Reserved on : 23.08.2024
Pronounced on : 25.10.2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.21760 OF 2023 (GM – RES)

BETWEEN:

MR. B. SATHYANARAYANACHAR
S/O LATE RAGHAVENDRACHAR
AGED ABOUT 91 YEARS
NO.58, T.P.VENUGOPAL LAYOUT
ANANDANAGARA
HEBBAL POST
BENGALURU – 560 024.

... PETITIONER

(BY SRI G.KRISHNAMURTHY, SR.COUNSEL A/W
SRI MADHUSUDHANA G., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
REPRESENTED BY ITS
CHIEF SECRETARY

DEPARTMENT OF URBAN DEVELOPMENT
VIDHANA SOUDHA
DR.B.R.AMBEDKAR VEEDHI
BENGALURU – 560 001.

2 . BANGALORE DEVELOPMENT AUTHORITY
REPRESENTED BY ITS COMMISSIONER
KUMARA PARK WEST
SANKEY ROAD
BENGALURU – 560 001.

3 . THE SPECIAL LAND ACQUISITION OFFICER
BANGALORE DEVELOPMENT AUTHORITY
KUMARA PARK WEST
SANKEY ROAD
BENGALURU – 560 001.

4 . JUSTICE A.V.CHANDRASHEKAR COMMITTEE FOR
DR.SHIVRAMA KARANTH LAYOUT
REPRESENTED BY ITS SECRETARY
BANGALORE DEVELOPMENT AUTHORITY
PREMISES 5TH MAIN ROAD
KUMARAPARK WEST
GUTTAHALLI
BENGALURU
KARNATAKA – 560 020.

... RESPONDENTS

(BY SMT.ANUKANKSHA KALKERI, HCGP FOR R-1;
SRI SHVAPRASAD M.SHANTANAGOUDAR,
ADVOCATE FOR R-2 TO R-4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO a)ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT OR DIRECTION TO QUASH AND SET ASIDE THE IMPUGNED PROCEEDINGS PASSED OF

THE RESPONDENT NO.4 DATED 08/08/2023, BEARING NO.JCC.NO./112/2023-24 (ANNEXURE-A) AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.08.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, ***M. NAGAPRASANNA, J.,*** DELIVERED THE FOLLOWING:-

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

(PER: **HON'BLE MR JUSTICE M.NAGAPRASANNA**)

The petitioner is before this Court seeking a writ in the nature of certiorari to quash proceedings of Justice A.V. Chandrashekar Committee for Dr. Shivarama Karanth Layout dated 08-08-2023 and the final Notification dated 30-10-2018 issued by the State insofar as it concerns the land of the petitioner for formation of Dr. K.Shivaram Karanth Layout or in the alternative, sought for a mandamus directing the 2nd respondent/Bangalore Development Authority to assess and grant compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013 (hereinafter referred to as the 'the Act' for short).

2. Facts, in brief, germane are as follows:-

The petitioner claims to be the absolute owner of land bearing Sy.No.11/2 (New No.11/8) of Kempanahalli Village, Yelahanka Hobli, Bangalore North Taluk to an extent of 1 acre (hereinafter referred to as the 'subject property'). It is the claim of the petitioner that he has acquired the subject property through a registered sale deed dated 13-05-2005 and is said to be in peaceful possession of the same since then. The petitioner claims to be a horticulturist and floriculturist by profession. After purchase of the said land, the petitioner is said to be running a nursery in the name of 'Sri Govardhana Nursery'. The averment in the petition is that he is, among other things, growing rose flowers and all other fruit bearing trees and also ornamental plants in the subject property. To buttress the said submission, the petitioner has placed on record certain RTCs for the years 2009-10 and 2011-12 reflecting the name of the petitioner and certain crops that are grown then.

3. The 1st respondent/State issues a preliminary notification under Section 17(1) and (3) of the Bangalore Development Authority Act, 1976 (hereinafter referred to as 'the BDA Act' for short) seeking to form a residential layout called "Dr. Shivarama Karanth Layout" (hereinafter referred to as 'Layout' for short). The preliminary notification contained the land of the petitioner. The petitioner aggrieved by the preliminary notification knocks at the doors of this Court in Writ Petition Nos. 55863-55865 of 2014. This Court, in terms of its order dated 16-12-2014, along with connected cases, declared that the preliminary notification with respect to the land of the petitioner had lapsed. After the order passed by this Court in the aforesaid petitions, the Deputy Commissioner, Land Acquisition attached to the BDA conducts a pre-feasibility study as directed by this Court for the proposed layout. In the meantime, the BDA challenges the order passed in the writ petitions noted *supra* in Writ Appeal No. 5098 of 2016. The said writ appeal comes to be dismissed in terms of the order of the Division Bench dated 28-04-2017. The order of the learned single Judge was upheld by the Division Bench.

4. The matter was taken to the Apex Court. The Apex Court, in terms of its order dated 03-08-2018 passed in Civil Appeal Nos. 7661-63 of 2018 and connected cases set aside the orders passed by the learned single Judge and the Division Bench of this Court and upholds the preliminary notification dated 30-12-2008 and directs the respondent/BDA to publish the final notification in respect of the layout. The respondent/BDA pursuant to the order of the Apex Court notified the final notification of acquisition of lands for the purpose of formation of layout on 30-10-2018. This final notification included the lands of the petitioner.

5. Several aggrieved persons, venting out various grievances by issuance of the final notification, preferred miscellaneous applications before the Apex Court, as the Apex Court had directed the final notification to be issued. The Apex Court then directed constitution of a Committee to go into the grievance of varied nature of number of applicants before the Apex Court. Accordingly, the 4th respondent Committee comes to be constituted. The Committee is headed by the former Judge of this Court Justice A.V. Chandrashekar and two members as appointed by the Apex Court.

The petitioner submitted a representation in the form of objections to the acquisition of his land on the ground that the land of the petitioner was a nursery and was exempted from acquisition in terms of Government order dated 1-01-1987 as several such lands which were subject matter of acquisition from time to time had been dropped on the score that they were lands utilized for nursery.

6. Based upon the representations so made by various people, two of the nurseries come to be exempted from acquisition or dropped from acquisition. The dropping of acquisition of those two lands which were held to be nurseries was placed before the Apex Court. The Apex Court records the said report of the Committee and closes the acquisition insofar as those lands are concerned. The petitioner again submitted a representation on 10-07-2023 requesting to consider deletion of his land from acquisition. The Apex Court, in the interregnum, remitted all the matters that were pending before it, which were based on several grounds, back to the hands of this Court by directing constitution of a special Bench. It is, therefore, the writ petitions are placed

before this Bench as it concerns acquisition for formation of the layout.

7. Heard Sri G.Krishna Murthy, learned senior counsel appearing for the petitioner, Mrs. Anukanksha Kalkeri, learned High Court Government appearing for respondent No.1 and Sri Shivaprasad Shantanagoudar, learned counsel appearing for respondents 2 to 4.

SUBMISSIONS:

Petitioner:

8. The learned senior counsel Sri G.Krishna Murthy takes this Court through the documents appended to the petition to demonstrate that the petitioner is running a nursery right from the day of his possession of the land by purchase through sale deed from the year 2005. He would place heavy reliance on Government order dated 01-01-1987 which exempted nurseries from acquisition wherever the Government or its authorities wanted to acquire the lands with a condition that those lands so exempted from

acquisition should continue to be used as nurseries. Immediately on issuance of preliminary notification the petitioner submitted a representation, approached this Court and finally pursuant to the direction of the Apex Court the petitioner is before this Court seeking deletion of his land from acquisition. To buttress the submissions, the petitioner has produced certain photographs depicting that the land is being used as a nursery for ages and should be exempted from acquisition following the Government order dated 01-01-1987.

Bangalore Development Authority:

9. Per contra, the learned counsel Sri Shivaprasad Shantanagoudar representing respondents 2 to 4 would vehemently refute the submissions to contend that these nurseries have come up overnight. As on the date of preliminary notification it was only vacant land and it was not used as a nursery. The moment final notification was directed to be issued by the Apex Court and pleas failed to get the nursery exempted, boards are put up and plants are stacked in the said land. He would submit that the petitioner

cannot claim parity with two of the nurseries that the Committee exempted, as the Committee rendered elaborate reasons to exempt only those two nurseries. That situation or circumstance is not present in the land of the petitioner for him to seek exemption from acquisition on the ground that it is a nursery.

10. We have given our anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

11. The afore-narrated facts, though not in dispute would require reiteration as they are hereinabove succinctly stated. The petitioner comes in possession of the land pursuant to his purchase, in the year 2005. This is not in dispute. The 1st respondent/State issues a preliminary notification seeking to acquire lands for the purpose of formation of the layout. The notification is issued on 30-12-2008. Objections were called and objections were filed to the preliminary notification by the petitioner. The objections, so filed by the petitioner to the preliminary notification, read as follows:

"Date: 11-02-2009

From:

B.Sathyanarayanachar,
S/o late Raghavendrachar,
Kempanahalli Village,
Yelahanka Hobli,
Bangalore North (Additional) Taluk,
Bangalore.

To
Hon'ble Special Land Acquisition Officer,
Bangalore Development Authority,
Bangalore.

Sir,

Sub: Deletion of my "Govardhana Nursery Farm" from Dr. K.Shivaramakarantha Lay-out project – reg.

Ref: 1. Your office Notification No.BDA/COMMR/DC(LA) /SLAO/AS/PR283/2008

2.Government order No.HUD/MNX/86/Bangalore Dated 01-01-1987.

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With reference to the above subject, your organization Bangalore Development Authority vide ref (1) has issued notification wherein my property situated at Sy.no.11/2, Kempanahalli Village, Yelahanka Hobli, Bangalore North (Additional) Taluk, Bangalore having an extent of 1 Acre is included in the Land Acquisition which is very surprising.

Froom the past 04 years I am running "Govardhana Nursery Farm" in the said premises and I have availed irrigation pumpset electrical connection vide No.LT-4/YIP/1669, dated: 04-05-2005. As per the Government order No.HUD/MNX/86/Bangalore, dated:01-01-1987, I am entitled for maintaining the Nursery Farm without any change in land use and there is provision to delete such nurseries from Land Acquisition. The lines of the Government order are reproduced as under:

"Government have further examined the request and hereby order that the lands used for nurseries be exempt from land acquisition for its development scheme by the Bangalore Development Authority. If the owners

of these nurseries discontinue to use those lads for nurseries, the lands will be acquired by the Bangalore Development Authority.

This order shall come into force with immediate effect and until further order"

In this background, I wish to continue to use my land for Nursery purpose only. I wish to give an undertaking that, if I wish to forego nursery business, I would hand over the nursery land to BDA without any objection.

Therefore, you are requested to delete Sy.No.11/2, Kempanahalli Village, Yelahanka Hobli, Bangalore North (Additional) Taluk, Bangalore to an extent of 1 Acre. I am enclosing the certificate issued by the District Administrator regarding the growth of Coconut trees. Teak wood trees, Banana Plantation, Rose Garden in the form of Rights Tenancy and Crops (RTC) with this application.

Thanking you,

With regards,
Sd/-"

(Emphasis added)

The petitioner relies on the Government order dated 01-01-1987 which exempts a nursery farm from any land acquisition on the condition, that owner of the land would not change nature of the land. The objection goes unheeded. He approaches this Court, along with others in Writ Petition Nos. 55863-55865 of 2014. This comes to be disposed of on the ground that acquisition has lapsed. The order passed by the learned single Judge reads as follows:

"…. …. ….

4. The respondents have filed the objection statement. In the objection statement it is contended that since there were large extents of lands which had been notified, the respondents require sometime to go through the process and thereafter complete the acquisition proceedings.

5. In that background, I do not propose to refer to the contentions in detail for the reason that in respect of the very same notification, this Court had made a detailed consideration in W.P.No.9640 of 2014 and connected petitions on 26-11-2014. During the said consideration, this Court had taken note of the contention put forth on behalf of the respondents with regard to the delay that has occasioned in the process as there were certain deletions at the initial stages and when subsequent deletions were made by the Land Acquisition Officer, the Government has initiated enquiries in that regard and therefore there was delay. This Court having not accepted such contention and further relying on a decision of this Court had arrived at the conclusion that the delay as explained by the respondents is not acceptable and therefore, the notification insofar as the lands of the petitioners therein was held as lapsed. Since in the instant case also the position is not different from the said cases, a similar consideration requires to be made.

6. Accordingly, the notification dated 30-12-2008 assailed in these petitions is held as having lapsed as against the lands of the petitioners referred to in these petitions which were included in the said notification.

In terms of the above, these petitions are allowed to that extent.

In view of the disposal of the main petitions, I.A.No.2/ 2014 for dispensation also stands disposed of."

(Emphasis supplied)

In the meantime, the BDA undertook the process of getting the feasibility report and notices that certain nurseries that would come in the lands notified for acquisition. The list is as follows:

"2.2.5 Filtration Process – Stage 5:

The Stage-5 of the filtration process eliminates those survey numbers which are used as nurseries:

Tale 6 – Nursery

Sl No.	Village Name	No. of Sy.No.	Land Area	
			Acres	Guntas
1.	Somashettihalli	1	6	O
2.	Lakshmipura	10	14	1
3.	Ganigerahalli	4	16	34
4.	Byalakere	3	12	6
5.	Kalathammanahalli	30	40	7
6.	Gunlagrahara	6	14	23
7.	Kempapura	1	9	28
8.	Mediagrahara	21	83	21
9.	Avalahalli	0	0	0
10.	Vaderahalli	1	7	17
11	Ramagondanahalli	0	0	0
12.	Kempanahalli	4	4	32
13.	Veerasagara	1	6	26
14.	Doddabettahalli	1	2	4
15.	Harohalli	0	0	0
16.	Shyamarajapura	1	6	26
17.	Jarakabande Kaval	0	0	0
Total Land Area			174	25

Therefore, a total of 174 acres and 25 guntas or 174.62 acres have been eliminated in the Stage-5 filtration process. Details of individual survey numbers spread across each of these villages is covered in Annexure-5 of this report."

In Kempanahalli, 4 survey numbers were depicted to be running nurseries. Survey number of the petitioner did find a place.

12. A writ appeal in W.A.No.5098 of 2016 comes to be preferred by the BDA assailing the order passed by the learned single Judge *supra*. The writ appeal comes to be dismissed by the following order:

> "…. …. ….
>
> **3. The writ petitioner assailed a notification dated December 30, 2008, proposing to acquire the land for formation of a layout. The preliminary notification was issue on December 30, 2008. Thereafter, neither the final notification was issued nor possession was taken. Consequently, the Hon'ble single Judge held that as within the reasonable time, no further action was taken, the proposal for acquisition got lapsed.**
>
> 4. We do not find any merit in the appeal.
>
> 5. The application for condonation of delay in filing the appeal is dismissed. Consequently, the appeal is, also dismissed."

(Emphasis supplied)

BDA challenges both the orders in several cases before the Apex Court. The Apex Court in ***BANGALORE DEVELOPMENT***

AUTHORITY V. STATE OF KARNATAKA[1](Civil Appeal Nos.7661-63 of 2018 and connected cases decided on 03-08-2018) sets aside both the orders of this Court and issues several directions holding:

> **"15.** First, we take up the question as to whether the High Court was legally justified on merits in quashing the preliminary notification issued under Section 17. The Constitution Bench of this Court in *Offshore Holdings (P) Ltd.* [*Offshore Holdings (P) Ltd.* v. *BDA*, (2011) 3 SCC 139: (2011) 1 SCC (Civ) 662] has decided the question affirmatively. The BDA has issued preliminary notification for acquisition of the lands. Non-finalisation of the acquisition proceedings resulted in the filing of the writ petitions before the High Court of Karnataka by the owners in the year 1987. Certain lands were denotified and the permission which was granted earlier was withdrawn. The denotification of the land was also withdrawn. It was urged that the time-frame which was prescribed under Sections 6 and 11-A of the LA Act would form an integral part of the BDA Act. This Court considered the scheme under the BDA Act and has observed thus: (SCC pp. 158-59, 162, 164-66 & 192, paras 33, 35, 50, 55, 123, 124 & 125)
>
> > "*33*. The provisions of the Land Acquisition Act, which provide for time-frame for compliance and the consequences of default thereof, are not applicable to acquisition under the BDA Act. They are Sections 6 and 11-A of the Land Acquisition Act. As per Section 11-A, if the award is not made within a period of two years from the date of declaration under Section 6, the acquisition proceedings will lapse. Similarly, where declaration under Section 6 of this Act is not issued within three years from the date of publication of notification under Section 4 of the Land Acquisition Act [such notification being issued after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of Central Act 68 of 1984] or within one year where Section 4 notification was published subsequent to the passing of Central Act 68 of 1984, no such declaration under Section 6

[1] **(2018)9 SCC 122**

of the Land Acquisition Act can be issued in any of these cases.

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35. Be that as it may, it is clear that the BDA Act is a self-contained code which provides for all the situations that may arise in planned development of an area including acquisition of land for that purpose. The scheme of the Act does not admit any necessity for reading the provisions of Sections 6 and 11-A of the Land Acquisition Act, as part and parcel of the BDA Act for attainment of its object. The primary object of the State Act is to carry out planned development and acquisition is a mere incident of such planned development. The provisions of the Land Acquisition Act, where the land is to be acquired for a specific public purpose and acquisition is the sum and substance of that Act, all matters in relation to the acquisition of land will be regulated by the provisions of that Act. The State Act has provided its own scheme and provisions for acquisition of land.

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50. Applying the above principle to the facts of the case in hand, it will be clear that the provisions relating to acquisition like passing of an award, payment of compensation and the legal remedies available under the Central Act would have to be applied to the acquisitions under the State Act but the bar contained in Sections 6 and 11-A of the Central Act cannot be made an integral part of the State Act as the State Act itself has provided specific time-frames under its various provisions as well as consequences of default thereto. The scheme, thus, does not admit such incorporation.

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55. The principle stated in *Munithimmaiah case* [*Munithimmaiah* v. *State of Karnataka*, (2002) 4 SCC 326] that the BDA Act is a self-contained code, was referred with approval by a three-Judge Bench of this Court in *Bondu Ramaswamy* [*Bondu Ramaswamy* v. *BDA*, (2010) 7 SCC 129 : (2010) 3 SCC (Civ) 1] . The Court, inter alia, specifically discussed and answered the questions whether the provisions of Section 6 of the Land Acquisition Act will apply to the acquisition under the BDA Act and if the final declaration under Section 19(1) is not issued within one year of the publication of the notification under Section 17(1) of the BDA Act, whether such final declaration will be invalid and held as under: (*Bondu Ramaswamy case* [*Bondu*

Ramaswamy v. *BDA*, (2010) 7 SCC 129 : (2010) 3 SCC (Civ) 1] , SCC p. 170, paras 79-81)

'*79*. This question arises from the contention raised by one of the appellants that the provisions of Section 6 of the Land Acquisition Act, 1894 ("the LA Act", for short) will apply to the acquisitions under the BDA Act and consequently if the final declaration under Section 19(1) is not issued within one year from the date of publication of the notification under Sections 17(1) and (3) of the BDA Act, such final declaration will be invalid. The appellants' submissions are as under: the notification under Sections 17(1) and (3) of the Act was issued and gazetted on 3-2-2003 and the declaration under Section 19(1) was issued and published on 23-2-2004. Section 36 of the Act provides that the acquisition of land under the BDA Act within or outside the Bangalore Metropolitan Area, shall be regulated by the provisions of the LA Act, so far as they are applicable. Section 6 of the LA Act requires that no declaration shall be made, in respect of any land covered by a notification under Section 4 of the LA Act, after the expiry of one year from the date of the publication of such notification under Section 4 of the LA Act. As the provisions of the LA Act have been made applicable to acquisitions under the BDA Act, it is necessary that the declaration under Section 19(1) of the BDA Act (which is equivalent to the final declaration under Section 6 of the LA Act) should also be made before the expiry of one year from the date of publication of notification under Sections 17(1) and (3) of the BDA Act [which is equivalent to Section 4(1) of the LA Act].

80. The BDA Act contains provisions relating to acquisition of properties, up to the stage of publication of final declaration. The BDA Act does not contain the subsequent provisions relating to completion of the acquisition, that is, issue of notices, enquiry and award, vesting of land, payment of compensation, principles relating to determination of compensation, etc. Section 36 of the BDA Act does not make the LA Act applicable in its entirety, but states that the acquisition under the BDA Act, shall be regulated by the provisions, so far as they are applicable, of the LA Act. Therefore, it follows that where there are already provisions in the BDA Act regulating certain aspects or stages of acquisition or the proceedings relating thereto, the corresponding provisions of the LA Act will not apply to the acquisitions under the BDA Act. Only

those provisions of the LA Act, relating to the stages of acquisition, for which there is no provision in the BDA Act, are applied to the acquisitions under the BDA Act.

81. The BDA Act contains specific provisions relating to preliminary notification and final declaration. In fact the procedure up to final declaration under the BDA Act is different from the procedure under the LA Act relating to acquisition proceedings up to the stage of final notification. Therefore, having regard to the scheme for acquisition under Sections 15 to 19 of the BDA Act and the limited application of the LA Act in terms of Section 36 of the BDA Act, the provisions of Sections 4 to 6 of the LA Act will not apply to the acquisitions under the BDA Act. If Section 6 of the LA Act is not made applicable, the question of amendment to Section 6 of the LA Act providing a time-limit for issue of final declaration, will also not apply.'

We may notice that, in the above case, the Court declined to examine whether the provisions of Section 11-A of the Central Act would apply to the acquisition under the BDA Act but categorically stated that Sections 4 and 6 of the Central Act were inapplicable to the acquisition under the BDA Act.

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123. Accepting the argument of the appellant would certainly frustrate the very object of the State law, particularly when both the enactments can peacefully operate together. To us, there appears to be no direct conflict between the provisions of the Land Acquisition Act and the BDA Act. *The BDA Act does not admit reading of provisions of Section 11-A of the Land Acquisition Act into its scheme as it is bound to debilitate the very object of the State law*. Parliament has not enacted any law with regard to development the competence of which, in fact, exclusively falls in the domain of the State Legislature with reference to Schedule VII List II Entries 5 and 18.

124. Both these laws cover different fields of legislation and do not relate to the same List, leave apart the question of relating to the same entry. *Acquisition being merely an incident of planned development, the Court will have to ignore it even if there was some encroachment or overlapping*. The BDA Act does not provide any provision in regard to compensation and manner of acquisition for which it refers to the provisions of the Land Acquisition Act. There are no provisions in the BDA Act which lay down detailed

> mechanism for the acquisition of property, i.e. they are not covering the same field and, thus, there is no apparent irreconcilable conflict. The BDA Act provides a specific period during which the development under a scheme has to be implemented and if it is not so done, the consequences thereof would follow in terms of Section 27 of the BDA Act. None of the provisions of the Land Acquisition Act deals with implementation of schemes. We have already answered that the acquisition under the Land Acquisition Act cannot, in law, lapse if vesting has taken place. Therefore, the question of applying the provisions of Section 11-A of the Land Acquisition Act to the BDA Act does not arise. Section 27 of the BDA Act takes care of even the consequences of default, including the fate of acquisition, where vesting has not taken place under Section 27(3). Thus, there are no provisions under the two Acts which operate in the same field and have a direct irreconcilable conflict.
>
> *125*. Having said so, now we proceed to record our answer to the question referred to the larger Bench as follows:
>
> For the reasons stated in this judgment, we hold that the BDA Act is a self-contained code. Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of the BDA Act but with a specific exception that the provisions of the Land Acquisition Act insofar as they provide different time-frames and consequences of default thereof, including lapsing of acquisition proceedings, cannot be read into the BDA Act. Section 11-A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions under the provisions of the BDA Act."
>
> (emphasis supplied)

16. This Court has emphasised that the primary object of the BDA Act is to carry out planned development. The State Act has provided its own scheme. The time constraints of the land acquisition are not applicable to the BDA Act. Making applicable the time-frame of Section 11-A of the LA Act would debilitate the very object of the BDA Act. It is apparent that the

decision of the Single Judge as well as the Division Bench is directly juxtaposed to the decision of the five-Judge Bench of this Court in *Offshore Holdings* [*Offshore Holdings (P) Ltd.* v. *BDA*, (2011) 3 SCC 139: (2011) 1 SCC (Civ) 662] in which precisely the question involved in the instant cases had been dealt with. By indirect method by making applicable the time period of two years of Section 11-A of the LA Act mandate of BDA Act has been violated. However, it is shocking that various decisions have been taken into consideration particularly by the Single Judge, however, whereas the decision that has set the controversy at rest, has not even been noticed even by the Single Judge or by the Division Bench. If this is the fate of the law of the land laid down by this Court that too the decision by the Constitution Bench, so much can be said but to exercise restraint is the best use of the power. Least said is better, the way in which the justice has been dealt with and the planned development of Bangalore City has been left at the mercy of unscrupulous persons of the Government and the BDA.

17. It is apparent from the fact that the Single Judge has relied upon the decision in *H.N. Shivanna* [*H.N. Shivanna* v. *State of Karnataka*, 2012 SCC OnLine Kar 8956: (2013) 4 KCCR 2793] in which it was observed by the Division Bench that scheme was to be completed in 2 years otherwise it would lapse. It was precisely the question of time period which was dwelt upon and what was ultimately decided by this Court in *Offshore Holdings* [*Offshore Holdings (P) Ltd.* v. *BDA*, (2011) 3 SCC 139: (2011) 1 SCC (Civ) 662] has been blatantly violated by the Single Judge and that too in flagrant violation of the provisions and intendment of the Act.

18. It is also apparent from the facts and circumstances of the case that there were a large number of irregularities in the course of an inquiry under Section 18(1) of the BDA Act. The Government had nothing to do with respect to the release of the land at this stage, as the stage of final notification had not reached but still the landowners in connivance with the influential persons, political or otherwise, managed the directions in respect of 251 acres of the land and the Special Land Acquisition Collector also considered exclusion of 498 acres of the

land against which the question was raised in the Assembly and eyebrows were raised in public domain. Two inquiries were ordered on 24-11-2012 and 19-1-2013 by the State Government and based upon that inquiry, it was ordered and a public notice was issued on 3-5-2014 that the BDA will consider the entire matter afresh.

19. In the aforesaid backdrop of the facts, the writ petitions came to be filed, it would not be termed to be the bona fide litigation, but was initiated having failed in attempt to get the land illegally excluded at the hands of the Special Land Acquisition Collector and the State Government and after the inquiries held in the matter and the notice was issued to start the proceedings afresh. At this stage, the writ petitions were filed. In the aforesaid circumstances, it was not at all open to the High Court to quash the preliminary notification issued under Section 17, as the landowners, the State Government and BDA were responsible to create a mess in the way of planned development of Bangalore City.

20. The scheme which was framed was so much benevolent scheme that 40% of the 55% of the land reserved for the residential purpose was to be given to the landowners at their choice and they were also given the choice to obtain the compensation, if they so desired, under the provisions of the LA Act. Thus, it was such a scheme that there was no scope for any exclusion of the land in the ultimate final notification.

21. It is apparent from the circumstances that the matter cannot be left at the mercy of unscrupulous authority of the BDA, the State Government or in the political hands. Considering the proper development and planned development of Bangalore City, let the Government issue a final notification with respect to the land which has been notified in the initial notification and there is no question of leaving out of the land in the instant case as option has been given to landowners to claim the land or to claim the compensation under the relevant LA Act which may be applicable in the case.

22. It was contended on behalf of the landowners that certain developments have taken place after the orders were passed regarding exclusion of the land and when Section 27 provides a limitation of five years after final notification, in case development was not undertaken within five years, even the final scheme would lapse. Thus, the principle enunciated in Section 27 should be followed by this Court with respect to the lapse of preliminary notification as well. We find that there is a vast difference in the provisions and action to be taken pursuant to the preliminary notification and the final notification under Section 19. In the instant case, the facts indicated that it was in the interest of the public, landowners, BDA and the State Government. The scheme had prior approval of the State Government however at the cost of public interest yet another scheme was sought to be frustrated by powerful unforeseen hands and the issuance of final notification had been delayed. Three inquiries were ordered, two by the State Government and one by the BDA as the release of the land was being proposed in an illegal manner. Hue and cry has been raised about their illegalities in the Assembly as well as in the public. Thus, for the delay, owners cannot escape the liability, they cannot take the advantage of their own wrong having acted in collusion with the authorities. Thus, we are of the considered opinion that in the facts of the case the time consumed would not adversely affect the ultimate development of Bangalore City.

23. The authorities are supposed to carry out the statutory mandate and cannot be permitted to act against the public interest and planned development of Bangalore City which was envisaged as a statutory mandate under the BDA Act. The State Government, as well as the authorities under the BDA Act, are supposed to cater to the need of the planned development which is a mandate enjoined upon them and also binding on them. They have to necessarily carry it forward and no dereliction of duty can be an escape route so as to avoid fulfilment of the obligation enjoined upon them. The courts are not powerless to frown upon such an action and proper development cannot be deterred by continuing inaction. As the proper development of such metropolitan is of immense importance, the public purpose for which the primary

notification was issued was in order to provide civic amenities like laying down roads, etc. which cannot be left at the whim or mercy of the authorities concerned. They were bound to act in furtherance thereof. There was a clear embargo placed while issuing the notification not to create any charge, mortgage, assign, issue or revise any improvement and after inquiry, it was clear that the notice had been issued in May 2014, thus, no development could have been made legally. Notification dated 3-5-2014 was issued that re-inquiry was necessary in the matter. The development made, if any, would be at the peril of the owners and it has to give way to larger welfare schemes and the individual interest and cannot come in the way of the larger public interest. The acquisition was for the proper and planned development that was an absolute necessity for the city of Bangalore.

24. In the circumstances, we have no hesitation in condoning the delay. Though, it is apparent that the authorities had come with certain delay, in certain matters and the writ appeals were also filed belatedly with the delay in the High Court, however, considering the provisions of the scheme and the method and manner, wrong has been committed, it has compelled us not only to condone the delay but also to act in the matter so as to preserve the sanctity of the legal process and decision of this Court in *Offshore Holdings* [*Offshore Holdings (P) Ltd.* v. *BDA*, (2011) 3 SCC 139: (2011) 1 SCC (Civ) 662].

25. We, therefore, direct the State Government as well as the BDA to proceed further to issue final notification without any further delay in the light of the observations made in the order. The impugned orders passed by the Single Judge and the Division Bench are hereby quashed and set aside. The scheme and notification under Section 17 of the BDA Act are hereby upheld with the aforesaid directions.

26. As noticed above, the Land Acquisition Officer proposed exclusion of 251 acres of land from acquisition on being asked by the Government after the preliminary notification was issued. The Land Acquisition Officer, has considered another 498 acres of land to be excluded from being acquired. In connection to this, several questions

were raised in the Karnataka Legislative Assembly, as a result of which two inquiries were ordered by the State Government i.e. on 24-11-2012 and 19-1-2013. However, result of the inquiry is not forthcoming. Further, it appears that the exclusion of the lands from acquisition was proposed in connivance with influential persons; political or otherwise. We are of the view that the BDA and the State Government have to proceed with the acquisition of these lands. We are also of the view that it is just and proper to hold an inquiry for fixing the responsibility on the officials of the BDA and the State Government for trying to exclude these lands from acquisition.

27. Therefore, we appoint Hon'ble Mr Justice K.N. Keshavanarayana, former Judge of the Karnataka High Court as the inquiry officer for fixing the responsibility on the officials of the BDA and the State Government who were responsible for the aforesaid. The Commissioner, BDA is hereby directed to consult the inquiry officer and pay his remuneration. Further, we direct BDA to provide appropriate secretarial assistance and logistical support to the inquiry officer for holding the inquiry. In addition, we authorise the inquiry officer to appoint requisite staff on temporary basis to assist him in the inquiry and to fix their salaries. Further, the BDA is directed to pay their salaries. The State Government and the BDA are directed to produce the files/documents in relation to the aforesaid lands before the inquiry officer within a period of four weeks from today. We request the inquiry officer to submit his report to this Court as expeditiously as possible.

28. The State Government and the BDA are further directed to proceed with the acquisition of the aforementioned lands without excluding land from acquisition and submit a report to this Court the steps taken by them in this regard within a period of three months from today."

(Emphasis supplied)

The Apex Court, on the reasons so rendered, directs the State Government and the BDA to proceed with the acquisition for the formation of layout without excluding any land from acquisition and submit a report to the Apex Court the steps taken towards the said acquisition. It directed completion within 3 months. Several land owners having several grievances approached the Apex Court by filing miscellaneous applications. Those miscellaneous applications come to be disposed by the Apex Court directing constitution of a committee to go into the grievance of all the land owners. The order directing constitution of the Committee reads as follows:

> "1. Heard learned counsel for the parties and perused affidavit dated 26-11-2020, filed by the Commissioner, Bangalore Development Authority.
>
> 2. During the course of hearing, it is pointed out that after quashing of the preliminary notification by the High Court and before setting aside of the said order by this court, several constructions have been put up either by the land-owners or purchasers of the sites from the land-owners. It is submitted that these constructions are mainly dwelling houses. In this factual background, we are of the considered opinion that some protection against demolition of dwelling houses may be justified. Further the layout is meant for residential sites and this object of formation of layout would not be frustrated by saving lawfully constructed dwelling houses belonging to poor and middle-income groups.

3. Judgment dated 03-08-2018, *inter alia*, observes that 45% of the land covered under the scheme was to be utilized for the civic amenities like play grounds, roads etc. and residential sites would be formed by utilizing remaining 55% of the land covered under the scheme. It is also clear that out of the said 55% of developed residential area, 40% of 55% will be offered as compensation to the land-owners as specified in the scheme and remaining 60% of 55% will be the share of the Bangalore Development Authority (BDA). The land-owners would be given option to accept the developed eligible residential land or opt for compensation as per the Land Acquisition Act, 1894 (for short 'the LA Act').

4. Needless to state that the acquisition of the land under the BDA Act is regulated by the provisions of the LA Act so far as they are applicable. (See: Section 36 of the BDA Act). The borrowed provisions of LA Act, become an integral part of the BDA Act and are totally unaffected by the repeal of the LA Act. In other words, the provisions of the LA Act are incorporated into the BDA Act so far as they are applicable. Of course, the bar contained in Sections 6 and 11-A of the LA Act, are not applicable to the BDA Act. We have discussed this aspect of the matter in our main judgment dated 03-08-2018. It is also clear that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 are not applicable for the acquisition made under the BDA Act. Final notification has also been issued after the pronouncement of judgment by this Court in Civil Appeal No(s). 7661-7663 of 2018 dated 3-08-2018. We direct the BDA to proceed with the acquisition of the land as proposed in the notification.

5. if the land-owner who has put up the construction opts for land by way of a developed plot in lieu of compensation, the constructed portion would be adjusted in the land that would be allotted in his favour. It is also clarified that the persons who have put up construction/ dwelling house are not entitled for compensation in respect of the constructed portion of the land. If the incentive scheme as per Bangalore Development Authority (Incentive Scheme for Voluntary

Surrender of Land) Rules, 1989, is applied, the constructed portion can also be adjusted towards incentive site for voluntary surrender of land. However, where a person has constructed a dwelling house or any other building and where the constructed portion is not adjusted for any reason, betterment charges could be levied on him under Section 20 of the BDA Act. BDA is directed to integrate the said constructions into the layout.

6. As stated above, the buildings constructed in the layout with valid sanction/permission from the competent authority/authority(ies) needs to be saved from demolition. Therefore, it is important to identify the lawful constructions made in the notified lands. For this purpose, we appoint a Committee comprising Hon'ble Mr. Justice A.V. Chandrashekhar, former Judge of the Karnataka High Court, as its Chairman, Mr. Jayakar Jerome, former Commissioner of the BDA and Mr. S.T. Ramesh, former Director General of Police, as its Members. The Committee is required to look into each of the requests of the owners of the dwelling houses/buildings for its regularization. The Committee should also find out whether the said dwelling houses/buildings have been constructed in accordance with the sanction/permission of the competent authorities. The constructions which have come up after the date of pronouncement of the judgment by this Court i.e.,3.08.2018, shall not be eligible for regularization. The Committee is permitted to devise its own mechanism/ procedure for holding the enquiry including issuing notices in the local newspapers in this regard. Final orders regarding dwelling houses/buildings which will be protected, would be passed after we receive the report of the Committee.

7. To ensure that in the interregnum and from now onwards no further constructions come up, the Commissioner, BDA, would undertake exercise for satellite imaging of the area in question for identifying and noting the constructions as they exist. The said exercise would be undertaken within a period of three days from the date of receipt of a copy of this order. This

exercise would be repeated periodically every month and in case any new constructions are noticed, they would be brought to the notice of the Committee and action, including demolition etc. would be undertaken.

8. The Commissioner of the BDA is hereby directed to consult the Chairman and its Members of the Committee and accordingly fix and pay their remunerations. We direct the BDA to provide appropriate secretarial assistance, transport and other logistical support to the Chairman and the members of the Committee for holding an enquiry within two weeks from today. We authorize the Chairman of the Committee to appoint requisite staff, if needed, on a temporary basis to assist the Committee in conducting enquiry and fix their salaries which would be paid by the BDA. The BDA is also directed to provide enough office space in its headquarters for the smooth functioning of the Committee within two weeks. The Committee is also permitted to take assistance of any of the employees including surveyors from the BDA or of the State Government for the purpose of spot inspection, measurement and for its overall functioning.

9. We make it clear that there is no bar for the Chairman or the Members of the Committee to accept any other engagement/arbitration matters during the subsistence of the Committee.

10. The Committee is requested to submit its report before this Court preferably within a period of six months from today.

11. It appears that certain writ petitions are pending before the Karnataka High Court challenging the final notification for acquisition of lands for the formation of Dr.Shivarama Karanth Layout. BDA is directed to furnish the list of pending cases in respect of the said layout to the Registrar General of the High Court within a week from today. We request the Registrar General to list them before the Court within two weeks. We request the High Court to dispose of the said cases on their merits expeditiously.

12. The State Government is directed to grant approval to the 60:40 scheme in respect of the layout in question, if necessary within two weeks from today. The State Government is also directed to depute additionally six Land Acquisition Officers to the BDA within two weeks from today.

13. BDA to file status report on or before 11.02.2021.

14. List these cases on 19-01-2021."

(Emphasis supplied)

13. After constitution of the Committee, the petitioner again represents to the Committee his objections to the acquisition on the ground that it is a nursery and it should be exempted. The representation reads as follows:

"Date: 28-12-2020

From:
B.Sathyanarayanachar,
S/o Late Raghavendrachar,
No.58, T.P.Venugopal Lay-out,
Anandanagara, Hebbal Post,
Bengaluru-560024
Mob: 9480683031.

To
The Special Land Acquisition Officer,
Bangalore Development Authority,
Bengaluru.

Respected Sir,

Sub: Objections to the public notice of BDA dated 11.12.2020 published leading newspapers w.r.t. land acquisition of Sy.No.11/2, Kempanahalli Village, Yelahanka Hobli,

Vaderahalli Gram Panchayat, Vidyaranapura Post, Bengaluru for Dr. K. Shivaramkaranth Layout.

*****

With reference to the above, I, B. Sathyanarayanachar aged 88 years herewith submitting the objections for the land acquisition process of the my land bearing Sy.No.11/2, Kempanahalli Village, Yelahanka Hobli, Vaderahalli Gram Panchayat, Vidyaranapura Post, Bengaluru due to following facts:

1. **My Kempanahalli Village is connected to BBMP limits having Attur layout as the BBMP boundary. I am the owner of Sy.No.11/2 (Copy of Purchase copy is herewith enclosed as Annexure-1). Previous to the purchase of the said property I was running a small verity of plants in a form of Nursery there I was doing the agriculture produce also. I used to produce Banana saplings and papaya saplings and running Nursery. Even to-day I am running Nursery in the said place and earning.(Photographs of the Nursery are herewith enclosed as Annexure-2).**

2. **Further, in 2005 the land owners Shivanna N, Sharadamma, Somashekara and Umadevi of Sy.No.11/2 offered to sell the property to me only since I was running the Nursery from a long time.**

3. **I, B.Sathyanarayanachar Aged 88 years, S/o Late B.Raghavendrachar, 111, hereby filing this statement of objections to your proposal to acquire my aforesaid land.**

4. **I have got a bore well drilled, a pump set installed, a big water tank built and laid galvanized steel pipes for irrigating the nursery.**

5. **I have also fenced the land all round and provided partly compound wall and gate for protection.**

6. **For purposes of shade and also green manure, I have planted various trees.**

7. In order to develop coconut and lime seedlings, I have also planted good number of coconut and lemon trees, which are now yielding.

8. I spent and invested a lot of money on this Nursery, in order that it would give me good returns over the years and be the main source of income for me and my family's livelihood.

9. I never had any intention of selling this land or converting it to housing or other purposes.

10. If the BDA or any other Government authority were to go ahead with the proposal to acquire the land, I would be put to a lot of hardship and loss.

11. I am enclosing the pahani of my land wherein it is clearly mentioned as in 2009-10 as "Tissue culture ಬಾಳೆ, Teak wood trees for shade and other Nursery plants especially Dutch variety Rose" and pahani also reflected the same.

12. I am enclosing the pahani of my land wherein it is clearly mentioned as in 2011-12 that I was growing Rose flowers in a large scale and pahani also reflected the same.

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA SUBJECT – Exempting the nursery lands from Acquisition by Bangalore Development Authority.

PREAMBLE:
The question of exempting nursery and garden land from acquisition by Bangalore Development Authority for the purpose of its scheme has been examined on the petition by Nurserymen Co-operative Society Limited, Lalbagh, Bangalore-4 made to the Hon'ble Chief Minister. They have urged that these professional people have been following this profession for over decades in this state and making all round efforts for the development of Horticulture.

Fruit, Orchards, Plantations, Speicos, Lawns and Gardens. They have also invited the attention to Government Order No.HUD 91

CGL 78 dated 15-11-1978, wherein indiscriminate acquisition of lands of Nurserymen denying their livelihood would work hard on them. They also drawn the attention of to the resolution N9o.834 of Bangalore Development Authority, dated 5-9-1985.

Wherein the notified areas the coconut trees, grapes and other fruit trees was not grown. It is decided that these lands have to be reconveyed to the land owners under the following conditions:

a. The land owners shall not change the uses of the land and shall not change the nature of land.
b. The land owners shall not put up any construction without the permission of B.D.A.
c. The land shall not be alienated to any person without prior permission of B.D.A.
d. Priority shall be given to B.D.A if the land owner wants to sell the lands. If B.D.A granted permission to sell the lands subject to the above conditions.
e. BDA has got power to take back the lands if any one of the conditions violated by the owners of the lands.

Therefore, they have requested the Government to kindly denotify the Nursery land from acquisition by BDA or KHB, and to exempt them under Urban Land (Ceiling and Regulation) Act, 1976 for continuing this profession.

The matter has been examined further by Chief Minister at a meeting taken by him on 22-10-1986. It has been decided at the meeting that Nurseries should be permitted to continue on their activities and necessary orders may be issued stating that if the owners discontinue to use these lands for nursery, they will be acquired by Bangalore Development Authority. Exemption to garden land other than Nursery they will be acquired by Bangalore Development Authority. Exemption to garden land other than Nursery from acquisition by Bangalore Development Authority over was not been agreed to Nursery has been defined as:

"The place where Horticulture plants and seeds are in the regular course of business propagated for the purpose of sale but does not include a Horticultural Nursery belonging to or managed by the State or Central Government."

ORDER NO.HUD 478 MNX 86, BANGALORE DATED 1st January 1987 Government have further examined the request and hereby order that the lands used for nurseries be exempt from Land Acquisition for its developmental schemes by the Bangalore Development Authority. If the owners of these nurseries discontinue to use those lands for nurseries, the lands will be acquired by the Bangalore Development Authority.

This order shall come into force with immediate effect and until further orders.

By order and in the name of the
Governor of Karnataka.
Sd/- (C.VENKATAIAH),
UNDER SECRETARY TO GOVERNMENT,
Housing and Urban Dev.Department"

All the documents pertaining to the said property is submitted with photographs. I would be submitting further documents/clarifications upon your directions. Therefore, I humbly request and pray that my representation may be considered with all the evidence validated by attached Annexures and dropping final acquisition orders been passed against my land bearing Sy.No.11/2, Kempanahalli Village, Yelahanka Hobli, Bengaluru.

Note: Due to Public Holidays on 25-12-2020 to 27-12-2020, I am submitting the objection today which is within 15 days.

Thanking you,

Yours faithfully,
Sd/- B.Sathyanaranachar"

(Emphasis added)

The petitioner has been representing throughout that his land should be exempted from acquisition, as it is a nursery. Therefore, ***Nursery Nursery*** is echoed by the petitioner throughout the

representation and in the memorandum of subject petition. Therefore, it is necessary to notice, what a nursery would mean.

NURSERY:

14. Nursery has not been judicially interpreted. Therefore, it becomes necessary to notice what the English dictionaries, would define nursery to be. **Merriam Webster** dictionary defines '**nursery**' as follows:

> **"Nursery – An area where plants are grown for transplanting, for use as stocks for budding and grafting, or for sale"**
>
> (Emphasis added)

Oxford Learners Dictionary defines '**nursery**' as follows;

> **"Nursery – A place where young plants and trees are grown for sale or for planting somewhere else."**
>
> (Emphasis added)

Encyclopedia Britannica defines 'nursery' as follows:-

> **"Nursery, place where plants are grown for transplanting, for use as stock for budding and grafting, or for sale. Commercial nurseries produce and distribute woody and herbaceous plants, including ornamental trees, shrubs, and bulb crops. While most nursery-grown plants are ornamental, the nursery business also includes fruit**

> **plants and certain perennial vegetables used in home gardens (e.g. asparagus, rhubarb). Some nurseries are kept for the propagation of native plants for ecological restoration.** Greenhouses may be used for tender plants or to keep production going year round, but nurseries most commonly consist of shaded or exposed areas outside. Plants are commonly cultivated from seed or from cuttings and are often grown in pots or other temporary containers."

(Emphasis added)

One common stream of interpretation of the word 'nursery' is that the plants are grown for transplanting, and for use as stock, for budding and grafting, or for sale. There is no statute governing the regulation or recognition of nursery in the State of Karnataka like several States. It is not a case where nurseries are not regulated by any State in the country. There are a few States which regulate 'nursery' by statutes. We deem it appropriate to notice these statutes.

15. **The State of Telangana,** has a statute – **The Telangana Registration of Horticulture Nurseries (Regulation) Act, 2010**. Section 2 of the said Act deals with definitions and the definitions germane are as follows:

> "2. In this Act, unless the context otherwise requires,
> … … …

(f) '**Horticulture nursery**' means any place where horticulture plants, fruits, vegetables and flowers are in the regular course of business, propagated and sold for transplantation.

(g) '**Horticulture Plant**' means a plant belonging to any of the categories of aromatic plant, flower plant, fruit plant, plantation crops, vegetable plant or such other plant as the Government may by notification declare to be a horticulture plant;

… … …

(l) '**Nurseryman**' means any person engaged in the production, display or sale of Horticulture plants.

… … …

(m) '**Owner**' means any person who has the ultimate control over the affairs of a Horticulture Nursery and includes a manager, managing director, managing partner or managing agent of a society, association or company to whom the said affairs are entrusted.

The State of Uttarakhand, has the **Uttarakhand Fruit Nurseries (Regulation) Act, 2019**. The definitions framed in the said Act are as follows:

"**Definitions –** **2.** In this Act, unless the context otherwise requires:-

… … …

(d) "**Fruit Nursery**' means a place where propagation, management and sale of fruit plant are done in the regular course of business and it also includes Commercial Tissue Culture unit/lab. And nurseries managed by the Government

… … …

(j) "**Nursery Owner"** in relation to a fruit nursery, means the person who, or the authority which has the ultimate control over the affairs of such fruit nursery and it also includes a manager, managing director, managing agent,

any other person incharge of such fruit nursery or the controlling authority (A.D.O/Superintendent/Nursery Development Officer/District/Chief Horticulture officer/or Nursery in-charge) of a Government nursery."

The State of Punjab has the **Punjab Fruit Nurseries Act, 1961**.

The definitions germane are as follows:

"In this Act, unless the context otherwise requires,-

(b) "**Fruit nursery"** means any place where fruit plants are in the regular course of business propagated and sold for transplantation.

(c) "**Fruit plant**" means any plant which can produce edible fruits or nuts, and includes budwood, seedings, grafts, seeds and cuttings of such plant;

(d) "**Owners**" in relation to a fruit nursery, means the person who, or the authority which, has the ultimate control over the affairs of such fruit nursery, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent shall be deemed to be the owner."

The State of West Bengal, has the **West Bengal Horticultural Nurseries (Regulation) Act,2001**. The definitions germane are as follows:

"Definitions – 2. In this Act, unless the context otherwise requires, -

(c) "**horticultural nursery**" means a place where horticultural plant is, in the regular course of business, propagated or sold for transplantation or sowing;

(e) **"nurseryman**" means a person engaged in the production and sale of horticultural plant or horticultural seed or horticultural plant material;

(f) "**plant material**" means the material used for propagation and raising of horticultural plant, and includes bud wood, scion, root-stock, sucker, root, seed, cutting, seedlings, tubers, bulbs, rhizomes, grafts, gooties, other vegetatively propagated materials of food crops including vegetables, fruits and flowers."

The State of Goa, has the **Goa Fruit and Ornamental Plant Nurseries (Regulation) Act, 1995**. The definitions germane are as follows:

"2. **Definitions.** – In this Act, unless the context otherwise requires.-

(g) "**Nursery"** means any fruit and/or ornamental plant nursery or tissue culture unit in Goa where fruit and/or ornamental plants, are in regular course of business, propagated and sold for transplantation or cultivation but does not include such a nursery belonging to or managed by the Government.

(h) "**Nursery-man**" means any person engaged in the production and sale of fruit and ornamental plants;

… … …

(k) **"fruit and ornamental plant"** means any plant, which gives flowers, foliage ornamental or edible fruits or nuts and includes budwood, seedings, grafts, layers, bulbs, seeds, suckers, rhizomes and cuttings of any such plant;

(l) "**Owner**" in relation to a fruit and ornamental plant nursery, means the person who, or the authority which, has the ultimate control over the affairs of such fruit and ornamental plant nursery, and where the said affairs are entrusted to a manager, managing director or managing

agent, such manager, managing director or managing agent shall be deemed to be the owner of the fruit and ornamental plant nursery."

The State of Maharashtra, has the **Maharashtra Fruits Nurseries and Sale of Fruit Plants (Regulation) Act, 1969**.

The definitions germane are as follows:

"**Definitions** – 2 (1) In this Act, unless the context otherwise requires.-

… … ….

(b) "**fruit nursery**" means any place, where fruit plants are in the regular course of business propagated and sold for transplantation, but does not include a fruit nursery belonging to, or managed by, the Government;

(c) "**fruit plant**" means any plant, which can produce edible fruits or nuts, and includes budwood, seedlings, grafts, layers, seeds, bulbs, suckers, rhizomes and cuttings of any such plant;

(d) "**Owner**", in relation to a fruit nursery, means the person who, or the authority which has the ultimate control over the affairs of such fruit nursery; and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent shall be deemed to be the owner of the fruit nursery."

The State of Himachal Pradesh, has the **Himachal Pradesh Fruit and Nurseries Registration and Regulation Act, 2015**.

The definitions germane are as follows:

"2. **Definitions.** – In this Act, unless there is anything repugnant in the subject or context.-

(b) "**Bud wood bank**" means earmarked progeny trees and fruit trees maintained for taking scion wood or any other propagule for further multiplication in the nursery;

… … ..

(h) "**Fruit nursery**" means bud wood bank or propagation unit or tissue culture unit where plants are regularly propagated and sold for transplantation;

.. .. …

(k) "**nurseryman"** means any individual or agency engaged in the production and sale of plant material from the fruit nursery.'

The State of Uttar Pradesh, has the **Uttar Pradesh Fruit Nurseries (Regulation) Act, 1976**. The definitions germane are as follows:

"**Definitions** – 2. In this Act –

(b) "**fruit nursery**" means any place where fruit plants are in the regular course of business, propagated and sold for transplantation, but does not include –

(i) a fruit nursery having an area less than 0.2 hectare;

(ii) fruit nursery belonging to or managed by the Government.;

… … …

(g) "**Owner**", in relation to a fruit nursery, means the person who, or the authority which, has the ultimate control over the affairs of such fruit nursery, and includes a manager, managing director, managing agent, or any other person in-charge of such fruit nursery."

The State of Jammu and Kashmir, has the **Jammu and Kashmir Fruit Nurseries (Licensing) Act, 1987**. The definitions germane are as follows:

> "2. **Definitions.** – In this Act, unless the context otherwise requires.-
>
> (b) "**Fruit Nursery**" means any place where fruit plants are in the regular course of business propagated and sold for transplantation, but does not include a fruit nursery belonging to or managed by the Government;
>
> (c) "**Fruit Plant"** means any plant which can produce edible fruits or nuts and incudes budwood, seedlings, grafts, layers, seed bulbs, suckers, rhizomes and cuttings of any such plant.
>
> (d) "**Owner**' in relation to a fruit nursery, means the person who has the ultimate control over the affairs of such fruit nursery and where the said affairs are entrusted to a manager, managing director, or managing agent, such manager, managing director or managing agent shall be deemed to be the owner of the fruit nursery."

The State of Tripura, has the **Tripura Horticultural Nurseries (Regulation) Act, 2013**. The definitions germane are as follows:

> "2. **Definitions:** –
>
> viii. "**Horticulture**" includes Fruits, Plantation crops, Vegetables, Spices & Condiments, Ornamental foliage or plants, Flowers, Medicinal and Aromatic crops and plantations.
>
> .. .. …

ix. "**Horticulture nursery**" includes any place where fruit plantation crops and or other notified plants are propagated and sold.

… .. …

xiv. "**Nursery**" means any place, where horticultural plants are in the regular course of business, propagated or sold for transplantation;

xv. "**Owner**" in relation to a nursery means the person, association or group of persons, organization, firm, agency, company, local body, Government etc., who or the authority which, has the ultimate control over the affairs of such horticultural nursery and includes a manager, managing director or managing agent, by whatever name or designation they called, where the said affairs are entrusted to such manager, managing director or managing agent, as the case may be."

Though the definitions in the afore-quoted statues of different States are worded differently, one common stream is that 'nursery' would be a place where horticulture plants, fruits, vegetables or flowers are grown in regular course of business, propagated and sold for transplantation. Owners of those nurseries are described to nurserymen. The statute of every State is the same and the purpose of regulation is the same.

16. As observed, in the State of Karnataka like few other States, the existence of nursery is not regulated. Therefore, what is a nursery is to be interpreted drawing interpretation from the

dictionary or from the statues of other States. Therefore, for any person to claim that he is running a nursery, the ***de rigueur*** would be that the plants be grown there, on a regular business, for transplantation, sale, propagation or other scientific necessities. Certain advanced aspects also can be brought within the ambit of nursery. Though mere keeping of plants and selling them would not mean that it is a nursery or nursery farming, as the case would be. Those lands which are to be used as horticulture nursery should necessarily come within the ambit of any regulatory regime. Since no regulatory regime is in place in the State of Karnataka, they should be registered with the National Horticulture Board as it has a method of accreditation of nurseries, till the State would bring any regulatory regime in place. There are plethora of nurseries registered with the Indian Horticulture Board. It is those nurseries only which can be brought within the term 'nursery' and cannot be vaguely determined by case specific Government Orders.

17. The issue now would be, several representations were made to the Committee on identical lines as that of the petitioner. Only two of the nurseries found acceptance by the Committee. On

inspection of those properties, what did the Committee find to exempt those nurseries, are found in the reasons so rendered by the Committee itself *qua* a particular nursery. The reason rendered, reads as follows:

> "**II.<u>Mary's Barn situated in Survey Number 40/3 and 40/4 in Byalakere Village and Survey Number 52/3, 52/4 and 52/5 of Mediagrahara Village.</u>**
>
> 4. Three applications were filed before the JCC in respect of the survey numbers referred to above. The applicants stated that these lands were purchased by them in the year 2005 and they are residing there since then. They have developed the lands into a unique farm.
>
> **5. A report has been obtained from the Spl.LAO concerned. The report of the Spl.LAO confirms the existence of about 250 trees of various species, about 120 medicinal plants, fish farming, livestock, nursery, ornamental plants. The activities undertaken are farming, nursery, livestock, fish farming aqua-phonics, by-products of agricultural produce, vermi composting, waste management and biogas. Various schools bring their pupils to this farm for workshops to get a personal experience of nature. One of the applicants is a qualified psychologist and conducts counseling sessions. There are two small RCC structures put up prior to 2008 in which the applicant reside and conduct their programmes. The garden coverage is 85%."**
>
> (Emphasis added)

The said report of inspection depicts that 250 trees of various species were in existence and 120 medicinal plants for

transplantation were in existence, fish farming, livestock, nursery, ornamental plants were all found in the said land. It is also noticed that various schools brought their students into the farms for the workshop to get personal experience of dealing with nature. Counselling sessions were held. The garden coverage is 85%.

18. In juxtaposition to what was found by the Committee on inspection to exempt the aforesaid nursery, *inter alia,* the report of the Committee insofar as the petitioner is concerned, requires to be noticed. The Committee opined as follows:

> **"JUSTICE A.V. CHANDRASHEKAR COMMITTEE, BDA HEAD OFFICE, KUMARAPARK WEST, BANGALORE-560020**
>
> **PROCEEDINGS OF THE COMMITTEE**
>
> JCC No.112/2023-24 Dated: 08-08-2023
>
> Sub: Order dated 27th June 2023 of Hon'ble High Court of Karnataka in W.P.No.9386 of 2023 (LA-BDA).
>
> --
>
> The petitioner one Sri B.Sathyanarauyanachar has filed an application dated 10-07-2023. His request in the application is for deletion of Sy.No.11/2 measuring 1 acre situated at Kempanahalli, Yelahanka Hobli, Bangalore North Taluk.
>
> 2. The petitioner had approached the Hon'ble High Court of Karnataka in the reverence cited above, in which the High Court was pleased to direct the petitioner to approach the Justice A.V. Chandrashekar Committee with his representation.

3. On receipt of this application along with a copy of the order of Hon'ble High Court an inspection was conducted by Advisor, Town Planning for the Justice A.V.Chandrshekar Committee.

4. The land is a vacant land and there are no buildings/structures therein. The mandate of the JCC by the Supreme Court is only in respect of buildings and not vacant land. This extent of land is said to be a nursery. It is true that on the basis of JCC's recommendation two to three nurseries have been exempted from acquisition. These nurseries had provided sufficient documentary proof like registration with the Indian Horticulture Board, loan from banks etc. to establish that they are genuinely in the horticulture business.

5. In the instant case, such documentary evidence is lacking. Moreover, the Hon'ble Supreme Court of India have very categorically stated in order dated 6-12-2022 that all pending applications stand closed.

6. In view of the above, the JCC would not be in a position to make any recommendation to the Hon'ble Supreme Court to exclude this land from acquisition. The best option open to the petitioner is to opt for 40:60 schemes of the Government."

(Emphasis added)

On inspection, the Committee found that the land of the petitioner was vacant. Therefore, the Committee refused to drop the land from acquisition and opined that the best option for the petitioner would be to opt for 40:60 scheme of the Government.

19. The entire **sheet anchor** of the submission of the learned senior counsel, is on the basis of Government order dated 01-01-1987, which exempted nurseries to be a part of acquisition process. We deem it appropriate to notice said Government order. The Government order reads as follows:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Subject:- **Exempting the nursery lands from acquisition by Bangalore Development Authority.**

PREAMBLE:

The question of exempting nursery and garden land from acquisition by Bangalore Development Authority for the purpose of its scheme has been examined on the petition by Nurserymen Co-operative Society Limited, Lalbagh, Bangalore-4 made to the Hon'ble Chief Minister. They have urged that those professional people have been following this profession for over decades in this State and making all round efforts for the development of Horticulture, Fruit, Orchards, Plantations, Speicos, Lawns and Gardens. They have also invited the attention to Government order No. HUD 91 CGL 78 dated 15-11-1978, wherein **indiscriminate acquisition of lands of Nurserymen denying their livelihood would work hard on them. They also drawn the attention to the resolution No.834 of Bangalore Development Authority, dated 5-9-1985**.

Wherein the notified areas the coconut trees, grapes and other fruit trees was not grown. It is decided that these lands have to be reconveyed to the land owners under the following conditions:

a. The land owners shall not change the uses of the land and shall not change the nature of land.

b. The land owners shall not put up any construction without the permission of BDA.

c. The land shall not be alienated to any person without prior permission of BDA.

d. Priority shall be given to BDA if the land owner wants to sell the lands. If BDA granted permission to sell the lands subject to the above conditions.

e. BDA has got power to take back the lands if any one of the conditions violated by the owners of the lands.

Therefore, they have requested the Government to kindly denotify the Nursery land from acquisition by BDA or KHB, and to exempt them under Urban Land (Ceiling and Regulation) Act, 1976 for continuing this profession.

The matter has been examined further by Chief Minister at a meeting taken by him on 22-10-1986. It has been decided at the meeting that Nurseries should be permitted to continue on their activities and necessary orders may be issued stating that if the owners discontinue to use these lands for nursery, they will be acquired by Bangalore Development Authority. Exemption to garden land other than Nursery they will be acquired by Bangalore Development Authority. Exemption to garden land, other than Nursery from acquisition by Bangalore Development Authority over was not been agreed to Nursery has been defined as:

"The place where Horticulture plants and seeds are in the regular course of business propagated for the purpose of sale but does not include a Horticultural Nursery belonging to or managed by the State or Central Government.

ORDER NO:HUD 478 MNX 86, BANGALORE
DATED 1ST JANUARY 1987

Government have further examined the request and hereby order that the lands used for nurseries be exempt from Land Acquisition for its development schemes by the Bangalore Development Authority. If the owners of these nurseries discontinue to use those lands for nurseries, the lands will be acquired by the Bangalore Development Authority.

This order shall come into force with immediate effect and until further orders.

By order and in the name of the
Governor of Karnataka.
Sd/- C.VENKATAIAH
Under Secretary to Government,
Housing and Urban Dev. Department."

(Emphasis added)

The Government order notices that the issue before it, for grant of exemption from acquisition by the BDA for the purpose of its scheme then was examined on a petition submitted by the Nurserymen Co-operative Society Limited at Lalbagh to the then Chief Minister. Based upon the said representation only, on the ground that the nurserymen would lose their livelihood and there would be development in horticulture, fruits, orchards plantations, lawns and gardens the exemption is granted. We deem it apropos, to add that it was case specific, for the purpose of survival of the Nurserymen Co-operative Society. It was, therefore, directed that the land be exempted from acquisition, so as to continue those members of the Nurserymen Co-operative Society for the purpose for which the Society was established with a condition that the nature of the land should not be changed. This Government order

is said to have been used by several land owners seeking exemption from acquisition on the ground that the Government order is applicable to them.

20. The aforesaid Government order bears consideration, in two of the orders passed by this Court. A Division of this Court in ***MRS.LATHA U.KAMATH v. COMMISSIONER, BANGALORE DEVELOPMENT AUTHORITY***[2] has held as follows:

"…. …. ….

> **42.** The background of the cases which was dealt with by the Supreme Court on the second point was almost the same as it is before us and we shall take the same route as that taken by the Supreme Court.
>
> **43.** The Supreme Court dealt with a situation where there was a State policy of not acquiring lands which had abadi on it. Abadi is a term of art which refers to village site lands utilised for residential purposes and there was a State policy adopted by the State of Uttar Pradesh not to acquire lands on which there is abadi namely village site lands having residential construction thereon. (The word 'Abadi' appears to be an Urdu word which translated in English means Township (Basti) fully developed, a place where people go and reside with all the amenities.)
>
> **44.** The Supreme Court while relegating the parties to approach the State Government under Section 48(1) of the Act directed the State to satisfy itself whether following conditions were fulfilled:

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[2]**(2003) SCC OnLine Kar.84**

(i) Whether there was any abadi on the acquired lands at the time of Section 4(1) notification;

(ii) Whether such abadi was a legally permissible abadi;

(iii) Whether such abadi has continued to exist till the date of representation;

(iv) Whether such abadi was covered by any government policy in force at the time of issuance of Section 4(1) notification and/or Section 6 notification for not acquiring lands having such abadi;

(v) Whether such government policy has continued to be in force till the date of representation.

45. In fact the Supreme Court left the entire matter at large for the consideration of the State on a representation being made by the land owners. The Supreme Court also directed the parties to maintain status-quo, pending representation being given to the State Government.

46. Ultimately the Supreme Court did not choose to quash the acquisition proceedings, but on the question of State policy left the matter to be determined by the State Government in accordance with law.

47. In the case presently before us the situation is more or less the same. Annexure-G the Circular issued by the State Government which appears to prohibit the acquisition of lands which is being used exclusively as a nursery. Enough materials have been placed to prima facie satisfy the Court that in the same notification other lands which had nurseries were deleted from the acquisition proceedings. However our opinion is only prima facie, since the Annexures produced before the Court whereby the lands were deleted on the grounds that the lands were being maintained as nurseries will have to be verified by the State Government and the State Government is also required to verify whether under the same notification other lands were exempted on the basis of the circular.

48. The learned Single Judge while disposing of the Writ Petitions has also given liberty to the appellants to approach either the Government or the Bangalore Development Authority for such other remedies as available in law in respect of the said lands in question. This portion of the Order has not been appealed against by the Bangalore Development Authority or the State Government. It is only in this context, we have chosen to deal with this matter by assigning reasons and on the basis of the judgment rendered by the Supreme Court in *Om Prakash's Case* (1998) 6 SCC.

49. We are also prima facie of the view that in view of the interim orders granted by earlier Benches-of this Court in the writ appeals in the presence of the BDA the possession appears to be still with the appellants. The Court Commissioner's report also appears to be of the same view. However, whether possession has been taken or not is a disputed question of fact and it is for the State Government to determine whether the possession has been taken by the BDA.

50. On the factual aspect of possession we are not inclined to give any finding and leave it to the State to deal with it in accordance with law. Right at the outset we had extracted Section 48 of the Act. Section 48 gives liberty to the State Government to withdraw from acquisition any land on which possession has not been taken.

51. In these circumstances, we direct the appellants to make a representation to the State Government <u>within three weeks</u> from the date of receipt of this Order and the State Government shall consider the following matters:—

(i) Whether there were any nurseries on the acquired lands at the time of Section 17 notification;

(ii) Whether such nurseries were a legally permissible nurseries;

(iii) Whether such nurseries have continued to exist till the date of representation;

(iv) Whether such nurseries were covered by any government policy (Annexure-G) in force at the time of issuance of Section 17 notification and/or Section 19 notification of the B.D.A. Act 1976 for not acquiring lands having such nurseries;

(v) Whether such Government policy (Annexure-G) has continued to be in force till the date of representation.

52. The State Government which is a final authority shall determine these issues and pass orders in accordance with law as expeditiously as possible on the basis of the representation if possession has not been taken. Pending disposal of the representation, interim orders granted by this Court shall enure to the benefit of the appellants. If no representation is made within the stipulated time the interim orders granted by the earlier Division Benches of this Court shall stand vacated.

Accordingly these Writ Appeals are disposed of. No order as to costs."

(Emphasis supplied)

The Division Bench does not give its ***imprimatur*** to the Government order dated 01-01-1987. It clearly poses certain questions to the Government to be considered. They are, whether there were any nurseries on the acquired lands at the time of Section 17 notification; whether such nurseries were legally permissible nurseries; whether such nurseries continue to exist till the date of representation; whether such nurseries were covered by any government policy in force at the time of issuance of Section 17

or 19 notification under the BDA Act for not acquiring lands having such nurseries; whether the Government policy has continued to be in force till the date of representation, as the learned single Judge had dismissed the writ petitions.

21. In a subsequent judgment in ***MEENAKSHI THIMMAIAH v. STATE OF KARNATAKA***[3] a learned single has held as follows:

> "…. …. ….
>
> **29.** That apart, the petitioners have filed I.A.II/2004 producing photographs as Annexure-K series to show that they are in possession of the lands. The photographs produced by the petitioners would clearly show the existence of residential houses, farm houses and agricultural and Horticultural operations upon the required lands of the petitioners. In view of these, it cannot be said that possession of the lands were taken over by MUDA. In the circumstances, I.A.II/2004 is allowed.
>
> **30.** Since possession of the lands remained with the petitioners, mere publication of Section 16(2) of L.A.Act Notification to evidence the fact of taking possession cannot be accepted by this Court. That apart, the Notification is issued by the Special Land Acquisition Officer of MUDA and it is not notified either by the Deputy Commissioner of the District or Assistant Commissioner of the Revenue sub-division. Therefore, Section 16(2) of the LA Act Notification has no legal sanction at all and it cannot be considered as proof for having taken over possession of the lands of the petitioners from them. Consequently, Point (iii) is answered in the negative.
>
> **Points (iv & v) : Application of decision in W.R.No. 16054/2004 and W.A.No. 1447/2000**

[3] **2009 SCC OnLine Kar 417**

31. In the aforementioned two cases filed by some other land owners, this Court declined to quash the impugned Notifications on account of delay and laches. MUDA wants to apply the same to the present cases and to dismiss these petitions. That cannot be done by this Court in view of the answers given to Points (i to iii) holding that the approval given to the scheme is bad in law; that possession of the lands are not taken in accordance with law and the lands are not vested with MUDA. The acquisition proceedings are void ab initio in law. A void action is always void and it can be challenged at any point of time. Even if there is delay, the same cannot be a ground to deny the relief in view of the decision of the Apex Court reported in (2000) 9 SCC 94 : AIR 2000 SC 2306. Further the order passed in the above writ petition need not be applied to the fact situation for the reason that in the above writ petition the legal ground that the prior sanction of the scheme of the MUDA was sanctioned by the State Government as required under Section 18(3) of the Act without considering the statement of objections to the preliminary Notification and before expiry of 30 days period from the date of service of notice upon the petitioners along with the preliminary Notification inviting objection statements to the proposed acquisition of the petitioners lands. Further the legal grounds urged in these petitions are entirely different, from the grounds urged in the above said writ petition. The petitioners have placed reliance upon the judgment of this Court in *G. Jayarama Reddy* v. *State of Karnataka and others* [ILR 2005 Kar 1963.]

32. The petitioners have produced Annexure-D the copy of the order dated 24-8-1998 passed by this Court in W.R.No. 29211/1994 and connected cases by which the impugned Notifications have been quashed in so far as the petitioners in those petitions are concerned. That order has become final. The said order was either produced or placed reliance by the petitioner in W.P.No. 16054/2004 & WA 1447/2000.

33. The petitioners also produced Annexures-E and E1 which are the Circulars issued by the Government not to acquire fertile agricultural lands, garden lands and lands where nurseries are established. The lands in question are also garden lands with residential and farm houses. Therefore, they should have not been proposed for acquisition for formation of residential layout even

though the said circulars have no statutory force, but the same are binding upon the Urban Development Authorities and State Government."

(Emphasis supplied)

The learned single Judge holds that the lands in question were garden lands and the Mysore Urban Development Authority should not have proceeded to propose the said lands for acquisition for formation of a residential layout. The learned single Judge holds that circulars or Government orders do not have a statutory force but the same is binding on the Urban Development Department and the State Government. These are two orders, which considered the Government order dated 01-01-1987 quoted *supra*.

22. The same **swan song** is projected by the petitioner in the case on hand, as well. In order to buttress the submission, several photographs are placed naming the nursery as "Shree Govardhana Nursery Farm". These photographs do not inspire our confidence, in contrast to what the learned counsel for the BDA has placed, as they are overwhelming piece of evidence, depicting the status of the land of the petitioner. The learned counsel for the BDA places

the status of the land in 2008, at the time of acquisition. It is **vacant**. Subsequently, at the time of inspection, it is **vacant**. Google earth images taken on 28-04-2018 and 26-10-2018 depict the land to be **vacant**. Same goes of the images taken on 20-01-2020 and 06-02-2021, which depict the land of the petitioner to be **vacant.** Satellite imaging was permitted by the Apex Court in its order *supra*. After all the aforesaid dates where the land of the petitioner lies **vacant**, the photographs are taken by developing the land to be a nursery. To our pointed question to the learned senior counsel for the petitioner, the learned senior counsel would submit that the land that is being used as a nursery, has not been subject matter of any registration with the Indian Horticulture Board. No farming activity is undertaken, there is no live stock; no vermi compost or waste management is processed nor bio-gas is generated. There are no counselling sessions with regard to development of plants at the nursery at any time undertaken by this petitioner. A nursery in our considered view, must be, the one registered with the Indian Horticulture Board; the registration being made subject to renewal from time to time on due inspection by the Competent Authority, that it still runs as a nursery; the traits of

using the land as a nursery, as obtaining under any regulatory regime or the activities that are found by the Committee in the nursery that is exempted from the subject acquisition. We thus, fail to understand, how can such a land which does not bear any of the characteristics of a nursery, be exempted from acquisition. In our considered view, the Government order dated 01-01-1987 was case specific, that is being used or misused to get exemption from acquisition till this day, as the learned senior counsel for the petitioner places reliance on the said Government order dated 01-01-1987 and nothing beyond that.

23. It is trite law that a Government order, Circular or administrative instructions, cannot override the statute. The acquisition of land of private citizens is done by the State in exercise of its sovereign power of ***eminent domain***, *albeit* on statutory considerations. If statute is what governs the acquisition of land of citizen by exercise of sovereign power of ***eminent domain***, the Government order *supra* cannot override the sovereign power of ***eminent domain*** or the rigour of the statute.

We deem it appropriate to notice certain judgments of the Apex Court on the issue. The Apex Court in the case of ***P.SADAGOPAN v. FOOD CORPORATION OF INDIA***[4] has held as follows:

> **"3.** The Regulation provides that such of the candidates who have put in three years' experience as Assistant, Category I are eligible to be considered for promotion as Assistant Managers in Category II post. **It is now settled legal position that executive instructions cannot be issued in derogation of the statutory Regulations.** In view of the fact that the statutory Regulations require that experience of three years is a precondition to consideration for promotion to Category II post from Category I post, it would be obvious that any relaxation was in defeasance of the above Regulations. The Division Bench, therefore, was not right in upholding the power of the Board in directing relaxation of the statutory regulations and consideration of the cases without considering the claims of all the eligible persons. Moreover, later the Board itself cancelled the 1970 Panel. The Regulation issued for promotion of the Scheduled Castes and Scheduled Tribes should also be considered. Admittedly, they were not considered. Since the claims of all the persons are not before us, we do not propose to close the matter at this end. Accordingly, we set aside the order of the Division Bench and direct the authorities concerned to determine the promotions of all the eligible persons in accordance with the statutory regulations and pass appropriate orders within a period of six months from the date of the receipt of the order."
>
> (Emphasis supplied)

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[4] **(1997) 4 SCC 301**

Later, the Apex Court in the case of ***K.KUPPUSAMY v. STATE OF TAMIL NADU***[5] has held as follows:

> **"3.** The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. **The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated**. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule."
>
> (Emphasis supplied)

The Apex Court in the case of ***DR. RAJINDER SINGH v. STATE OF PUNJAB***[6] has held as follows:

> **"7. The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous** inasmuch as it would deprive the security of tenure

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[5] **(1998) 8 SCC 469**
[6] **(2001) 5 SCC 482**

> and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the Rules, Class II of the service can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the rules by a government order and ignoring the mandate of Article 309 of the Constitution."
>
> (Emphasis supplied)

The Apex Court in all the afore-quoted judgments would clearly hold that it is settled principle of law or position of law that no Government order, notification or circular can be a substitute to the statutory rules framed with the authority of law. Following any other course would be disastrous, inasmuch as it would deprive the rights under the constitutional scheme. These are the general jurisprudential principles, with regard to whether the statutory rules can be overridden by Government order, instructions or circulars.

24. Specifically in the cases of misuse of power on ***eminent domain***, whether any Government order could control the said power is elucidated by the Apex Court in the case of ***CHAIRMAN,***

INDORE VIKAS PRADHIKARAN v. PURE INDUSTRIAL COKE & CHEMICALS LIMITED[7] wherein it is held as follows:

> **"59.** In *Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai* [(2005) 7 SCC 627] construing Section 5-A of the Land Acquisition Act, this Court observed: (SCC pp. 634-35, para 6-7)
>
> > "*6*. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of 'eminent domain' may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.
> >
> > *7*. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State, as envisaged under sub-clause (*iv*) of Clause (*f*) of Section 3 of the Act. But the same would not mean that the State is the sole judge therefor and no judicial review shall lie. (See *JilubhaiNanbhai Khachar* v. *State of Gujarat* [1995 Supp (1) SCC 596] .)"
>
> It was further stated: (SCC p. 640, para 29)
>
> > "*29*. The Act is an expropriatory legislation. This Court in *State of M.P.* v. *Vishnu Prasad Sharma* [AIR 1966 SC 1593] observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also *Khub Chand* v. *State of Rajasthan* [AIR 1967 SC 1074] and *CCE* v. *Orient Fabrics (P) Ltd.* [(2004) 1 SCC 597]]

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[7] **(2007) 8 SCC 705**

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative."

In *State of Rajasthan* v. *Basant Nahata* [(2005) 12 SCC 77 : JT (2005) 8 SC 171] it was opined: (SCC p. 102, para 59)

> "In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution."

In *State of U.P.* v. *Manohar* [(2005) 2 SCC 126] a Constitution Bench of this Court held: (SCC p. 129, paras 7-8)

> "*7*. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(*f*) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:
>
> '300-A. *Persons not to be deprived of property save by authority of law*.—No person shall be deprived of his property save by authority of law.'
>
> *8*. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities."

In *JilubhaiNanbhai Khachar* v. *State of Gujarat* [1995 Supp (1) SCC 596] the law is stated in the following terms: (SCC p. 622, para 34)

> "*34*. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in

their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous with the term 'eminent domain'."

It was further observed: (SCC p. 627, para 48)

> **"*48*. The word 'property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase 'deprivation of the property of a person' must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State. In other words, Article 300-A only limits the powers of the State that no person shall be**

> **deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300-A."**

Rajendra Babu, J. (as the learned Chief Justice then was) in *Sri Krishnapur Mutt* v. *N. Vijayendra Shetty* [(1992) 3 Kar LJ 326] observed: (Kar LJ p. 329, para 8)

> "*8*. The restrictions imposed in the planning law though in public interest should be strictly interpreted because they make an inroad into the rights of a private person to carry on his business by construction of a suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted."

(Emphasis supplied)

A little earlier to the said judgment the Apex Court in the case of ***JILUBHAI NANBHAI KHACHAR v. STATE OF GUJARAT***[8] has held as follows:

> **"35.** This Court in *Chiranjit Lal Chowdhuri* v. *Union of India* [1950 SCC 833 : 1950 SCR 869 : AIR 1951 SC 41] held that eminent domain is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use. The limitation imposed upon acquisition or taking possession of private property which is implied in clause (2) of Article 31 is that such taking must be for public purpose. The other condition is that no property can be taken, unless the law which authorises such appropriation contains a provision for payment of compensation in the manner as laid down in the clause. **In *State of Bihar* v. *Kameshwar***

[8] **1995 Supp (1) SCC 596**

Singh **[(1952) 1 SCC 528 : 1952 SCR 889 : AIR 1952 SC 252] , the "eminent domain" was held to be a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use without owner's consent. The limitation imposed upon acquisition or taking possession of private property which is implied in clause (2) of Article 31 is that such taking must be for public purpose. The other condition is that no property can be taken, unless the law which authorises such appropriation contains a provision for payment of compensation in the manner laid down in the clause.** Mahajan, J., as he then was, quoting from *Thayer's Cases on Constitutional Law* stated that : (SCR p. 929)

> **"Shorn of all its incidents, the simple definition of the power to acquire compulsorily or of the term 'eminent domain' is the power of the sovereign to take property for public use without the owner's consent. The meaning of the power in its irreducible terms is, (*a*) power to take, (*b*) without the owner's consent, (*c*) for the public use. The concept of the public use has been inextricably related to an appropriate exercise of the power and is considered essential in any statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term, is an essential element of the valid exercise of such power."**

(Emphasis supplied)

The Apex Court holds that sovereign power of ***eminent domain***, is a right inherent, in every sovereign State to take and expropriate property, for public purposes, without its owner's consent. It would be exercised by authority of law and obviously not by an executive fiat or a Government order.

25. If what the Apex Court has observed in the afore-quoted judgments is **paraphrased** towards consideration of the subject Government order, the unmistakable inference, would be that the said Government order, cannot take away the sovereign power of ***eminent domain***, by concluding exemption for nurseries, unless the nurseries are the ones that pass the test of the conditions noticed by us hereinabove. It is a Government order. The acquisition takes place under the statute and it is the sovereign power of the ***eminent domain***, subject of course to statutory restrictions. The statute nowhere exempts any part of the land from the process of acquisition, except in certain circumstances. The judicial elucidation of exemptions from time to time insofar as nursery is concerned has been on only in two cases, in these 37 years of existence of the Government order. There is no law declared by this Court, giving the Government order a status of a statute, over and above the Act - either the Land Acquisition Act or the Bangalore Development Authority Act in terms of which the acquisition would commence and conclude, in cases like the one on hand.

26. It is by now, too rudimentary, that any Government order, cannot override a statute, particularly the subject Government order, which had and has no statutory legs to stand. It was, as observed hereinabove, a case specific Government order. Therefore, henceforth, if the acquiring authorities under the respective statutes want to exempt a nursery, they can do so only after bringing in a regulatory regime for recognition of such nurseries. It is for the State to take appropriate action in that regard. Reliance on the Government order dated 01-01-1987, in our considered view, must stop and stop forthwith. Therefore, there is no case made out by the petitioner that would entail our interference to step in and quash the report of the Committee dated 08-08-2023, nor drop the lands from acquisition, in terms of the final Notification dated 30-10-2018.

27. For the ***praefatus reasons***, finding no merit in the claim of the petitioner that it is a nursery, the petition stands rejected, leaving open to the petitioner to claim compensation or any other mode of redemption for acquisition, as is notified by the State/BDA.

Interim order of any kind operating shall stand dissolved.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ