REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 4678 OF 2021
(arising out of SLP (Civil) No. 23353 of 2012)

M/S. M.S.P.L. LIMITED …Appellant(s)

VERSUS

THE STATE OF KARNATAKA AND ORS. …Respondent(s)

WITH

CIVIL APPEAL No(s). OF 2022
(arising out of SLP (Civil) No. 23351 of 2012)

SRI SYED AHMED …Appellant(s)

VERSUS

THE STATE OF KARNATAKA AND ORS. …Respondent(s)

CIVIL APPEAL No(s). 4699-4719 OF 2021
(arising out of SLP (Civil) Nos. 20866-20886 of 2012

THE KARNATAKA INDUSTRIAL AREA
DEVELOPMENT BOARD AND ANOTHER …Appellant(s)

VERSUS

SRI KAKARAL RAVIKUMAR AND OTHERS …Respondent(s)

CIVIL APPEAL No(s). 4679-4698 OF 2021
(arising out of SLP (Civil) Nos. 21310-21329 of 2012

M/S. AARESS IRON & STEEL LTD. …Appellant(s)

VERSUS

THE STATE OF KARNATAKA AND ORS.
ETC. …Respondent(s)

AND WITH
CIVIL APPEAL No(s). 4745-4747 OF 2021
(arising out of SLP (Civil) Nos. 21915-21917 of 2013

THE STATE OF KARNATAKA AND ANOTHER …Appellant(s)

VERSUS

SRI KAKARAL RAVIKUMAR AND OTHERS …Respondent(s)

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J U D G M E N T

Vikram Nath, J.

1. Leave granted in SLP(C) No. 23351/2012.

2. The State of Karnataka (Civil Appeal No. 4745-4747 of 2021), the Karnataka Industrial Area Development Board (Civil Appeal No. 4699-4719 of 2021), M/S MSPL Limited (Civil Appeal No. 4678 of 2021) and AARESS Iron & Steel Limited (Civil Appeal No. 4679-4698 of 2021) have jointly assailed the correctness of the judgement and order dated 22.03.2012 passed by the

Division Bench of the Karnataka High Court, Circuit Bench at Dharwad in a group of writ appeals filed by the land owners. By the said judgment, the Division Bench allowed the writ appeals, set aside the order of the learned Single Judge dated 17.03.2009 and the writ petitions were allowed. The notifications under Sections 3(1), 1(3) and 28(1) of the Karnataka Industrial Areas Development Act, 1966[1] were quashed.

3. Civil Appeal @ SLP (C) No. 23351 of 2012 is filed by a land owner Syed Ahmed challenging the judgment dated 14.12.2011 passed by the Division Bench of the Karnataka High Court, Circuit Bench at Dharwad in Writ Appeal No. 6098 of 2009 whereby the writ appeal was dismissed and the judgement of the learned Single Judge dated 23.06.2008 dismissing the writ petition {bearing number W.P.No. 18617 of 2007 (LA-KIDAB)} was affirmed. As the argument of the appellant is based upon the Division Bench Judgement of the Karnataka High Court dated 22.03.2012 which is impugned in the group of Civil Appeals referred to above, this matter has been taken up analogous with the above said appeals.

Background

1 In short "the 1966 Act"

4. Two State Acts legislated in the State of Karnataka are relevant for determination of issues in the present case. Karnataka Industrial Areas Development Act, 1966 and the Karnataka Industries (Facilitation) Act, 2002[2].

(i) The 1966 Act came up with the following preamble/object:

> "An Act to make special provisions for securing the establishment of industrial areas in the 1 [State of Karnataka]1 and generally to promote the establishment and orderly development of industries therein, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid. WHEREAS it is expedient to make special provisions for securing the establishment of industrial areas in the 1 [State of Karnataka]1 and generally to promote the establishment and the orderly development of industries in such industrial areas, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid;"

(ii) The 2002 Act was enacted with the following preamble/object:

> *"An Act to provide for the promotion of industrial development and facilitation of new investments to simplify the regulatory frame work by reducing procedural requirements and rationalising documents and to provide for an investor friendly environment in the State of Karnataka. Whereas, it is expedient to provide for speedy implementation of industrial and other projects in the State by providing single point guidance and assistance to promoters, reducing the procedural requirements, rationalising documents and to ensure smooth operation;"*

2 In short "the 2002 Act"

5. The acquisition is for two companies viz. M/s MSPL Ltd.[3] and M/s AARESS Iron and Steel Ltd.[4], for setting up an iron ore palletisation plant and an integrated steel plant respectively.

6. Before setting out the facts it is relevant to note that challenge to the notifications under Section 1(3) and 3(1) of 1966 Act is made only in W.P. No.6304 of 2008. This petition relates to the land acquired for MSPL. The land owner in this petition S. Narayana Reddy owned only 4.35 acres whereas the total land acquired for MSPL was approx: 110 acres. Thus, S.Narayana Reddy owned a fraction of land being less than 4% of the total acquisition for MSPL. Rest of the 10 petitions challenged the notification under Section 28 of 1966 Act. The writ petitioners therein in all the 10 petitions held less than 10% of the total land acquired for AISL. For sake of convenience facts from the appeal of MSPL have been recorded. It covers the relevant facts of the AISL appeal also.

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[3] In short "MSPL"
[4] In short "AISL"

Chronology of events:

i. MSPL moved an application on 23.03.2005 before the State High Level Clearance Committee[5] under the 2002 Act for approval of project to set up palletisation plant and an integrated steel plant in Koppal Taluk of Koppal District in the State of Karnataka.

ii. The SHLCC in its meeting dated 06.06.2005 approved the proposal of the project of MSPL to establish 1.20 million TPA iron ore pellet plant and 1 million TPA speciality steel plant (an integrated steel plant with an initial capacity of 1 million TPA) with a total cost of Rs. 2296.26 Crores for both the plants.

iii. The SHLCC also approved infrastructural facilities for the aforesaid project which included acquisition of 1034 acres of land by Karnataka Industrial Area Development Board[63] setup under the 1966 Act.

iv. Government of Karnataka on the aforementioned recommendations issued a Government Order dated

3[5] In short "SHLCC"

[6] In short "KIADB"

22.12.2005 permitting MSPL to setup the project and also approved the infrastructural facilities, including 1034 acres of land to be acquired by the KIADB.

v. MSPL on 04.01.2006 transferred all applications made to the Government of Karnataka for setting up of palletisation and iron and steel plant to AISL.

vi. Consequent to the above, AISL on 09.01.2006 applied for all applications submitted by MSPL to be transferred in its name.

vii. On 16.01.2006, a further restructuring was made by MSPL and it was communicated to the Department of Industries that the palletisation project was to be done by MSPL whereas the iron and steel project was to be done by AISL.

viii. On 28.01.2006, the Land Audit Committee granted approval of 1034 acres of land for acquisition.

ix. On 15.02.2006, Karnataka Udyog Mitra conveyed the
decision dated 28.01.2006 to KIADB to give 1034 acres of land for the project.

x. The Government of Karnataka issued another

Government Order dated 22.03.2006 modifying already approved project for pellet plant in favour of the MSPL and integrated steel plant in the name of AISL.

xi. The State Government issued notifications under Section 1(3), 3(1) and 28(1) of the 1966 Act somewhere between 09.11.2006 till 07.05.2007.

xii. The Karnataka State Pollution Control Board[7] [4]on 19.10.2006 forwarded its inspection report for the palletisation plant of MSPL.

xiii. The Special Land Acquisition Officer, KIADB on 20.11.2006 issued notice to the land owners under Section 28(2) of 1966 Act inviting their objections.

xiv. On 12.04.2007, the Special Land Acquisition Office, KIADB issued an order under Section 28 (3) of 1966 Act after dealing with each of the objections.

xv. Thereafter, notifications under Section 28(4) of 1966 Act was issued on 17.05.2007, 13.03.2008 and 17.04.2007 for a total area of 110 acres 24 guntas

[7] In short KSPCB

required by MSPL. (Similar notifications were issued for the land required for AISL)

xvi. The compensation under Section 29 (2) of 1966 Act was determined at a sum of Rs. 3,64,98,000/- for MSPL.

xvii. The Special Land Acquisition Officer, KIADB issued its orders determining compensation of land in two categories: Rs. 3 lac per acre for dry land and Rs. 3.50 lacs per acre for irrigated lands. The land owners were requested to collect their compensation.

xviii. Writ Petition No. 10501 of 2007 and 10 other petitions were filed praying for quashing of the notifications issued under Section 28(4) of the 1966 Act for MSPL and AISL. It would be relevant to mention that more than 90 per cent of the land owners covering 90 per cent of the area acquired accepted the compensation. It was only 10 per cent or less of the land owners who had filed the above 11 petitions. In Writ Petition No. 6304 of 2008 challenge was also made to the grant under Sections 1(3) and 3(1) of the

1966 Act. The area of petitioners therein sought to be acquired is only 4 acres and 34 guntas. Further the Writ Petition No. 6304 of 2008 was with respect to the land for the pelletisation plant being set up by MSPL The other 10 petitions were for the land acquired for AISL.

xix. On 31.01.2008, the Government of Karnataka issued an order for transfer of land with respect to 110 acres and 24 guntas.

xx. The transfer of possession took place on 10.03.2008 and both the companies MSPL and AISL were handed over possession.

xxi. MSPL entered into an agreement with KIADB on 11.03.2008.

xxii. KSPCB gave its consent to MSPL to establish pellet plant on 02.08.2008 and 01.12.2008.

xxiii. Further the Ecology and Environment Department of Government of Karnataka gave environmental clearance on 01.10.2010.

xxiv. On 17.03.2009, the learned Single Judge dismissed all the 11 petitions.

xxv. Judgment of the Single Judge was challenged by way writ appeals before the Division Bench.

xxvi. The Division Bench vide judgment dated 22.03.2012 allowed the appeals and quashed the acquisition proceedings for the entire areas which was not even challenged.

xxvii. Special Leave Petitions filed in this Court with a request for interim order in favour of MSPL. This Court granted interim protection on 27.07.2012 by staying operation of the impugned judgment of the Division Bench.

xxviii. The Ministry of Environment and Forest issued an order dated 08.09.2014 providing that the plant may be continued to operate.

xxix. The KSPCB issued an order dated 16.10.2014 asking MSPL to apply for Terms of Reference (TOR) by 07.12.2014 and also to obtain environment clearance

within one year.

xxx. The Ministry of Environment and Forest vide letter dated 23.09.2016 communicated environmental clearance to MSPL.

7. The above chronology of events is part of the written note of the appellant MSPL. No objection has been taken by the respondents to the said chronology.

Proceedings before the High Court:

8. Before the learned Single Judge, the learned counsels for land owners had raised two points as recorded in paragraph 3 thereof; the same is reproduced below:

> *"Sri Mahabaleshwar Goud, learned counsel appearing on behalf of some of the petitioners canvassed mainly two points:* ***(a)*** *The State Government has not issued Notification under Section 1(3) of the KIADB Act and consequently, Chapter 7 of the KIADB Act has not come into force in so far as it relates to the present acquisition is concerned and therefore, the acquisition notifications issued under Section 28(1) and 28(4) of the KIADB Act are bad in the eye of law, and* ***(b)*** *the acquisition is in respect of only one company and therefore, the same is not for public purpose. According to him, it is the case of colourable exercise of power and the action of the respondents is fraudulent and therefore, the acquisition proceedings vitiate."*

9. Insofar as the first point was concerned regarding the

absence of notification under Section 1(3) of the 1966 Act, the learned counsel appearing for KIADB produced the notification of the Government dated 09.01.2006 notifying that chapter VII of the 1966 Act would come into force in the relevant area. Insofar as the second point is concerned that the acquisition was only for one company and as such it could not be for public purpose, the exercise being colourable exercise of power and the action of respondents is fraudulent was dealt with by the learned Single Judge in detail and relying upon the judgments of the Karnataka High Court under the 1966 Act held that the second argument would also fail. The learned Single Judge has also recorded in the last paragraph that only 1/10 i.e. 10% of the land owners submitted their grievances by filing the writ petitions. It further gave reasons for not accepting their challenge in larger public interest relying upon a judgment of this Court. The last paragraph of the judgment of learned Single Judge is reproduced hereinbelow:

> *"As aforementioned, the owners of only 1/10th of the lands which are sought to be acquired are agitating their grievances by filing these writ petitions. If the Notifications under Section 28(1) and Section 28(4) of the KIADB Act are set aside, qua these pockets of lands, then the entire development activity in the industrial area will come to a grinding halt and that would not be in the interest of anyone. It is not advisable nor feasible to interfere with the*

acquisition of such a large tract of lands when the occupants of 9/10th of the acquired lands have not thought it fit to challenge the acquisition proceedings. The aforesaid view of mine is supported by the judgement of the Apex Court in the case of OM PRAKASH AND ANOTHER -vs- STATE OF U.P. AND OTEHRS ((1998) 6 SCC PAGE-1). The individual's right of the land owner must yield place to the larger public purposes. In view of the same, this Court declines to interfere I the acquisition proceedings."

10. The Division Bench allowed the appeals, and after setting aside the judgement of the learned Single Judge proceeded to quash the acquisition proceedings. In paragraph 127, the Division Bench recorded its conclusions which are reproduced hereunder:

"127. In the result, we sum up our conclusions as under:
i) In the Indian context, Judicial review of administrative action is much more precise, pervasive and accurate than as contemplated either under the English legal system or as developed in the American legal system. In the wake of our country having a written Constitution and laws made by competent legislatures, judicial review of administrative action is not merely confined to the question of decision making process on the parameters of the same being affected or vitiated due to unreasonableness, arbitrariness or irrationality, which concepts are not capable of a precise definition though many erudite authors have made good contributions and administrative law is very much part of jurisprudence but is on more substantial and precise parameters such as on the touchstone of the statutory provisions and the constitutional provisions and therefore any decision and the process of making such a decision, if is not in conformity with the relevant statutory provisions and the constitutional provisions, the decision is affected and cannot be sustained.

ii) Acquisition of private lands even for a public purpose, while should always be in conformity with the laws

governing acquisition proceedings and existence of public purpose which subserve a public interest is a sine quo none of such acquisition proceedings, in a situation where acquisition is of private agricultural lands belonging to agriculturists and has the effect of affecting their very livelihood and depriving them of their avocation, then the acquisition proceedings will have to be tested even on the touchstone of the constitutional provisions such as Articles 14, 21 and 300A of the Constitution of India and though there is no corresponding safeguard as is provided under Article 22 of the Constitution of India visa-vis violations of Article 21, nevertheless, Courts will have to apply the test of strict compliance with procedural requirements and any deviation even from procedural requirement will vitiate acquisition proceedings.

iii) Acquisition of lands under the provisions of the Karnataka Industrial Areas Development Act, 1966 can only be for the purpose of developing the subject lands as an industrial area and by the Board and cannot be for the benefit of a private industry or company or companies, particularly as the notifications issued under the provisions of 1, 3 and 28 of the Act, proclaiming that the subject lands are notified for acquisition for the purpose of the board and when once it is so, handing over of such lands to a private industrialist amounts to an instance of improper exercise of power and for a purpose other than the published and stated purpose, but more importantly, distribution of such acquired land, whether after development or before development, being in the nature of distribution of largesse of the State, amounts to depriving equal opportunity to all aspirants, who propose to set up industries in industrial areas and when the State hands over acquired lands to a private individual, it is therefore violative of the equality clause in the Constitution of India. In this regard, statement of law as enunciated in the single bench decision of this Court in the case of Heggappanavara [supra], later followed by another learned Single Judge in the case of N. Somashekar [supra], on the basis of the judgment of the Supreme Court in the case of RAMTANU [supra], does not state the correct legal position as indicated in para 21 of the judgment of the constitutional bench of the Supreme Court, reading as under:

> *21. Counsel on behalf of the petitioners contended that there was procedural discrimination between the Land Acquisition Act and the Act in the present case. It was said that there was a special procedure designed by*

the Land Acquisition Act for acquisition of land for the companies whereas in the present case the State was acquiring land for companies without adopting the procedure of the Land Acquisition Act. It is to be remembered that the Act in the present case is a special one having the specific and special purpose of growth, development and organisation of industries in the State of Maharashtra. The Act has its own procedure and there is no provision in the Act for acquisition of land for a company as in the case of Land Acquisition Act. In the present case, acquisition under the Act is for the purpose of development of industrial estates or industrial areas by the Corporation or any other purpose in furtherance of the objects of the Act. The policy underlying the Act is not acquisition of land for any company but for the one and only purpose of development, organisation and growth of industrial estates and industrial areas. The Act is designed to have a planned industrial city as opposed to haphazard growth of industrial areas in all parts of the State. The Act is intended to prevent, growth of industries in the developed parts of the State. Industries are therefore to be set up in the developing or new parts of the State where new industrial towns will be brought into existence. The object of the Act is to carve out planned areas for industries. On one side there will be engineering industries and on the other there will be chemical industries. There will be localisation of industries with the result that the residents and dwellers of towns and cities will not suffer either from the polluted air or obnoxious chemicals of industries or the dense growth of industries and industrial population, within and near about the residential areas. The Land Acquisition Act is a general Act and that is why there is specific provision for acquisition of land by the State for public purpose and acquisition of land by the State For companies. The present Act on the other hand is designed the sole purpose of development of industrial areas and industrial estates and growth and development of industries within the State. Industrial undertakings or persons who are engaged in industries all become entitled to the facilities on such industrial growth. Under the Land Acquisition Act acquisition is at the instance of and for the benefit of a company whereas under the present Act acquisition is solely by the State for public purposes. The two Acts

are dissimilar in situations and circumstances.

though the examination by the Supreme Court of the Maharashtra Act was in the context of the Constitutional validity of the Maharashtra Act as being repugnant to the Central Enactment - Land Acquisition Act - as we find the purpose of acquisition of lands under the Maharashtra Act as well as the Karnataka Act is both for the purpose of developing industrial areas in the State, and therefore cannot be held to be laying down the correct law and ratio as indicated in the two single bench decisions of this Court to this effect is hereby overruled.

iv) An approval of the project proposed by an entrepreneur and cleared by the State high level clearance committee under Section 5 of the Felicitation Act by itself cannot act as an insurance against any possible violations, infractions, illegalities or irregularities in the matter of acquisition of private lands by the State Government in exercise of its power under any enabling acquisition Acts including the present act (KIAD Act, 1966). Such clearance cannot and does not absolve the State Government from adhering to the procedural requirements envisaged tinder the Acquisition Act and in the instant case, under the provisions of the KIAD Act and the legality or otherwise of the proceedings for acquisition of lands has to bear scrutiny independently and the mere approval of the project by the State high level clearance committee cannot and will not validate the illegalities or irregularities in the matter of acquisit ion of land. On such an independent examination in the instant case, we find from the records that the State Government as an acquiring authority and the board as a statutory development board, have not, only committed infractions of statutory provisions of Sections 3(1) and 28 of the Act but having also merely surrendered to the decision of the State high level committee and have thereby abdicated their duties and responsibilities under the acquiring Act.

v) Simultaneous issue of notifications by the State Government for declaring an area as industrial area under Section 3(1) of the Act for notifying the applicability of Chapter-VII of the Act in respect of an industrial area under Section 1(3) of the Act and the State Government issuing the notification of its intention to acquire any extent of land in an industrial area for the purpose of development by the board, particularly when different extent of lands are mentioned in these notifications, betrays a clear lack of understanding of

the statutory provisions as well as lack of awareness to the legislative scheme in making provisions in the Act for issuing of not only notifications but also to gazette the same under these three different statutory provisions and unless it is factually and on record that the State Government is able to establish a commensurate application of mind to the three different enabling sections of the Act, a presumption that either the notifications are validly issued or that the notifications are fully in conformity with the procedural requirement does not arise. For a valid acquisition of lands by the State Government in exercise of its powers under Section 28 of the Act, unless the State Government has adhered to the procedural requirement under sub-sections (2) to (8) of Section 28 of the Act, the acquisition proceedings get vitiated, as the acquisition results in deprivation of not merely land of agriculturists but also their livelihood and denial of their avocation, and therefore the present acquisition of land becomes unsustainable as procedural requirements under these statutory provisions are not adhered to in the present cases.

vi) Proceedings for acquisition of lands notified under Section 28 of the Act are also vitiated for the reason that the State Government has not shown its awareness to the mandate of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, imposing restrictions and prohibitions on new projects or activities based on their potential environmental impacts in respect of the industries and the nature of industries proposed to be set up by the fourth respondent in the subject lands before embarking on acquisition proceedings. The amended Rule has come into force as per notification dated 14-9-2006 and in clear and emphatic terms envisages the procedure for either granting or rejecting of prior environmental clearance. In terms of the notification, even before construction of new projects, it has to be approved/permitted or cleared by the central government or by the State level environment impact assessment authority, constituted by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act. The industries proposed to be set up by respondents 4 and 5 having an annual production capacity far exceeding 20000 tonnes are a class of industries/activities within the meaning of column 3(a) of the schedule to the notification and therefore prior clearance by the Central Government was essential. The State Government having embarked on the acquisition proceedings by issue of preliminary notification dated 9-11-2006 i.e., subsequent to the publication of the

notification dated 14-9-2006 under the provisions of the Environment (Protection) Act, indicates that the State Government had embarked on acquisition proceedings for the benefit of a private company to set, up industries covered by the notification even before it was known as to whether a project of this nature can be cleared by the Central Government and therefore the acquisition proceedings get vitiated. Acquisition of private agricultural lands by the State Government and in the name of a public purpose cannot be either casual or without being aware of the suitability and possibility of the acquired lands being available or otherwise for the proposal. In this view of the matter the State action affecting rights of citizens under Articles 21 and 300A of the Constitution of India and in turn violating Article 14 also, cannot pass muster before a constitutional Court."

11. Based on the above conclusion, the Division Bench allowed the bunch of appeals and quashed the notifications issued under Sections 1(3), 3(1) and 28(1) of the 1966 Act. Aggrieved by the same, the appeals have been preferred by not only the companies for whose benefits the land was acquired but also by the KIADB and the State of Karnataka. At the cost of repetition, it is pointed out that Civil Appeal @ SLP (C) No. 23351 of 2012 has been preferred by a land owner aggrieved by judgment dated 14.12.2011, whereby the writ appeal of the said petitioner was dismissed, confirming the dismissal of the writ petition by the learned Single Judge with respect to a challenge relating to similar acquisition for a company BMM Ispat Ltd. on similar grounds.

12. We have heard the learned counsel for the parties and perused the material on record. Shri Krishnan Venugopal, learned Senior counsel appearing for the MSPL, after taking us through the chronology of events, summarised the findings and reasonings given in the impugned judgment as follows:

a. The appellant being a 'private' company, its interests are not public.

b. The appellant MSPL multiplied into two or three entities even during the process of acquisition proceedings.

c. The 2002 Act cannot lead to a situation that 'at the same time it can never be by giving a go by to other statutory requirements and procedural compliances.

d. The process followed in terms of Section 28 of the 1996 Act was not proper and many land owners were complaining about being dispossessed or thrown out of their land as procedural requirements were not complied.

e. Section 28(7) of the 1996 Act is 'draconian'.

f. There is no 'public purpose' when land is acquired for one entity.

g. The KIADB has not examined the issue of Environmental Clearance.

h. Acquisition proceedings, in the background of the 2002 Act, are not in accordance with law and not for public purpose.

13. Mr. Venugopal also briefly summarised the conclusions given in paragraph 127 of the impugned judgment, which have already been reproduced above as follows:

i. KIADB cannot acquire lands for a single company/private industrialist and the same is improper exercise of power. It is also not in public interest.

ii. Approval of project by SHLCC under the 2002 Act is not immunity against illegalities/irregularities in land acquisition.

iii. Simultaneous issuance of Notifications under Sections 1(3), 3(1) and 28(1) of the 1966 Act for declaration of the land as 'industrial area' and its acquisition, 'betrays a clear lack of understanding of the statutory provisions as well as lack of awareness to the legislative scheme' and further, 'unless it is factually and on record that the State Government is able

to establish a commensurate application of mind to the three different enabling sections of the 1966 Act, a presumption that either the notifications are validly issued or that the notifications are fully in conformity with the procedural requirement does not arise'.

iv. State Government has not complied with the EIA Notification for Environmental Clearance.

14. Shri Krishnan Venugopal, learned Senior Counsel then advanced his submissions which are briefly summarised hereunder:

a. Failure to appreciate following facts and material on record

Approval of Project was after due consideration of material

i. The initiation of the entire process is based on an application filed by Appellant and its consideration under the 2002 Act. The Application was considered on 06.06.2005.

ii. The Government Order approving the Project was on 22.12.2005. The approval was not hastily done and the

Government Order in fact notes key features of the project.

iii. The approval for modification of the Government Order by inclusion of AISL was based on an application filed by MSPL. The details and relation between AISL and MSPL are set out in additional documents, which discloses that MSPL and AISL had common shareholders and were under same management and ultimately, AISL was a wholly owned subsidiary of MSPL.

iv. Full and complete disclosure was made by Applicant and the same was duly considered and not mechanically approved by Government of Karnataka. The High Court has observed:

> *"106.....There is absolutely no application of mind at the subsequent levels. A notification issued under Section 3 of the Act in the name of the Act and for declaring an area mentions names of respondent Nos. 4 and 5. Respondent No. 5 was never an applicant before the State High Level Clearance Committee, but, nevertheless, figures in the notification under Section 3 of the Act. Even mentioning of the names do not reveal or spell out as to how they figure there. No preamble or legend is given to it. Then follows the application of chapter-VII in respect of the land notified."*

v. The above observations have not taken into consideration the Government Order dated 22.03.2006. The grant of land is also approved by the Land Audit Committee in its

meeting on 28.01.2006.

Objections of land owners duly considered

vi. Upon approval to the Project under the 2002 Act, the notifications for land acquisition are issued under the 1966 Act. The Notifications for acquisition of land were issued on 09.11.2006:- (A) declaration under Section 1(3) that Chapter VII would apply (B) declaration under Section 3(1) that an area is 'industrial area' for the 1966 Act and (C) acquisition of land.

vii. Notice is only thereafter issued under Section 28(1) of the 1966 Act to the individual landowners to show cause as to why land should not be acquired. In the present case, notice under Section 28(2) was issued on 20.11.2006 and the objections were duly considered. The Special Land Acquisition Officer passed an order under Section 28(3) of the KIAD Act after considering these objections.

viii. Sample Panchnama has also been placed before this Hon'ble Court. Without any basis and despite material on record, the High court has concluded that procedure in terms of Section 28(3) was violated.

b. Failure to appreciate law

Scope of Facilitation Act

i. The High Court has erroneously concluded that the 2002 Act 'virtually leaves no option to all other agencies of the State whether statutory or otherwise and has produced in them a state of submissiveness and they have mechanically like robots acted in a compliant manner.' It is submitted that the very purpose of a SHLCC and Single Window Clearance Committee would be defeated if the approval granted by such committee is reviewed again and again by other departments. The approach of the High Court will not only render the text of the 2002 Act otiose and unworkable, but will defeat the very purpose of the 2002 Act as set out in the Statement of Object and Reasons.

ii. Further, the Hon'ble High Court has completly exceeded its jurisdiction to review the very approval of the Project when the only issue to have examined was – whether the mandate of Section 28 of the 1966 Act was complied.

iii. The High Court's conclusion that the 2002 Act leads to a complete 'go by' to 'statutory requirements and procedural

compliances' is manifestly contrary to the record. The approval of the project by the SHLCC, the State Government Order along with the compliances in terms of site inspection by KPSCB and even obtaining Environmental Clearance, the approval in terms of the 2002 Act has not given a 'go by' to statutory requirements and procedural compliances.

iv. It is submitted that the High Court has erred in appreciating the scope of the Facilitation Act. It is submitted that the same is only for approval of proposal of a project and not for construction and operation itself, which are only subject to various other approvals.

Process under section 28 of 1966 Act

v. The High Court has concluded that the power of State Government to take possession of land under Section 28(7) of the 1966 Act is draconian. However, this power is conferred only in the scenario that orders are passed after considering objections and further notice to the landowners in terms of Section 28(6) of the 1966 Act.

vi. It is only on the refusal in such an event that the power to

forcibly acquire land is conferred on the State Government.

Single entity being eligible Applicant

vii. It is submitted that the High Court has committed a grave error of jurisdiction in reconsidering the approval granted to the Project- which was cleared by the SHLCC and also by the Land Audit Committee. It is submitted that the High Court could not have second-guessed the policy decision to approve a palletisation and integrated steel plant.

viii. Without prejudice to the above contention, in any event, it is submitted that a single applicant can be an eligible applicant and there is no bar for the same.

ix. The conclusions fail to appreciate the socio-economic benefit to the State of Karnataka and the scope of what constitutes 'public purpose'.

15. Learned counsels appearing for AISL, State of Karnataka and KIADB have majorly adopted the arguments advanced by Mr. Krishnan Venugopal and have submitted that the impugned judgment of the Division Bench be set aside. It is their submission that the procedure as prescribed under the law has

been strictly adhered to.

16. On behalf of the respondent no.8 in the Appeal of MSPL, Shri Shekhar S. Naphade, learned Senior counsel made submissions. Other counsels appearing for other land owners in the appeal of AISL have adopted the same. Briefly the arguments advanced on behalf of the private respondents are reproduced below:

a. MSPL and AISL did not have any Environmental Clearance, in the absence of which the land could not have been acquired for setting up the plant.

b. The land owner–respondents have not accepted any compensation.

c. Just because 90% of acquirees have accepted compensation, that does not validate an illegal acquisition.

d. This is a colourable exercise of power since the 1996 Act does not contemplate acquisition for a private party directly. An area has to be set up as an industrial area in which private industry can be set up later. In the present case, the procedure has been shortened at the behest of private

parties.

e. AISL was not even before the SHLCC and the only applicant was MSPL. Hence, the acquisition for AISL is bad in law.

f. Division Bench considered the issues in detail and has rightly quashed the notifications under 1966 Act. It does not call for any interference. The appeal deserves to be dismissed.

17. In so far as Civil Appeal @ SLP (C) No. 23351 of 2012 is concerned, Shri Ankur S. Kulkarni, learned counsel, supported the arguments of Mr. Shekhar S. Naphade. He has further submitted that judgment of the Division Bench dated 22.03.2012 is correct on law and facts as such the Division Bench dismissing the writ appeal by the impugned judgement dated 14.12.2011 committed an error and, therefore, needs to be set aside.

18. It may be noted here that depending upon the outcome of the decision in the appeals filed by MSPL, AISL, KIADB and State of Karnataka in which the judgment of the Division Bench dated 22.03.2012 is under challenge, the fate of the aforesaid Civil Appeal of Syed Ahmad would rest.

19. Before proceeding to deal with the respective submissions, a brief outline of the two state enactments i.e. 1966 Act and the 2002 Act, is spelled out.

1966 Act.

20. The object of the 1966 Act is already reproduced in the earlier part of this order. It is for securing the establishment of industrial areas and generally to promote the establishment and orderly development of industries therein within the state of Karnataka.

(i) Under section 1(3), it is provided that the Act would come into force at once except Chapter VII which shall come into force in such area and from such date as the State Government may from time to time by notification specify on this behalf.

(ii) Section 2 deals with the definitions of the various words and phrases used in the Act.

(iii) Under section 3(1), the State Government by Notification may declare any area in the State to be an industrial area for purposes of the Act.

(iv) Under section 6, a Board is to be established chaired by the Secretary, Commerce and Industries Department. Its

constitution is provided therein and comprises of the following as members:

- The Secretary, Finance Department;
- The Secretary, Housing and Urban Development;
- The Commissioner, Industrial Development;
- Director, Industries and Commerce;
- The Chairman and Managing Director, Karnataka State Industrial Investment and Development Corporation Limited;
- The Chairman, Karnataka State Pollution Control Board;
- The Director, Town Planning;
- The Managing Director, Karnataka State Small Industries Development Corporation Limited;
- The Managing Director, Karnataka State Financial Corporation;
- The Executive Member of the Board; and
- Two nominees of the Industrial Development Bank of India;

(v) The functions of the Board are enumerated in section 13 and further general powers of the Board are spelled out in section 14 of the 1966 Act. The same are reproduced hereunder:

"13. ***Functions.****- The functions of the Board shall be,-*

(i) generally to promote and assist in the ***rapid and orderly establishment, growth and development of industries [and to provide industrial infrastructural facilities and amenity] in industrial areas****, and*

(ii) in particular, and without prejudice to the generality of clause (i), to,-

(a) develop industrial areas declared by the State Government and make them available for undertakings to establish themselves;

(b) establish, maintain, develop, and manage industrial estates within industrial areas;

(c) undertake such schemes or programmes of works, either jointly with other corporate bodies or institutions, or with the Government or local or statutory authorities, or on an agency basis, as it considers necessary or desirable, for the furtherance of the purposes for which the Board is established and for all purposes connected therewith.

14. General powers of the Board.*- Subject to the provisions of the Act, the Board shall have power,-*

(a) to acquire and hold such property, both movable and immovable as the Board may deem necessary for the performance of any of its activities and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Board;

(b) to purchase by agreement or take on lease or under any form of tenancy any land, to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions;

(c) to provide or cause to be provided amenities [industrial infrastructural facilities] and common facilities in industrial areas and construct and maintain or cause to be maintained works and buildings therefor;

(d) to make available buildings on lease or sale or lease-cum-sale to industrialists or persons intending to start industrial undertakings;

(e) to construct buildings for the housing of the employees of industries;

(f) (i) to allot to suitable persons [premises or parts thereof] including residential tenements in the industrial areas established or developed by the Board;

(ii) to modify or rescind such allotments, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of their allotment;

(iii) to resume possession of premises or part thereof including residential tenements in the industrial area, or industrial estate in the manner provided in section 34B.

(g) to delegate any of its powers generally or specially to the Executive Member;

(h) to enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of its functions; and

(i) to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions, and the carrying into effect the purposes of this Act.

(vi) Chapter VII deals with the acquisition and disposal of the land. Section 27 provides that the areas notified by the State

Government under section 1(3) would be applicable to this Chapter with effect from the date specified in the notification. Section 28 and its sub-sections (i) to (viii) provide the procedure for acquisition of land. Section 29 provides for determination of compensation of the land acquired. Section 30 provides that Land Acquisition Act, 1894 would *mutatis mutandis* apply with respect to the provisions therein for inquiry and award by the Deputy Commissioner, reference to Court, apportionment and payment of compensation. Section 40 confers powers on the State Government to make rules and section 41 confers power on the Board to frame regulations with the previous approval of the State Government.

2002 Act:

21. This Act was promulgated for promotion of industrial development and facilitation of new investments to simplify the regulatory framework. Statement of objects and reasons is reproduced below:-

> *"**STATEMENT OF OBJECTS AND REASONS.**- It is considered necessary to provide for the promotion of industrial development and facilitation of new*

investments, to simplify the regulatory frame work, by reducing the procedural requirements and rationalising documents and to provide for an investor friendly environment in the State of Karnataka. The Bill among other things provides for the following, namely:-

1. Constitution of State High Level Clearance Committee, State Level Single Window Clearance Committee and District Level Single Window Clearance Committee for consideration of application from entrepreneurs intending to establish industries in the State.

2. Appointment of Karnataka Udyoga Mitra as a Nodal Agency at State Level and the District Industries Centre at Nodal Agency at the District level to undertake investment promotional activities and to render necessary guidance and assistance to entrepreneurs to setup industrial undertaking in the State.

3. Providing Combined Application Form in lieu of existing forms prescribed under various laws.

4. Facilitating entrepreneurs by furnishing a self certification at the time of submitting the combined application form to the Nodal Agency.

5. Rationalising inspections by various authorities.

6. Providing for deemed approval by the departments or authorities in case of delay.

7. Penalty for entrepreneurs who fail to comply with the conditions of undertaking in the self certification.
"

(i) Section 3(1) provided for establishment of a SHLCC consisting of such members as may be notified by the State Government to work as a single point clearance committee. Under sub-section (2), the SHLCC was to examine and consider

such proposals received from any entrepreneur relating to setting up of any industrial or any other project in the State with the minimum investment of Rs.100 Crores or above. The functions of the SHLCC are provided in section 4 and its powers are provided in section 5.

(ii) Under section 6, a State Level Single Window Clearance Committee (SLSWCC) is to be notified by the State Government which has the power to deal with the proposals with the investment of more than Rs.15 Crores but less than Rs.100 Crores.

The powers of SLSWCC are provided in section 7 and section 8.

(iii) Similarly, there would be a District Level Single Window Clearance Committee (DLSWCC) dealing with investments up to Rs.15 Crores and its functions and powers spelled out in paragraphs 10 and 11.

(iv) Under section 11(A), the Government could constitute a State Level Empowered Committee which was to be chaired by the Chief Secretary of the State, with Principal Secretaries of 10 different departments, Chairman of KSPCB, Director-General and Inspector-General of Police & State Fire Extinguishing and Emergency Services, Chief Executive Officer & Executive

Member of KIADB and the Commissioner for Industrial Development & the Director for Industries and Commerce as its members.

(v) There was also provision made for Nodal Agencies, Karnataka Udyog Mitra at the State Level under section 12 and its functions enumerated under section 13.

(vi) Section 14 provides for a Combined Application Form for use of entrepreneurs for obtaining clearance to be prescribed by the State Government to all the Clearance Committees.

(vii) Section 17 provides for deemed approval in case clearance is not issued within stipulated time.

(viii) Section 18 provided for an appeal by any person aggrieved by the decision of the above-mentioned committees.

22. In the present case as stated in the chronology of events, the MSPL had initially moved an application under the 2002 Act. During the consideration of the said application by the State Government, MSPL shared its projects of the two industries by inducting AISL a fully owned subsidiary of MSPL. The introduction of AISL was accepted by the State Government and necessary applications were given by AISL also. The SHLCC had

earlier approved both the projects and one of the recommendations was for acquisition of land under the 1966 Act. The KIADB considered the recommendations of the SHLCC, Karnataka Udyog Mitra & the State Government and accordingly acquired the land as per the procedure prescribed under section 28 of the 1966 Act.

23. It is this acquisition of land for MSPL and AISL which is under challenge in these proceedings. The Division bench having quashed the acquisition as also the notifications under section 1(3) and section 3(1) along with section 28 of 1966 Act is now for consideration in the present group of appeals.

24. Based upon the arguments advanced by the learned counsels, the following issues arise in these appeals for our consideration:

(I) Whether in the absence of environmental clearance, the acquisition in question could have taken place?

(II) Whether the acquisition was vitiated in view of the undue haste and non-application of mind by the competent authorities?

(III) Whether the procedure prescribed under the 1966 Act was duly followed?

(IV) Whether the acquisition for a single company could be said to be for public purpose and could be made under the 1966 Act?

(V) Whether acquisition could be made for a non-applicant AISL under the 1966 Act without its application being routed through SHLCC.

(VI) Whether the comparison with the Maharashtra Industrial Development Act, 1962, placing reliance on the judgment of this Court in the case of **Shri Ramtanu Co-op.Housing Society Ltd. Vs. State of Maharashtra**, reported in (197) 3 SCC 323 in the impugned judgment is correct?

(VII) Whether the conclusions arrived at in the impugned judgment are vitiated on account of inclusion of value judgments of policy views by the High Court?

(VIII) Whether the entire acquisition could be quashed upon a petition by a fraction of landowners holding a fraction of acquired land which is only 10 % or less of the total acquired land?

A. <u>Environmental Clearance.</u>

25. On record environmental clearance has been given on 23.09.2016 by the Ministry of Environment and Forests, Government of India, copy of which has been filed along with I.A. No.118035 of 2017 in the appeal of MSPL. Prior to it, the Ministry itself vide paragraph-2 of the Notification dated 14.09.2006 provided that no Environment Clearance from MOEF was required for securing land. It may also be relevant to note here that KSPCB had given its clearance and no objection much earlier for setting up the plant vide communication dated 02.08.2008. Further, the Ecology and Environmental Department of Government of Karnataka had given clearance on 01.10.2010. Further, the Ministry of MOEF had issued an order dated 08.09.2014 providing that the plant may be continued to operate. Thereafter, the KSPCB issued an order dated 16.10.2014 requiring MSPL to apply for Terms of Reference by 07.12.2014 and to obtain environment clearance from MOEF within one year. The MSPL accordingly applied as per the Terms of Reference and was granted the environment clearance by MOEF vide communication dated 23.09.2016. In view of the above facts, as of date, no objection can be raised that there is no environmental

clearance certificate from the Ministry of Environment and Forest as the same has already been issued on 23.09.2016.

B. <u>Non-application of mind and undue haste.</u>

26. From the chronology of events what is to be noted is that the SHLCC after considering all aspects of the matter had resolved to approve the project and had made recommendations accordingly. Thereafter, the KIADB accepted the recommendations of the SHLCC and the same also had due approval of the Government at the highest level. The division made by MSPL (the initial applicant) for setting up the two industries by two different entities also had due approval of the KIADB and the Government.

27. The original writ petitioners (land owners) had challenged the notifications under Section 1(3), 3(1) and 28(1) of the 1966 Act on the ground of non-application of mind and undue haste. No grounds were raised nor any foundation laid in the petitions alleging mala fide. The object of the 2002 Act was primarily to provide a Single Window Clearance by the High Level Committees constituted under the 2002 Act. We have gone through the reports and recommendations of the different Committees as also

the State Government and we find that all aspects of the matter have been considered and a conscious decision has been taken on the overall conspectus of the project and the proposals submitted.

28. The meeting of the SHLCC dated 06.06.2005 was chaired by the Chief Minister, State of Karnataka, the concerned Ministers and Secretaries were also present in the meeting. The complete project was discussed under different heads including the background of the promoters, background of the company, means of finance, infrastructure facilities, environment and pollution control clearances, local employment, water consumption, electricity consumption and incentives & concessions.

29. The Government Order, thereafter, was issued on 22.12.2005 detailing the different facets of the proposal and granting due approval for establishment of the palletization plant as also the integrated steel plant with a total investment of 2292.26 crores and generating employment to one thousand persons.

30. Thereafter, under the provisions of 1966 Act, the Land Audit Committee in its meeting of 28th January, 2006, which was chaired by the Principal Secretary, Department of Commerce & Industries and Secretaries of other relevant Departments with special invitees also took a conscious decision with respect to the project submitted by MSPL for both the plants at subject Item No.2.5 and recommended for acquisition of 1034 acres of land and to intimate the same to the KIADB. It was thereafter that the Nodal Agency of the State level i.e. Karnataka Udyog Mitra in its meeting dated 15.02.2006 after considering the proceedings of the SHLCC dated 6th June, 2005 and that of the Land Audit Committee dated 28.01.2006 accepted the recommendation for acquisition of 1034 acres of land.

31. These aspects were examined by this Court in **Chairman & MD, BPL Ltd. Vs. S.P. Gururaja,** reported in **(2003) 8 SCC 567**. This Hon'ble Court was dealing with a similar situation where a State High Level Committee was constituted to grant approvals and acquire land to the appellant therein. This process was challenged in a public interest litigation. This Court was pleased to dismiss the writ petition finding that:

17. The Company intended to set up more than one unit. For the purpose of achieving the objective of economic development of the State, the State is entitled to deal with the applications of the entrepreneurs in an appropriate manner. For the said purpose a High Level Committee was constituted. The said Committee held its meeting on 10.10.1994 wherein not only the members referred to hereinbefore but also various other officers were present. Presumably, prior thereto the applications filed by the Company were scrutinized by the competent authorities. After detailed discussions, the High Level Committee resolved: (a) to permit the unit to change the location from Malur Indl. Area. to Dobespet Industrial Area; (b) to allot a total of 500 acres of land for the three projects viz., Colour Picture Tube, Colour Televisions and Battery, in Dobespet Industrial Area, Nelamangala to, in lieu of the earlier allotment of 100 acres of land at Malur Indl Area for the Colour TV sets project, subject to the promoters indicating the individual land requirement for Colour Picture Tube project, Colour TV project and the battery project duly justifying the requirement with necessary plans, block diagrams, etc.

18. Similar considerations were made in respect of Colour Television Picture Tube Project of the Company and Manufacture of Batteries. The matter relating to allotment of land is a statutory function on the part of the Board. In terms of the provisions of the Act, consultations with the State Government is required if Regulation 13 of the Regulations in place of Regulation 7 is to be taken recourse to. Does it mean that consultations must be held in a particular manner, i.e. by exchange of correspondences and in no other? Answer to the said questions must be rendered in negative. The High Level Committee was chaired by the Minister who in terms of the Rules of Executive Business framed under Article 166 of the Constitution of India was entitled to represent the State. Once a consultation takes place by mutual discussion and a consensus is arrived at between different authorities performing different functions under the statutes, the purpose for which consultation was to be made would stand satisfied. Under the Act or the Regulations framed thereunder, no procedure for holding such consultations had been laid down. In that situation it was open to the competent authorities to evolve their own procedure. Such a procedure of taking a decision upon

deliberations does not fall foul of Article 14 of the Constitution of India. No malice of fact has been alleged in the instant case."

32. In view of the above, the finding in the impugned judgment regarding non-application of mind and the submission of Mr. Naphade to the aforesaid effect cannot be sustained.

33. Insofar as the notifications under Section 1(3), 3(1) and 28(1) of 1966 Act being issued on the same date, it may be noted that there is no embargo on the same. The statutes do not prohibit the same. Moreover, this issue has also been dealt with by this Court in the case of **Deputy General Manager (HRM) and another Vs. Mudappa and others** reported in **2007 (9) SCC 768**. Para 30 of the said judgment is reproduced hereunder:

"In our judgment, the learned Single Judge was wholly in error in taking such view and quashing the notification. Upholding of such view would make statutory provisions under the Act or similar provisions in other laws, (for example, the Land Acquisition Act, 1894) nugatory and otiose. ***We are also of the view that the learned Single Judge was not right in finding fault with the State Authorities in issuing notifications under Section 1(3), Section 3(1) and Section 28(1) simultaneously****. There is no bar in issuing such notifications as has been done and no provision has been shown to us by the learned counsel for the contesting respondents which prevented the State from doing so. Even that ground, therefore, cannot help the land-owners".*

34. The above view has the approval of this Court in its recent order dated 28.01.2020 passed in **Special Leave Petition (c) No(s).9662 of 2013 (C. Jayaram and others Vs. The State of Karnataka and others)**.

C. <u>Procedure Prescribed under the 1966 Act duly followed:</u>

35. As already noted above from the chronology of events given in the earlier part of the judgment, the due procedure had been followed. It is also to be noticed that the objections were invited under the procedure prescribed in Section 28 of the 1966 Act and the same were duly considered and disposed of, as such, it cannot be alleged that the objections have not been considered vitiating the acquisitions. In this respect it would be relevant to mention that the Land Audit Committee approved the grant of 1034 acres of land in its meeting dated 28.01.2006, which was duly accepted and approved by the State Nodal Agency, Karnataka Udyog Mitra in its meeting dated 15.02.2006 and duly communicated vide letter of even date to the KIADB to start the process for acquisition. It was thereafter that the notifications were issued under Section 3(1), 1(3) and 28(1) of the 1966 Act, on 09.11.2006. Simultaneous publication of the said notifications

has already been upheld to be not suffering from any illegality or irregularity.

36. Pursuant to the notification under Section 28(1) of the 1966 Act, further steps were taken and after inviting objections and disposing of the same, final declaration was made, compensation was determined and thereafter possession taken. It would be also relevant to state here that from the material on record, it is apparent that the land was acquired in the name of the State, thereafter transferred to the KIADB, which proceeded to allot the same to MSPL and AISL respectively and, accordingly, lease deeds were executed. The entire process as provided under the Act has been strictly followed. The Division Bench in the impugned judgment apparently was swayed by its own personal views based on assumptions and having no material backing which led to the quashing of the notifications._

D. <u>Acquisition for a Single Company.</u>

37. Section 28(1) of the KIAD Act is reproduced below:

> *"28. Acquisition of land.- (1) if at any time, in the opinion of the State Government, any land is required for the purpose of development by the Board,* ***<u>or for any other purpose in furtherance of the objects</u>***

> ***of this Act***, *the State Government may by notification, given notice of its intention to acquire such land."* ***[Emphasis Provided]***

The words for the purpose of development by the Board, and or for any other purpose in furtherance of the objects of this Act make it amply clear that the intention to acquire land in the opinion of the State Government could be not only for the purpose of development by the Board but for any other purpose in furtherance of the objects of this Act. This gives power to acquire land beyond development by KIADB. Further, the regulations framed by the Board under Section 41 particularly deal with this aspect in Regulation 13 which reads as under;

> *"Allotment of Plots in Special Cases: Notwithstanding anything contained in these regulations,* ***the Board*** *in consultation with the State Government* ***may allot any plot or area*** *other than those in respect of which applications are called for under Regulation 7* ***to any individual or company for the establishment of an industry*** *or for the provision of any amenity required in the Industrial area."* ***[Emphasis Provided]***

38. Under the above regulations, the Board is empowered to allot any plot or area to any individual or company for establishment of an industry in consultation with the State Government. This provision also contemplates acquiring land for the purpose of allotment to a single company to set up an

industry. In the present case, the allotment by the Board is duly approved by the State Government.

39. In the same context, it would be relevant to refer to a judgment of this Court in the case of **P. Narayanappa Vs. State of Karnataka** reported in **(2006) 7 SCC 578**, where it upheld the acquisition of land in favour of a private company under the 1966 Act. Paragraphs 6, 13 and 14 of the said judgment are reproduced below:

> *"6. Shri Shanti Bhushan, learned senior counsel for the appellants, has challenged the impugned notifications on several grounds and the principal ground is that the land has been acquired in order to benefit a company, namely, Vikas Telecom (P) Ltd. (respondent no.9) who had submitted a project report for setting up a software technology park which included an I.T. Training Institute/Engineering College, Research and Development Centre, Educational Centre, Commercial and Residential Buildings and Service Apartments, Convention Centre, Hotel, Shopping Mall, etc.....*
> .....
>
> *13. The provision for acquisition of land under the Act is contained in Section 28 which is somewhat different from the provisions contained in Sections 4, 5A and 6 of the Land Acquisition Act. The legislature in its wisdom thought it proper to make a specific provision for acquisition of the land in the Act itself rather than to take recourse to Sections 4 and 6 of the Land Acquisition Act.* ***A plain reading of sub-section (1) of Section 28 would show that land can be acquired for the purpose of (i) development by the Board, or (ii) for any other purpose in furtherance of the objects of the Act.*** *Sub-section (3) of Section 28 is similar to Section 5A of the Land Acquisition Act and the final notification*

is issued under sub-section (4) of Section 28. ***The necessary precondition for a valid notification under sub-section (4) of Section 28 is that the State Government should be satisfied that the land is required for the purpose specified in the notification issued under sub-section (1),*** *viz., for the purpose of (i) development by the Board, or (ii)* ***for any other purpose in furtherance of the objects of the Act.*** *Therefore, in order to judge the validity of the notification what is to be seen is whether the acquisition of land is being made for securing the establishment of industrial areas or to promote the establishment or orderly development of industries in such areas.* ***In view of wide definition of the words "industrial infrastructural facilities" as contained in Section 2 (7a) of the Act, making of a technology park, research and development centre, townships, trade and tourism centres or making provisions for marketing and banking which would contribute to the development of industries will meet the objectives of the Act and acquisition of land for such a purpose would be perfectly valid.***

*14.....****Sub-section (1) of Section 28 clearly shows that the land can be acquired for*** *(i) development by the Board; or (ii)* ***for any other purpose in furtherance of the objects of the Act.*** *Under sub-section (8) of Section 28, the State Government is empowered, after it has taken possession of land, to transfer the same to the Board for the purpose for which the land has been acquired. Section 32 empowers the State Government to place at the disposal of the Board any land vested in it and the Board is enjoined to deal with the land in accordance with the regulations made and directions given by the State Government in this behalf. This stage when the Board gets the authority to deal with the land comes at a later stage which is after the land has been developed by it.* ***An entrepreneur or a company may give a proposal to the State Government for setting up an industry or infrastructural facility and the Government may thereafter acquire the land and give it to the Board. It is also possible that after the land has***

> ***already been acquired and developed by the Board, it may be allotted to an entrepreneur or a company for setting up an industry or infrastructural facility.*** *Therefore, the scheme of the Act does not show that at the time of acquisition of the land and issuing a preliminary notification under Section 28(1) of the Act, the complete details of the nature of the industry or infrastructural facility proposed to be set up should also be mentioned. At that stage what is to be seen is whether the land is acquired for development by the Board or for any other purpose in furtherance of the objects of the Act, as mentioned in sub-section (1) of Section 28 of the Act. In fact, if the contention raised by the learned senior counsel for the appellants is accepted, it would mean that even at the stage of preliminary notification under Section 28(1) of the Act, the nature of the activity which may be done by some entrepreneur or a company which may give a proposal for setting up an industry or infrastructural facility much after land has been acquired should also be taken note of and specifically mentioned in the notification, which is well nigh impossible. While interpreting the provisions of the Act, the Court should not only take into consideration the facts of the present case but should also have in mind all possible contingencies.* ***Therefore, on a plain reading of the language used in the Act, it is not possible to accept the contention of the learned senior counsel for the appellants that the impugned notification is vague or cryptic as the complete details of the project which was proposed to be established by Vikas Telecom (P) Ltd. (respondent no.9) were not mentioned*** *and on account of the aforesaid lacuna, the landowners were deprived of their right to make a proper representation or to show cause against the proposed acquisition."* **[Emphasis Provided]**

40. Therefore, the view expressed by the Division Bench that no acquisition could be made for a single company cannot be sustained.

E- Acquisition for a non-applicant (AISL).

41. It is not disputed that AISL (non-applicant) is fully owned subsidiary of MSPL (applicant). In effect, AISL is a new Company promoted by the same promoters. The State Government examined the request of MSPL and also AISL for modification of its Government Order dated 22.12.2005. It examined the bifurcation under various heads. State Government issued Government Order dated 22.03.2006 splitting the infrastructures required with further stipulation that all other terms and conditions mentioned in the Government Order dated 22.12.2005 would apply as it is to both the Companies. The only change sought by MSPL was the integrated steel plant be set up by AISL which was its own subsidiary. These are commercial matters and the State after examining the proposal for change in its wisdom accepted the same. There was no change in the project, as such, regarding the finance, employment and other infrastructures. The objection raised by Mr. Naphade to the aforesaid effect does not merit consideration.

F. Relevance of Shri Ramtanu judgment:

42. The impugned judgment has placed reliance upon the judgment in the case of **Shri Ramtanu (supra)** for the proposition that the acquisition under the 1966 Act was in *pari materia* to the Maharashtra Industrial Development Act, 1962 and, therefore, the acquisition has to be for public purpose only and not for a private company. At the outset, it may be recorded that validity of the 1962 Act was being considered in the case of **Shri Ramtanu (supra)**. In the present litigation, there is no challenge to the validity of the 1966 Act or the 2002 Act. Further, the object and purpose of the 1962 Act was for securing the orderly establishment in industrial areas and industrial State of industries in the State of Maharashtra whereas the 1966 Act, the object and preamble was to promote the establishment and orderly development of industries (in industrial areas). This Court while dealing with the 1962 Act discussed this aspect in para 21 of **Shri Ramtanu (supra)**, which is reproduced hereunder:

> *Counsel on behalf of the petitioners contended that there was procedural discrimination between the Land Acquisition Act and the Act in the present case. It was said that there was a special procedure designed by the Land Acquisition Act for acquisition of land for the companies whereas in the' present case the State was acquiring land for companies without adopting the procedure of, the Land Acquisition Act. It is to be remembered that the Act in the present case is a special one having the specific*

and special pur- pose of growth, development and Organisation of industries in the State of Maharashtra. The Act has its own procedure and there is no provision in the Act for acquisition of land for a company as in the case of Land Acquisition Act. ***In the present case, acquisition under the Act is for the purpose of development of industrial estates or industrial areas by the Corporation or any other purpose in furtherance of the objects of the Act. The policy underlying, the Act is not acquisition of land for any company but for the one. and only purpose of development, Organisation and growth of industrial estates and industrial areas. The Act is designed to have a planned industrial city as opposed to haphazard growth of industrial areas in all parts of the State. The Act is intended to prevent ,.growth of industries in the developed parts of the State.*** *Industries are therefore to be set up in the developing or, new parts of the State where new industrial towns will be brought into existence.* ***The object of, the Act is to carve out planned areas for industries****. On one side there Will be engineering industries and on the other there will be chemical industries. There will be localisation of industries with the result that the residents and dwellers of towns and cities will not suffer either from the polluted air or obnoxious. chemicals of industries or the dense growth of industries and industrial population, within and near about the residential areas. The Land Acquisition Act is a general Act and that is why there is specific provision for acquisition of land by the, State for public purpose and acquisition of land by the State for companies.* ***The present Act on the other hand is designed the sole purpose of development of industrial areas and industrial estates and growth and development of industries within the State****. Industrial undertakings or persons who are engaged in industries all become entitled to the' facilities on such industrial growth. Under the Land Acquisition Act acquisition is at the instance of and for the benefit of a company whereas under the present Act acquisition is solely by the State for public*

purposes. The two acts are dissimilar in situations and circumstances." ***[Emphasis Provided]***

43. Thus, it is to be noticed that the purpose in 1962 Act was for establishment of industrial areas whereas in the other statute i.e 1966 Act, it was for promotion of the establishment and orderly development of industries. Thus, the reliance by the Division Bench in the impugned judgment on the case of **Shri Ramtanu (supra)** is misplaced.

G. Value judgments of policy views.

44. The Division Bench in the impugned judgment seems to have been swayed by its own philosophy in due deference to the principles of statutory interpretation. The statute is to be read in its plain language. Setting up of industries is part of development. There has to be a sustainable growth and existence of all facets and, that is why, laws have been framed, cheques and balance have been imposed so that development takes place side by side with the protection and preservation of nature and environment. Certain extracts from the impugned judgment wherein the Division Bench had expressed its personal policy views and value judgments are reproduced hereunder:

"Though the word 'development' is used, when this word is examined in an objective manner, in an impassionate manner, it is nothing but interference with the existing state of nature and destroying naute !" (P.90-91)

"Any industry inevitably creates and causes pollution of the land, air and water...." (P.91)

"Unfortunately, by and large,....courts have been pro acquisition and have generally approved or upheld acquisition proceedings in the name of public interest." (P.96)

"When examined on such a touchstone and such tests are applied, we find that the present acquisition proceedings cannot stand. The affectation is very adverse and the benefit if at all is a return because of future development of any industry with some potential for employment and may be a little revenue to the State. The affectation to the livelihood and dignified life of thousands of people which is not examined even it is not the focal point, it should be at least be given due attention which it deserved" (P.105)

".....[A]nd with the history of limited companies being too well-known, though the British claim the invention of joint stock company is the genius of English legal mind when the concept is examined from the perception as it prevails in this country and in the society and examine from the ethos of our society, it is nothing short of deception or playing fraud." (P.106)

"A joint stock company is invented only to defraud creditors." (P.106-107)

"Let us not lose our souls in the name of development by depriving land holders of their land holdings." (P.108)

45. A perusal of the above makes it amply clear that the Division Bench introduced several value judgments and policy views in order to interpret the provisions of the 1966 Act and the 2002 Act. It is only as a measure of caution that the said aspect is being taken note of. Such value judgments and policy views are

beyond the domain of the Courts. The Courts should refrain itself from expressing value judgments and policy views in order to interpret statutes. Statutes are to be read in their plain language and not otherwise. Reference may be had to the following decisions:

(i) Regina Vs. Barnet London Borough Council; (1983) 1 AII ER 226;

(ii) Union of India Vs. Elphinstone Spinning and Weaving Company Ltd.; (2001) 4 SCC 139 (Para 17)

(iii) D.R. Venkatachalam Vs. Transport Commissioner; (1977) 2 SCC 273 (Para 29)

(iv) Padma Sundara Rao Vs. State of Tamil Nadu; (2002) 3 SCC 533 (Para 13);

(v) Harbhajan Singh Vs. Press Council of India; (2002) 3 SCC 722 (Para 11) and

(vi) Unique Butyle Tube Industries Vs. U.P. Financial Corporation; (2003) 2 SCC 455 (Para 12).

H. <u>Challenge to acquisition by a minority (10%) of land owners.</u>

46. It is admitted position that the challenge to the acquisition of more than a thousand acres was made by a small fraction of land owners having land less than 10% of the total acquisition. Compensation for rest of the 90% land acquired had been

accepted by their respective land owners. The Division Bench has quashed the entire acquisition of more than a thousand acres at the instance of such a small fraction. This aspect has been dealt with by this Court in the case of **Amarjit Singh** Vs. **State of Punjab** reported in **(2010) 10 SCC 43** and **Om Prakash** Vs. **State of U.P.** reported in (**1998) 6 SCC 1**. The learned Single Judge had placed reliance on the judgment of **Om Prakash (supra)**. It is also worthwhile to mention that out of approx 110 acres of land acquires for MSPL, only one land owner possessing only 4.34 acres of land, had filed the writ appeal before the Division Bench. Quashing the entire acquisition at the instance of one land owner having 4.34 acres of land out of total acquisition for MSPL of 110 acres, would be against the public policy and public interest. The MSPL alone provides employment to 292 persons with a substantial investment of Rs.200 crores. The employment to approximately 300 persons by MSPL is also alleged to be double of the number of employees as projected in the proposal. Further, in the case of AISL acquisition of 914 acres is challenged by a fraction of less than 10% land owners. The estimated project of AISL is approx Rs.2092 crores and would employment to at least one thousand persons.

47. In view of the above analysis, we are of the view that the Division Bench committed an error in quashing the acquisition proceedings. Accordingly, the appeals filed by MSPL, AISL, KIADB and State of Karnataka are allowed.

48. The judgment of the Division Bench dated 22.03.2012 is set aside and the writ petitions stand dismissed as ordered by the learned Single Judge vide judgment dated 17.03.2009.

49. Insofar as the claim of Syed Ahmed is concerned, which is in respect of similar acquisition for M/S BMM Ispat Ltd. on similar grounds based upon the judgment of the Division Bench dated 22.03.2012 impugned in the other appeals, deserves to be dismissed as we have already set aside the said judgment. Relevant to state here that Syed Ahmed was owner of 14.35 acres out of total land measuring 705.99 acres acquired for M/S BMM Ispat Ltd., which is less than 2%. The appeal of Syed Ahmed is accordingly dismissed.

50. There shall be no order as to costs.

51. Pending application(s), if any, is/are disposed of.

.....J.

[HEMANT GUPTA]

.....J.

[VIKRAM NATH]

NEW DELHI

OCTOBER 11, 2022.