2026 INSC 1151

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.13744-13747 of 2015

N. Arasappa

.... Appellant

Versus

State of Karnataka & Ors.

.... Respondents

W I T H

Civil Appeal Nos.13749-13752 of 2015

Civil Appeal Nos.13759-13762 of 2015

Civil Appeal Nos.13754-13757 of 2015

Civil Appeal No.13753 of 2015

J U D G M E N T

K. VINOD CHANDRAN, J.

"The power of eminent domain, next to that of conscription of manpower for war, is the most awesome grant of power under the law of the land."

Winger v. Aires (371 Pa. 242 (1952)

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Date: 2026.10.26 14:09:35 IST
Reason:

What the Supreme Court of Pennsylvania observed applies equally in our shores too. Condemnation of privately owned land for public purpose can only be with authority of law and

with just compensation being paid. That, such authority of law can be exercised only for public purpose, is without cavil; with just compensation being an ancillary right, which does not by itself justify an acquisition. However just the compensation be, if the authority of law is lacking or the public purpose is absent, there can be no eminent domain exercised. The appellants herein allege lack of authority in law; complete absence of public purpose and fraud having vitiated the instant acquisition.

Arguments of the Appellants: -

2. Ms. Kiran Suri, learned Senior Counsel and Mr. Basava Prabhu S. Patil, learned Senior Counsel appeared for the appellants. Mr. Vikas Singh, learned Senior Counsel appeared for the 4th respondent/Society and Mr. Sanjay Hegde, learned Senior Counsel appeared for the State assisted by learned Additional Advocate General, Mr. Omar Hoda.

3. On behalf of the appellants, it was pointed out that housing schemes sponsored by a Cooperative Society were treated as 'public purpose' only by Land Acquisition (Amendment) Act, 1984[1] (w.e.f. 24.09.1984) by introduction of clause (f) with sub-

[1] Hereinafter referred to as 'the LA Act'

clause (vi) under Section 3. However, to enable a valid requisition, there should be a housing scheme; the layout and the blueprint drawn up, which has to be approved by the appropriate Government. In fact, even before the Amendment Act came into force, the respondent Society entered into an agreement with a third party, one Bhagya Enterprises who in turn undertook to acquire land for implementing a housing scheme, which in itself is an indication of the colourable exercise of power by the authorities under the Government. The learned Single Judge found that there was no approval of the housing scheme and the acquisition was approved only on the basis of the area-wise extent. Even with respect to the extent, there was gross discrepancy, in the extent cleared by the State Level Committee, that approved and later notified for acquisition.

4. The appellant relied on ***H.M.T. House Building Cooperative Society v. Syed Khader & Ors.***[2], ***Bangalore City Cooperative Hosing Society Ltd. v. State of Karnataka & Ors.***[3], ***B. Anjanappa & Ors. v. Vyalikaval House Building Cooperative Society Ltd. & Ors.***[4] and ***Rajashekar & Ors. v. Trinity House***

[2] (1995) 2 SCC 677
[3] (2012) 3 SCC 727
[4] (2012) 10 SCC 184

Building Cooperative Society & Ors.[5], wherein similar acquisitions were set aside by this Court. The Registrar of Cooperative Societies, on allegations of several irregularities, illegalities and fraud committed by the mushrooming societies, who attempted to grab land under the pretext of implementation of housing schemes, appointed the G.V.K. Rao Committee to inquire into the allegations. The 4th respondent was one of the Societies whose activities were questioned before the Committee. Very serious and grave irregularities were noticed in its functioning and the Committee Report specifically disclosed the agreement between the Society and the third party, M/s Bhagya Enterprises, which had undertaken the acquisition, which could only have been carried out by employing State machinery under the garb of a public purpose being effectuated.

5. The learned Single Judge categorically found fraud in the acquisition carried out. The Division Bench, whose order is impugned herein, though highlighted the well-settled principle that fraud vitiates the most solemn proceedings, chose to

[5] (2016) 16 SCC 46

overturn the well-considered judgment of the learned Single Judge on the ground of delay. The trite principle that delay condonation should yield to a categoric finding of fraud was not appreciated by the Division Bench. The appellants also relied on the comparable instances, wherein this Court interfered with the colourable exercise of power in ***Uddar Gagan Properties Ltd. v. Sand Singh & Ors.***[6], ***Royal Orchid Hotels & Anr. v. G. Jayarama Reddy & Ors.***[7], ***Rattan Chand Hira Chand v. Askar Nawaz Jung (Dead) by LRs. & Ors.***[8]. The Division Bench also erred egregiously in finding proof of possession based only on the notification issued under Section 16(2) of the LA Act, applicable in the State of Karnataka, when the appellants were never physically divested of their possession by the State Authorities. The learned Single Judge had categorically found that there is no *mahazar* prepared; which is incumbent, when actual physical possession is taken, of the acquired lands. The Division Bench ought not to have disturbed the well-considered findings of the learned Single Judge in the absence of any perversity or

[6] (2016) 11 SCC 378
[7] (2011) 10 SCC 608
[8] (1991) 3 SCC 67

arbitrary exercise of jurisdiction, which grounds in fact applied more aptly to the subject acquisition.

Arguments for the Society: -

6. Arguing for the 4th respondent-Society, it is pointed out that the case set up by the appellant rests on four propositions: bogus membership, engagement of middlemen, fraud and absence of prior government approval under Section 3(f)(vi) of the LA Act, all of which are unsubstantiated and frivolous. On government approval, it is pointed out that the Society's proposal was scrutinised by a Three-Men Committee and cleared by the State-Level Coordination Committee (SLCC) and subsequently approved by the Government before issuance of Section 4(1) notification. The acquisition commenced with notification dated 22.11.1988 and after consideration of the objections, the declaration under Section 6(1) was issued on 04.12.1989 restricted to 59 acres, 6 guntas. Awards followed in the year 1990 with possession taken evidenced unequivocally by the notification under Section 16(1), raising a statutory presumption under sub-section (2) of Section 16 and the entire land was duly handed over to the Society. The present Writ Petition is filed after about 19 years, in 2007. Earlier a Division Bench of the

Karnataka High Court ruled in favour of the Society and the specific notification was upheld as occasioned by a public purpose, in ***Karnataka Gruha Nirmana Sahakara Sangha Limited, Peenya, Bangalore v. Karithimmaiah and Others***[9].

7. The contemporaneous records indicate a housing scheme having been approved by the Government which was the proposal made by the Society before the Revenue Commissioner. The Society itself was registered on 14.03.1974 and consisted of members who were employees of the Small-Scale Industries in Peenya, Bangalore and other landless residents of that area. The application in the form of a proposal submitted before the Revenue Commissioner contained the ownership particulars of the land, the extent required, the financial capacity of the Society, the proposed plot dimensions, approximate price and the broad map of the layout plan for development, as produced along with I.A. No.161082 of 2018 in C.A Nos. 13744-13747 of 2015 as Annexure R4. This proposal, was recommended by the Three-Men Committee and the SLCC,

[9] 2002 (1) Kar.L.J. 469 (DB)

as also approved by the Government by order dated 13.11.1987 and directed initiation of acquisition proceedings.

8. The allegation of bogus membership is frivolous, insofar as the same was considered at the level of the SLCC and confirmed through the machinery of the State; the Registrar of Cooperative Societies. There is no proof offered of fictitious membership and there is no annulment of the Society's registration or cancellation of the approval of the verified memberships. The GVK Rao Committee only made a preliminary scrutiny and there were no serious irregularities that were highlighted as against the 4th respondent Society. The report also does not record any membership conferred as fictitious or its memberships being fabricated without any basis. There is no substantiation as to the allegation of colourable devices having been employed for acquisition or that the beneficiaries were bogus. The agreement produced as Annexure P1 along with the Civil Appeal does not confer any statutory power on the service provider who was merely employed to identify the land and obtain documents from the owners, as also propose a layout and carry out liaison work. There was never any intention or authorisation to the service provider to indulge in any unlawful activity for the

acquisition. The acquisition as such was not under any contract and it was a separate proposal made, which was verified by the Committees at the government level and approved by the Government itself. The agreement with a service provider, for obtaining documents from owners and layout related work, does not vitiate the acquisition which was carried out legally.

9. It is also urged that the authorities relied upon by the appellants are distinguishable. ***H.M.T. House Building Cooperative Society v. M. Venkataswamappa***[10] was a case in which there was no prior approval of a housing scheme and the record contained findings of a large-scale inclusion of ineligible and bogus members, collection of huge amounts and agreements with agents, to use undue influence on the Government to issue notification to acquire lands for H.M.T.H.B.C Society. ***The Vyalikaval House Building Co-Op. Society by its Secretary v. V. Chandrappa & Ors.***[11] was concerned with a clear fraud employed and abuse of State machinery, on which finding the acquisition was set aside. In the instant case, fraud is inferred from a *'general committee report'*

[10] (1995) 3 SCC 128
[11] (2007) 9 SCC 304

and a private service agreement despite the project specific scrutiny and approval being on record. ***Bangalore City Cooperative Housing Society Ltd.***[3] is in favour of the 4th respondent Society, specifically applying paragraph 78 to 79, wherein disclosure of total eligible members, land requirement, specific identification of land, plot dimensions and broad mode of development were the aspects on which the Committees of the Government applied its mind before acquisition. Therein the land owners challenged the notification of 1988-1989 in 1992 and 1998 and the delay had been condoned. In the present case despite the GVK Rao Committee Report being on the public domain, no challenge was made within a reasonable time. The notifications were of the period 1998-99, awards were made in 1990, possession commenced in 1992-93 and the writ petitions were filed only in the year 2007. ***Karithimmaiah***[9] with respect to the very same acquisition is a binding precedent. Insofar as Writ Petition No's.22979-85 of 1989 and Civil Appeal No's.13754-57 of 2015, it is pointed out that the parties in the writ petitions and one of the parties in the Civil Appeals had challenged the notification in an earlier proceeding, ending with the dismissal of Special Leave Petition (C) No.1727-1732 of 2002. In

conclusion, it is the argument that the four propositions urged does not merit consideration and are liable to be negated and the acquisition is to be upheld.

Arguments of the State: -

10. The Government, to the specific query raised, as regards the documents in I.A. No.161082 of 2018 asserted a proper procedure having been followed as provided in the Karnataka Government (Transaction of Business) Rules, 1977. The extracts under Part III, Sub-heading 'E' with reference to Land Acquisition is pointed out, indicating that the acquisition of land under the LA Act for any Department of Government shall be dealt within the Revenue Department; but all administrative decisions connected with the acquisition shall be taken in the Administrative Department concerned in the Secretariat under order of the Minister-in-Charge. On our specific directions, an Officer of the State Government was present who also produced the extracts of the relevant records with respect to the 4th respondent Society which is Government File No.RD 242 AQB 84.

11. The State also relies on ***Karithimmaiah***[9] to urge the ground of *res judicata.* Insofar as the GVK Rao Committee being

in public domain it is urged that the inquiry report being one prepared by an Inquiry Officer appointed under a statute, any person could have obtained a certified copy of the same. The Committee's report was also looked into by the High Court and this Court in the various decisions cited, which was a raging controversy during that time and the land owners were quite aware of the report. Insofar as the extent of land acquired, the Three-Men Committee and the SLCC had recommended allocation of additional 97 acres of land to the 4th respondent Society, comprising of 11 acres in Laggere village, 8 acres and 23 guntas in J.B. Kaval village, 12 acres and 17 guntas in Nelakedaranahalli village and 65 acres in Jakkur village. The SLCC excluded 65 acres from Jakkur village since it was falling under the regional park zone. The Commissioner Revenue adjudicated the compensation and acquired the land by communication dated 07.11.1988 which proposed the acquisition of 59 acres and 39 guntas from Nelakadirenahalli Village. Mr. Sanjay R. Hegde, learned Senior Counsel also points out that these acquisitions for the housing societies were at the time of the initial development of Bangaluru which was necessary and expedient.

The Single Bench Findings: -

12. We have to take note of the judgment of the learned Single Judge which led to Civil Appeal No's. 13744 to 13747 of 2015; taken as the lead case, in a little detail. There were originally 16 petitioners, all of whom had lands in Nelakadiranahalli Village, but by the time the writ petition was heard, only four remained; the 2nd, 10th, 13th and 16th petitioners, who are respectively Kempaiah, Nanjundaiah, Hanumaiah and Chandra, whose legal representatives are the appellants before us; the writ petitioners in WP No.9412 of 2007. They assert their possession over the lands alleged to have been acquired, even now. Only when interference to their possession was attempted in 2007, they approached the High Court with a challenge, specifically asserting fraud. In total, they claimed 4 acres and 12 guntas; their separate holdings being 27 guntas, 1 acre and 32 guntas, 30 guntas and 38 guntas respectively. They sought for a writ of certiorari quashing the notification dated 22.11.1988 under Section 4 and the declaration dated 04.12.1989 under Section 6 of the LA Act. Their prayer was also to quash the notification issued under Section 16(2) of the LA Act; a provision brought in by an amendment, by the State of Karnataka. They further

challenged Annexure Q dated 19.01.1993, Annexure R dated 01.03.2005 and Annexures S1 to S3 communications dated 13.11.1992, 20.01.1993 and 26.07.2004, which directed handing over of possession to the 4th respondent-Society. In the alternative, they prayed for a writ of mandamus directing de-notification of the land acquisition proceedings in the specified survey numbers of Nelakadiranahalli Village, Yeshwanthpur-Hobli, Bangalore North Taluk, Bangalore.

13. The learned Single Judge first looked at Annexure P1 agreement entered into with two persons, representing one Bhagya Enterprises, who acted as middlemen for the purpose of acquisition of the land. It was observed that on instigation of the middlemen, the Government employed its machinery to acquire the land for the purpose of the Society; which is evident from how it was proceeded with. The acquisition commenced with a letter dated 13.11.1987, issued by the Revenue Commissioner and Secretary to Government to the Special Deputy Commissioner, Bangalore, conveying the approval for acquisition of an extent of 97 acres of land in favour of the 4th respondent Society. Later by the notification under Section 4(1) the extent was reduced to 79

acres 25 guntas while the declaration under Section 6 indicated 59 acres 6 guntas.

14. Some other landowners had challenged the acquisition in a writ petition which was allowed by the learned Single Judge, overturned by a Division Bench in ***Karithimmaiah***[9] While the learned Single Judge quashed the acquisition proceedings on several grounds; viz; the 4th respondent being not a *bona fide* society, absence of public purpose, invalid declaration under Section 6 and the State Government not being a contributory; the Division Bench found that the condemnation of privately owned properties for the purpose of providing housing, as provided under Section 3(f)(vi) of the LA Act, was perfectly in order and the omission to specify 'public purpose' in the notification would not vitiate it. The respondent State and the Society vehemently relied upon the aforesaid decision to seek for a dismissal of the instant writ petition too.

15. The learned Single Judge found that the contention of the writ petitioners that the Society itself was dubiously constituted without any details of the membership and the involvement of middlemen to facilitate acquisition of land by the State, was justified and it clearly indicated a fraud played on the citizens

and the colourable exercise of power by the State authorities. The respondents, on the other hand, asserted that they had followed the legal rigmarole and requisitioned a specified extent of property for the purpose of laying out a housing scheme, which is included as a public purpose in the LA Act. The respondents also asserted possession on the basis of a notification issued under Section 16(2) of the LA Act, which was urged as conclusive evidence of the State having taken possession of the said land. The specific contentions raised before the learned Single Judge by the respondents, State and the Society, were of *res judicata, estoppel* as also delay & laches. On possession, the learned Single Judge found categorically that, but for the notification under Section 16(2), there was nothing available in the records to indicate physical possession having been taken over by the State authorities, usually acknowledged by *mahazars* in which the independent persons are also made witnesses.

16. The technical plea of *res judicata, estoppel* and delay & laches were rejected by the learned Single Judge, primarily finding fraud played on the landowners for reasons of : (i) the agreement with middlemen, who undertook to facilitate

acquisition through the State for a consideration; (ii) payment to landowners having not been substantiated; and (iii) the G.V.K. Rao Committee Report, which had specifically dealt with land acquisitions made in the garb of establishing housing schemes on the requisition of Cooperative Housing Societies, the benefit of which lands actually inured to real estate operators. None of these aspects were addressed in ***Karithimmaiah***[9]. The learned Single Judge noticed the G.V.K. Rao Report in detail, with reference to the 4th respondent-Society, in its order and extracted the same. The conclusions indicate that the 4th respondent-Society did not have any details of its members and that huge amounts were paid by them to middlemen and landlords directly. It was shockingly noticed that the representatives of the 4th respondent-Society before the Committee had spoken of bribe to the Land Acquisition Officers (LAO). The observations made in the G.V.K. Rao Report, specifically with respect to the 4th respondent-Society and the conclusions arrived at by the said Committee, clearly indicated the fraudulent manner in which the Society was functioned, attempting to appropriate lands privately owned, for dubious purposes under the guise of implementation of housing

schemes, the like of which, was interfered with by another Division Bench; approved in ***H.M.T. HBCS [M. Venkataswamappa]***[10] and a batch of cases. The facts and the law delineated are strikingly similar and identical, held the learned Single Judge, which persuaded the learned Single Judge to quash the acquisition proceedings on the ground of fraud and colourable exercise of power, on finding also that the possession had not been taken over by the State or the property handed over to the 4th respondent-Society till date. Learned Single Judge after quashing the notifications issued under Section 4 and the declaration under Section 6, proceeded to consider the irresponsible and illegal manner in which the officers of the State acted *mala fide* in condemning privately owned properties exercising powers of eminent domain and thus perpetrating injustice on the citizens through the fraudulent measure of land acquisition, not intended for public purposes. The learned Single Judge came down heavily on the false affidavit filed before the Court and directed contempt notice to be issued against the Under Secretary, who was the deponent in the affidavit. Costs of Rs.10,000/- in favour of each of the four petitioners were also ordered.

The Impugned Judgment: -

17. In fact, we are concerned with another set of appeals in which the writ petition was dismissed on the ground of delay, which the landowners had challenged in writ appeal. Both the appeals, from the decision, quashing the notification, and the other rejecting the challenge on delay, were considered together. While affirming the dismissal on the ground of delay, the judgment of the learned Single Judge in WP No.9412 of 2007; which we are looking at presently, was reversed and the writ petition itself got dismissed on the ground of delay and *res judicata*.

18. The Division Bench judgment, which is impugned herein, passed a common judgment in the two appeals; one, from the dismissal of Writ Petition No.10843 of 2008 on the ground of delay and latches, and the other, from Writ Petition No.9412 of 2007 which quashed the entire acquisition. The Division Bench first noticed the decision in ***Karithimmaiah***[9] in which the very same acquisition was under challenge, which challenge stood negated. The impugned judgment relied on the recommendations of the Three Men Committee as also the SLCC and subsequent approval of the Government, which stood

upheld in ***Karithimmaiah***[9]***,*** the SLP against which was also dismissed by this Court. On considering whether the very same issues could be reagitated by the writ petitioners on the ground of fraud, reference was made to the decision of this Court in ***Meghmala & Ors. v. G. Narasimha Reddy & Ors.***[12]. In that case, the issue relating to fraud was held to be concluded by reason of the principles of *res judicata* for reason of the very same issue having been agitated in the earlier proceedings. The discovery or detection of fraud at a belated stage would not be sufficient to set aside the same, even if it has been procured fraudulently, held the Supreme Court. The Division Bench also dilated upon various legal aspects, specifically; propositions of law regarding, finality of litigation and constructive *res judicata* to reiterate that the decision in ***Karithimmaiah***[9] had brought in finality to the acquisition proceedings for the 4th respondent Society.

19. ***A.C. Ananthaswamy and Ors. v. Boraiah (dead) by LRs.***[13] was also relied on. The decision of the learned Single Judge, which set aside the acquisition, had considered the plea of *res*

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[12] (2010) 8 SCC 383
[13] (2004) 8 SCC 588

judicata based on ***Karithimmaiah***[9]. It was negatived on the ground that it was just a ruse to get the writ petition dismissed on technical pleas, without allowing the Court to embark on a scrutiny into the records of the State Government as maintained by the Special LAO. The Division Bench faulted this finding on the ground that the acquisition commenced with the notifications issued in the year 1988-89 the passing of the award in the year 1990 and the possession taken over in the year 1993. We immediately notice that this is far from the reality as we see from the records, which we referred to a little later. Continuing the narration, the reliance on GVK Rao Report was also criticized on the ground that it was available in the year 1989 and there was no explanation why the writ petitioners did not assail the acquisition proceedings at any earlier point of time. The presumption arising out of sub-section (2) of Section 16 of the LA Act by a notification issued on 18.11.1992, proclaiming possession having been taken over, was specifically noticed. The Division Bench also observed that a *mahazar* for taking over possession would be drawn up only if Section 47 of the LA Act is invoked, when there is an obstruction to the taking over of possession, pursuant to a notice issued under Section 12(2) of the

LA Act. There being no obstruction caused, there was no requirement to invoke Section 47 was the finding; which again is far from the facts as disclosed from the documents produced by the 4th respondent Society in IA No.161082 of 2018; which we would notice a little later. The decisions of this Court in which the acquisition proceedings were interfered with were noticed and distinguished.

20. Finding that the instant acquisition proceedings were upheld by the Division Bench in the year 2001 in ***Karithimmaiah***[9], the allegation of fraud having vitiated acquisition proceedings was rejected; especially since the said ground having not been taken up in the earlier round of litigation. On the ground of delay, the writ appeal against the judgment interfering with the acquisition, was allowed and the other impugned order rejecting the writ petition on the ground of delay was affirmed. The Division Bench declined to look into the facts as noticed by the learned Single Judge; while causing interference to the acquisition proceedings, all relatable to the fraud, colourable exercise of power and collusion, as coming out from the records produced and the documents perused; which we are unable to appreciate. On the ground of delay, we cannot

but notice immediately that there was no proper housing scheme with a layout plan of the sites, the roads, the common area etc. approved by the State Government; which itself vitiates the acquisition under Section 3(f)(vi) of the LA Act.

Fraud vs. Delay vis-à-vis Res judicata: -

21. ***Meghmala***[12] observed that judicial pronouncements, unlike sand dunes, are known for their stability and finality, while rejecting the claim made by a Society who had failed in their earlier attempts to hold on to a property based on an agreement to sell. The facts indicate that the appellants therein asserted title over a property based on a sale deed, while the respondent Society claimed possession based on an agreement for sale. The Special Court for Land Grabbing Cases found the purchaser to have title, which was unsuccessfully challenged in a Writ Petition and a Special Leave Petition. The SLP was withdrawn with liberty to file a review, which too stood rejected. The appellants; while the review was pending before the High Court, moved for execution, while the respondent moved an application before the Executing Court to summon the records of the Revenue Divisional Officer, Secunderabad, pertaining to the survey of the suit land. The Special Court allowed the

Execution Petition and rejected the application filed by the respondent-Society. The order of the Executing Court was challenged unsuccessfully in a writ petition and a review too failed. Having failed at every point, the respondents filed a Review Application from the original decree in the land grabbing case before the Special Court and filed a fresh application before the Special Court for declaration; that, they were the owners, alleging that, in fact the appellants were the land grabbers. The respondents also impleaded the Government Officers and the vendors of the appellants in the fresh application, which application was rejected by the Special Court. On a challenge before the High Court, the High Court directed a *de novo* consideration of the merits, which was challenged before this Court. This Court reversed the order of the High Court specifically finding that the respondents were unable to show any suppression of material information from the Special Court, at the earlier instance, wherein the contention of a proper identification of the suit land was taken and negatived. The respondents were unable to prove their interest in the suit land and they completely failed to show any document transferring the land to the Society, but for the agreement of sale,

on which there was no suit for specific performance initiated. The questions attempted to be agitated on the ground of fraud and misrepresentation, were already agitated unsuccessfully in the earlier round of litigation, was the specific finding.

22. We are unable to find any application of ***Meghmala***[12] in considering ***Karithimmaiah***[9] on the ground of *res judicata.* ***Karithimmaiah***[9] only based itself on the approval of the Government communicated by the Under Secretary, and held it a valid approval of the housing scheme, without verifying the records to understand whether actually there was a housing scheme, with the proper lay out approved by the Government, prior to initiation of acquisition proceedings. As we noticed, the Division Bench, at the earlier instance, had cursorily looked at the files to find a public purpose, while in the present proceedings, the learned Single Judge had dealt with the issues raised on fraud, colourable exercise of power and collusion. Pertinent also is the singular factum of an agreement entered into with a so-called service provider to facilitate acquisition of lands, already agreed to be purchased by the service provider, for a commission; which aspect was not before the Court at the earlier instance.

23. ***A.C. Ananthaswamy***[13] was also in a totally different circumstance. Therein, an *ex-parte* decree was sought to be set aside under Order IX Rule 13 of the Code of Civil Procedure, 1908, and a First Appeal was also filed against it. The First Appeal was dismissed as time barred and when the plaintiff moved for execution of the decree when the defendant filed a separate suit seeking setting aside of the *ex-parte* decree on the allegation of fraud and misrepresentation; which allegation was specifically raised on the ground of incorrect details of the defendant having been shown in the plaint. This Court found not only that bare non-service of summons cannot lead to an allegation of fraud, but also that the specific contention raised in the second suit regarding fraud and misrepresentation, was never raised in the application to set aside the *ex-parte* decree or the appeal filed from that decree; at which stage the details of the defendants shown in the plaint was very much within their knowledge. Annexure P1 agreement produced in the writ petition is the distinctive aspect on which, in this case the ground of *res judicata* and delay are liable to be rejected.

24. In ***Karithimmaiah***[9]**,** the learned Single Judge quashed the acquisition proceedings on multiple grounds i.e. the 4th

respondent being not a *bona fide* society, absence of public purpose, invalid declaration under Section 6, and the State Government not being a contributory. The Division Bench noticed that the learned Judge merely observed that the Government did not produce any record to show that there was a scheme submitted by the appellant-society and the same was approved by the Government. Section 3(f)(vi) was noticed along with the communication of 13.11.1987 signed by the Under Secretary to Government, Revenue Department to find that there was a prior approval. The application of the 4th respondent Society was perused to find that the communication more than satisfies the Court, to find a proper approval from the Government having been obtained.

25. Be that as it may, we cannot but observe that a more detailed examination has brought out facts, which clearly indicate collusion and colourable exercise of power, leading to a fraud played on the landowners, which according to us cannot be ignored, merely on the ground of *res judicata*. In this context we also have to notice that ***G. Jayarama Reddy***[7] was a decision of another Division Bench, which interfered with the similar acquisition proceedings, upheld in a Civil Appeal, by this Court.

The precedential value of the judgments of this Court assumes relevance while the mere dismissal of an SLP approving the judgment in ***Karithimmaiah***[9] does not have the sheen of a precedent of this Court, under Article 141 of the Constitution of India, on application of the principles of merger.

The Precedents: -

26. ***H.M.T. HBSC [M. Venkataswamappa]***[10] upheld the decision of the Division Bench of the High Court of Karnataka in ***G. Jayarama Reddy***[7] and followed ***H.M.T. HSBC [Syed Khader]***[2]. The facts of the said cases are strikingly similar to the instant case and hence we need to dwell on those for a better understanding.

27. In ***G. Jayarama Reddy***[7], the challenge was against the acquisition under the LA Act in favour of certain House Building Cooperative Societies *inter alia* on the ground that, though, apparently the acquisition was in implementation of housing schemes, in truth, the Society joined hands with builders and contractors to do real estate business, making enormous profit taking advantage of the huge demand for building sites in the growing city. The Division Bench found that the acquisition of land in favour of the six respondent-Societies, though stated to

be in implementation of housing schemes, the materials placed clearly established that, in fact and truth, the acquisition was not for any *bona fide* housing scheme for the benefit of *bona fide* members but was substantially for the purpose of indulging in real estate business under the guise of allotment, to either bogus members or in favour of intending purchasers by enrolling them as associate members. The Societies and the middlemen with whom the societies had entered into agreements, were reaping profits by exploiting the existence of the great demand for residential sites, arising in the nascent stages of Bangalore City's development.

28. The agents of the Societies had paid huge amounts to influence the Government officers, to get the preliminary and final notifications published acquiring large extent of lands from private land owners. It was held that the decision of the Government to acquire lands brought about by the influence of such agents appointed as 'go-betweens' and 'carriers' between the Government and the Society concerned, warranted the acquisition notifications to be set aside on the ground that it is a colourable exercise of power and it suffers from legal *mala fides.* It was also held in Paragraph 49(7) as a general observation: -

> *'49.7 There is considerable force in the contention of the petitioners that acquiring large extent of lands for formation of large number of Societies in the area for which the Bangalore Development Authority is constituted under an Act of Legislature and on whom the obligatory function of formation of layouts and distribution of sites to citizens is vested, has the effect of circumventing the provisions of the B.D.A. Act and rendering the Bangalore Development Authority workless and purposeless and therefore as a rule, the formation of layouts in the City should ordinarily be undertaken by the Bangalore Development Authority and only as an exception the work may be permitted to be undertaken by any Housing Co-operative Society after satisfying its suitability, merit and bona fides and therefore requires serious consideration by the Government.'*

29. In the course of the judgment, it was found that a detailed investigation by the Court in respect of the serious allegations made by the landowners was unnecessary, due to the G.V.K Rao Report. The widespread acquisition of lands in favour of Cooperative Housing Societies, which had sprung up within the Bangalore Metropolitan Planning Area, had become a matter of public debate and criticism, as a result of which, a statutory inquiry was directed by the Registrar of Cooperative Societies under Section 64 of the Karnataka Cooperative Societies Act, 1959, by Sri G.V.K. Rao, the Controller of Weights and Measures, who had submitted his report. The Division Bench noted the

contention of the petitioner that the report fully establishes the allegations made by the petitioner and copiously extracted the same in its judgment.

30. The illegalities pointed out in the report were highlighted in the decision, which are as follows; which we summarize for brevity: -

(i) There were gross irregularities in admission of members and the Registers maintained are haphazard and incapable of pinpointing the resolutions, admitting the members or the date on which such admissions were carried out.

(ii) Persons who were residing outside the jurisdiction of the Society had been admitted and despite no provision for admission of associate members or allotment of sites to such members, such privileges of allotment were conferred on associate members despite absence of a specific provision to benefit the associate members with such allotments.

(iii) Many of the societies had acquired lands outside the jurisdiction which the Government has approved in a lackadaisical manner.

(iv) Most of the Societies had entered first, into agreements with agents, who undertook acquisition through the Government machinery for payment of a consideration. There were also instances of repeated advances having been paid to middlemen, often resulting in the Societies, facing the problem of overlapping claims. <u>The agreements with the agents alone warrant treatment of such acquisitions to be bogus and</u>

illegal, especially since it reveals the vested interest of the Management of the Societies.

(v) There were also specific irregularities and illegalities found with reference to the named societies, who were the respondents therein.

[underlining by us for emphasis]

31. After copious reference to the report of Sri G.V.K. Rao, it was found that the State Government had given approval for acquisition for more than 100 societies within the area of the BDA. The submission of the Government, noticed in Paragraph 26, was also with reference to a Cabinet Sub-Committee having been constituted by the Government to take a final decision in the matter and in view of the change of the Government, the Cabinet Sub-Committee having been reconstituted. A copy of the order dated 14.01.1991 reconstituting the Cabinet Sub-Committee was also produced, which was extracted, which specifically dealt with the mushrooming growth of House Building Cooperative Societies and the unregulated purchase and allotment of large extents of land.

32. Immediately, we have to notice that there are a number of similarities with respect to the irregularities and illegalities highlighted in the judgment of the learned Single Judge, subject

matter of this appeal, which we will deal with a little later. We also have to notice that when the Cabinet Sub-Committee was appointed on 14.01.1991 seeking review of the purchase and allotments of land to Cooperative Housing Societies, a specific contention raised in the present case by the Government was that possession was taken over of the lands decided to be acquired on 23.10.1992. The decision of the Cabinet Sub-Committee, unfortunately, is not forthcoming nor does the notification speak of the constitution of the Cabinet Sub-Committee on 14.01.1991.

33. It was categorically found in Paragraph 33 after referring to the conclusions in the G.V.K. Rao Report, that the agreement entered into by the Societies with the agents and the huge amounts advanced by the agents in order to procure the preliminary and final notifications under the LA Act, are agreements opposed to public policy and totally expose the want of *bona fides* on the part of the housing scheme, sponsored by the Societies. This very fact was found to be injurious to public interest and detrimental to purity of administration in Paragraph 40, which led to quashing of the notifications, insofar as the five respondent-Societies, based on G.V.K. Rao Committee Report

and relating to one other Society, based on the report of the Joint Registrar.

34. It was held so in Paragraph 40, which is extracted hereinbelow:

> *'40.....The irresistible inference flowing from the facts and circumstances of these cases is, whereas the power conferred under the Land Acquisition Act is for acquiring lands for carrying out housing scheme by a housing society, in each of the cases the acquisition of lands is not for a bona fide Housing Scheme but is substantially for the purpose of enabling the concerned office bearers of respondent-Societies and their agents to indulge in sale of sites in the guise of allotment of sites to the Members/Associate Members of the Society and to make money as alleged by the petitioners and therefore it is a clear case of colourable exercise of power. Thus, the decision of the Government to acquire the lands suffers from legal mala fides and therefore the impugned Notifications are liable to be struck down.'*

35. ***H.M.T. HBCS [Syed Khader]***[2] dealt with the acquisition of lands in two villages and the challenge made to the Section 4(1) Notification dated 12.07.1988 and the Section 6(1) declaration made in respect of 99.01 acres of land. The High Court quashed the steps taken in connection with the acquisition thereof, which was challenged before this Court. Therein also the High Court held that the acquisition was not for allotment to *bona fide* members and the Society had indulged in a commercial venture

for sale of lands acquired under the provisions of the LA Act, which was a colourable exercise of power. The High Court also opined that the procedure adopted there, by the State Government for acquisition of lands for the Society, was likely to defeat the schemes under the BDA Act. Therein also, far earlier to the Section 4(1) Notification of 12.07.1988, the appellant Society had entered into an agreement with M/s SR Constructions on 19.09.1984, wherein the latter undertook to secure lands in the two villages, as specified in the annexure to the agreement. It was held so in Paragraphs 21 and 22 as under:

> *'21. Mr G. Ramaswamy, learned Senior Counsel appearing on behalf of the appellant, submitted that merely because the appellant-Society had entered into an agreement with Respondent 11, M/s S.R. Constructions, in which the latter for the consideration paid to it had assured that the lands in question shall be acquired by the State Government, no adverse inference should be drawn because that may amount to a tall claim made on behalf of M/s S.R. Constructions in the agreement. He pointed out that the notifications under Sections 4(1) and 6(1) have been issued beyond the time stipulated in the agreement and as such, it should be held that the State Government has exercised its statutory power for acquisition of the lands in normal course, only after taking all facts and circumstances into consideration. There is no dispute that in terms of agreement dated 1-2-1985 payments have been made by the appellant-Society to M/s S.R. Constructions. <u>This circumstance alone goes a long way to support the contention of the writ petitioners that their</u>*

lands have not been acquired in the normal course or for any public purpose. In spite of the repeated query, the learned counsel appearing for the appellant-Society could not point out or produce any order of the State Government under Section 3(f)(vi) of the Act granting prior approval and prescribing conditions and restrictions in respect of the use of the lands which were to be acquired for a public purpose. There is no restriction or bar on the part of the appellant-Society on carving out the size of the plots or the manner of allotment or in respect of construction over the same. That is why the framers of the Act have required the appropriate Government to grant prior approval of any housing scheme presented by any cooperative society before the lands are acquired treating such requirement and acquisition for public purpose. It is incumbent on the part of the appropriate Government while granting approval to examine different aspects of the matter so that it may serve the public interest and not the interest of few who can as well afford to acquire such lands by negotiation in open market. According to us, the State Government has not granted the prior approval in terms of Section 3(1)(vi) of the Act to the housing scheme a in question. The power under Sections 4(1) and 6(1) of the Act has been whether the acquisition of the exercised for extraneous consideration and at the instance of the persons who had no role in the decision making process lands in question shall be for a public purpose. This itself is enough to vitiate the whole acquisition proceeding and render the same invalid.

22. In the present case there has been contravention of Section 3(f)(vi) of the Act inasmuch as there was no prior approval of the State Government as required by the said section before steps for acquisition of the lands were taken. The report of Shri G.K.V. Rao points out as to how the appellant-Society admitted large number of persons as members who cannot be held to be genuine members, the sole object being to transfer the lands acquired for "public purpose", to outsiders as part of commercial venture, undertaken by the office-bearer of the appellant-Society. We are in agreement with the finding of the High

Court that the statutory notifications issued under Sections 4(1) and 6(1) of the Act have been issued due to the role played by M/s S.R. Constructions, Respondent 11. On the materials on record, the High Court was justified in coming to the conclusion that the proceedings for acquisition of the lands had not been initiated because the State Government was satisfied about the existence of the public purpose but at the instance of agent who had collected more than a crore of rupees for getting the lands acquired by the State Government.

[underlining by us for emphasis]

36. The aforesaid decision was followed in ***H.M.T. HBCS [M. Venkataswamappa]***[10]**,** which common judgment affirmed ***G. Jayarama Reddy***[7] and the other cases, as referred to by the learned Senior Counsel for the appellants.

The Instant Acquisition: -

37. We commence with the agreement produced as Annexure P1 which is dated 21.09.1984. Pertinently, we have to observe that the agreement was executed before sub-clause (f) to Section 3 was incorporated by way of a substitution in the LA Act by Act 68/1984 with effect from 24.09.1984. The 4th respondent Society admits the execution of the agreement and the contention is that there was no intention to appoint middlemen or to confer them with statutory powers or authorise them to indulge in any illegal activities. Definitely, there can be no conferment of statutory

authority on the second party to the agreement, by the first party who is only a Cooperative Society. We are also unable to accept the contention that the second party to the agreement was a mere service provider, especially going by the recitals in the document.

38. Annexure P1 produced along with the Civil Appeals categorically states that the second party had entered into an agreement to purchase lands having an extent of 11 acres and 16 guntas in Nelakadirenahalli village and was in the process of purchasing a further extent of 61 acres and 38 guntas in the very same village. The second party assured that the landlords would execute necessary documents and effectuate conveyance of the said lands. Clause 2 of the agreement clearly indicates that the second party agreed to ensure acquisition of the land as government land in favour of the Society as also prepare and get sanctioned all the plans through the Bangalore Development Authority (BDA). Clause 3 was an undertaking that the second party would do and carry out all acts, things and deeds as may be necessary to facilitate the sale or acquisition by the Government and the sanction of layout plan by the BDA, with possession handed over to the 4th respondent Society. The

Society had also agreed to make payment of amounts to the second party per square feet acquired; a portion, after the notification under Section 4(1), then, after the objections are heard and before the Section 6 declaration and the balance, after the issuance of the declaration. The agreement so executed was in furtherance of the scheme to divest the lands from the owners, through acquisition by the Government, for eventual handover of such lands to the 4th respondent Society; even prior to the statutory regime, incorporating housing schemes promoted by Cooperative Societies with the prior approval of the Government defining it as a public purpose.

39. The agreement entered into by the 4th respondent Society with the third party was akin to those referred to in the cited decisions; which practice was deprecated by this Court and was also one of the grounds; nay, the major ground on which the acquisitions were struck down. We fail to comprehend as to how a third party could undertake invocation of the provisions of the LA Act by the Government for allotment of land, purportedly for the purpose of allotment to the members of a Society, which by itself was not a public purpose at that juncture. Here we have to reiterate that acquisition for the purpose of carrying out a

housing scheme by a Cooperative Society, with the prior approval of the appropriate Government, was introduced for the first time by the Act 68 of 1984 by substituting sub-clause (f) of Section 3 of the LA Act; which also included sub-clause (vi). Section 3(f)(vi) of the LA Act reads as under:

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

40. It is crystal clear that the acquisition for a public purpose for implementation of a housing scheme by a Cooperative Society, can be only carried out with the prior approval of the appropriate Government. The approval of the appropriate Government is not of the mere requisition made, by a Cooperative Society. It should be for the scheme; not one in contemplation but, *forma et descriptio* (*the layout and the blueprint*), placed before the appropriate authority. Immediately, we also have to observe that there is no such

scheme or a layout plan as contemplated in the LA Act, placed before or approved by the Government.

41. The 4th respondent Society has produced additional documents from Annexures R1 to R33 to substantiate a valid acquisition having been taken out and the possession also delivered to the 4th respondent Society. We have to consider these documents with reference to the statutory provisions and the Karnataka Government (Transactions of Business) Rules and the copy of the Government File No. RD 242 AQB 84 produced by the State. But, before that, we would briefly refer to the provisions under the LA Act and the timelines provided therein. The preliminary notification under Section 4 has to be published in the official gazette in two daily newspapers with circulation in the locality, one of which should be in the regional language. The Collector shall also cause public notice of the substance of such notification to be given at convenient places in the said locality and the last of the dates of such publication and public notice given, is referred as the date of publication of the notification. Section 6 (1) refers to the declaration that the land is required for a public purpose, which has to be made after considering the report, if any, made under Section 5A, after

hearing of the objections. The proviso *inter alia* prohibits, any declaration in respect of any particular land covered by a notification under Section 4(1), published after the commencement of the Land Acquisition (Amendment), Act 1894, to be made after the expiry of one year from the date of publication of Section 4(1) notification. Sub-section (2) provides that such declaration shall be published in the official gazette and in two daily newspapers, as provided under Section 4(1). Herein too, the last of the date of such publication or giving of such public notice, is referred to as the date of publication of the declaration. We pause here only to observe that these timelines are reflected in Annexure P1 agreement for payment of commission to the service provider, a sure manifestation of the attempted fraud.

42. The application dated 08.10.1984 for acquisition of land submitted by the 4th respondent Society to the Revenue Commissioner is produced as Annexure R1. Annexure R1 itself indicates that the Society has entered into agreements with the landlords for the under mentioned lands, after paying heavy advances. We are unable to understand if private agreements were entered into, why the government machinery was utilised

to acquire the said lands; which was the recital in Annexure P1 agreement also. The lands covered by the said agreements with the extent and the survey numbers, as also the village, has been merely specified in the said application, without any detailed plan. The proposal in the form of a *'checklist'* is produced at Annexure R4 which is said to have been considered and approved by the Committee. It speaks *inter alia* of the number of members; total of 1774 out of which 1442 members are found eligible for allotment, the total fund of the Society was declared as Rs.6,16,000.70/- and the sites proposed to be acquired, mentioned with the specific extent. There is no layout plan seen produced along with the application.

43. We reckon that the extract of the files produced indicate the proposed area to be acquired in Nelkadaranahalli Village in favour of the 4th respondent Society. This only indicates a sketch of land without any layout plan, without housing sites, roads of access, common area and so on and so forth. Here we have to again refer to sub-clause (vi) of Section 3(f) of the LA Act which includes in the definition of 'public purpose', *inter alia* housing schemes of a Cooperative Society; but only with prior approval of the appropriate government. What is required is not just an

approval of the extent and the mere expression of a laudable housing scheme, but housing sites demarcated for allotment to landless members with the detailed descriptive lay-out plan laid before the Government. We find no such scheme having been laid out before the Government.

44. The Three-Men Committee, which examined the scheme and filed a report, as Annexure R7 specifically speaks of the Assistant Registrar of the Cooperative Societies having not verified the membership with reference to the bye laws and provisions, and that he has merely done a verification based on the records made available by the Society. Juxtaposed with this, we have to specifically notice the finding of the learned Single Judge, from the G.V.K. Rao Committee Report that the membership register of the 4th respondent Society was not available, the same having been removed by the erstwhile employee. The SLCC considered very many proposals, almost 120 cases referred by the Government and approved by the Three Men Committee, out of which, the 4th respondent Society's case was considered as No.7. Again, no reference to the detailed scheme was made, but on the mere expression of a proposed housing scheme the issue was considered and

approved. We find from a reading of the two paragraphs, in three quarters of a page, to be lackadaisical and without any application of mind.

45. The approval of the Government evidenced at Annexure R10 dated 13.11.1987, is a cryptic order conveying approval without any specific mention of the order by which such approval was made. The Officer of the Government who was present before us referred to the Minutes from the extract of the documents to contend that the Minister In-charge had approved the same with his initials. We are unable to find any such formal order having been issued by the Minister In-charge, even going by the Transaction of Business Rules. Rule 66 under the heading '*E. Land Acquisition*', relates to acquisition of land under the LA Act for any Department of Government, which has to be dealt with by the revenue department and all administrative decisions connected with it being taken by the administrative department under orders of the Minister-in-charge. We cannot but observe that the said rule does not apply to the instant acquisition, which is with respect to a housing scheme being brought in as a public purpose under the LA Act by an amendment to the Act, far later

to the Rules of 1977. Rule 18 of the Rules of 1977 assumes relevance, which reads as under:

> *'18. All orders or instruments made or executed by or on behalf of Government shall be expressed to be made or executed in the name of the Governor of Karnataka.'*

46. Hence, any approval of the Government, for a housing scheme to be carried on as a public purpose and to facilitate acquisition under the LA Act, it should be expressed to be approved in the name of the Governor of Karnataka.

47. More pertinently, we notice Section 11A of the LA Act which speaks of the period within which an award shall be made. The provision mandates that the Collector shall make an award under Section 11 within a period of two years from the date of publication of the notification and if no such award is made within that period, the entire proceedings for acquisition shall elapse. In computation of the period of two years referred to in this Section, as per the Explanation, excludes any period in which there is a stay order of a Court from pursuing with the proceedings under the LA Act.

48. We have not been apprised of any stay order having been passed and we pertinently notice from the records, the following handwritten note in the file: -

> *118) In this case 6(1) Notification was issued pending payment of balance amount. The balance amount to be paid was Rs.27,77,226=20. The Spl D.C. has now reported that the Society has deposited Rs.12,45,226=20 and a sum of Rs.19,60,00=00 has been paid directly to the land owners. From this, it is seen that the Society has actually paid Rs.32,05,226=20 which is more than the stipulated due.*
> *119) In view of the above position, we may perhaps accept the conclusion of the Spl D.C. regarding the payments made and close the matter.*
> *For orders.*
>
> *Sd*
> *31/5*
>
> *120) D.S. We can assent to further proposals like passing of awards, handover possession etc.*
>
> *Sd.*
> *8.6.90*

49. Two aspects assume significance, from the above extract. The proviso to Section 6(1), require the compensation to be awarded to be paid by a Company wholly or partly out of public revenues or some fund controlled or managed by a local

authority. If there was a proper approval under Section 3(f)(vi) for a public purpose, then the money would have to be paid by the Cooperative Society, after the award of the Collector. The files indicate that the Government reckoned an amount of Rs.19,60,000.00 which had been paid directly to the land owners while the total assets of the Cooperative Society as declared in the proposal submitted was Rs.6,16,021.70. In this context, we also have to come back to Annexure P1 agreement produced along with Civil Appeal which spoke of a third party having entered into agreements with the land owners which was reiterated in the first proposal of acquisition submitted by the 4th respondent Society before the Government as per Annexure R1. The Society has thus paid Rs.32,05,226.20, some privately disbursed and the other deposited before the Government for disbursal, clearly in violation of the LA Act.

50. We are unable to find a proper acquisition proceeding under the LA Act having been pursued by the Government. It is also pertinent that the order passed on 08.06.1999, included in the above extract, also indicates no award having been passed till then, since the order specifically directs the passing of awards. This is contrary to the timelines provided under Section

11A of two years from the date of the notification. We would not stress unduly on the aspect of delayed awards since there was no challenge raised against the notification, on the grounds of the timelines having been not adhered to; thus, the State being offered no opportunity to respond.

Karithimmaiah's Precedential Value: -

51. We have already found that the delay or the ground of *res judicata* on the basis of ***Karithimmaiah***[9] does not enable outright dismissal of the writ petition filed by the writ petitioners. Here we would look at ***Bangalore CCHS***[3], which is relied upon by the respondents as supporting their contentions, specifically paragraphs 78 and 79. On a reading of the decision, we are not impressed by the said argument and paragraph 78 is with respect to Section 32 of the Bangalore Development Authority Act, 1976, which permits formation of new extensions or layouts by private persons with the written sanction of the BDA. The instant case is not projected as a privately administered extension or layout, especially since, it is styled as a housing society formed for the purpose of development of a housing scheme under the nomenclature of a public purpose. Paragraph 79, in fact, fortifies our finding that there should be approval of a

housing scheme *forma et descriptio* and we hence extract the same hereunder:

> ***79.*** *Although, the appellant may not have been required to frame a scheme in strict conformity with the provisions of the 1976 Act and the Housing Board Act, but it was bound to frame a scheme disclosing the total number of members eligible for allotment of sites, the requirement of land including the size of the plots and broad indication of the mode and manner of development of the land as a layout. The State Government could then apply mind whether or not the housing scheme framed by the appellant should be approved.*

52. ***Bangalore CCHS***[3] needs to be noticed in detail for it lays out the history of the development of Bangalore City. After the BDA Act came into force, there was unprecedented increase in the population of the city by 1981, which made the Government realize that BDA may not be able to meet the demand for developed residential sites. Hence, it was decided to encourage formation of private layouts, as permissible under Section 32 of the BDA Act, and for this purpose, the guidelines for approval of private layouts were revised by Circular No. HUD 260 MNX 82 dated 03.03.1983. However, finding gross misuse of the guidelines by the housing societies who resorted to uncontrolled purchase of lands with haphazard layouts, resulted

in the policy being abandoned. It was then that a Three-Men committee consisting of the Registrar of the Co-operative Societies, the Secretary, BDA and the Special Deputy Development Commissioner, was constituted to scrutinize the land requirements of housing societies, fixing 30.06.1984 as the cut-off date for consideration of the applications made, by the housing societies. The cut-off date was then extended to 30.06.1987. We have to pertinently notice that the Three-Men Committee, hence, was not intended to look at the land acquisitions under the LA Act as such.

53. Dealing with the acquisition, which was the subject of the cited decision, it was categorically held in paragraph 68 that, carrying out any scheme *inter alia* of housing by a Co-operative Society, can be regarded as public purpose, only if the appropriate Government, before initiation of the acquisition proceedings, grants approval. Answering the contention that violation of Section 3(f)(vi) of the LA Act was not raised, the averment from the writ petition was categorically noticed in paragraph 70. It was found that the Society, which was the appellant therein, neither controverted the averments specifically raised on this count in paragraph 2 of the writ

petition, resulting in the Division Bench holding the acquisition to be not for a public purpose as defined under Section 3(f)(vi). This Court in ***Bangalore CCHS***[3] specifically referred to the decision of a Division Bench of the High Court in ***G. Jayarama Reddy***[7], which differed from a co-ordinate Bench in ***Narayana Raju v. State of Karnataka***[14]. The Division Bench in ***G. Jayarama Reddy***[7] *(mistakenly referred to a Narayana Raju in the report of Bangalore CCHS at para 83 to 85)* while holding that the acquisition was vitiated due to *mala fides* and manipulations done by the house building societies through an agent, relied on ***Rattan Chand Hira Chand***[8]***.*** It applied the ratio of the said decision to find that the agreements entered into between the 6th respondent Society, which indicated a condition of payment of huge sums of money by the Society to an agent, in consideration of the agent facilitating the preliminary and final notifications by the Government, clearly indicated the purpose of influencing the Government to secure approval for acquisition of lands, which is opposed to public policy. Dealing with the subject acquisition, ***Bangalore CCHS***[3] held so in paragraph 89 as under:

[14] 1988 SCC OnLine Kar 161

> *'89. As noticed earlier, in this case also no housing scheme was framed by the appellant which is sine qua non for treating the acquisition of land for a cooperative society as an acquisition for public purpose within the meaning of Section 3(f). Not only this, the appellant executed agreement dated 21-2-1988 for facilitating the acquisition of land in lieu of payment of a sum of more than rupees 5 crores. This agreement was similar to the agreement executed by H.M.T. Employees' House Building Society with M/s S.R. Constructions. The Estate Agent engaged by the appellant had promised that it will get the notifications issued under Sections 4(1) and 6(1) within four months and three months respectively. The huge amount which the appellant had agreed to pay to the Estate Agent had no co-relation with the services provided by it. Rather, the amount was charged by the Estate Agent for manipulating the State apparatus and facilitating the acquisition of land and sanction of layout, etc. without any obstruction. Such an agreement is clearly violative of Section 23 of the Contract Act.'*

54. This Court also from paragraph 90 to paragraph 109 referred to various decisions of the High Court of Karnataka, finding in favour of the Societies, the challenge to some of which were also rejected in the Special Leave Petitions filed before this Court. The reliance on these decisions, which obtained approval of this Court, was to buttress the contention that, though, a housing scheme with a layout plan is not submitted, the

representation made to the Government, clearly indicating that the land would be used for developing a housing scheme and providing sites to land-less people, would be due compliance of Section 3 (f)(vi); deeming it to be a public purpose. It was held that the findings recorded by the Division Bench of the High Court in ***G. Jayarama Reddy***[7] case clearly indicated money having played an important role in facilitating acquisition, which was substantially approved by this Court in three cases (specified in the extract below), illustrating how unscrupulous elements in the society use money and other extraneous factors for influencing the decision-making process by the executive (sic. para 130). It was held so in paragraph 132:

> *'132. Before concluding we consider it necessary to observe that in view of the law laid down in 1st H.M.T. case*[(1995) 2 SCC 677] *(paras 19, 21 and 22), which was followed in 2nd H.M.T. case*[(1995) 3 SCC 128] *and Vyalikaval House Building Coop. Society case*[(2007) 9 SCC 304]*, the view taken by the Division Bench of the High Court in Narayana Raju case*[1988 SCC OnLine Kar 161] *that the framing of scheme and approval thereof can be presumed from the direction given by the State Government to the Special Deputy Commissioner to take steps for issue of notification under Section 4(1) cannot be treated as good law and the mere fact that this Court had revoked the certificate granted by the High Court cannot be interpreted as this Court's approval of the view expressed by the High Court on the validity of the acquisition.'*

55. This fortifies our finding that ***Karithimmaiah***[9] is not a reliable precedent to reject the writ petitions on the ground of *res judicata*; despite the 4th respondent Society being the appellant therein. The Division Bench of the High Court in ***Karithimmaiah***[9] just as in ***Narayana Raju***[14] case presumed that the framing of a scheme and approval thereof can be inferred, on the direction given by the State Government to the Special Deputy Commissioner to take steps to issue notification under Section 4(1). ***Karithimmaiah***[9] was approved by this Court by declining special leave, akin to the revocation of the leave granted by the High Court in ***Narayana Raju***[14]. ***Bangalore CCHS***[3] and the extract above applies on all fours in the instant case.

Fraud; it's ominous resonance, restated: -

56. 'Fraud vitiates all solemn acts' is a principle which cannot be reduced to providing a mere lip service. We notice two classic decisions of this Court on the overwhelming effect of fraud, even when there are binding decisions between the very same parties bringing in a valid ground of *res judicata*. ***S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by***

LRs.[15], and ***A.V. Papayya Sastry & Ors. v. Government of A.P. & Ors.***[16] resonate still despite the passage of time.

57. The facts in ***S.P. Chengalvaraya Naidu***[15] indicate that the Clerk of a Decree Holder (DH) purchased a land in a court auction, on behalf of the DH, but in his own name, the rights to which was relinquished in favour of the DH by a registered document. In the meanwhile, the Judgement Debtors (JD) had paid the decretal amounts to the DH and the same having been accepted without demur, the DH was no longer entitled to the property which he had purchased through his Clerk. Suppressing the execution of a release deed in favour of the DH, the Clerk filed a suit for partition of the property and obtained a preliminary decree. The defendants were unaware of the lack of *locus standi* of the Clerk since the registered release deed executed by him was not within their knowledge. The same having been brought to their notice, the preliminary decree was challenged in the application for final decree. The trial Judge accepted the contention and dismissed the application for final decree while the High Court reversed it on the finding that, at

[15] (1994) 1 SCC 1
[16] (2007) 4 SCC 221

the most, the plaintiff can only be found to have falsely asserted title and it was for the defendants to plead and establish by way of oral and documentary evidence that, the plaintiff had no title to the suit property. The defendants ought to have obtained an encumbrance certificate to find out whether the plaintiff had still a subsisting title at the time of the suit and there was no trick or deceit employed by the plaintiff, who merely made a false assertion and did not, in any event, prevent the defendants, in any manner, from raising proper pleas and adducing necessary evidence, held the High Court.

58. This Court found the High Court to have fell into a patent error since the facts and circumstances of the case clearly indicated the Clerk to have obtained a preliminary decree, by playing a fraud on the Court. The High Court was found to have gone haywire and made observations, which were termed perverse. It was categorically held that the principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity, that it becomes an engine of fraud in the hands of dishonest litigants. Unequivocally, it was held that when the case of a person is based on falsehood, he has no right to approach the Court and can be summarily thrown out at any stage of the

litigation. A litigant who approaches the Court, is bound to produce all documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage, then he would be guilty of playing fraud on the Court as well as on the opposite party (*sic paragraph 6*). The proposition applies squarely not only to the party who initiates the litigation, but also to the party who defends it.

59. ***A.V. Papayya Sastry***[16] was again a case of land acquisition in which, based on an acquisition initiated by the Port Trust, which never fructified by reason of no award having been passed, the parties sought avoidance of the proceedings initiated under the Urban Land Ceiling and Regulation Act, 1976. In fact, repeated attempts for acquisition were made by the Government on the request of the Port Trust, none of which culminated with an award. On the Ceiling Act coming into force, the appellants on the strength of the acquisition proceedings sought to be absolved from the ceiling proceedings. The finding of the Authority under the Ceiling Act that they were 'non-surplus land holders' were taken up in a *suo motu* revision. This led to a Writ Petition being filed by the landowners before the High Court which was heard with another Writ Petition filed by

the very same landowners to complete the acquisition proceedings. The Writ Petitions were disposed of with a direction to complete the land acquisition proceedings which were originally initiated, and the order passed exercising revisional jurisdiction under the Ceiling Act after thirteen years was set aside.

60. The State filed a recall application, alleging fraud and suppression of material facts by the landowners as also by the Port Trust and the Government, especially since the land was never handed over to the Port Trust and the possession was always with the tenants and not the landowners, subject also to pending disputes *inter se*. The High Court, in review found the earlier proceedings to be vitiated by fraud and suppression of material facts and recalled its earlier order which was challenged before this Court. This Court heavily relied on the decision in ***S.P. Chengalvaraya Naidu***[15]**,** and a host of other decisions of this Court as also that of other jurisdictions.

61. We would specifically extract paragraphs 24 and 25 from the aforesaid decision which reads as under: -

> ***24.*** *In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, de*

Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. *It has been said: fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).*

(underlining supplied by us for emphasis)

62. Hence, the clear distinction is between mistake and trickery; the former leading to a wrong decision but the later resulting in a decision which would not at all have been rendered, if the Court was not misled and was made conscious of the entire facts and circumstances. Just as the Port Trust and the Government officials had misled the High Court as alleged in ***A.V. Papayya Sastry***[16] which upheld the decision of the High Court in recalling its earlier order; here the 4th respondent

Society and the Government had consciously suppressed material facts from the notice of the Court which resulted in the decisions in ***Narayana Raju***[14] and ***Kartihimmai***[9]**.**

63. In ***A.V. Papayya Sastry***[16], a contention was also taken that the order sought to be recalled was challenged in a Special Leave Petition which was rejected and hence it was not open to the High Court to thereafter entertain the application and grant the relief of recalling of the earlier order, affirmed by this Court. This Court placed reliance on ***Kunhayammed & Ors. v. State of Kerala & Anr.***[17]**,** and found the rejection of SLP to be inconsequential since there was no merger of the decisions of the High Court with that of this Court. In fact, this Court contemplated an extreme situation where this Court does not merely dismiss an SLP but after grant of leave decides an appeal by recording reasons which clearly is a binding precedent, under Article 141 of the Constitution, disabling any party to the judgment from approaching any Court or authority to review, recall or reconsider the matter. However, a caveat was made in

[17] (2000) 6 SCC 359

paragraph 39 in ***A.V. Papayya Sastry***[16] which we extract hereunder: -

> ***39.*** *The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.*

64. That fraud has it is ominous overwhelming resonance is beyond any cavil and in this case, it assumes undeniable and unquestionable relevance.

The Conclusion: -

65. The agreement produced at Annexure P1; before sub-section (f) of Section 3 of the LA Act was substituted, clearly brings out the fraud employed, which had not been considered at the earlier point of time. The further revelation from the files, regarding the manner in which the compensation was paid, clearly vitiates the acquisition proceedings. Insofar as the GVK Rao Committee Report, the learned Single Judge had elaborately considered the same and found that the

membership applications were not produced on the ground that one M. Lakkappa Gowda, who was previously working in the Society, had carried away the records. The members were admitted, in violation of the byelaws and amounts collected from the members were at different rates; at Nelkadaranahalli, at a far lower price than those in the other sites. In addition to Annexure P1, the report found that the Society had entered into agreements with two other agents for the three layouts at Jarakabande Kaval, Nelkadaranahalli and Laggere. The records which were available, were found to be tainted and there was no proper maintenance of the same. The conclusions with respect to the 4th respondent Society were that:

> (i) The admission that an employee took away the records of the Society, indicates the mismanagement pervading it.
> (ii) Huge amounts were paid to agents and landlords and the general power of attorneys were obtained in the name of the agents and not in the name of the Society.
> (iii) The Society also did not exercise necessary care in their final transactions, especially, regarding the agreements and payment of advances.
> (iv) The Office Bearers submitted to the Committee that they had paid bribes to Government Officials to facilitate acquisition.

66. The G.V.K. Rao Committee report was heavily relied on by this Court in the three decisions referred to by ***Bangalore CCHS***[3]

in its paragraph 132. ***Narayana Raju***[14] and ***Karithimmaiah***[9], both of Division Benches of the High Court cannot upset the precedential value of this Court's decisions in Civil Appeals as against the negation of leave in ***Narayana Raju***[14] and dismissal on rejection of leave in ***Karithimmaiah***[9]. This is so, on the principle of merger as expounded by this Court in ***Kunhayammed***[17].

67. It is also pertinent that even going by the additional documents produced by the 4th respondent Society with I.A. No.161082 of 2018, there is a lack of information regarding the Society, which has been glossed over by the Government authorities. Annexure R6, proceedings of the Three-Men Committee indicate that in the verification carried out, some of the membership applications were not made available nor were the receipt books for collection of share amounts, share fee or entrance fee, available for verification. Despite entries in the cashbooks as well as the share ledger, the specific submission of the Society was that the share certificates were kept ready in the Society, and they were not collected by the members. Although, 1,499 members had deposited the site amounts partly, no verification, as such of the members, were carried out and the

affidavits proffered by them were accepted. Annexure R7, report of the Three-Men Committee also clearly indicated that the Assistant Registrar of Co-operative Societies could not verify the membership with reference to the byelaw provisions.

68. Much reliance was placed on Section 16(1) notifications issued, which as per the State amendment, makes it conclusive evidence of the fact of taking over of the land. As any statutory presumption. Section 16(2) of the LA Act, incorporated by a State Amendment, is only a rebuttable presumption. The complete absence of *mahazars* of taking over, was brushed aside by the Division Bench on the ground that it would be required only if Section 47 of the LA Act is invoked, which was not required in the present acquisition. Contrary to the said finding, Annexure R18, produced as an additional document, clearly indicates the invocation of Section 47, at least with respect to certain extent of land in Nelkadaranahalli Village, which document does not contain the date on which the possession was taken over. The 4th respondent Society relies on Annexure R25 to fortify its submission of the defects noticed by the GVK Rao Committee having been resolved, which we find is only an undertaking to cure the defects and not resolution as such.

69. We fail to understand why an agreement for developing a layout has been produced as Annexure R28, which in its schedule, refers to certain villages in Bangalore South Taluk, while Nelkadaranahalli Village is in Bangalore North Taluk. In any event, Annexure R28 of the year 2007 indicates that the 4th respondent Society engaged the services of the second party therein, for forming the layout and distributing the sites to its members on the identified land for developing them into layouts. This clearly indicates that no lay out was finalized before the acquisition was made, further fortifying the argument of the statutory mandate in getting a prior approval of the housing scheme having not been complied with.

70. We once again refer to ***Winger v. Aires*** (supra), which encapsulates succinctly the *raison d'etre* for judicial review, which power we invoke to cause interference to the present acquisition proceedings, as follows: -

> *'There is no authority under our form of government that is unlimited. The genius of our democracy springs from the bedrock foundation on which rests the proposition that office is held by no one whose orders, commands or directives are not subject to review.'*

71. On a conspectus of the above reasoning, we are unable to sustain the impugned judgment of the Division Bench, and we set it aside and find vitiated the instant acquisition for the following reasons:

i. An agreement with a third party to facilitate acquisition of lands for developing a housing scheme, with an undertaking to facilitate steps under the LA Act of 1894, even before such housing schemes were brought under the nomenclature of public purpose, clearly exposes the fraud intended to be carried out.

ii. Though, the application was made by the 4th respondent Society after clause (f) was substituted in Section 3 of the LA Act, 1894, by the Act 68 of 1984 w.e.f. 24.09.1984, the cryptic consideration of the same and the absolute absence of a housing scheme with a proper layout plan placed for the approval of the Government, vitiates the acquisition and reveals the colourable exercise of power.

iii. With respect to the 4th respondent Society, the G.V.K. Rao Committee report clearly found that the membership details were not fully placed before it.

The allegation of misplacing of registers by an employee, the verification of memberships not being possible, puts the very formation and continuation of the Society under a cloud.

iv. The Three-Men committee and the SLCC had proceeded in a lackadaisical manner and there is absolutely no application of mind nor a recommendation of a properly laid out housing scheme, for approval by the Government.

v. There is no layout or blueprint of the housing scheme laid before the two committees or the Government for its approval.

vi. The notes in the Government file, as extracted hereinabove, clearly indicates that the amounts to satisfy the award were not paid by the Society to the Government for disbursal to the landowners. Private transactions of payment of money to landowners, without any substantiation were relied on to absolve the Society from making full deposit of the award amounts, again indicating the fraud played on unsuspecting citizens.

vii. The irregularity and illegality in the management of the Societies, as pointed by the G.V.K. Rao Committee, as also the statements made by the office bearers of the 4th respondent Society, that bribes were paid to the Government Officials, further vitiates the acquisition.

72. We are unable to sustain the decision of the Division Bench which failed to look into the compelling contentions regarding fraud and colourable exercise of power and upset a detailed consideration by the learned Single Judge merely on grounds of *res judicata* and delay; which pale into insignificance, especially in the teeth of the established allegations of illegal acquisitions through fraud and undue influence, as was categorically found by various decisions of this Court in the case of similar Societies, on identical allegations.

73. We, hence, set aside the order of the Division Bench and restore the order of the learned Single Judge. However, only due to the passage of time, we delete the direction to take contempt proceedings against the Government Officers. The costs imposed by the learned Single Judge shall stand enhanced to Rs.50,000/- to, each of the petitioners or the combination of the

legal representatives of the original petitioners in the writ petitions, who are the appellants in the above Civil Appeals.

74. Insofar as the consequences of the interference caused to the acquisition, we reiterate the directions in ***H.M.T. HSBC [Syed Khader]***[2]. The possession of the land shall be restored to the respective landowners, irrespective of the fact whether they had challenged the acquisition of their lands or not. On restoration of possession, they shall refund the amounts, if any received by them, as compensation from the Government, without any interest. We make it clear that this shall not facilitate any refund of the amounts received by them in any private transaction. The 4th respondent Society shall not have any claim over the lands acquired, even if possession handed over or the money refunded, since they facilitated the fraud and the colourable exercise of power by the Government Officers. If any of the plots are not resumed to the original landowners for reason of their inability or unwillingness to refund the amounts paid to them by the Government, the Government shall auction such lands and the proceeds shall be used for the purpose of victim compensation and remitted to the appropriate Head of Account at the directions of the Chief Justice of the High Court in

consultation with the Karnataka Legal Services Authority. The auction shall be conducted by the Revenue Authorities but under the supervision of a Judicial Officer not below the rank of a District Judge (Selection Grade) as authorised by the Chief Justice.

75. The appeals are allowed.

76. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
OCTOBER 26, 2026.