v State of Karnataka & Others, 1991, Writ Petition No. 17707/1986, *The High Court of Karnataka/Karnataka Law Journal*, [1991(2)].
- <sup>76</sup> Ibid: p. 361.
- <sup>77</sup> The lands of Balageri village in question were under acquisition proceedings to provide sites for the homeless persons belong to weaker sections of the society.
- <sup>78</sup> Smt. Venkamma and Others v Deputy Commissioner, Bangalore and Others (1995), Writ Appeal No. 512/1987, *The High Court of Karnataka/Karnataka Law Journal*, [1995(3)].
- <sup>79</sup> Ibid: p. 103.
- <sup>80</sup> Hanumanthappa M. v State of Karnataka & others, 1987, Writ Petition No. 9114/1987, *The High Court of Karnataka/Karnataka Law Journal*, [1987(2)].
- <sup>81</sup> Land was being acquired for residential purposes.
- <sup>82</sup> PillayyaNagamangalaVenkatappa v State of Mysore, 1969, Writ Petition No. 854, *The High Court of Mysore/AIR 1969, Vol. 56*.
- <sup>83</sup> Land was being acquired for residential purposes.
- <sup>84</sup> MahalakshmiKeshavaRao v State of Karnataka & another, 1990, Writ Petition No. 15553/87, *The High Court of Karnataka/Karnataka Law Journal*, [1990(2)].
- <sup>85</sup> Sri ShanidevaraSevaMandali, Bangalore v Commissioner, Bangalore City Corporation, Bangalore and Another (1995), Regular First Appeal No. 307/1995, *The High Court of Karnataka/Karnataka Law Journal*, [1995(5)], p. 527.
- <sup>86</sup> Petitioner's agricultural land 2 acres 2 guntas was at stake due to the land acquisition proceeding initiated by BDA at Doddigunta Village, KasabaHobli, K.R. PuramTaluk, Bangalore District, of the formation of residential layout.
- <sup>87</sup> A. Krishnamurthy (Since Deceased) by L.Rs. v Bangalore Development Authority and Others, 1996, Writ Appeal No. 1450/1992, *The High Court of Karnataka/Karnataka Law Journal*, [1996(3)].
- <sup>88</sup> Ramachandrappa and Others v State of Karnataka and Others, Writ Appeal No. 2074/1994, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1996(7)], pp. 253-254; Poornaprajna House Building Co-operative Society, Bangalore v Bailamma @ Doddabailamma and Others, Writ Appeal Nos. 2079/1993, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1998(3)], pp. 317-320.
- <sup>89</sup> Chayadevi& another v State of Karnataka & another, 1988, Writ Petition Nos. 4101 & 4102/1986, *The High Court of Karnataka/Karnataka Law Journal*, [1988(2)].

<sup>90</sup> Bangalore Development Authority had planned a scheme, which court had termed it as “gigantic project” for the residential development for which 1703 acres of agricultural land was planned to be acquired.

<sup>91</sup> Kanthamma & others v State of Karnataka & another (1984), Writ Appeal Nos. 671 to 681/84, *The High Court of Karnataka/Karnataka Law Journal*, [1984(2)], p. 272.

<sup>92</sup> Ibid: p. 271

<sup>93</sup> M.B. Ramachandran v State of Karnataka and Others, 1991, Writ Petition Nos. 18891, 18892, 18981 to 18983 of 1986 and 9260 & 9261/1988, *The High Court of Karnataka/Karnataka Law Journal*, [1991(3)].

<sup>94</sup> Mahendra Enterprises (R) v Commissioner, Bangalore City Corporation & Others (1987), Writ Appeal Nos. 9167, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1987(3)], p.344

<sup>95</sup> Vishwabharathi House Building Co-operative Society Ltd. v Bangalore Development Authority, 1989, Writ Petition Nos. 8719 & 8720/1989, *The High Court of Karnataka/Karnataka Law Journal*, [1989(3)].

<sup>96</sup> Section “2. Definitions.-... (c) ‘Bangalore Metropolitan Area’ means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 (Mysore Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Mysore Act 5 of 1945) was immediately before the commencement of this Act in force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify;” (BDA Act, 1976).

<sup>97</sup> See Appendix- 2 for more details.

<sup>98</sup> See Appendix- 2 for more details.

<sup>99</sup> See Appendix- 2 for more details.

<sup>100</sup> See Appendix- 2 for more details.

<sup>101</sup> Ibid: p. 23

<sup>102</sup> Smt. Venkamma and Others v Deputy Commissioner, Bangalore and Others, 1995, Writ Appeal No. 512/1987, *The High Court of Karnataka/Karnataka Law Journal*, [1995(3)].

<sup>103</sup> The case involving *S.S. Darshan v State of Karnataka and Others* represents the land acquisition for the new kind of industrialization which had begun in the early 1980s i.e. the Information Technology Park Limited. For the creation of the industrial estate Karnataka Industrial Areas Development Board had proposed to acquire land measuring two hundred acres spread over many villages in the Bangalore South Taluk. The petitioner-landowners’ lands measuring ten acres thirty guntas were part of the total acquisition process for the purpose. The petitioner had set up a Bee-Keeping and the honey production industry which on the site also involved the research and development activities related to the industry and also the cultivation of a farm of various flower and fruit bearing trees which was aiding in the production of honey (Writ Petition Nos. 25555 and 23530/1994, *The High Court of Karnataka/Karnataka Law Journal*, [1995(6)]).

<sup>104</sup> Ibid: pp. 345.

<sup>105</sup> Government had planned to acquire agricultural lands of Kethamaranahalli village, YeshwantpurHobli, Bangalore North Taluk, but withdrew from the acquisition proceeding through final notification.

<sup>106</sup> Muninanjappa v State of Karnataka & Another, 1980, Writ Petition No.6041/1975, *The High Court of Karnataka/Karnataka Law Journal*, [1980(1)].

<sup>107</sup> R.M.S. Telephone Employees’ House Building Co-operative Society Limited, Bangalore v Government of Karnataka and Others, Writ Petition Nos. 1302, 1344, etc., of 1992, *The High Court of Karnataka/Karnataka Law Journal*, [1997(1)], p. 139-142.

<sup>108</sup> Article 14- “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India” (Constitution of India, updated in 2007, Ministry of Law and Justice, Government of India).

<sup>109</sup> Article 300A. “No person shall be deprived of his property save by authority of law” (ibid).

<sup>110</sup> Bangalore Development Authority v Dr. H. S. Hanumanthappa, Writ Appeal No. 693/1992, *The High Court of Karnataka/Karnataka Law Journal*, [1996(7)], pp. 8-9.

<sup>111</sup> Ibid: pp. 5-7.

<sup>112</sup> Ibid: pp. 9-10.

<sup>113</sup> Ibid: p. 10.

<sup>114</sup> Ibid: pp. 10-11.

<sup>115</sup> Ibid: p.16.

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<sup>116</sup>Ibid: p.17.

<sup>117</sup>Ibid

<sup>118</sup> Dr. H.S. Hanumanthappa v State of Karnataka and Another, Writ Petition Nos. 33360/1996, etc, *The High Court of Karnataka/Karnataka Law Journal*, [1997(3)], pp. 163-176.

<sup>119</sup>Ibid: pp. 165-168.

<sup>120</sup>Ibid: pp. 171.

<sup>121</sup>Ibid: pp. 172.

<sup>122</sup>Ibid: pp. 168-169.

<sup>123</sup>Ibid: pp. 169.

<sup>124</sup> M. P. Narasimha Murthy v State of Mysore, 1967, Writ Petitions Nos. 1575/64 etc., *The High Court of Mysore/Mysore Law Journal*, 1967 (1).

<sup>125</sup> Muthyala Reddy v. State of Mysore and Another, 1968, Writ Petition No. 1934, *The High Court of Mysore/Mysore Law Journal*, [1968 (2)], p. 48.

<sup>126</sup> S.A. Jalaluddin v Bangalore Development Authority and Another, 1995, Regular First Appeal No. 232 of 1984, *The High Court of Karnataka/Karnataka Law Journal*, [1995(5)].

<sup>127</sup> According to 7<sup>th</sup> Schedule, List II, Entry 5.- "Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration- of the List II" (Constitution of India).

<sup>128</sup> According to 7<sup>th</sup> Schedule, List III, Entry 42 "Acquisition and requisitioning of property" (Constitution of India).

<sup>129</sup> The Constitutional provisions of land acquisition are outlined by the court in the following manner—"Entry 33 of List I and Entry 36 of List II of VII Schedule to the Constitution provided for acquisition and requisition of land prior to Constitution (Seventh) Amendment. There was a separate Entry 42 of List III which referred to compensation. By the Constitution (Seventh) Amendment, under Entry 42 of List III, acquisition and requisition of property is provided, for the original entry had referred only to the principles on which compensation for the property acquired and requisitioned for the purpose of Union or the State Government was provided. Thus the amendment was made deleting Entry 33 of List I and Entry 36 of List II and retaining only Entry 42 of List III in the changed form...The existence of three entries in the legislative lists (Entry 33 of List I, 36 of List II and 42 of List III) relating to essentially single subject of acquisition and requisitioning of property by the Government gives rise to necessary technical difficulties in legislation. In order to avoid these difficulties and simplifying the constitutional position, it is proposed to omit the entries in the Union and State List and replace the entry in the concurrent list by a comprehensive entry covering the whole subject"(Khoday Distilleries Ltd. V State of Karnataka and others, 1997, Writ Petition Nos. 21423/1992, etc. *The High Court of Karnataka/Karnataka Law Journal*, [1997(5)]: 736).

<sup>130</sup> The court had elaborated that the- "acquisition of land for purpose of the scheme is only for the purpose of development and therefore falls entirely within the scope of Entry 5 of List II of the Seventh Schedule to the Constitution; that Entry 5 of List II provides for Local Government, that is to say, the Constitution and powers of Improvement Trusts among other authorities for the purpose of Local Government, that is to say, the Constitution and powers of Improvement Trusts among other authorities, mining settlement authorities and other authorities for the purpose of Local Self-Government or village administration; that, necessarily the provisions of the Bangalore Development Authority Act are not enacted for the purpose of acquisition as such and in the course of enforcement of its developmental schemes it may become necessary to acquire lands and therefore acquisition of land is part of the developmental scheme and thus in pith and substance is an enactment made under Entry 5 of List II of the Seventh Schedule to the Constitution; that the purpose of the Bangalore Development Authority Act is not acquisition of land simpliciter. It is only to constitute or incorporate an Authority to regulate planned development of the Bangalore Metropolitan Area. The Authority is enabled under the Act to frame any scheme and, if necessary, to acquire the land by agreement with the persons having interest in the land by agreement with the persons having interest in the land by exchange or otherwise. Thus, the compulsory acquisition of land is only incidental to the main purpose." (ibid: 741).

<sup>131</sup> Ibid: p. 745.

<sup>132</sup> Ibid: p. 733.

<sup>133</sup> Mahendra Enterprises (R) v Commissioner, Bangalore City Corporation & Others (1987), p. 344.

<sup>134</sup> S.S. Darshan v State of Karnataka and Others, p. 343.

<sup>135</sup> Khoday Distilleries Limited, Bangalore v State of Karnataka and Others (1997), p. 747.

<sup>136</sup> Chikkamuniyappreddy Memorial Trust, Bangalore v State of Karnataka and Others, 1998, *The High Court of Karnataka/Karnataka Law Journal*, [1998(2)], p. 284.

<sup>137</sup> Ibid: p. 277.

<sup>138</sup> Annayya & others v State of Karnataka & others, 1988, Writ Petition Nos. 9032-9041/1988, The High Court of Karnataka/Karnataka Law Journal, [1988(2)].

<sup>139</sup> H. N. Nanjgowda and Another v State of Karnataka and Others, 1996, Writ Petition No. 27735/1995, *The High Court of Karnataka/Karnataka Law Journal*, [1996(3)], p. 54.

<sup>140</sup> M. Laxmiah v State of Mysore & others, 1966, Writ Petitions Nos. 1517 & 996/65, *The High Court of Mysore/Mysore Law Journal*, 1966.

<sup>141</sup>“Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.” (Entry 29, List I of Schedule VII, Constitution of India).

<sup>142</sup> “Acquisition and requisitioning of property”

<sup>143</sup> Venkataramaih M. v State of Karnataka & others, 1988, Writ Petition No. 8133/1986, The High Court of Karnataka/Karnataka Law Journal, [1988(1)].

<sup>144</sup> Shambuvaiah v Deputy Commissioner, Bangalore, 1980, *Writ Petition No. 14217/78, The High Court of Karnataka/Karnataka Law Journal*, [1980(1)].

<sup>145</sup> M.B. Ramachandran v State of Karnataka and Others (1991), Writ Petition Nos. 18891, 18892, 18981 to 18983 of 1986 and 9260 & 9261/1988, *The High Court of Karnataka/Karnataka Law Journal*, [1991(3)], p. 49.

<sup>146</sup>“**Interpretation of statutes-** The judicial process of determining, in accordance with certain rules and presumptions, the true meaning of Acts of Parliament. The principal rules of statutory interpretation are as follows.

(1) An Act must be construed as a whole, so that internal inconsistencies are avoided.

(2) Words that are reasonably capable of only one meaning must be given that meaning whatever the result. This is called the **literal rule**.

(3) Ordinary words must be given their ordinary meanings and technical words their technical meanings, unless absurdity would result. This is the **golden rule**.

(4) When an Act aims at curing a defect in the law any ambiguity is to be resolved in *such a way as to favour that aim* (the **mischievous rule**). The *ejusdem generis* rule (of the same kind): when a list of specific items belonging to the same class is followed by general words (as in "cats, dogs, and other animals"), the general words are to be treated as confined to other items of the same class (in this example, to other *domestic* animals)" (Oxford Dictionary of Law 2005, Oxford University Press, Oxford/New York, pp. 262-263).

<sup>147</sup> H. N. Nanjgowda and Another v State of Karnataka and Others, p. 54.

<sup>148</sup> Lands of Kempapura Agrahara were sought 21 acres 30 guntas of lands for acquisition by CITB for a residential scheme. This case is concerned with petitioners' 6 acres 30 guntas of lands which was part of the overall proceedings.

<sup>149</sup> M/s Manjog Builders, Bangalore v Vyalikaval Co-operative Housing Society Limited, 1998, Writ Petition No. 15038/1990, *The High Court of Karnataka/Karnataka Law Journal*, [1998(4)], pp. 499-500.

<sup>150</sup> BDA had notified the land in 1977 itself as a part of the formation of Banaswadi-Hennur Road Layout.

<sup>151</sup> B.T. Sakku v Commissioner, Bangalore Development Authority and Another, 1995, pp. 373-374.

<sup>152</sup> *Ibid*: p. 381.

<sup>153</sup> Vinayaka Griha Nirmana Sahakara Sangha Limited v Karnataka Appellate Tribunal and Others, 1995, Writ Petition No. 942/1995, *The High Court of Karnataka/Karnataka Law Journal*, [1995(6)].

<sup>154</sup> For the background of the legal dispute as delineated in the foregoing -see (10) *Contentions with reference to the application of substitutive of laws*.

<sup>155</sup> M. P. Narasimha Murthy v State of Mysore, 1967, Writ Petitions Nos. 1575/64 etc., The High Court of Mysore/Mysore Law Journal, 1967 (1).

<sup>156</sup> Narayan Raju v State of Karnataka & others, 1988, Writ Appeal Nos. 1084-89/1987, *The High Court of Karnataka/Karnataka Law Journal*, [1988(2)], p. 37.

<sup>157</sup> See also for the discussion under the won cases *Land Acquisition and Public Purpose* in the next section.

<sup>158</sup> Ramachandrapa and Others v State of Karnataka and Others, 1996, Writ Appeal No. 2074/1994, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1996(7)].

<sup>159</sup> Venkataswamappa v Special Deputy Commissioner (Revenue), 1997, Civil Appeal Nos. 1006 to 1025/1990, *The High Court of Karnataka/Karnataka Law Journal*, [1997(7)].

<sup>160</sup> B. Krishnappa & Another v State of Karnataka and Others, 1994, Writ Petition Nos. 43962 & 43963, The High Court of Karnataka/Karnataka Law Journal, [1994(2)], pp. 681-682.

<sup>161</sup>Article 14- Right to Equality-“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India” & Article 21- “No person shall be deprived of his life or personal liberty except according to procedure established by law” (The Constitution of India).

<sup>162</sup> Article 19(1)(g)-Right to Freedom- “to practise any profession, or to carry on any occupation, trade or business” (ibid)

<sup>163</sup> Article 21- “No person shall be deprived of his life or personal liberty except according to procedure established by law” (ibid).

<sup>164</sup>Article 38.“[(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”

2[(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]”

<sup>165</sup>Article 39. “The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men

and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

1[(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]” (ibid).

<sup>166</sup> According to Section 3(f) land is acquired for the ‘public purpose’. The public purpose includes housing the poor, landless, or displaced persons, etc., and where the land is needed by a building co-operative society or corporation for the construction of houses.

<sup>167</sup>Subramani M. v Union of India and Others, Writ Petition Nos. 35837/1994; 11211, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1995(6)], p. 486.

<sup>168</sup>Ibid: p. 486.

<sup>169</sup>Ibid: p. 486.

<sup>170</sup>Ibid: p. 487.

<sup>171</sup> Rs. 94,33,572/-

<sup>172</sup>Subramani M. v Union of India and Others, 1995, p. 488.

<sup>173</sup>Ibid: p. 489.

<sup>174</sup>Ibid: p. 489.

<sup>175</sup>Ibid: p. 490.

<sup>176</sup>Ibid: p. 490.

<sup>177</sup>Ibid: p. 493.

<sup>178</sup>Ibid: pp. 492-496.

<sup>179</sup>Ibid: pp. 507-510.

<sup>180</sup>Ibid: p. 511.

<sup>181</sup>Ibid: pp. 511-512.

<sup>182</sup>Ibid: pp. 512-519.

<sup>183</sup>Ibid: p. 521.

<sup>184</sup>Ibid: p. 522.

<sup>185</sup>Ibid: p. 536.

<sup>186</sup>P. AchiahChetty and other v State of Mysore (1962), Writ Petitions Nos. 1076, 1083 and 1087 of 1959, etc., *The High Court of Mysore/The All India Reporter*, [Vol. 49], p. 220

<sup>187</sup>Ibid: p. 222.

<sup>188</sup>Ibid: p. 222.

<sup>189</sup>Ibid: p. 218.

<sup>190</sup> “In the matter of compulsory acquisitions of lands for the purposes of the Improvement Act, the provisions of the Improvement Act are to apply only as modified by the aforesaid provisions of the Improvement Act. That the necessity for and the importance of those modifications flow directly from the very purposes of the Improvement Act. Under S. 52 in the event of repugnancy between the provisions of the Improvement Act and the provisions of any other Act in force in Mysore, the latter shall be void to the extent of the repugnancy. There is repugnancy between the provisions of Secs. 4 to 6 of the Acquisition Act and the provisions of Secs. 14 to 18 and 27 of the Improvement Act, because it is perfectly obvious that the two sets of provisions cannot stand together, and an obedience of only Secs. 4 to 6 of the Acquisition Act necessarily involves a disobedience of the provisions of Sec. 14 to 18 and 27 of the Improvement Act. The procedure prescribed in Secs. 14 to 18 of the Improvement Act are not only directory but mandatory and non-compliance with the said procedure will invalidate the acquisition proceedings” (ibid: p. 218).

<sup>191</sup>Krishnamurthy v State of Mysore & Others, 1970, Writ Petition No. 2694/1967, *The High Court of Mysore/Mysore Law Journal*, [1970(1)].

<sup>192</sup> Reckitt & Colman of India Ltd. v Bangalore Development Authority & Others, Writ Petition No. 18236/81, *The High Court of Karnataka/Karnataka Law Journal*, [1983(2)].

<sup>193</sup> This is a petition against land acquisition proceedings which was initiated by BDA for residential development known as BTM scheme.

<sup>194</sup>Krishnamurthy v State of Mysore & Others, 1970, Writ Petition No. 2694/1967, *The High Court of Mysore/Mysore Law Journal*, [1970(1)].

<sup>195</sup> D.R. Kodandarama Reddy v Deputy Commissioner, Bangalore and Others, 1995, Writ Petition No. 4389/1988, *The High Court of Karnataka/Karnataka Law Journal*, [1995(1)].

<sup>196</sup> Patel Munireddy v Deputy Commissioner, Bangalore & Others, 1976, Writ Petition No. 6545/1975, *The High Court of Mysore/Mysore Law Journal*, [1976(2)].

<sup>197</sup> ArchakRangachar v Deputy Commissioner, Bangalore District & others, 1989, Writ Petition Nos. 17476 and 18670/1984, *The High Court of Karnataka/Karnataka Law Journal*, [1989(2)].

<sup>198</sup>Bhavasara Kshatriya Samaj v State of Karnataka & Others, 1985, Writ Petition No. 8241/80, *The High Court of Karnataka/Karnataka Law Journal*, [1985(2)].

<sup>199</sup> M/s. ShakthivelnagaraGudisaluNivasigalaKshemabhivrudhiSangha, Bangalore, 1997, Writ Petition No. 5681/1991, *The High Court of Karnataka/Karnataka Law Journal*, [1997(2)].

<sup>200</sup> B. Munegowda v State of Karnataka & others (1990), Writ Petition No. 9686/1985, *The High Court of Karnataka/Karnataka Law Journal*, [1990(2)], p. 384.

<sup>201</sup> The Agricultural Produce Market Committee, Yeshwanthpur, Bangalore v State of Karnataka and Others, 1997, Writ Petition No. 29569/1992, *The High Court of Karnataka/Karnataka Law Journal*, [1997(4)].

<sup>202</sup> Vishwabharathi House Building Co-operative Society Ltd. v State of Karnataka and Others (1991), Writ Petition No. 11973/1987, *The High Court of Karnataka/Karnataka Law Journal*, [1991(2)], p. 390.

<sup>203</sup> ArchakRangachar v Deputy Commissioner, Bangalore District & others, 1989, Writ Petition Nos. 17476 and 18670/1984, *The High Court of Karnataka/Karnataka Law Journal*, [1989(2)].

<sup>204</sup> M/s. ShakthivelnagaraGudisaluNivasigalaKshemabhivrudhiSangha, Bangalore, 1997, Writ Petition No. 5681/1991, *The High Court of Karnataka/Karnataka Law Journal*, [1997(2)].

<sup>205</sup> Section 20 of the Urban Land (Ceiling and Regulation) Act 1976 gives powers to the concerned authority to exempt the excess ownership of land, under certain circumstances. It is as following- “Power to exempt.-(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter,-

- (a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;
- (b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is satisfied that only of the conditions subject to which any exemption under clause (a) or clause (b) of subsection (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.” (As quoted in

the case *M/S Revajeethu Builders & Developers v S. Vasudeva& Others*, 1991, Writ Appeal. Nos. 2071 to 2074, 2059 to 2062, 1928, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1991(1)], pp. 535-36).

<sup>206</sup> Section 35 endows powers to the State Government to issue orders and directions to the competent authority. It is as follows- “The State Government may issue such orders and directions of a general character as it may consider necessary in respect of any matter relating to the powers and duties of the Competent Authority and thereupon the Competent Authority shall give effect to such orders and directions” (As quoted in the case *M/S Revajeethu Builders & Developers v S. Vasudeva& Others*, p. 536).

<sup>207</sup> Section 36 is about the powers of the Central Government to give directions to the State Government. It is as follows- “(1) The central Government may give such directions to any State Government as may appear to the Central Government to be necessary for carrying into execution in the State any of the provisions of this Act or of any rule made thereunder. (2) The Central Government may require any State Government to furnish such returns, statistics, accounts and other information, as may be deemed necessary” (As quoted in the case *M/S Revajeethu Builders & Developers v S. Vasudeva& Others*, p. 536).

<sup>208</sup> The judgment deliberates and elaborates on the issue. The distinction is made between “hardship” and “undue hardship”. According to the court, the Section 20 of the act, “the satisfaction of Government must be with reference to the undue hardship that may be cause to the person who holds, vacant land in excess of the ceiling limit subject to the proviso which mandates that an order granting exemption under clause (b) of sub-section (1) of Section 20 of the Act shall record the reasons in writing for exempting the excess land on grounds of undue hardship” (p. 537). “The expression ‘undue hardship’ was the point which fell for consideration of the learned Judges. It was held that ‘undue hardship was not mere hardship. Undue hardship definitely cannot be hardship ordinarily so expressed. Any difficulty is hardship as a standard English Dictionary would indicate the meaning. Undue hardship, therefore, must be a hardship which is out of the ordinary or extraordinary. We must not lose sight of the fact that under the scheme of the Act, person holding land in excess of the ceiling limit will be deprived of it and a fixed compensation subject to a maximum limit alone is liable to be paid. Any loss of property, particularly immovable property, in itself is a hardship. Therefore, the expression ‘undue hardship’ has special significance. For instance even under other laws dealing with compulsory acquisition of land for public purposes, legislature has always taken notice of the hardship caused to the person who has been deprived of the land for a public purpose. While he may be adequately compensated in accordance with the provisions of the law under which the acquisition is made, the provision... is always or invariably made for payment of solatium in addition to the value of land acquired. The payment of solatium is to offer solace to the person who has suffered hardship by losing his land which in the context of our country means displacement in many cases of a person from the land forcing him to shift to another land or another place. Therefore, undue hardship must necessarily be more than the hardship cause by mere deprivation of property... what constitutes undue hardship[?]... the learned Judges of the Gujarat High Court has clearly state that it is not possible to exhaustively enumerate what would be undue hardship which would cover all cases. Undue hardship would certainly vary from case to case... The financial liability could and would arise for various causes. But such liability, we have no doubt, to constitute under hardship should be a liability acquired before the Act came into force. It certainly cannot be undue hardship, if the liability or the undue hardship is created after the coming into force of the Act. It may not be necessary to pin point undue hardship related to heavy mortgage in favour of individuals or banks as the application of the provision of the Act in such cases would affect not only the mortgagor but also the mortgagee. The mortgagee’s security would stand extinguished if the excess land which forms part of the subject matter of the mortgage vests in the Government in terms of Section 10 of the Act. There may be several other instances which do constitute undue hardship. For instance, educational institutions run by individuals or Association of person having vacant land in excess of the ceiling limit would be hard pressed to provide adequate play-grounds for such educational institutions or provide for vacant land for development of the institution by increasing intake of the students or opening new disciplines to be taught. Similarly, an industry which has to diversify in order to survive economically must have at its disposal the land which otherwise would be acquired by the Government as excess land under the provisions of the Act. Yet another instance is where even an ordinary private individual not being an industry or educational institution or a trust administering charitable institutions may have excess land hit by the ceiling provisions of the Act and have a temple or a family burial ground or a memorial for the deceased members of the family which is sacred to him and him alone and who on that account may plead undue hardship and claim exemption that the ground haloed and dedicated to the memory of his ancestors in the form of graves, mausoleums or memorials shall not be desecrated. In appropriate cases, it is for the Government to satisfy itself whether such claims should be entertained and the exemption granted” (ibid: pp. 537-538).

<sup>209</sup> Ibid: p.537.

<sup>210</sup> *The Bangalore City Municipality and Another v K. Rangappa*, 1953, *Mysore High Court/ The Mysore Law Journal Reports [Vol. XXXIV]*.

<sup>211</sup> Ibid: pp. 73-74

<sup>212</sup> *Vishwabharathi House Building Co-operative Society Ltd. v Bangalore Development Authority*, Writ Petition Nos. 8719 & 8720/1989, *The High Court of Karnataka/Karnataka Law Journal*, [1989(3)].

<sup>213</sup> *Narayana Reddy & Another v State of Karnataka and Others*, Writ Petition Nos. 17775 & 17776/1986, 21417/1986, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1991(3)], pp.545-602.

<sup>214</sup> Ibid: p. 549.

<sup>215</sup> Ibid: p. 547.

<sup>216</sup> “In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.” (Constitution of India, [http://lawmin.nic.in/legislative/Art1-242%20\(1-88\).doc](http://lawmin.nic.in/legislative/Art1-242%20(1-88).doc), p. 6, accessed in January, 2009)

<sup>217</sup> *Narayana Reddy & Another v State of Karnataka and Others*, 1991, pp. 550-551.

<sup>218</sup> Ibid: p. 555.

<sup>219</sup>Ibid: p. 559.

<sup>220</sup>Ibid: p. 560.

<sup>221</sup>Ibid: pp. 560-61.

<sup>222</sup>Ibid: p. 561.

<sup>223</sup>Ibid: p. 567.

<sup>224</sup>Vyalikaval Co-operative Society, H.M.T. Employees' Co-op. Society, Bank Officers' Co-op. Society, REMCO Employees' House Building Co-op. Society, Amarajyothi Co-op. Society, Bangalore Chickpet House Building Co-op. Society, and Jayanagar House Building Co-op. Society were the HBCS which were in accused of irregularities.

<sup>225</sup>Narayana Reddy & Another v State of Karnataka and Others, 1991, p. 583.

<sup>226</sup>Ibid: p. 585.

<sup>227</sup>Ibid: p. 594.

<sup>228</sup>Ibid: p. 600.

<sup>229</sup>Ibid: pp. 595-596.

<sup>230</sup>“Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” ([http://lawmin.nic.in/legislative/Art1-242%20\(1-88\).doc](http://lawmin.nic.in/legislative/Art1-242%20(1-88).doc), p. 6 accessed in January, 2009).

<sup>231</sup>Narayana Reddy & Another v State of Karnataka and Others, 1991, p. 599.

<sup>232</sup>H.M.T. House Building Co-operative Society Limited, Bangalore v Syed Khader and Others, Civil Appeal Nos. 3011 to 3019/1995, *The Supreme Court of India/Karnataka Law Journal*, [1996(6)], pp. 322-345.

<sup>233</sup>Mrs. BehrozeRamyarBatha and Others v The Special Land Acquisition Officer, Bangalore and Others, Writ Appeal Nos. 1094 & 1095/1987, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1992(1)], pp. 589-604.

<sup>234</sup>Ibid: p. 596.

<sup>235</sup>Ibid: p. 599.

<sup>236</sup>Kanaka GruhaNirmanaSahakaraSangha, Avalahalli, Bangalore South Taluk v Kota Srinivasa Murthy (since deceased) by L.Rs. and Others, Writ Appeal Nos. 75 & 95/1996, etc., *The High Court of Karnataka/Karnataka Law Journal*, [1998(1)], pp. 227-246.

<sup>237</sup>“No person shall be deprived of his property save by authority of law” (Constitution of India, [http://lawmin.nic.in/legislative/Art243-395%20\(89-184pp\).doc](http://lawmin.nic.in/legislative/Art243-395%20(89-184pp).doc), p. 124).

<sup>238</sup>“**Certain principles of policy to be followed by the State.**—The State shall, in particular, direct its policy towards securing— ... that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;” (Constitution of India, [http://lawmin.nic.in/legislative/Art1-242%20\(1-88\).doc](http://lawmin.nic.in/legislative/Art1-242%20(1-88).doc), p.19accessed in January, 2009).

<sup>239</sup>Section 3(f) of L.A. Act.

<sup>240</sup>Kanaka GruhaNirmanaSahakaraSangha, Avalahalli, Bangalore South Taluk v Kota Srinivasa Murthy, 1996, p. 239.

<sup>241</sup>Ibid: p. 242.

<sup>242</sup>[http://www.karnataka.gov.in/dpal/pdf\\_files%5CBANGALORE%20DEVELOPMENT%20AUTHORITY%20ACT,%201976%20\(BM\).pdf](http://www.karnataka.gov.in/dpal/pdf_files%5CBANGALORE%20DEVELOPMENT%20AUTHORITY%20ACT,%201976%20(BM).pdf), p. 109 (accessed on 21<sup>st</sup> May, 2009).

<sup>243</sup>Government of Mysore v. MavalliThimmaiah., 1951, Criminal Appeal No. 1 of 1950-51, D/- 9-10-1950, *Mysore High Court/The All India Reporter, 1951 [Vol. 38]*, p. 51.

<sup>244</sup>M. P. Narasimha Murthy v State of Mysore, 1967, Writ Petitions Nos. 1575/64 etc., *The High Court of Mysore/Mysore Law Journal, 1967 (1)*.

<sup>245</sup>B. Changaiah v State of Mysore & Others, 1970, Writ Petition No. 1756/1967, *The High Court of Mysore/Mysore Law Journal, [1970(2)]*.

<sup>246</sup>M. Manicklal v. State of Mysore 1967(2), Writ Petition No. 674/65, *The High Court of Mysore/Mysore Law Journal, [1967 (2)]*,p. 246.

<sup>247</sup>T. C. Srikantappa& Others v CITB & Another, 1969,Writ Petition No. 3776, *The High Court of Mysore/Mysore Law Journal, [1969(1)]*.

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<sup>248</sup>Aildas G & Others v Chairman, CITB & Others, 1975, Writ Petition No. 1394/1974, *The High Court of Mysore/Mysore Law Journal*, [1975(2)].

<sup>249</sup>Section 32 enables private owners of land to assist the development of the City of Bangalore in an orderly fashion by obtaining the permission of the authority to form the layout.

<sup>250</sup>Vishwabharathi House Building Co-operative Society Ltd. v. B.D.A., 1989, Writ Petition Nos. 15995 & 15996/1984, *The High Court of Karnataka/Karnataka Law Journal*, [1989(3)], p. 436.

<sup>251</sup>Ibid: p. 436.

<sup>252</sup>Bangalore Development Authority v VishwaBharathi House Building Cooperative Society Ltd., 1992, Writ Appeal No. 1844/1990, *The High Court of Karnataka/Karnataka Law Journal*, [1992(1)].

<sup>253</sup>VishwaBharathi House Building Co-operative Society Ltd. v. B.D.A., 1990, Writ Petition No. 7910/1986, *The High Court of Karnataka/Karnataka Law Journal*, [1990(1)], p. 396.

<sup>254</sup>THE KARNATAKA REGULARISATION OF UNAUTHORISED CONSTRUCTION IN URBAN AREAS ACT, 1991, [http://www.karnataka.gov.in/dpal/pdf\\_files%5CREGULARISATION%20OF%20UN-AUTHORISED%20CONSTRUCTIONS.pdf](http://www.karnataka.gov.in/dpal/pdf_files%5CREGULARISATION%20OF%20UN-AUTHORISED%20CONSTRUCTIONS.pdf), p. 1 (accessed on 9<sup>th</sup> February, 2009).

<sup>255</sup>Munimasthaiah v State of Karnataka and Others, 1996, Writ Petition No. 36804/1994, *The High Court of Karnataka/Karnataka Law Journal*, [1996(1)], pp. 59-61. For more detail see Appendix- 3.

<sup>256</sup>K.C. Raju Reddy v The Commissioner, Bangalore Development Authority, 1995, Writ Petition No. 4822 to 4827/1993, *The High Court of Karnataka/Karnataka Law Journal*, [1995(4)], p. 483.

<sup>257</sup>Ibid: p. 487.

<sup>258</sup>Ibid: p. 487.

<sup>259</sup>Ibid: p. 488.

<sup>260</sup>Ibid: p. 488.

<sup>261</sup>Ibid: p. 488.

<sup>262</sup>Ibid: p. 489.

<sup>263</sup>Ibid: p. 489.

<sup>264</sup>Ibid: p. 489.

<sup>265</sup>Ibid: pp. 489-490.

<sup>266</sup>Ibid: p. 490.

<sup>267</sup>Ibid: pp. 490-91.

<sup>268</sup>Ibid: p. 491.

<sup>269</sup>Ibid: p. 491.

<sup>270</sup>Ibid: p. 491.

<sup>271</sup>Ibid: p. 491.

<sup>272</sup>Fathimabi and Others v State of Karnataka and Others, 1993, Writ Petition No. 23082/1992, *The High Court of Karnataka/Karnataka Law Journal*, [1993(3)].

<sup>273</sup>M. Ramachandra v Deputy Commissioner (Land Acquisition), Bangalore Development Authority, Bangalore and Others, 1998, Writ Petition No. 28292/1997, *The High Court of Karnataka/Karnataka Law Journal*, [1998(4)].

<sup>274</sup>K.C. Raju Reddy v The Commissioner, Bangalore Development Authority, 1995, pp. 488-492.

<sup>275</sup>Interview of Jayaram on 11<sup>th</sup> December, 2002, at Bilekahalli.

<sup>276</sup>M/s Revajeethu Builders & Developers & Others v S. Vasudeva & Others, pp. 537-538.