WA No. 100139 of 2022
C/W WA No.100062/2022

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 20TH DAY OF JULY, 2022

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S.DIXIT

AND

THE HON'BLE MR JUSTICE P.KRISHNA BHAT

WRIT APPEAL NO. 100139 OF 2022 (LA-RES)

C/W

WRIT APPEAL NO.100062 OF 2022 (LA-RES)

IN WA NO.100139/2022

BETWEEN:

1. MR. GOPAL S/O GOVIND KARJOL
   AGE. 45 YEARS, OCC. AGRICULTURE
   R/O. KHB COLONY,MUDHOL

2. MR. UMESH S/O. GOVIND KARJOL
   AGE. 43 YEARS, OCC. AGRICULTURE
   R/O. KHB COLONY, MUDHOL, MODHOL TALUK
   DIST. BAGALKOT

3. MR. ARUN S/O. GOVIND KARJOL
   AGE. 45 YEARS, OCC. AGRICULTURE
   R/O. KHB COLONY, MUDHOLD, MUDHOL TALUK
   AND DIST. BAGALKOT

...APPELLANTS

(BY SRI. C V ANGADI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   REPRESENTED BY THE PRINCIPAL
   SECRETARY
   REVENUE DEPARTMENT

M S BUILDING, BENGALURU- 560001

2. THE COMMISSIONER
REHABILITATION AND RESETTLEMENT (R AND R)
LAND ACQUISITION,
EX- OFFICIO SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, UPPER KRISHNA PROJECT
NAVANAGAR BAGALKOT- 587101

3. THE SPECIAL DEPUTY COMMISSIONER
AND GENERAL MANAGER (R AND R)
UPPER KRISHNA PROJECT
NAVANAGAR, BAGALKOT- 587101

4. THE SPECIAL LAND ACQUISITION OFFICER
BAGALKOT TOWN DEVELOPMENT
AUTHORITY, NAVANAGAR, BAGALKOT- 587101

…RESPONDENTS

(BY SMT. K. VIDYAVATHI, ADDL. ADV. GENERAL FOR R1-R3)
(SRI. M.R. NAIK, SENIOR COUNSEL A/W SRI. G.K. HIREGOUDAR, ADV. FOR R4)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO ALLOW THIS WRIT APPEAL BY SETTING ASIDE JUDGMENT DATED 10.12.2021 PASSED BY LEARNED SINGLE JUDGE IN WP.NO.108405/2016 (LA-RES) AND ALLOW THE SAME IN THE INTEREST OF JUSTICE & EQUITY.

IN WA NO.100062/2022

BETWEEN:

1. RAVI S / O BASAVARAJAPPA KUMATAGI
AGE : 49 YEARS, OCC : AGRICULTURIST,
R/O : BAGALKOT, NEAR BASAVESHWAR CIRCLE,
TQ & DIST:BAGALKOT-587101 .

2. LOKNATH 5/0 SHANKRAPPA KUMATAGI
AGE : 60 YEARS, OCC : AGRICULTURIST ,
R / O : BAGALKOT, NEAR BASAVESHWAR CIRCLE,

TQ & DIST:BAGALKOT - 587101.

3. PRABHAYYA S / O MADIVALAYA PRABHUSWAMIMATH
AGE : 50 YEARS, OCC: AGRICULTURIST,
R /O: NAVANAGAR,
BAGALKOT, TQ & DIST : BAGALKOT – 587103

4. BASAPPA MUKKANNA SWAGI
AGE : 58 YEARS, OCC : AGRICULTURIST
R/O : BAGALKOT, TQ & DIST : BAGALKOT
MUCHAKANDI TANDA - 587103

5. SHIVAPPA MAHADEVAPPA HERAKAL
AGE : 61 YEARS. OCC : AGRICULTURIST,
R / O : SAL PRINTERS BVV COMPLEX,
TO & DIST : BAGALKOT - 587103

6. BASAPPA MAHADEVAPPA HERAKAL
AGE: 45 YEARS, OCC: AGRICULTURIST,
R/O: SAI PRINTERS BVV COMPLEX,
TQ & DIST: BAGALKOT-587103.

7. SANGAPPA MAHADEVAPPA
HERAKAL DECEASED BY HIS LRS

7(A) SMT. NEELAVVA W / O LATE SANGAPPA HERAKAL
AGE : 51 YEARS, OCC : HOUSEHOLD
R /O : WARD NO.6, BAGALKOT,

7(B) SHARNAPPA S / O LATE.SANGAPPA HERAKAL
AGE : 41 YEARS, OCC : AGRICULTURIST
R/O : SAL PRINTING NEAR BLOOD BANK,
TQ & DIST : BAGALKOT - 587103.

7(C) MAHADEVAPPA S/O LATE. SANGAPPA HERKAL
AGE: 36 YEARS, OCC: R/O: R/O: WARD NO.6, BAGALKOT,

7(D) KUMARI SHANKRAVVA D/O. LATE. SANGAPPA HERKAL
AGE : 26YEARS, OCC: STUDENT,
R / O : WARD NO.6, BAGALKOT,

7(E) RAVI S / O LATE. SANGAPPA HERKAL
AGE:24 YEARS, OCC : STUDENT
R / O : WARD NO.6, BAGALKOT,

8. YALLAWA W / O BHEEMAPPA HERAKAL
AGE : 45 YEARS, OCC : AGRICULTURIST,
R/A : SAL PRINTING NEAR BLOOD BANK,
TQ & DIST: BAGALKOT - 587103 .

9. IRRAPPA IRABASAPPA BALAMI
C / O : SANTOSH KUMAR HUDED,
AGE : 69 YEARS , OCC : AGRICULTURIST,
R / O : NAVANAGAR,
TQ & DIST : BAGALKOT - 587103 .

10. KALLAPPA IRAPPA BALAMI
C/O SANTOSHKUMAR HUDED
AGE:69 YEARS, OCC: AGRICULTURIST
R/O NAVANAGAR, TQ & DIST:BAGALKOT-587103.

11. DR. HANAMANTH RAMANNA KATTI
AGE:49 YEARS, OCC:DOCTOR & AGRICULTURIST
R/O EXTENSION AREA, BAGALKOT,
TQ & DIST:BAGALKOT-587103.

12. SHREEDHAR KESHAPPA KANDAKUR
AGE:55 YEARS, OCC:AGRICULTURIST
R/O KERURU, TQ & DIST:BAGALKOT,
TQ : BADAMI, KERUR-587206.

13. DR. SOMASHAKER BASAVARAJ KERUDI
AGE:65 YEARS, OCC:AGRICULTURIST,
R/O KERUDI HOSPITAL,
TQ & DIST:BAGALKOT-587103.

14. SHASHIDHAR MALLESHAPPA JIGAJINNI
AGE:47 YEARS, OCC:AGRICULTURIST,
R/O ROOP LORD LAYOUT VIDYAGIRI

TQ & DIST:BAGALKOT-587103.

15. SANGANABASAVVA SAJJAN
AGE:61 YEARS, OCC:AGRICULTURIST
R/O VINAYAKA NAGAR,
OPP:KERUDI HOSPITAL,
TQ & DIST:BAGALKOT-587103

16. LEELABEN W/O VITTALABAI PATEL
AGE:69 YEARS, OCC:AGRICULTURIST,
R/O SECTOR 32, NAVANAGAR,
NEAR HESCOM TQ & DIST:BAGALKOT-587103

17. RAVINDRA MALLAPPA ANTIN
AGE:69 YEARS, OCC:AGRICULTURIST,
RURAL POLICE STATION,
TQ & DIST:BAGALKOT-587103

18. PANDAPPA S/O PEERAPPA LAMANI
AGE:62 YEARS, OCC:AGRICULTURIST,
R/O MUCHAKANDI VILLAGE,
TQ & DIST:BAGALKOT-587103.

19. GOPAL RAMAPPA LAMANI
AGE:70 YEARS, OCC:AGRICULTURIST,
R/O MUCHAKANDI TANDA,
TQ & DIST:BAGALKOT-587103

20. BHIMSINGH MANGALAPPA LAMANI
AGE:52 YEARS, OCC:AGRICULTURIST,
R/O MUCHAKANDI TANDA,
TQ & DIST:BAGALKOT-587103.

21. SURESH GUNAPPA LAMANI
C/O SANTOSH KUMAR HUDED
SECTOR NO.13, PLOT NO.11B,
NAVANAGAR, BAGALKOT
TQ & DIST:BAGALKOT-587103.

22. SANGAPPA SHIVAPPA RAKARADDI
AGE:56 YEARS, OCC:AGRICULTURIST,
R/O BAGALKOT, TQ & DIST:BAGALKOT,
EXTENSION AREA BAGALKOT-587103.

...APPELLANTS

(BY SRI. ASHOK HARANAHALLI, SENIOR COUNSEL A/W SRI. BASAVARAJ GODACHI, ADVOCATE)

AND:

1. THE PRINCIPAL SECRETARY
GOVERNMENT OF KARNATAKA
REVENUE DEPARTMENT,
MS BUILDING, BENGALURU-560001.

2. THE COMMISSIONER REHABILITATION
& RESETTLEMENT (R & R)
UPPER KRISHNA PROJECT,
NAVANAGAR BAGALKOT-587103.

3. THE MANAGING DIRECTOR
KBJNL, MS BUILDING, BENGALURU-560001.

4. THE DEPUTY COMMISSIONER
BAGALKOTE-587103.

5. SPECIAL DEPUTY COMMISSIONER
R & R UPPER KRISHNA PROJECT
NAVANAGAR BAGALKOT-587103.

6. THE EXECUTIVE ENGINEER
BTDA DIVISION NO.1, BAGALKOTE

7. THE SLAO BTDA DIVISION
BAGALKOTE-587103.

8. THE CHIEF ENGINEER BTDA
BAGALKOTE-587103.

9. THE TOWN PLANNING AUTHORITY
BAGALKOTE REP. BY ITS
MEMBER SECRETARY, SECTOR NO.19,

MUNICIPALITY BUILDING NAVANAGAR,
BAGALKOT-587103.

....RESPONDENTS

(SMT. K. VIDYAVATHI, ADDL. ADV. GENERAL FOR R1 TO R5)
(BY SRI.M.R. NAIK, SENIOR COUNSEL A/W SRI. G.K. HIREGOUDAR, ADV. FOR C/R6 TO R8)

THIS WRIT APPEAL FILED U/S 4 OF KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THIS WRIT APPEAL BY SETTING ASIDE THE JUDGMENT DATED 10.12.2021 PASSED BY LEARNED SINGLE JUDGE IN WP.Nos.112171-2211/2015 (LA-RES) IN THE INTEREST OF JUSTICE AND EQUITY.

THESE WRIT APPEALS HAVING BEEN HEARD AND RESERVED ON 04.07.2022 AND COMING ON FOR PRONOUNCMENT OF JUDGMENT THIS DAY, ***P. KRISHNA BHAT J.,*** DELIVERED THE FOLLOWING.

JUDGMENT

The appellants herein were the petitioners in W.P.No.112171/2015 & connected matters in which they had challenged the acquisition of their lands in Muchakandi and Bagalakote villages of Bagalakote District under two notifications issued by the respondents. The same came to be dismissed by the learned Single Judge by a common judgment dated 10.12.2021. Being aggrieved by the same, the appellants are before us in these appeals.

2. Under the impugned notifications, about 1275 acres of lands were acquired in Muchakandi & Bagalakote

villages of Bagalkot District for the purpose of implementing Unit-III of Upper Krishna Project (for short "UKP"). It is stated that ever since 1985, lands were being acquired for implementing UKP which was for the avowed "Public Purpose" of irrigating large tracts of land in various districts of North Karnataka extending upto Yadagiri.

3. There is no dispute about the fact that an award dated 30.12.2010 was passed by the Krishna Water Dispute Tribunal–II permitting the increase of height of Dam from 523 mtrs to 525 mtrs which in its wake would have submerged large extents of lands in Bagalkot. The impugned notifications were issued for establishing township in order to rehabilitate and resettle people who were going to be displaced on account of such submergence.

4. The learned Single Judge raised following two questions for consideration upon hearing the submissions of the learned counsel on both sides:

> "a. Whether the issuance of the declaration under Section 6(1) notification was issued beyond the period of one year stipulated in the 1st explanation

of Section 6 and consequently rendered it a nullify?

b. Whether the State was justified in acquiring additional lands of about 1643 acres for establishing Bagalkote-Navanagar Unit III under the impugned notifications?"

5. On the first question, by taking note of the relevant dates and the provisions of the Land Acquisition Act, 1894 (for short, 'Act'), the learned Single Judge recorded a finding in the negative. The discussions in this behalf are at paragraphs 29 to 43 of the impugned judgment. The correctness of the said finding has not been seriously contested before us by the learned Senior Counsel Sri. Ashok Haranahalli, appearing for the appellants. In any case, the relevant dates noticed by the learned Single Judge having not been disputed before us, we are satisfied that no other conclusion on the said point for consideration in the facts of the case is possible.

6. Extensive and expansive submissions were made before us by learned Senior Counsel on both sides. Submissions for the appellants was led by Sri. Ashok Haranahalli, learned Senior Counsel assisted by Sri.

Basavaraj Godachi, Advocate and learned Counsel Sri. C.V. Angadi and the submissions for the respondents was led by learned Senior Counsel Sri. M.R. Naik assisted by Sri. G. K. Hiregoudar, learned Advocate.

7. After hearing the submissions of learned Senior Counsel of both sides, we are satisfied that there is no merit in these appeals and they are liable to be dismissed.

8. The moot points canvassed in extensor before us necessitate some treatment of the extent of judicial review permissible under Article 226 of the Constitution of India in a matter of this nature and so also the nature and extent of power of the State to acquire lands under the umbrella provision "Public Purpose". Again, we have no doubt in our mind that law on both these heads admit of no ambiguity leaving no scope for further elucidation in view of catena of decisions emanating from the Hon'ble Apex Court; but yet we are treating the same in some detail largely on account of deference to the pain-staking submissions made by the learned Senior Counsel on both sides on the merits of the case.

9. Before dealing with the facts of the case, we deem it appropriate to inform ourselves of the extent of judicial review permissible in a case of this nature and also the extent of power available to the State for acquiring lands in question for "Public Purpose".

10. As we have already noticed, under the impugned notifications, large extent of lands has been acquired for rehabilitation of people displaced on account of implementing Unit-III of UKP. There is no dispute about the fact that the said project was meant to be implemented in various stages in order to quench the needs of large tracts of parched lands which the experts assessed as arable with scientific irrigation. There is also no dispute that a Dam has been built several decades ago benefiting tens and thousands of hectares of land in various districts of North-Karnataka region and the comprehensive plan envisaged implementation of what was called as "Unit-III". There was also a subsequent development sometime in 2010 by which State Government was permitted to utilize more volumes of water (303 TMC) for satisfying its local needs arising in the

adjoining districts of Dam area. Therefore, there was also an urgent need to utilize the benefits emanating from the award passed by the Krishna Water Dispute Tribunal-II to promote public weal.

11. In ***Narmada Bachao Andolan Vs. Union of India[1],*** the Hon'ble Supreme Court has observed as follows:

> **227.** There are three stages with regard to the undertaking of an infrastructural project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project is to be regarded as a policy decision. While there is always a need for such projects not being unduly delayed, it is at the same time expected that a thorough possible study will be undertaken before a decision is taken to start a project. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a court may have to play is to see that the system works in the manner it was envisaged." (underlined by us)

12. When the Irrigation Project is conceptualized and planned with the avowed objective of benefiting large number of people, especially since the project is visualized

[1] (2000) 10 SCC 664

for the purpose of providing irrigation for promoting agriculture, which is the life-blood of about 60% of the population of the State and the subject acquisition is for rehabilitating people displaced as a fallout to the execution of the irrigation project, the Courts should view curial challenges to the same with extreme caution and interference should be limited only where clear case of violation of the provisions of the Constitution or any other Statutory Rights is made out.

13. The following observation of the Hon'ble Supreme Court in ***Narmada Bachao Andolan***[2] is instructive:

> **233**. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a

[2] (2000) 10 SCC 664

valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law."

(underlined by us)

14. The Hon'ble Supreme Court in ***Tata Cellular vs. Union of India***[3] has observed as under:

> **"***Bernard Schwartz in Administrative Law, 2nd Edn., p. 584 has this to say:*
>
> *"If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial inquiry must not be so restricted that it prevents full inquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. 'It makes judicial review of administrative orders 34 (1980) 41 P & CR 255 35 (1989) 88 LGR 73 a hopeless formality for the litigant.... It reduces the judicial process in such cases to a mere feint.'*
>
> *Two overriding considerations have combined to narrow the scope of review. The first is that of deference to the administrative expert. In Chief Justice Neely's*[4] *words :*
>
> > *'I have very few illusions about my own limitations as a judge and from those limitations I generalize to the inherent limitations of all appellate courts reviewing rate cases. It must be remembered that*

[3] 1994 (6) SCC 651, paragraph-82
[4] Monongahela Power Co. Vs. Public Service Commision, 276 S.E. 2d 179 (1981), Supreme Court of Appeals of West Virginia, February 10, 1981

> *this Court sees approximately 1262 cases a year with five judges. I am not an accountant, electrical engineer, financier, banker, stock broker, or systems management analyst. It is the height of folly to expect judges intelligently to review a 5000 page record addressing the intricacies of public utility operation.'*

It is not the function of a judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

> *The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinised by the non-expert judge. The alternative is for the court to overrule the agency on technical matters where all the advantages of expertise lie with the agencies. If a court were to review fully the decision of a body such as state board of medical examiners 'it would find itself wandering amid the maze of therapeutics or boggling at the mysteries of the Pharmacopoeia'. Such a situation as a state court expressed it many years ago 'is not a case of the blind leading the blind but of one who has always been deaf and blind insisting that he can see and hear better than one who has always had his eyesight and hearing and has always used them to the utmost advantage in ascertaining the truth in regard to the matter in question'.*
>
> *<u>The second consideration leading to narrow review is that of calendar pressure</u>. In practical terms it may be the more important consideration. More than any theory of limited review it is the pressure of the judicial calendar combined with the elephantine bulk of the record in so many review proceedings which leads to*

perfunctory affirmably of the vast majority of agency decisions."

(underlined by us)

15. The above observation in ***Tata Cellular***[5] emphasizes the need for the Courts to caution themselves and tread carefully in cases where it is demonstrated by the State that the projects sought to be implemented by acquisition of the lands in question is pursuant to study by domain experts, careful weighing of the pros and cons of acquisition of the lands for implementation of the project and urgency for the need of the project for the use by the public. Such a decision takes the colour and complexion of implementing a policy for promoting public welfare. Once that is demonstrated, Courts are required to show deference to the views of the administration.

16. In ***Jal Mahal Resorts Private Limited Vs. K. P. Sharma***[6]**,** it is observed as follows:

> **"139.** In a matter of the instant nature, where the policy decision was taken way back from 1976 followed by master plans to develop a particular chunk of land by adopting the mode of private-public partnership method and a global tender was floated,

[5] 1994 (6) SCC 651
[6] (2014) 8 SCC 804

> obviously the private players were bound to participate specially in an age when private partnership is not an anathema…… In our considered view unless the detailed project report, Master Plan of Jaipur, revenue record indicating the nature of land that the Project was fraught with risk of environmental degradation which could establish with facts and figures that the decision is not in public interest, interference by the Court adopting an overall view smelling foul play at every level of administration is bound to make the governance an impossibility. Therefore, the courts although would be justified in questioning a particular decision if illegality or arbitrariness is writ large on a particular venture, excessive probe or restraint on the activity of a State is bound to derail execution of an administrative decision even though the same might be in pursuance of a policy decision supported by other cogent materials like survey and search by a reliable expert agency of a State after which the State project or private and public partnership project is sought to be given effect to." (underlined by us)

17. The governance is a complex task. State is charged with onerous responsibility of promoting public welfare. Project in question is of mammoth proportion. Hon'ble Supreme Court has cautioned that in matters of this nature, it ill-behoves a Constitutional Court to smell foul-play on the part of administration merely because small error here or small infirmity there is pointed out by aggrieved petitioners appealing for judicial intervention.

18. The UKP has been conceived on account of severe drought affecting large parts of North Karnataka. River Krishna has abundant water which remained unharnessed. Popular demand for water, science, and received wisdom cried for some action. The project was the culmination of a combination of such factors and popular government naturally has a mandate to implement it. That is a dynamic of any welfare state and particularly a democratic republic. Therefore, there can be no gain-saying that the implementation of the Project of which rehabilitation of displaced persons is an integral part was a sequel to the policy put together by the Government as democratic compulsion.

19. Hon'ble Supreme Court in ***Narmada Bachao Andolan***[7] has formulated the limitation on exercise of power of judicial review by a Constitutional Court when the project sought to be implemented is pursuant to a policy. The observation is as follows:

[7] (2000) 10 SCC 664

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.

240. In the case of projects of national importance where the Union of India and/or more than one State(s) are involved and the project would benefit a large section of the society and there is evidence to show that the said project had been contemplated and considered over a period of time at the highest level of the States and the Union of India and more so when the project is evaluated and approval granted by the Planning Commission, then there should be no occasion for any court carrying out any review of the same or directing its review by any outside or "independent" agency or body. In a democratic set-up, it is for the elected Government to decide what project should be undertaken for the benefit of the people. Once such a decision had been taken then unless and until it can be proved or shown that there is a blatant illegality in the undertaking of the project

> or in its execution, the court ought not to interfere with the execution of the project.
>
> (underlined by us)

20. Hon'ble Supreme Court has underlined the need for careful balancing of interest in cases of exercise of power of judicial review and has cautioned that where the action impugned is pursued for implementing a policy seeking to benefit large sections of population or an important economic measure, including a measure which is fundamentally transformative in nature *vis-à-vis* the segment of population that is going to be benefited in terms of livelihood, the sword of judicial intervention should be unsheathed only when it is demonstrably inevitable.

21. The Hon'ble Supreme Court in ***Ramniklal N Bhutta and another v. State of Maharashtra and others***[8], has observed as under:

> "10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all - round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to

[8] (1997) 1 SCC 134

attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of

> compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."
>
> (underlined by us)

22. To sum-up, when a measure taken by the Government is for implementing a Mega Infrastructural Project pursuant to a policy framed embedded with the opinion of experts, Court should refrain from acting like a super-accountant and interference with the same should be extremely rare where it is inevitable. It is primarily the task of the Government to govern and in the guise of judicial review, Courts should not seek to run the governments. Smelling foul-play in the action of the government at a mere whiff of suggestion would make running the administration an impossibility and elected governments which are accountable to the people will be hamstrung in implementing projects for promoting public weal. Where two options are possible, it is not for the Court to act as an expert and

substitute its own view for the view of the executive. In matters of such nature, an appeal is essentially to the ballot and not to the Courts. Courts do not have the expertise nor the political mandate for deciding the comparative merits of two options. It is relevant to notice that in ***Ramnikial***[9] even goes to the extent of suggesting that moulding the relief in a suitable manner should be the preferred choice with the Court rather than striking down the acquisition.

23. We also feel the need to inform ourselves the scope of power of the State to acquire land for "Public Purpose". We hasten to add that we have no doubt in our mind that the law is no longer res-integra and we do so only on account of the extensive argument presented before us on this aspect. An illuminating discussion on the true meaning of "Public purpose" is available in the judgment of *Venkatarama Ayyar J.,* sitting with *Rajamannar, CJ*, in ***P Thambiran Padayachi & Others Vs. State of Madras***[10]. We find it irresistible to quote the following observations

[9] (1997) 1 SCC 134
[10] AIR 1952 Madras 756

made in the above decision for the sheer beauty of its articulation:

> "We have reached this conclusion even without the aid of the presumption which the law raises in favour of the existence of public purpose in such acquisitions. Though the question is a justiciable one and the ultimate decision must rest with the courts, the action of the Legislature in deciding upon the acquisition is itself considered good proof that the purpose is a public one. It was observed in ***United States v. Welch***[11] that "When Congress has spoken on the subject its decision is entitled to deference until it is shown to involve impossibility. The same considerations must apply, to notifications issued by the Government under the powers vested in them under the Land Acquisition Act for acquisition of lands.
>
> 19. In ***Hamabai v. Secy. of State***[12], this is what the Privy Council observed on this aspect of the case:
>
> > "Prima facie the Government are good Judges of that. They are not absolute judges. They cannot say 'sic volo sic jebeo'. But at least the court would not easily hold them to be wrong."
>
> The acquisition must, therefore, be held to be valid.**"**

24. However, while not taking radically different view on the import of "Public Purpose", a Constitution Bench of

[11] (1946) 327 U.S. 546: 90 Law Ed. 843 at p. 848
[12] AIR 1914 PC 20

Hon'ble Supreme Court in ***Smt. Somawanti & Others Vs. State of Punjab & Others*** [13] has observed as follows:

> "30. It is, however, said that that does not mean that insofar as the meaning to be given to the expression public purpose is concerned the courts have no power whatsoever. In this connection the decision of the Privy Council in ***Hamabai Framjee Petit v. Secretary of State* for India**[14] was referred to. In that case certain land in Malabar Hill in Bombay was being acquired by the Government of Bombay for constructing residences for government officers and the acquisition was objected to by the lessee of the land on the ground that the land was not being taken or made available to the public at large and, therefore, the acquisition was not for a public purpose. When the matter went up before the High Court Batchelor, J., observed:
>
> > "General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase "public purpose" in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."
>
> In that case what was being considered was a re-entry clause in a lease deed and not provisions of the Land Acquisition Act. That

[13] AIR 1963 SC 151
[14] AIR 1914 PC 20

clause left it absolutely to the lessor, the East India Company to say whether the possession should be resumed by it if the land was required for a public purpose. It was in this context that the question whether the land was needed for a public purpose was considered. The argument before the Privy Council rested upon the view that there cannot be a "public purpose" in taking land if that land, when taken, is not in some way or other made available to the public at large. Rejecting it they held that the true view is that expressed by Batchelor, J., and observed:

> "That being so, all that remains is to determine whether the purpose here is a purpose in which the general interest of the community is concerned. Prima facie the Government are good judges of that. They are not absolute Judges. They cannot say 'sic volo sic jebeo', but at least a court would not easily hold them to be wrong. But here, so far from holding them to be wrong, the whole of the learned Judges, who are thoroughly conversant with the conditions of Indian life, say that they are satisfied that the scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servants. From such a conclusion Their Lordships would be slow to differ, upon its own statement it commends itself to their judgment."

Mr. Pathak strongly relied on these observations and said that the Privy Council have held that the matter is justiciable. It is enough to say that that was not a case under the Land Acquisition Act and, therefore, conclusiveness did not attach itself to the satisfaction of the Government that a particular

> purpose fell within the concept of public purpose."

25. The Hon'ble Supreme Court has further struck a note of caution that though the Courts are generally not entitled to go behind the declaration of the Government to the effect that the acquisition is for "public purpose", an exercise of judicial review is permissible where power of acquisition is exercised in a colourable manner or if it is a fraud on power. The following observation in ***Somawanti's***[15] case bears reference:

> "40. Though we are of the opinion that the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose we must emphasise that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act,

[15] AIR 1963 SC 151

and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of Section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as Section 6(3) notwithstanding." (underlined by us)

26. The Hon'ble Supreme Court in ***Daulat Singh Surana Vs. First Land Acquisition Collector***[16], after elaborate survey of the case laws on "Public Purpose" has observed as follows:

> "**71.** A seven-Judge Bench of this Court in ***State of Karnataka* v. *Ranganatha Reddy***[17] explained the expression "public purpose" in the following words:
>
> "6. It is indisputable and beyond the pale of any controversy now as held by this Court in several decisions including the decision in the case of ***Kesavananda Bharati* v. *State of Kerala***[18] —popularly known as *Fundamental Rights case*—that any law providing for acquisition of property must be for a public purpose. Whether the law of acquisition is for public purpose or not is a justiciable issue. But the decision in that regard is not to be given by any detailed inquiry or investigation of facts. The intention of the legislature has to be gathered mainly from the Statement of Objects and Reasons of the Act and its Preamble. The

[16] (2007) 1 SCC 641
[17] (1977) 4 SCC 471
[18] (1973) 4 SCC 225

> matter has to be examined with reference to the various provisions of the Act, its context and set up, the purpose of acquisition has to be culled out therefrom and then it has to be judged whether the acquisition is for a public purpose within the meaning of Article 31(2) and the law providing for such acquisition.
>
> *61*. When we ascertain the content of 'public purpose', we have to bear the above factors in mind which mean that acquisition of road transport undertakings by the State will undoubtedly be a public purpose. Indeed, even in England, 'public purposes' have been defined to mean such 'purposes' of the administration of the Government of the country (p. 228, *Words & Phrases Legally Defined*, IInd Edn.). Theoretically, or even otherwise, there is no warrant for linking up public purpose with State *necessity*, or in the court throwing off the State's declaration of public purposes to make an economic research on its own. It is indeed significant that in Section 40(*b*) of the Land Acquisition Act, 1894, the concept of 'public use' took in acquisition for the construction of some work even for the benefit of a company, provided such work as likely to prove useful to the public. Even the American Constitution, in the 5th Amendment, uses the expression 'public use' and it has been held in India in ***Kameshwar***[19] that 'public purpose' is wider than 'public use'."

27. As can be noticed from the above, the Hon'ble Supreme Court has held that power of acquisition for "public

[19] AIR 1952 SC 252

purpose" is wider than that under the doctrine of "public use" in America.

28. The Hon'ble Supreme Court in ***Sooraram Pratap Reddy Vs. Collector***[20] has considered the exercise of eminent domain power in US Jurisdiction as well as British Jurisdiction and observed as follows:

> **58.** In ***Hawaii Housing Authority* v. *Midkiff***[21], the Court held that, no doubt there is a role for courts to play in reviewing a legislature's judgment of what constitutes a public use, even when the eminent domain power is equated with the police power. But the Court in ***Berman***[22] made clear that it is "extremely narrow". The Court emphasised that any departure from this judicial restraint would result in courts deciding on what is and what is not a governmental function and in their invalidating legislation on the basis of their view on that question. And the court would not substitute its judgment for a legislature's judgment as to what constitutes a public use "unless the use be palpably without reasonable foundation".
>
> **59.** Recently, in ***Susette Kelo* v. *City of New London***[23] the landowners challenged the city's exercise of *eminent domain* power on the ground that it was not for public use. The project in question was a community project for economic revitalisation of the city of New

[20] (2008) 9 SCC 552
[21] 81 L Ed 2d 186 : 467 US 229 (1984)
[22] 99 L Ed 27 : 348 US 26 : 75 S Ct 98 (1954)
[23] 162 L Ed 439 : 545 US 469 : 125 S Ct 2655 (2005)

London for which the land was acquired. It was submitted by the learned counsel for the respondents that the facts in *Kelo* were similar to the facts of the present case. For that the counsel relied upon the integrated development project. Dealing with the project, the Court stated:

"The Fort Trumbull area is situated on a peninsula that juts into Thames River. The area comprises approximately 115 privately owned properties, as well as the 32 acres of land formerly occupied by the naval facility (Trumbull State Park now occupies 18 of those 32 acres). Parcel 1 is designated for a waterfront conference hotel at the center of a 'small urban village' that will include restaurants and shopping. This parcel will also have marinas for both recreational and commercial uses. A pedestrian 'riverwalk' will originate here and continue down the coast, connecting the waterfront areas of the development. Parcel 2 will be the site of approximately 80 new residences organised into an urban neighbourhood and linked by public walkway to the remainder of the development, including the State park. This parcel also includes space reserved for a new US Coast Guard Museum. Parcel 3, which is located immediately north of the Pfizer facility, will contain at least 90,000 sq ft of research and development office space. Parcel 4A is a 2.4 acre site that will be used either to support the adjacent State park, by providing parking or retail services for visitors, or to support the nearby marina. Parcel 4B will include a renovated marina, as well as the final stretch of the riverwalk. Parcels 5, 6 and 7 will provide land for office and retail space, parking, and water-dependent commercial uses."

> The Court also stated:
> "Two polar propositions are perfectly clear. On the one hand, it has long been accepted that the sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation. On the other hand, it is equally clear that a State may transfer property from one private party to another if future 'use by the public' is the purpose of the taking; the condemnation of land for a railroad with common-carrier duties is a familiar example."
> The Court noted the contention of the petitioners that "using *eminent domain* for economic development impermissibly blurs the boundary between public and private takings". It also conceded that quite simply, the Government's pursuit of a public purpose might benefit individual private parties, but rejected the argument by stating:
> "When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of other kinds of socio-economic legislation are not to be carried out in the Federal Courts." (underlined by us)

29. In both ***Daulat Singh Surana***[24] **&** ***Sooraram Pratap Reddy***[25], the Hon'ble Supreme Court has extensively surveyed the English Law, American Law and authorities like *Nichols* on "Eminent Domain", *Cooley* on "Constitutional Limitations", *Hugo Grotius, and Willis* on "Constitutional Law" and also construct put on "Public Purpose" in India from

[24] (2007) 1 SCC 641
[25] (2008) 9 SCC 552

Hamabai Vs. Secretary of State[26] onwards and has finally referred to the following interesting observations of the Hon'ble Supreme Court in ***State of Karnataka Vs. Ranganatha Reddy*** [27]:

> "*57*. … There may be many processes of satisfying a public purpose. A wide range of choices may exist. The State may walk into the open market and buy the items, movable and immovable, to fulfil the public purpose; or it may compulsorily acquire from some private person's possession and ownership the articles needed to meet the public purpose; it may requisition, instead of resorting to acquisition; it may take on loan or on hire or itself manufacture or produce. All these steps are various alternative means to meet the public purpose. The State may need chalk or cheese, pins, pens or planes, boats, buses or buildings, carts, cars, or eating houses or any other of the innumerable items to run a welfare-oriented administration or a public corporation or answer a community requirement. If the purpose is for servicing the public, as governmental purposes ordinarily are, then everything desiderated for subserving such public purpose falls under the broad and expanding rubric. The nexus between the taking of property and the public purpose springs necessarily into existence if the former is capable of answering the latter. On the other hand, if the purpose is a private or non-public one, the mere fact that the hand that acquires or requires is Government or a public corporation, does not make the purpose automatically a public purpose. Let us illustrate.

[26] AIR 1914 PC 20
[27] (1977) 4 SCC 471, per, Krishna Iyer J.,

> If a fleet of cars is desired for conveyance of public officers, the purpose is a public one. If the same fleet of cars is sought for fulfilling the tourist appetite of friends and relations of the same public officers, it is a private purpose. If bread is 'seized' for feeding a starving section of the community, it is a public purpose that is met but, if the same bread is desired for the private dinner of a political maharajah who may *pro tem* fill a public office, it is a private purpose. Of course, the thing taken must be capable of serving the object of the taking. *If you want to run bus transport you cannot take buffaloes*."

30. On a meaningful reading of the various decisions of the Hon'ble Supreme Court, more particularly, in ***Somawanti***[28]***, Daulat Singh Surana***[29] and ***Sooraram Pratap Reddy***[30], the following conclusions are inescapable:

i) 'Public Purpose' is bound to vary with times and prevailing conditions in the community or locality and, therefore, the legislature has left it to the State (Government) to decide what 'Public Purpose' is and also to declare the need of a given land for the purpose. The legislature has left the discretion to the Government regarding 'Public Purpose'. The Government has the sole and absolute discretion in the matter.[31]

ii) 'Public Purpose' cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the 'Public Purpose' is

[28] AIR 1963 SC 151
[29] (2007) 1 SCC 641
[30] (2008) 9 SCC 552
[31] Paragraph-44 in **Daulat Singh Surana's** *case*

concerned. 'Public Purpose' is not static. It also changes with the passage of time, needs and requirements of the community. Broadly speaking, 'Public Purpose' means the general interest of the community as opposed to the interest of an individual.[32]

iii) The power of compulsory acquisition as described by the term "eminent domain" can be exercised only in the interest and for the welfare of the people. The concept of 'Public Purpose' should include the matters, such as, safety, security, health, welfare and prosperity of the community or public at large.[33]

iv) A "Public Purpose" is thus wider than a "Public Necessity". Purpose is more pervasive than urgency. That which one sets before him to accomplish, an end, intention, aim, object, plan or project, is purpose. A need or necessity, on the other hand, is urgent, unavoidable, compulsive. *Public Purpose should be liberally construed, not whittled down by logomachy*.[34]

v) Though……the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose…….the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a

[32] *paragraph-73 in* **Daulat Singh Surana's** *case*
[33] *paragraph-74 in* **Daulat Singh Surana's** *case*
[34] Paragraph-79 in ***Sooraram Pratap Reddy's*** case

> declaration the protection of Section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as Section 6(3) notwithstanding."[35]

Declaration of "Public Purpose" in the acquisition notification is final so far as curial challenge to the same is concerned, except in the rare cases where colourable exercise of such power or fraud on power is demonstrated before a Constitutional Court.

31. Learned Senior Counsel Sri. Ashok Haranahalli has assailed the legality of the acquisition on two principal grounds. Firstly, he contended that an opportunity was given to the appellants by virtue of directions given by a learned Single Judge in collateral proceedings (WP Nos.102180-102221 of 2014, disposed of on 25.06.2014) to raise objections to 4(1) notification by filing statement of objections before the SLAO. His contention was that the said objection was not considered by the SLAO in accordance with law. Secondly, he submitted that the subject acquisition was not supported by "Public Purpose" and in fact it was

[35] Paragraph-40 in ***Somawanti's*** case

colourable exercise of power and therefore, it is illegal. On the second aspect of his contention, he made several ancillary submissions which will be taken note of at a later stage.

32. Learned Senior Counsel Sri. M.R Naik was equally vehement that both the contentions and ancillary submissions made in support thereof are factually incorrect and bereft of legal basis.

33. On account of a direction given by the learned Single Judge of this Court in collateral proceedings initiated by the appellants, State treated the notification initially issued under Section 17 of the Land Acquisition Act, 1894 (for short, 'Act') as one under Section 4(1) of the Act and permitted the parties to submit their objections which is in the nature of objections filed under Section 5-A of the Act. There is no dispute on this aspect from either side. Drawing our attention in extenso to the objections filed by the appellants herein to the acquisition, Sri. Ashok Haranahalli, learned Senior Counsel made pain-staking efforts to

substantiate his contention that the objections more particularly in the nature of disproportionately large extent of land being acquired for the supposed fulfillment of objectives of "Public Purpose" and therefore, it being patently irrational, irrationality of acquiring fertile agricultural lands for the purpose of rehabilitation when alternative dry lands equally suitable for the purpose of rehabilitation being available and the alike were not considered by the competent authority.

34. Learned Senior Counsel Sri. M.R.Naik, on the other hand, took us through individual objections filed by the appellant-land losers and also a report of the competent authority on the same. He further submitted that the objections taken are vague and general in nature and therefore, the competent authority was handicapped in meeting the said objections. By way of illustration, he submitted that the objections taken by the appellants by merely stating that alternative lands are available which are non-agricultural in nature, for rehabilitation purpose, without giving further particulars about the location or area of the same or such similar particulars by which the land is capable

of being identified is impossible of being considered by the competent authority and therefore, it was not unnatural that the competent authority has not dealt with it in great detail. In this behalf, reliance was placed on behalf of the respondents on a decision of learned Single Judge of this Court in ***N. Somashekar & Others Vs. State of Karnataka & Others***[36]***.*** The relevant observations are as follows:

> "*27.* It cannot be disputed that each objection raised by a landowner or person interest in the land sought to be acquired must be considered and disposed of by the Land Acquisition Officer fairly and objectively, but then that proposition of law is subject to an all important caveat viz., that the objection must be one of substance and must be stated with sufficient clarity and supportive material. The requirement of consideration of all the objections raised before the Land Acquisition Officer is not ritualistic nor would the Court interfere just because each objection raised before the Officer concerned has not been considered by him howsoever irrelevant funny or even foolish the objection may be. It is only when the Court finds that a fair and proper consideration of the objection raised may have changed the course of events that the Court may view non-consideration with concern. Where the objections are just for the sake of objections without any substance or wholly irrelevant or insufficient to outweigh the compulsions of compulsory acquisition meant to satisfy a public purpose, the failure to deal with or consider *ad seriatum* each objection raised would make no difference. The decision of this Court in ***K.S.***

[36] 1997 (7) Kar.L.J. 410

> ***Chandrashekhar and Others v The Special Land Acquisition Officer, Karnataka Industrial Areas Development Board, Bangalore and Others***[37]**,** relied upon by Counsel for the petitioners does not, in my opinion, lay down a different proposition of law. That was a case where the objection raised was that the proposed acquisition was unnecessary having regard to the fact that a vast extent of the Government land was available which was suited for satisfying the public purpose in view. Non-consideration of the said aspect by the Land Acquisition Officer was considered by this Court to be improper. Reference may also be made to a Division Bench decision of this Court in Writ Petition Nos. 1808 to 1822 of 1996, dated 31-5-1996, where this Court held that in order that an objection on the ground of availability of Government land is considered, it is essential for the objector to identify the Government land that is available, indicate the extent thereof and provide such other details to enable the Land Acquisition Officer to consider the objections by reference to the same". (underlined by us)

35. We have carefully perused the above observations of the learned Single Judge and we are in respectful agreement with the proposition of law stated by him. Perusal of the statement of objections filed by the petitioners before the competent authority raising various objections to the acquisition shows that they are extremely bald and general in nature and lacking in specificity, and incapable of being dealt with by the competent authority. As

[37] 1991 (2) Kar. L.J. 38 (DB) : ILR 1991 Kar. 1314 (DB)

in ***N. Somashekar***[38], so in these cases while the petitioners have taken the contention that other non-agricultural suitable lands are available, they have given no particulars thereof for being considered by the competent authority. Insofar as the need, the suitability and advantages arising from acquisition of subject lands notwithstanding they being agricultural lands for the purpose of rehabilitating project displaced persons on account of submergence is concerned, that essentially is a matter of policy and therefore, so long as the acquisition itself is not shown to be violative of provisions of the Act or essentially in colourable exercise of power, it cannot be frowned upon for lack of detailed consideration of the same in the 5-A report. That, the project proposal was backed up by vision document of considerable vintage and further subject acquisition is supported by report from Experts is demonstrated before the Court by producing the same. It is also evident that this vision document and the opinion of the experts were prepared long anterior to the subject acquisition and they are not the outcome of the

[38] 1997 (7) Kar.L.J. 410

subsequent efforts by the State to justify and substantiate what has already been done by it. In view of the same, we have no hesitation in rejecting the contention of Sri. Ashok Haranahalli in this behalf.

36. It is the grievance of the appellants that the subject acquisition is not supported by "Public purpose" and the specific "Public Purpose" stated in the notification was deviated and therefore, it is illegal. Learned Senior Counsel Sri. Ashok Haranahalli in order to substantiate his contention that there was no "public purpose" supporting the subject acquisition had raised several ancillary contentions. He submitted that the State had frittered away large extent of lands namely 4544 acres acquired during previous acquisition and in this behalf, he drew our attention to the acquisition made in 1985-86. He also submitted that this was supposed to cover the requirement of Unit-I to Unit-III of UKP and the subject acquisition being the one supposedly to meet the requirement of implementing Unit-III which having been already served in the acquisition made during 1985-86, there is total absence of "public purpose" for the

subject acquisition. In support of his submission, he read out to us the vision document and various annexures produced along with the writ papers.

37. We notice that the document relied by the learned Senior Counsel to support his contention is the vision document prepared before the acquisition of 4544 acres during 1985-86 showing the extent of land required for implementation of each of the project namely Unit-I, Unit-II and Unit-III. The subject acquisition is for implementing Unit-III of the Project. However, learned Senior Counsel does not dispute the fact that the legality of the earlier acquisition is not in challenge now and that the lands required for the implementation of Unit-III is simply not available as of now except a measly extent of slightly more than 100 acres which is much less than the land required for the execution of the current project and therefore, the existence of the "public purpose" for the subject acquisition to meet the current needs cannot be gainsaid. And what are the reasons advanced by the learned Senior Counsel to demonstrate his legal contention that on account of,

according to him, the State frittering away the lands earlier acquired, again according to him, by utilizing the lands so acquired for unauthorized purposes, foul-play should be smelled regarding the present acquisition also so as to conclude that there is demonstrable lack of public purpose? It needs to be noticed that he seeks to substantiate his contention by pointing out that the lands acquired during 1985-86 were allotted to Karnataka Industrial Areas Development Board; for establishing various other public institutions; and also for establishing Agri-techno-park etc.. It was also suggested during submission that some parcels of lands earlier acquired found their way through to the hands of some private parties which had a characteristic of "shady deals". We agree with the submission of learned Senior Counsel Sri. M.R. Naik that this last submission is not supported by any specific pleading before the learned Single Judge thereby depriving the respondents of an opportunity of meeting them and rightly, as a result thereof, was not dealt with by the learned Single Judge as well. In that view of the matter, it is not prudent on our part to go into the factual

merits of the said contention. However, in light of limitations on exercise of judicial review in matters of this nature as adumbrated by the Hon'ble Supreme Court in various decisions referred to supra, it needs to be observed with reference to the objections of this nature taken by the learned Senior Counsel for the appellants both in regard to the past acquisition as a ground to doubt the bonafides of the current one emanating from the alleged mis-utilization of the lands so acquired and concerning the subject acquisition as to the possible mis-utilization of the extent of lands acquired in comparison with the alleged need to sub-serve the purpose of rehabilitation of the displaced persons, we only need to be guided by the sage advice of Chief Justice *Neely*[39] that our intervention is called for in this jurisdiction only when violation of the constitutional right of a citizen is demonstrated or as cautioned in ***Somawanti***[40]***,*** only when colourable exercise of power or fraud on power is

[39] Monongahela Power Co. Vs. Public Service Commision, 276 S.E. 2d 179 (1981), Supreme Court of Appeals of West Virginia, February 10, 1981
[40] AIR 1963 SC 151

demonstrated. We are not satisfied that the learned Senior Counsel could make out any such case before us.

38. Learned Senior Counsel further contended that the acquisition proposal was not supported by sufficient data as to the number of families that are going to be displaced on account of submergence as a fallout to increasing the height of Dam from 523 mtrs to 525 mtrs and therefore, the acquisition is irrational. Learned Senior Counsel Sri. M.R. Naik produced large number of reports including the survey report which were available with the authorities when the subject acquisition proposal was mooted. We are satisfied from the material made available during the submissions that the government had collected materials regarding the number of families going to be displaced and once we are satisfied about the same, we cannot go into sufficiency of the material for supporting the extent of acquisition made by the respondents.

39. It is necessary for us to remind ourselves that subject acquisition for rehabilitation of people displaced due to implementation of Unit-III UKP cannot be seen in isolation

and it is to be viewed from the overall perspective. The implementation of UKP was an ongoing project meant to promote public weal by irrigating tens and thousands of hectares of lands extending upto Yadagir District. By any measure, it is a mammoth project. The State was bound to factor in while acquiring the lands for the purpose of a project of ongoing nature of this kind, various other aspects like area of submergence, possible number of families going to be displaced, since inevitably in the very nature of the project execution taking a number of years more number of families requiring rehabilitation due to passage of time and the impossibility of rehabilitating from the old habitat in the same manner in the new habitat going to be built in the acquired land on account of the compulsion warranted by new methods of town planning and concomitant requirement for civic amenities. Learned Senior Counsel Sri. M.R. Naik gave graphic details of the challenges before the respondents on account of interjection, as he put it, of supervening circumstance of a new district being formed albeit in the year 1997 and the attendant need to develop Bagalkot into a well

regulated township. He also submitted that this cannot also be seen in isolation from worldwide development like liberalization of the economy and the need to accommodate industries, government offices and the views of funding agencies like World Bank for overall planned development of Bagalkot. He also brought to our notice that on account of emerging scenario especially the new culture of planned development of the habitats, new laws have also come in for regulating town planning and in consonance with the same Bagalkot Town Development Authority (BTDA) was also constituted. The said BTDA is created to effectuate the purpose of the Karnataka Urban Development Authorities Act, 1987. Therefore, all the requirements under the same should be met in the land acquired where the displaced persons would be resettled.

40. After hearing the elaborate submissions of both sides, we are completely satisfied that the subject acquisition has to be seen as in fulfillment of the requirement of execution of ongoing project of rehabilitating the project displaced families as part of integral development of

Bagalkot Town under BTDA which, perforce, should fulfill overlapping requirements and overlapping objectives. In that view of the matter, the purpose being demonstrably one to promote public welfare, we are not in a position to agree with the contention of the learned Senior Counsel that there is no public purpose in the acquisition. We cannot don the hat of a town planner or that of an Accountant to minutely examine whether a slightly lesser extent of land would have fulfilled the objective or whether the project could have been implemented satisfactorily at another location. Such an exercise by us would tantamount to substituting our views to that of the State which has the advantage of expert advice. There is absolutely no material to support the contention that the acquisition is colourable exercise of power and therefore, illegal. Once that is not demonstrated, no case is made out for our interference under the writ jurisdiction. As held in ***Ramaniklal N Bhutta***[41] quashing of acquisition of lands made for a project of such public importance as in the current one should be a rare one and only when it is

[41] (1997) 1 SCC 134

inevitable. We are not satisfied that this is not one such instance where such a case is made out. There may be some error here or some minor infractions there, but then in any human endeavour, infractions and violations of minor nature are inevitable; but, we are conscious that it is not for us to do nit picking and smell foul-play at mere whiff of a suggestion.

41. Learned Senior Counsel Sri. Ashok Haranahalli contended that the acquisition of large extent of fertile agricultural lands for rehabilitation purpose amounts to depriving livelihood of affected parties including the present appellants and the same has been frowned upon by the Hon'ble Supreme Court. In this behalf, he invited our attention to the decision of the Hon'ble Supreme Court in ***Raghbir Singh Sehrawat Vs. State of Haryana & Others***[42]. We have carefully perused the said decision rendered by a two-judge bench of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the said case was considering 4(1) notification dated 22.06.2022 issued by the

[42] (2012) 1 SCC 792

Government of Haryana for acquisition of 3183 Kanals 17 marlas (476 acres 5 kanals 17 marlas) in Sonepath District fo development of Industrial Sector-28. In the facts and circumstances of the said case, certain observations were made regarding massive acquisition of agricultural lands for the purpose of industry. Observations made therein were particular to the facts of the said case and no law was laid down to the effect that no agricultural property should be acquired for rehabilitation purpose.

42. As already noticed, subject acquisition and the purpose sought to be achieved therefrom has to be seen in the overall circumstances of ongoing project of implementation of various phases of UKP and rehabilitation of displaced persons as a part of integral development of Bagalkot town. In that view of the matter, this contention of Sri. Ashok Haranahalli also does not assist him. We are not satisfied that merely because the properties acquired are agricultural in nature, there is no "public purpose" sought to be sub-served or that there was otherwise fraud on power or colourable exercise of power which alone provide us an

occasion to interdict the acquisition. Accordingly, the appeals are devoid of merits and they are ***dismissed***.

Pending applications, if any, do not survive for consideration and accordingly, they are disposed off. Costs made easy.

Sd/-
JUDGE

Sd/-
JUDGE

YAN/JTR