BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

ORIGINAL APPLICATION NO.37/2023

BETWEEN:

SRI.PARAMESH V ..... **APPLICANT**

AND

THE COMMISSIONER BBMP
AND OTHERS .....**RESPONDENTS**

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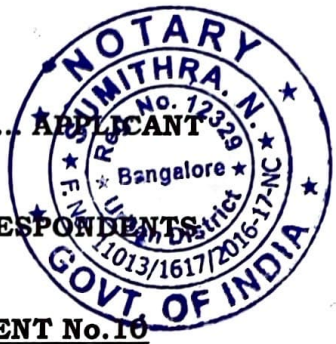
AKL

CHENNAI **ADVOCATE FOR RESPONDENT NO.10**

DATE: 10-2-2026

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

APPLICATION NO.37 OF 2023



BETWEEN:

SRI. PARAMESH. V ..... **APPLICANT**

AND

THE DEPUTY COMMISSIONER & OTHERS ..... **RESPONDENTS.**

COUNTER AFFIDAVIT FILLED ON BEHALF RESPONDENT No.10

I, **Ragava Roa,** Managing Director – Sai Sravanthi Infra Projects Pvt. Ltd, #601, PAVANI VISISTA, Saibaba Temple Road, Greengarden Layout, Munikolala, Bangalore-560037 the respondent No. 10 do hereby solemnly affirm and state on oath and swear accordingly as follows:

1. I submit that, at the outset, it is prayed that this affidavit may be read as part and parcel of the earlier objections filed on 18.07.2024 and the affidavit dated 31.01.2025, 20.05.2025 and another affidavit by me dated 22.11.2025

2. I submit that, I am constructing a multi-storied apartment in the name of "Pavani Mirabilia" in Survey No. 21/1, 21/2, 21/3, 22, 23, 124 and 125 of Seegehalli Village, Bidrahalli Hobli, Bangalore East Taluk, Bengaluru Urban District and during the said construction I have followed the due procedures and abided by all the governing laws and have not encroached nala and the buffer zone and further undertake to maintain the same. Which is crystal clear from the reports submitted by all the government authorities/revenue authorities on the order of this Hon'ble Tribunal.

3. I submit that, the Applicant has not even pleaded, either in the original application or in the accompanying pleadings, the **starting point, ending point, or precise alignment of the alleged Saravu**. The Applicant has failed to identify the source, direction of flow, downstream connectivity, or terminal point of the watercourse. This omission itself demonstrates that the Applicant does not know the actual natural flow of the nala or the manner in which it is alleged to have been diverted at different points. In the absence of such foundational facts, the allegations of diversion, encroachment, or obstruction are purely speculative and cannot form the basis of adjudication by this Hon'ble Tribunal.

4. I submit that, the Applicant has proceeded entirely on the basis of obsolete village maps, without referring to or even acknowledging the sanctioned Comprehensive Development Plan (CDP) / Master Plan prepared under the Karnataka Town and Country Planning Act, 1961, or the subsequent development framework governing the area. The Applicant has also failed to consider the statutory changes brought about by town planning approvals, infrastructure realignments, and orders passed by competent authorities, including the Deputy Commissioner. Such selective reliance on village maps, divorced from the current planning regime and statutory development controls, renders the allegations legally untenable. Moreover, the allegations have been made without any technical, hydrological, or planning-based assessment and without reference to the CDP, zoning regulations, or approved layouts governing the area. The Applicant has neither produced any scientific study nor any authoritative document establishing the present flow of the nala or its alleged obstruction. Mere assertions, unsupported by survey data, CDP alignment, or statutory records, cannot displace the consistent findings of the Deputy Commissioner, the Bangalore Development Authority, and the Karnataka State Pollution Control Board, all of which have categorically recorded that there is no encroachment or violation. Copy of Regulations in Revised Master Plan- 2015, of Bengaluru Development Authority is produced as **ANEXXURE-A**

5. I submit that, I am producing the relevant page of the Master Plan of Bangalore pertaining to the area in which the land of the Respondent is situated. A perusal of the same clearly demonstrates that no nala passes through the land in question. It is respectfully submitted that the Hon'ble High Court of Karnataka, in *Writ Petition No. 44277/2011* reported in 2012 SCC Online Karnataka 2679, and in Valmark Developers v. State of Karnataka, order dated 06.07.2022 in W.A. No. 1226 of 2021, has held that when a Master Plan is prepared by the competent planning authority under the Karnataka Town and Country Planning Act, 1961, the village map loses its credibility and ceases to have any legal validity. Copies of the aforementioned judgments are produced herewith and marked as **ANNEXURE-B & C.** In view of the binding law declared by the Hon'ble High Court, the **village map is rendered insignificant and cannot override the provisions or the layout approved under the Master Plan**, which is the final authority in matters of planning and development in the area.

NOTARY
SAMPATHRA. N.
No. 12323
Bangalore
Urban District
F. No: 11013/1617/2016-17-NC
GOVT. OF INDIA

6. I submit that, the allegation by the applicant, that the report of the Deputy Commissioner is self-contradictory or ambiguous is entirely misconceived. The report clearly and consciously distinguishes between **(a) the position reflected in original and Hissa survey records**, and **(b) the present physical status of the land as found during spot inspection.** The statement that the Saravu is classified as *kharab* with a natural width of 1.20 metres is strictly based on revenue and survey records. The subsequent references to stretches of land measuring 100 metres, 70 metres, and 30 metres are not projected as the natural Saravu but are expressly described as areas left vacant on site in the present land status. The report, therefore, does not contradict itself; rather, it transparently records both the statutory revenue position and the ground-level situation, which the Deputy Commissioner is legally bound to assess. It is respectfully submitted that in *Joint Collector, Ranga Reddy District v. D. Narsing Rao*, (2015) 3 SCC 695, Supreme Court held that **revenue authorities, including Collectors/Deputy Commissioners, exercise quasi-judicial powers and are competent to conduct enquiries, assess records, and take decisions within the statutory framework.** And in *Bhimappa v. Deputy Commissioner*, Karnataka High Court. The Court recognized that the **Deputy Commissioner is empowered to independently examine facts, valuation, and land status, and is not required to act as a mere post office.** Copies of the aforementioned judgments are produced herewith and marked as **ANNEXURE-D & E.**

7. I submit that, the colour-coded sketch annexed to the DC report further clarifies the factual position. The blue-coloured marking represents the Saravu as per original and Hissa survey records, with a kharab width of 1.20 metres. The red-coloured marking denotes areas presently left vacant on site for drainage and buffer purposes, based on current land status. The orange-coloured marking, showing a width of 30 metres, reflects an enhanced precautionary buffer consciously left open, notwithstanding the fact that the Saravu is not presently running through the site. This does not indicate diversion or encroachment; on the contrary, it demonstrates regulatory compliance and environmental prudence.

8. I submit that, On the question of jurisdiction under Rule 28-A(4), Karnataka Land Grant Rules, 1969, the Deputy Commissioner acted strictly within the powers vested under Section 71 of the Karnataka Land Revenue Act, 1964, and in compliance with the statutory procedure. The valuation of the land in question was duly examined in accordance with prevailing revenue

NOTARY SUMUKHA. N. Reg. No. 12329 Bangalore Urban District F.No. 110/3/1617/2016-17-NC GOVT OF INDIA

records and market trends, and the DC's report, forwarded to the competent authority where required, fully satisfies the statutory mandate. The assertion that the DC acted "without jurisdiction" ignores the fact that subsequent approvals were given by the Regional Commissioner and other competent authorities, as mandated in high-value cases. Courts have repeatedly upheld that a Deputy Commissioner's action under Rule 28-A(4), when accompanied by due record-keeping, inspections, and forwarding reports to higher authorities, cannot be treated as ultra vires (Ref: Sobha Developers Ltd. v. BBMP, 2012 SCC OnLine Karnataka 2679; Valmark Developers v. State of Karnataka, W.A. No. 1226 of 2021).

9. I submit that, the diversion carried out by the Respondent strictly adheres to the Master Plan / CDP approved by the planning authority. The Bangalore Development Authority, KSPCB, and BBMP storm water authorities were all consulted as part of the procedural framework, and site inspections confirm that the buffer zone of 15 metres on either side of the Saravu/nala has been maintained. The diversion in question does not obstruct or encroach upon the natural watercourse. It aligns with the lawful and approved re-alignment sanctioned under Section 71 of the Karnataka Land Revenue Act, 1964, and is reflected in the reports submitted by the competent authorities. The allegation that the diversion is "rectangular and unscientific" is factually incorrect. The diversion follows the contours and drainage alignment reflected in the approved Master Plan / CDP, which is prepared after due consideration of hydrology, storm water flow, and urban development planning. Any assertion of flood hazard is speculative, as the DC's order and subsequent site inspections by KSPCB and BDA confirm that the flow velocity, buffer maintenance, and storm water alignment remain consistent with the natural drainage system.

10. I submit that, The Respondent has acted in full compliance with Karnataka Town and Country Planning Act, 1961, the Master Plan of Bangalore and environmental clearance requirements. The approvals obtained are not "mechanical" but the result of lawful processes, site inspections, and statutory procedures. The claim that environmental authorities were not consulted is factually incorrect, as all statutory bodies—KSPCB, BDA, BBMP storm water department—were either consulted or their reports considered before the issuance of the diversion order. As held by the Hon'ble High Court of Karnataka in Sobha Developers Ltd. *and* Valmark Developers, once the Master Plan is approved, the village map or historical revenue

NOTARY SUMITHRA. V. Reg. No. 12222 Bangalore Urban District Regd. No: 11013/1617/2016-17-NC GOVT OF INDIA

alignment cannot be treated as overriding. The Deputy Commissioner's action aligns with this principle, and the diversion has been implemented according to the approved planning framework, ensuring legality and environmental compliance.

11. I submit that, the Deputy Commissioner acted within the scope of his statutory powers, after due consideration of planning and environmental norms, and in coordination with the relevant authorities. Allegations of recklessness, lack of scientific assessment, or collusion are unfounded, and the order must be regarded as a lawful, rational, and environmentally compliant administrative decision. In view of the above, the Deputy Commissioner's order is fully compliant with statutory provisions, planning norms, and environmental safeguards. The relief sought in this paragraph to declare the diversion void or compel disclosure is unnecessary and legally unsustainable, and this Hon'ble Tribunal may accordingly reject the prayer of the applicant.

Identified by me

KAR - 849/2018
Advocate

Date: 10 FEB 2026

Bangalore

Deponent

NOTARY SUMITHRA. N. Reg. No. 12329 Bangalore Urban District F. No: 11013/1617/2016-17-NC GOVT. OF INDIA

SWORN TO BEFORE ME 10/2/26

SUMITHRA. N
Advocate & Notary
Govt. of India
22/3, "Sri M.V. Nilaya", Gavipuram
17th 'A' Main, Maruthi Block, Srinagar
Bangalore - 560 050. Ph: 99454 07912

[ANNEXURE-A]

ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು
ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ – ೪ಎ Part – IVA	ಬೆಂಗಳೂರು, ಮಂಗಳವಾರ, ೦೨, ಸೆಪ್ಟೆಂಬರ್, ೨೦೨೫ (ಭಾದ್ರಪದ ,೧೧, ಶಕವರ್ಷ, ೧೯೪೭) BENGALURU, TUESDAY, 02, SEPTEMBER, 2025 (BHADRAPADA ,11, SHAKAVARSHA, 1947)	ನಂ. ೫೨೬ No. 526

GOVERNMENT OF KARNATAKA

No. UDD 468 MNJ 2025(E)

Karnataka Government Secretariat,
Vikasa Soudha,
Dr. B.R. Ambedkar Veedhi
Bengaluru, dated: 01.09.2025.

NOTIFICATION

Whereas, buffer for lakes and drains are insisted at the time of granting approval for developments, as per the zonal regulations of the approved master plans of the concerned local planning areas.

Whereas further, it is found necessary to define the categories of drains and prescribe uniform buffer for lakes and drains for all the local planning areas coming within the Bengaluru Metropolitan Region.

Now therefore, in exercise of the powers conferred under Section 13-E of Karnataka Town and Country Planning Act, 1961, the Government of Karnataka proposes to make certain amendments to zonal regulations of Revised Master Plan-2015 of the Local Planning Area of Bengaluru, approved Master Plan of the Bengaluru - Mysuru Infrastructure Corridor Local Planning Area and the approved Master Plans of all the Local Planning Areas coming within the Bengaluru Metropolitan Region.

Any objections or suggestions from the public on this amendment may be addressed to the Additional Chief Secretary to Government, Urban Development Department, Vikasa Soudha, Dr. Ambedkar Veedhi, Bengaluru-560001, within thirty days from the date of this publication. Objections/suggestions received after the stipulated date will not be considered by the State Government.

DRAFT REGULATIONS

Title and Applicability.- (1) These regulations may be called the Zonal Regulations of Revised Master Plan-2015 of the Local Planning Area of Bengaluru, approved Master Plan of the Bengaluru - Mysuru Infrastructure Corridor Local Planning Area and the approved Master Plans of all the Local Planning Areas coming within the Bengaluru Metropolitan Region (Amendment) Regulations 2025.

(2) They shall come into force from the date of its final publication in the official Gazette.

(3) In the zonal regulations of the (i) Revised Master Plan-2015 of the Local Planning Area of Bengaluru, (ii) approved Master Plan of the Bengaluru - Mysuru Infrastructure Corridor Local Planning Area and (iii) approved Master Plans of all the Local Planning Areas coming within the Bengaluru Metropolitan Region, irrespective of anything contained in the zonal regulations, the following regulations with regard to lakes and drains shall be applicable.

Buffer for Lakes:- The buffer to be maintained around the lake (as per revenue records) and the infrastructure/activities permissible in the lake and the buffer area shall be as stipulated in the Karnataka Tank Conservation and Development Authority Act. This buffer may be taken into account for reservation of park while sanctioning plans.

Drains:- The drains have been categorized into 3 types namely primary, secondary and tertiary as below:

Primary Drain:- shall mean natural drain/ nala as per revenue records meant for carrying storm water, leading from lake to another lake or leading from lake to a river.

Secondary Drain:- Shall mean natural drain/nala as per revenue records meant for carrying storm water, leading to a lake or to a primary drain.

Tertiary Drain:- shall mean natural drain/ nala as per revenue records meant for carrying storm water, leading to secondary drain.

Minimum buffer for primary, secondary and tertiary drain/ nala shall be as below.

Sl No.	Classification	Buffer on either side from the edge of drain / nala as per revenue records (in m.)
1	Primary	15.00
2	Secondary	10.00
3	Tertiary	5.00

Whereas drain/nalas leading to tertiary drains shall be maintained as per the revenue records and buffer shall not be insisted for such drains/ nalas.

R.N.I. No. KARBIL/2001/47147 POSTAL REGN. No. RNP/KA/BGS/2202/2017-19
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Permissible uses / activities in the buffer shall be as specified in the zonal regulations.

These classifications have been used for the drains identified in the approved Master plan. In case the buffer has not been marked in the Master plan for any of the above types of drains, then based on the revenue records, buffer shall be insisted in all such cases without referring the land use plan while according approval for building/development/layout plan. Permission in sensitive areas, if earmarked on the land use plan, shall be considered only by the Planning Authority.

By Order and in the name of the
Governor of Karnataka

(Rajesh S Sulikeri)
Under Secretary to Government
Urban Development Department,
(BDA & B-1)

ಮುದ್ರಕರು ಹಾಗೂ ಪ್ರಕಾಶಕರು:- ಸಂಕಲನಾಧಿಕಾರಿಗಳು, ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ, ಸರ್ಕಾರಿ ಕೇಂದ್ರ ಮುದ್ರಣಾಲಯ, ಬೆಂಗಳೂರು

THAMMAIAH

KA/BG-GPO/2515/WPP-47/2006-2008

ಮುದ್ರಣ ಕರ್ನಾಟಕ

ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ವಿಶೇಷ ಪತ್ರಿಕೆ

ಭಾಗ - IV-A	ಬೆಂಗಳೂರು, ಶುಕ್ರವಾರ, ಜೂನ್ ೨೯, ೨೦೦೭ (ಆಷಾಢ ಶು. ೪ ಪರಾ ೧೯೨೯)	ಸಂ. ೧೦೪೯

Commissioner, Bangalore Development Authority, Kumara Park West, T. Chowdaiah Road, Bangalore 560 020.

NOTIFICATION

No. BDA/TPM/1322/2007-08, Bangalore, dated 29th June 2007

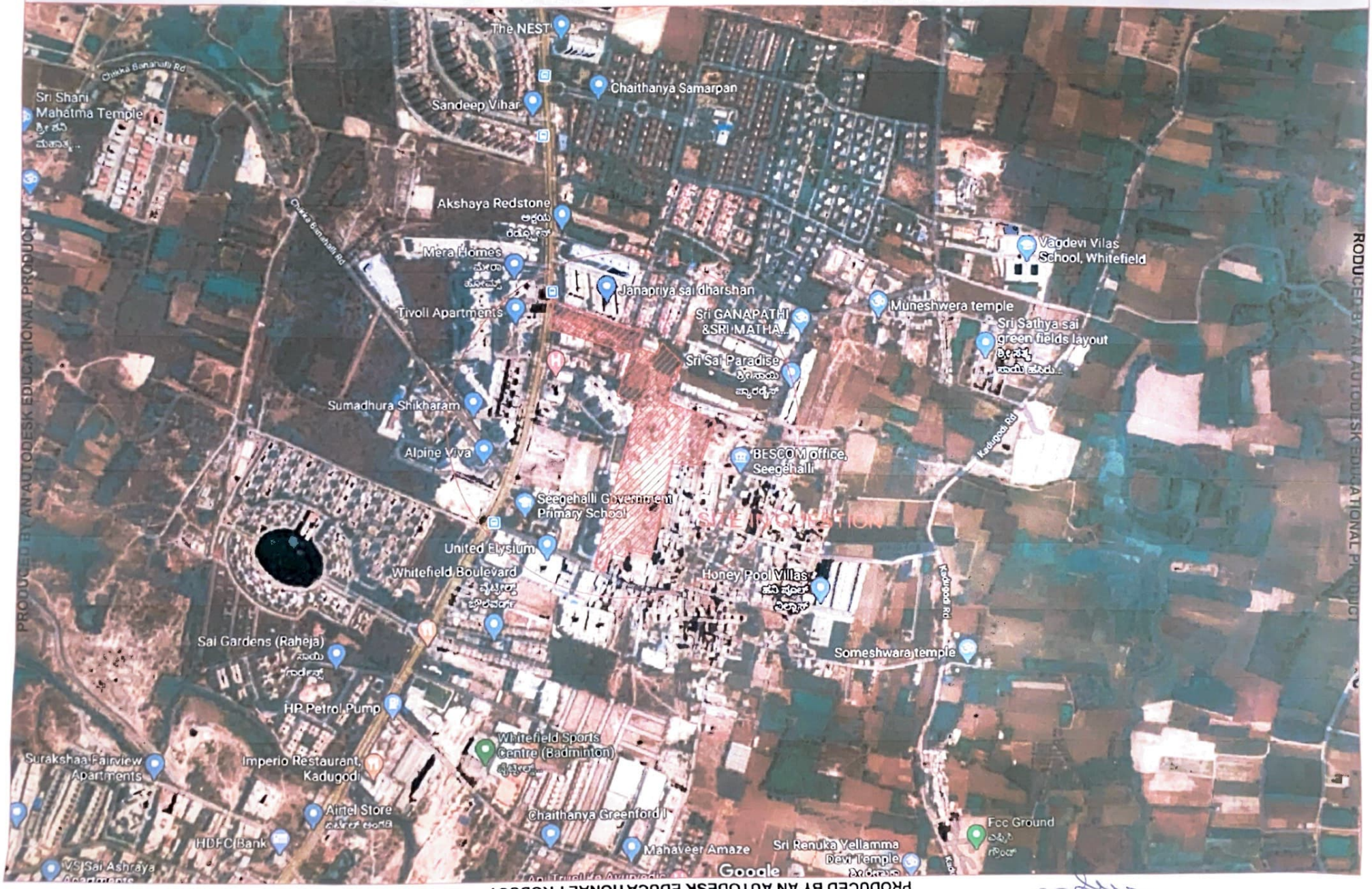
Sub: Approval of Revised Master Plan 2015.

Government in their Notification No. UDD 540 BEM AA SE 2004, Bangalore, dt. 25.06.2007have approved under Section 13(3) of the Karnataka Town and Country Planning Act 1961, the revised Master Plan-2015 of Bangalore Metropolitan Area prepared by Bangalore Development Authority, Bangalore. As required under section 13(4) of the Act and Rule of 44 of the Karnataka Planning Authority Rules, 1965, this Notification is published for information of public and institutions.

The Plans, Zoning Regulations and the report of the Revised Master Plan 2015 is available for inspection by the public in the Planning Section of the Town Planner Member, Bangalore Development Authority, Bangalore. From the date of this Notification, the provisions of the Revised Master Plan-2015 shall have effect and shall govern all changes in the land use and development in the Bangalore Metropolitan Area. The provisions of the Revised Comprehensive Development Plan and Zoning Regulations approved by the Government in Order No. HUD 139 MNJ 94, dated. 05th January 1995 under section 25 & 22(3) shall be deemed to be superseded, as provided in Karnataka Town and Country Planning Act, 1961.

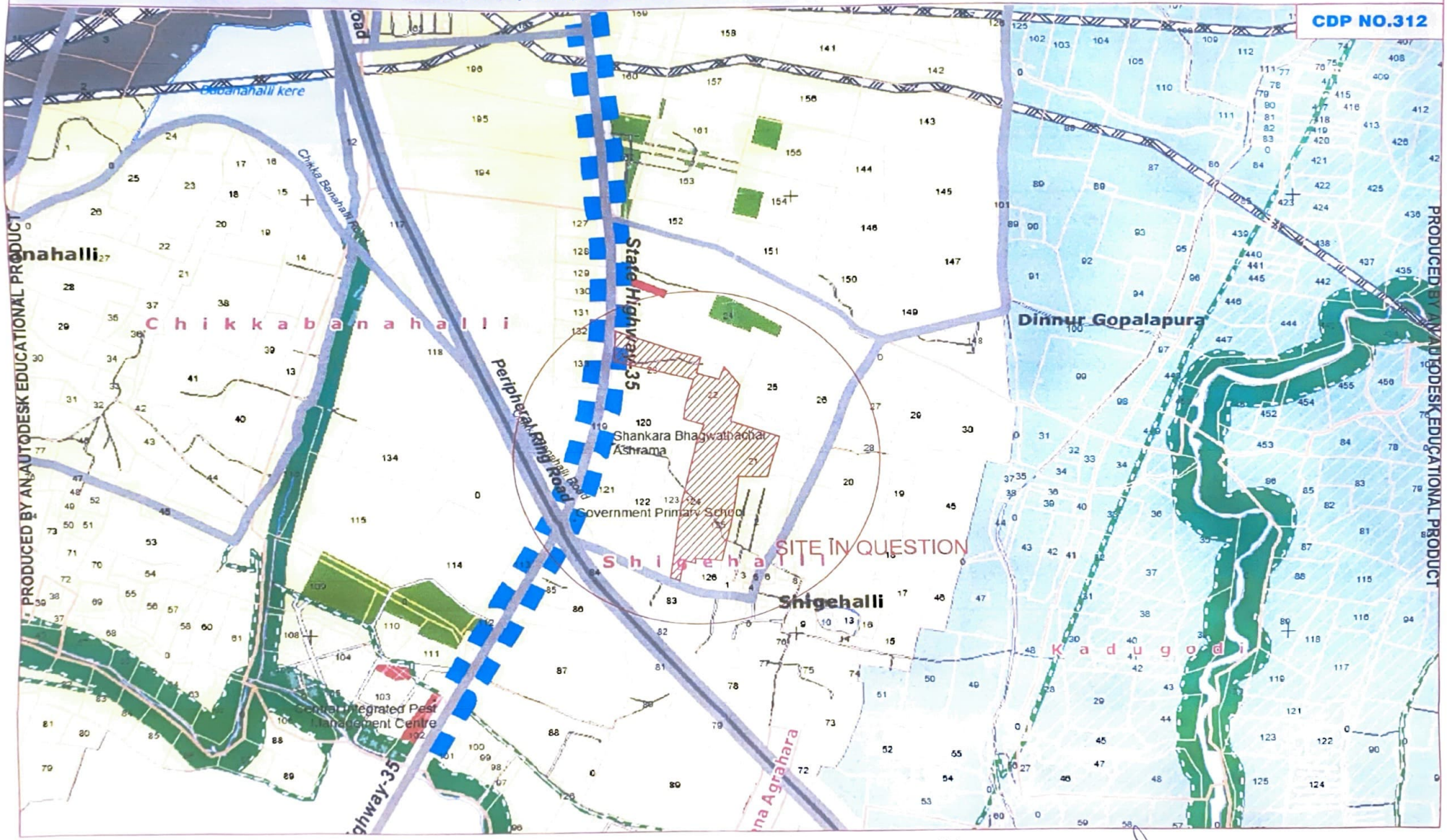
Commissioner
BDA, Bangalore.

SKETCH SHOWING THE SY NO. 23, 22, 21/1, 21/2, 21/3, 124 & 125, SEEGEHALLI VILLAGE, BIDARAHALLI HOBLI, BANGALORE EAST TALUK.



SKETCH SHOWING THE SY NO. 23, 22, 21/1, 21/2, 21/3, 124 & 125, SEEGEHALLI VILLAGE, BIDARAHALLI HOBLI, BANGALORE EAST TALUK.

CDP NO.312



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[ANNEXURE-B]

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 10TH DAY OF FEBRUARY, 2012

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.44277/2011 (LB-BMP)
C/w
W.P.No.29108/2011 & 29318-27/2011 (LB-BMP)

BETWEEN:

Sobha Developers Limited,
a Company incorporated under
the Companies Act, 1956,
having its registered office at
E-106, Sunrise Chambers,
22, Ulsoor Road,
Bangalore – 560 042,
Represented by its
Authorised Signatory,
Mr. Vijaykumar G.Bagoji.

... PETITIONER (COMMON)

(By Sri K.G.Raghavan, Sr. Counsel for Sri Suraj Govinda Raj, Adv., for M/s. Anup S.Shah Law Firm, Advs.)

AND:

1. Bruhat Bangalore Mahanagara Palike,
   Hudson Circle, N.R.Road,
   Bangalore, Represented by its
   Commissioner.

2. Assistant Executive Engineer,
   Bruhat Bangalore Mahanagara Palike,
   Peenya Industrial Centre, Sub-Division,
   H.M.T.Layout, Bangalore – 560 073.

3. Bangalore Development Authority,
T.Chowdaiah Road, Kumara Park West,
Bangalore, Represented by its
Commissioner.

... RESPONDENTS (COMMON)

**(By Sri I.G.Gachchinamath, Adv. for R-1 & R-2;
Sri M.B.Prabhakar, Adv. for R-3)**

W.P.No.44277/2011 is filed under Articles 226 & 227 of the Constitution of India, praying to quash the endorsement dated 19.11.2011 vide Annexure-A.

W.P.No.29108/2011 & W.P.No.29318-27/2011 is filed under Articles 226 & 227 of the Constitution of India, praying to direct restraining the respondents, their agents or any one claiming through or under the respondents from in any manner trespassing on the schedule property belonging to the petitioner and/or in any manner demolishing or attempting to demolish the construction or any of its peripheral compound wall or other structures erected by the petitioner on the schedule property.

These petitions having been and heard and reserved for orders on 01.02.2012, coming on for 'Pronouncement of Order', this day, the Court made the following:

ORDER

1. Since the questions raised and the parties in these writ petitions are common, they are clubbed together, heard and disposed of by this common order.

2. Petitioner is a construction company incorporated under the provisions of the Companies Act, 1956. In this writ petition, it is aggrieved by the refusal by respondents 1 & 2 to grant permission for road cutting to lay the electrical underground

cable for the residential project known as Sobha Ruby and Sobha Platinum constructed in Sy.No.5/3, 18/1 to 18/6, 23, 68,69/2 and 70, situated at 8th Mile, Nagasandra Village, Yeshwantpura Hobli, Bangalore North Taluk.

3. The lands in question were purchased by the petitioner under a Sale Deed dated 23.3.2005 in auction proceedings initiated by the Court receiver as per the order passed by the Debts Recovery Tribunal-I, Mumbai in O.A.No.264/2001. After the purchase, petitioner claims to have got the property converted to residential use for the purpose of construction of residential apartments. The petitioner applied for all necessary clearances, approval and sanctions from various statutory authorities for the purpose of putting up construction. The Surveyor attached to the office of the Special Land Acquisition Officer, Bangalore Development Authority, conducted a survey and submitted a survey sketch on 3.3.2006 as per Annexure-C.

4. It is the case of the petitioner that the said survey sketch was prepared on 'as is where is' and 'as is what is' basis. It is relevant to notice here that before the petitioner purchased the property and got it converted for residential use, there were industrial sheds and factory building belonging to Deepak

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Insulated Cables Corporation Ltd., which came to be sold in public auction pursuant to the order passed by the Debts Recovery Tribunal. The petitioner approached the then Bangalore Development Authority with the development and building plan and after the same were approved, petitioner undertook demolition of the factory and commenced the construction of residential building complex. Necessary commencement certificate came to be issued by the Bangalore Development Authority.

5. It is the further case of the petitioner that they have relinquished their rights in a portion of the aforementioned properties for undertaking development as required under the Karnataka Town and Country Planning Act,. According to the petitioner, they have relinqhished an area measuring 11,623.52 sq. mtrs. for park and open spaces, an area measuring 7,749.01 sq. mtrs. for civic amenities and an area measuring 2,606.751 sq.mtrs. for road widening in favour of the Bangalore Development Authority, vide relinquishment deed dated 1.12.2006. The Bangalore Development Authority issued work order dated 26.2.2007 and plan sanction order dated 23.3.2007 authorizing the petitioner to construct the group housing

project on the aforementioned properties. A copy of the work order and the plan sanction order are produced at Annexure-F. It is also urged by the petitioner that after the revised Master Plan, 2015, came into force, based on the application made by the petitioner to the Bangalore Development Authority, the modified work order dated 26.3.2010 and modified plan sanction order dated 23.4.2010 authorizing the petitioner to construct the group housing project in terms of the modified plan came to be issued. A copy of the same is also enclosed to the writ petition at Annexure-G.

6. Petitioner has filed W.P.No.29108 & 29318-327/2011 alleging interference with the possession by the respondents herein on the ground that the petitioner had put up construction on a Nala and a pathway as depicted in the village map. The petitioner has since put up construction of multistoried apartment building and it is urged by the petitioner that the built up area comes to around 19 lakhs sq. ft. on the property in question and the construction has been put up strictly in terms of the modified plan sanctioned.

7. It is the case of the petitioner that out of the 1200 apartments, the petitioner has already sold more than 934

apartments to various purchasers. According to the petitioner, in terms of the modified plan sanctioned, there are in all 6 blocks to be constructed, out of which block No.1 & 5 have already been constructed for which occupancy certificate has been issued by the Bangalore Development Authority on 26.5.2011. In furtherance of the same, sale deeds have been executed in favour of third parties and the said parties are stated to be in occupation of their respective apartments. The construction in respect of other blocks as urged in the writ petition has been under progress at varying stages, in that, while some of them are completed, some are nearly completed and the others are at an advanced stage of construction. In fact the petitioner has produced along with a memo during the course of arguments, one more occupancy certificate issued by the Bangalore Development Authority on 12.1.2012 for the constructed residential block No.4 with 184 dwelling units.

8. The petitioner applied on 20.8.2011 to the 2nd respondent requesting permission for road cutting so as to lay the electrical underground cable for its project from the Nelagadaranahalli KPTCL Sub-Station. There was no response. Another application was submitted on 9.11.2011 requesting the 1st

respondent to act upon the application at the earliest pointing out the difficulties faced by the occupants of the premises in the residential project. These two representations are produced at Annexures-R & S, respectively. By an endorsement dated 19.11.2011, the 1st respondent has rejected the request made for permission to lay the electrical underground cable on the ground that certain illegalities have been resorted to by the petitioner in diverting the natural course of a Nala and the pathway running in the property in question. It is also stated that the petitioner had approached this Court in W.P.No.29108 & 29318-327/2011 against the BBMP and Bangalore Development Authority wherein an interim order is obtained against the Corporation in connection with the property in question and therefore, no permission could be granted. It is also stated in the endorsement that the subject is seized by the Public Works Standing Committee of the Corporation for consideration and decision. Thus, the stand taken by the respondent Corporation as per the impugned endorsement is that, as the petitioner had committed illegality as stated above and the cases were pending, no permission could be granted for road cutting. In this background, aggrieved by the endorsement issued refusing permission for road cutting and

seeking a direction to the 1st respondent to grant permission for road cutting, the present writ petition is filed.

9. It is contended by Mr. K.G.Raghavan, learned Senior Counsel appearing for the petitioner that the entire action of the 1st respondent is wholly illegal and arbitrary and is violative of Articles 14, 19 & 21 of the Constitution. His contention is that the petitioner having obtained the sanctioned plan from the Town Planning Authoirty viz., the Bangalore Development Authority and the said plan having been granted strictly in conformity with the comprehensive development plan and as also the revised master plan and zonal regulations, followed by the construction already put up by the petitioner culminating in the grant of occupancy certificate by the BDA, it was absolutely impermissible for the 1st respondent to subject the petitioner to such harassment by intentionally refusing to issue the road cutting permission on baseless and untenable grounds.

10. It is his further contention that the petitioner has not violated any of the conditions imposed and has in fact, relinquished in favour of the BDA vast extent of vacant land for the purpose of earmarking the same as park, open space and for road. It is urged that sale deeds have been executed in

favour of various third parties by the petitioner in respect of most of the apartments and as such third party rights have been created in respect of the persons who have purchased the various apartments by raising loans from banks and financial institutions and refusal to grant permission for road cutting has been causing irreparable injury to the petitioner and the residents who have occupied premises.

11. He has invited the attention of the Court to Section 505 of the Karnataka Municipal Corporations Act, to contend that the Corporation is bound to act in conformity with the Town and Country Planning Act, meaning thereby the master plan and the zonal regulations and the revised master plan prepared are binding on all the authorities including the respondent-Corporation and it is not open for the 1st respondent to contend by relying on a village map that there existed a Nala or a pathway, when in fact no such Nala or pathway has been shown to have been in existence at the place with such width in the revised master plan. It is his contention that suitable and adequate arrangement for roads, storm water drains, culverts have been made in the revised Master Plan.

12. It is urged by him that there is no power or jurisdiction vested with the 1st respondent to enforce the village map ignoring the revised Master Plan and the roads, streets and other things provided for in the revised Master Plan in the locality. In other words, according to him, the BBMP had failed to establish that the land was covered by a Nala and pathway belonging to Government by producing any valid documents in any proceedings validly instituted before any Court of law.

13. Sri K.G.Raghavan, learned Senior Counsel has taken me through the provisions contained under the Karnataka Town and Country Planning Act, particularly Sections 12, 14, 26 and 76. To support his contention that when there is a Master Plan prepared by the Planning Authority, the same gets superimposed over any village map that might have been in existence prior to the area being included in the Comprehensive Development Plan and the Master Plan prepared and revised. He has further contended, by referring to Section 61-A of the Karnataka Municipal Corporations Act, that there is no power vested in the Standing Committee to sit in judgment over the plan sanctioned by the Planning Authority as all works in private land are being regulated by the planning authority. The

impugned endorsement issued stating that the Standing Committee is seized of the matter has been attacked as exfacie illegal. His contention is that once the Planning Authority sanctions the building plan and permits the construction in terms of the Master Plan prepared and strictly in conformity with the rules and regulations framed, it will not be open for the Corporation at the fag end when the entire construction is almost completed, to deny road cutting permission on the ground that the construction put up was on a pathway or a Nala as depicted in a village map. He urges that principles of promissory estoppel applies. Reliance is placed on the judgment of the Apex Court in this regard in the case of **STATE OF PUNJAB VS NESTLE INDIA LTD. AND ANOTHER – (2004)6 SCC 465**. He has also relied on the judgment of the Division Bench in the case of **H.V.VIJAYARAGHAVAN AND OTHERS VS MALATHI DAS & OTHERS – 2009(4) KCCR 2313**, to contend that once Master Plan is prepared and finalized, any change in the same can only be as per Section 14A as interpreted by the Supreme Court in **S.N.CHANDRASHEKAR AND ANOTHER VS STATE OF KARNATAKA AND OTHERS – (2006)3 SCC 208**.

14. He has furnished the list of dates and events starting from the date on which the application was submitted to the Town Planning Member, Bangalore Development Authority on 1.2.2006 ranging over various stages through which the entire process of obtaining the sanction plan, commencement, construction and other activities have gone on. He therefore contends that the respondents are estopped from alleging that the petitioners deviated the natural course of storm water drain from the Centre of their property to the western most periphery.

15. Respondent-BBMP has filed statement of objections. It is contended by him that apart from diverting the Nala and the natural course of the stream which was running across the schedule property from North to South, the petitioners have brought down the size of the passage of the water course, thereby increasing the scope for unexpected floods. He has further referred to the stand taken by the BBMP that the joint survey was conducted as requested by the petitioner and it was found that the petitioner had put up construction on the Nala violating the building bye-laws and the provisions of the Town and Country Planning Act. The map issued by the revenue

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authorities is referred to substantiate that there was a kachcha road and the Nala in existence in the land in question.

16. The Bangalore Development Authority has not filed any statement of objections. However, learned Counsel representing the Bangalore Development Authority Mr. M.B.Prabhakar has sought to justify the action of the BBMP. He has further contended that though Annexure-C- sketch and map depicting the kharab portion in the land in question, its topography is prepared by the surveyor attached to the Land Acquisition office of the Bangalore Development Authority, the said sketch does not seem to reflect the true state of affairs. He has placed reliance on the decision of the Apex Court in the case of **M.C.MEHTA VS KAMAL NATH AND ORS (1997) 1 SCC 388**.

17. Counsel for the respondent-BBMP contends that the petitioners have not only disturbed and shifted the natural course of the stream which was running across the schedule property from North to South passing across National Highway No.4, but have also brought down the size of vent way of the water course thereby increasing the scope of unexpected floods and unwarranted mishap during the rainy season. According

to him, petitioner has closed the natural Nala that was running across the center of the schedule property in contravention of all the rules and regulations. It is also urged by them that BBMP had issued a show cause notice to the petitioners calling upon them to show cause why the building license should not be cancelled. Petitioner had replied requesting the BBMP to conduct joint survey and the BBMP obliged and conducted the survey.

18. As the petitioners had contended that the survey had been conducted by the BBMP behind their back, this Court directed a fresh survey to be conducted by the Surveyor in the presence of the petitioner and the representatives of the Corporation. Accordingly, a fresh survey is conducted and a report is filed before this Court. On the basis of the said report, Mr. Gachchinmath, learned Counsel for the respondent-Corporation submits that even as per the said survey, it was apparent that the petitioner had deviated the natural flow of the Nala and also the pathway that was running in the land.

19. Upon hearing the learned Counsel for the parties and on careful perusal of the materials on record, the only question that requires to be examined in the instant case is,

> *"whether the respondent-Corporation is justified in denying the road cutting permission to the petitioner to lay underground cable to the residential apartments constructed by them in the lands in question?"*

20. Petitioner has produced along with the rejoinder filed on 22.11.2011, a Revised Master Plan 2015, and the proposed land use map in respect of the area in question. The drain passing in the lands in question is indicated with two parallel green lines under the category Hydrography. The area earmarked in purple colour is shown as industrial area, whereas the area shown in yellow colour is the residential area. It is not in dispute that the petitioner has got the area that was earlier reserved for industrial purpose changed into residential purpose. It is also not in dispute that as per the Master Plan, its construction is in the area meant for residential purpose including the portion for which the petitioner got the change of land use from industrial to residential purpose. Admittedly, there is no other drain, nala or pathway in the Master Plan to demonstrate that the petitioner had deviated the same for the

purpose of putting up construction. It is also evident from Annexure-C – survey sketch prepared by the BDA on 03.03.2006 that no Nala or pathway as claimed by the respondent-Corporation has been shown to be running in the lands in question as is sought to be projected in the survey sketch prepared by the Surveyor based on the village map. Annexure-C – Sketch prepared by the BDA is prior to the date on which the petitioner was granted license.

21. As rightly contended by the Counsel for the petitioner, once the Master Plan is prepared indicating the existence of roads, drains, streets, etc., and particularly the Planning Authority at an undisputed point of time had prepared a sketch of the lands wherein no such passage of Nala in the middle of the property or the existence of pathway therein was shown, it is not open for the Corporation at such a belated stage to raise an objection solely based on the village map to contend that the existing Nala was deviated by the petitioner. It is to be noticed that the draft of the Master Plan would be published and sent to the Government enclosing the report of the survey conducted and after taking into consideration all the relevant aspects, the Master Plan submitted by the Planning Authority viz., BDA for

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approval and the same is approved. The BBMP, at no stage had raised any objection nor is there anything to show that anybody had raised any objection to the contents of the revised Master Plan when the objections were called for. The Revised Master Plan 2015 has come into effect on 25.06.2007. The Master Plan contains showing of lands, street pattern, areas reserved for parks, playgrounds and other civic amenities or for public purpose as also areas of special control and development. In such circumstances, the objection raised by the Corporation at the stage of grant of underground cable connection to the occupants of the premises is wholly unjustified. Section 505 of the Karnataka Municipal Corporations Act, 1976, makes it clear that exercise of powers by the Corporation shall be in conformity with the provisions of the Karnataka Town and Country Planning Act, 1961, with regard to any matter relating to land use or development as defined in the explanation to Section 14.

22. Section 76M of the Karnataka Town & Country Planning Act, 1961, gives primacy to all the provisions of the Act over any other provisions of any other law. It is not the case of the respondents that there is any violation of the usage mentioned

in the Master Plan or the building plan sanctioned and when there is no grievance made regarding the violations of any set backs or permissible vacant areas to be set part. it is not understandable how the Corporation can, by referring to a village map deny permission for road cutting after the petitioner put up construction by investing huge amount of money. The plan is sanctioned on 23.03.2007. The commencement certificate and work order has been issued by the BDA followed by the work order. In such event, how the Corporation can come to the conclusion that the original path or stream/nala has been deviated and its width is reduced by 10 feet before deviating its route is not clear.

23. As rightly urged by the learned Counsel for the petitioner, Section 61-A(1) deals with the power of the Standing Committee. It is not demonstrated how the Corporation can defer or deny the permission sought for road cutting stating that the matter is seized by the Standing Committee. Nothing is pointed out regarding the powers and functions of the Standing Committee to go into this aspect of the matter, particularly when the complaint is not with regard to the violation of the building plan or deviation from the usages

mentioned in the revised master plan. The Corporation undoubtedly has to ensure that the existing Nalas and the drains have to be kept intact and no encroachment is made by any private parties on the same. They have every right to prevent the obstruction to be caused for free flow of water in the Nala/drain. The existence of the drain in the instant case is also evident from the master plan. The survey sketch now prepared now prepared also discloses that the nala is in existence and the same is constructed on the sites by the petitioner as it passes by the side of the petitioner's construction. If the width of the nala is reduced only at the place where the nala passes through the properties of the petitioner and if the Corporation on expert's opinion finds that the reduced passage would cause flooding in the area in and around, then the best course is to find a solution to the problem by engaging the petitioner and owners of the area over which the nala passes for widening the nala in the interest of their own safety and security. The Corporation can also resort to other legal measures in this connection. But that does not enable the Corporation to block the entire project that is either substantially completed, in respect of some blocks or nearing

completion in respect of several others from being occupied or enjoyed. Such an action is totally arbitrary and unreasonable.

24. The reasons assigned in the impugned endorsement to deny the permission for road cutting are legally untenable. Interim order passed in the connected writ petition cannot be a ground to deny the said permission as the interim order passed is restraining the respondents from in any manner interfering with the peaceful possession and enjoyment of the schedule property owned by the petitioner. The connected petitions are filed seeking a direction restraining the respondents from in any manner trespassing on the schedule property belonging to the petitioner and/or in any manner demolishing or attempting to demolish the construction or any of its peripheral compound wall or other structures erected by the petitioner on the schedule property. Now the said writ petition does not survive for consideration in view of the order passed in this case setting aside the impugned endorsement.

25. For all the aforementioned reasons, W.P.No.44277/2011 is allowed. The impugned endorsement is set aside. The Corporation is directed to give permission to the petitioner for

road cutting to lay underground cable in accordance with law, expeditiously.

Sd/-
JUDGE

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[ANNEXURE -C]

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JULY 2022

PRESENT

THE HON'BLE MR. ALOK ARADHE
ACTING CHIEF JUSTICE

AND

THE HON'BLE MS.JUSTICE J.M. KHAZI

W.A. NO.1226 OF 2021 (BDA)

BETWEEN:

M/S. VALMARK DEVELOPERS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE
AT THE RESIDENCY
19TH FLOOR, NO.133/1
RESIDENCY ROAD, BANGALORE 560 025
REPRESENTED BY ITS MNAGING DIRECTOR
SRI. RATAN LATH.

... APPELLANT

(BY MR. UDAYA HOLLA, SR. COUNSEL FOR
MR. VIVEKANANDA Y.P. ADV.,)

AND:

1. STATE OF KARNATAKA
URBAN DEVELOPMENT DEPARTMENT
VIKAS SOUDHA, BANGALORE 560 001
REPRESENTED BY ITS SECRETARY.

2. STATE OF KARNATAKA
DEPARTMENT OF REVENUE
VIDHANA SOUDHA, BANGALORE 560 001
REPRESENTED BY ITS SECRETARY.

3 THE DEPUTY COMMISSIONER
BANGALORE URBAN DISTRICT

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KANDAYA BHAVAN
BANGLAORE 560 009.

4. KARNATKAA LAKE CONSERVATION
DEVELOPMENT AUTHORITY
II FLOOR, PARISHARA BHAVAN
NO.49, CHURCH STREET
BANGALORE 560 001
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

5. BANGALORE DEVELOPMENT AUTHORITY
T. CHOWDAIAH ROAD
KUMARA PARK WEST, BANGALORE 560 020
REPRESENTED BY ITS COMMISSIONER.

6. THE TOWN PLANNING MEMBER
BANGALORE DEVELOPMENT AUTHORITY
T. CHOWDAIAH ROAD, KUMARA PARK WEST
BANGALORE 560 020.

7. BRUHAT BANGALORE MAHANAGARA PALIKE
N R SQUARE, BANGALORE
REPRESENTED BY ITS COMMISSIONER.

... RESPONDENTS

(BY MRS. VANI H, AGA FOR R1 TO R3
MR. V. RAGHUNATH, ADV., FOR R4
MR. K. KRISHNA, ADV., FOR R5 & R6
MR. K.N. PUTTEGOWDA, ADV., FOR R7)

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THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THIS WRIT APPEAL SET ASIDE THE ORDER DATED 01.09.2021 PASSED BY THE LEARNED SINGLE JUDGE PASSED IN WP NO.12942/2020 AND ALLOW THE WP NO.12942/2020 AS PRAYED FOR.

THIS W.A. COMING ON FOR PRELIMINARY HEARING, THIS DAY, ***ACTING CHIEF JUSTICE*** DELIVERED THE FOLLOWING:

JUDGMENT

This intra court appeal has been filed against order dated 01.09.2021 passed by the learned Single Judge, by which writ petition preferred by the appellant has been disposed of with liberty to seek clarification from the division bench of this court, in respect of its claim to raise construction without leaving the buffer zone in and around survey No.4 measuring 3 acres and 16 guntas. In order to appreciate the appellant's grievance, few facts need mention, which are stated infra.

2. The appellant who is a builder submitted an application before the Bangalore Development Authority (hereinafter referred to as 'the Authority' for short) on 01.03.2013 seeking sanction of development plan proposing to construction 554 villaments with a total built up area of 1,44,184 square meters. The

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Authority in its meeting held on 31.01.2014 decided to accord approval to the development plan. However, the work order was directed to be released only after receipt of information from the Deputy Commissioner regarding reservation of an area measuring 3 acres 16 guntas of Survey No.4 of Chandrashekarpura Village. The Authority, thereafter, issued a demand notice dated 11.02.2014, by which the appellant was asked to pay a sum of Rs.81,94,800/- as well as to execute a relinquishment deed in respect of road and parks. The appellant submitted a modified plan on 18.02.2015 reducing the proposed buildable area to 1,17,303.98 square meters.

3. The State Government in exercise of powers under Section 71 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as 'the Act' for short) by a communication dated 07.08.2015 addressed to the Deputy Commissioner, Bangalore Urban District

accorded prior approval for reserving Chandrashekarpura Tank in survey No.4 measuring 3 acres and 16 guntas for a specific purpose of development of tree park. The Authority by a communication dated 09.09.2015 directed the appellant to execute the relinquishment deed in relation to park and open spaces, which was executed by the appellant on 15.09.2015. The Authority thereafter issued the work order to the appellant on 07.10.2015.

4. The Deputy Commissioner, Bangalore Urban District passed an order under Section 71 of the Act reserving Chandrashekarpura Tank area for development of a tree park and directed to hand over the same to Bruhat Bangalore Mahanagara Palike (hereinafter referred to as 'the BBMP' for short). The BBMP on 22.03.2016 permitted the appellant to construct the villaments in terms of development plan

approved by the Authority. The appellant on 23.03.2016 itself applied for approval to the modified development plan in respect of entire extent of land measuring 27 acres and 33 guntas and permit development of 554 villaments. The Lake Development Authority by a communication dated 20.04.2016 furnished in response to an application under Right To Information Act, 2005 (hereinafter referred to as 'the 2005 Act' for short) stated that the Chandrashekarpura Tank on Survey No.4 has lost its characteristic as tank and the same has been reserved for tree park.

5. The appellant thereafter submitted a representation on 24.12.2016 requesting the Authority for consideration of modified plan in the light of information furnished by the Lake Development Authority. Thereafter, the Authority addressed a communication dated 20.01.2017 to the

Lake Development Authority making an a reference to the information furnished under the 2005 Act seeking clarification as to whether the construction of the building could be permitted by leaving 16 meters of buffer zone.

6. The Lake Development Authority by a communication dated 17.02.2017 informed the Town Planning Department of the Authority that Chandrashekarpura Tank is modified to that of tree park and the area is a Tank and provisions of Karnataka Conservation and Development of Lakes Act, 2014 and its Rule as well as the order of National Green Tribunal (NGT) dated 04.05.2016 and Wet Land Rules are applicable. In the list of Tanks, the Lake Development Authority has mentioned that Chandrashekarpura Tank is reserved, as per orders of Deputy Commissioner, Bangalore dated 15.01.2015 for development of the park. The appellant submitted

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a representation on 27.02.2018 to the Authority requesting for consideration of modified development plan in respect of additional 182 units pointing out that more than once the authority has clarified about the status of Tank in question. The authority on 23.05.2019 sought the opinion of the Deputy Commissioner, Bangalore Urban District about buffer zone of 30 meters.

7. The Deputy Commissioner, Bangalore Urban District by an order dated 03.06.2019 communicated to the Authority that Tank in question has lost its characteristic and the same has been reserved for development of tree park under Section 71 of 1964 Act. The authority was directed to hand over the possession to BBMP and it was clarified that zoning regulations referred to in the letter are not applicable. The authority by a communication dated 14.10.2019 informed the appellant that there is no

clarity in the opinion furnished by the Deputy Commissioner, as to declaration of the tank area as tree park. The appellant was informed that Revised Master Plan 2015 and zoning regulation, the appellant has to provide a buffer zone of 30 meters from the edge of the Tank and to submit a modified plan. The appellant assailed the aforesaid communication in a writ petition, which was disposed of by learned Single Judge of this court with the liberty to the appellant to seek clarification from the division bench of this court with regard to the claim of construction of the appellant without leaving a buffer zone of 30 meters in and around land bearing survey No.4 measuring 3 acres and 16 guntas. In the aforesaid factual background, this appeal has been filed.

8. Learned Senior counsel for the appellant submitted that the land in question is reserved for the tree park and is no longer a tank and therefore, the

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impugned communication dated 14.10.2019 directing the appellant to provide a buffer zone of 30 meters from the edge of the tank and to submit a modified plan and arbitrary and suffers from the vice of non application of mind. It is further submitted that the prior approval of the State Government has been accorded and the land has been reserved as tree park. Learned Senior counsel has invited our attention to various documents on record. It is also submitted that State Government after having accorded the permission for the land in question with the reserve for tree park cannot take a stand that the same is a tank.

9. On the other hand, learned Additional Government Advocate submitted that communication dated 07.08.2015 is an inter departmental communication and at no point of time the lake has been de-classified as tree park and it remains to be so

in the revenue record. It is further submitted that land bearing survey No.4 measuring 3 acres and 16 guntas is a dry land and therefore, to avoid encroachment on the lake, the same has been reserved as tank. Attention of this court is also invited to Section 2(g) of Karnataka Tank Conservation and Development Authority Act, 2014 (hereinafter referred to as 'the 2014 Act' for short). It is further submitted that in the absence of any provision under the 1964 Act, the State Government has no power to de-classify the park.

10. Learned counsel for Lake Development Authority has submitted that the lake in question has lost its characteristic as a lake and the same has been handed over to BBMP to develop the same as tree park. Attention of this court has also been invited to the report submitted by the Lake Development Authority and it has been pointed out that the land in

question as reserved as tree park. Learned Counsel for the Authority has supported the stand taken by the Additional Government Advocate.

11. We have considered the rival submissions made on both sides and have perused the record. Section 71 of the 1964 Act enables the Deputy Commissioner to assign the land for special purposes and when they are so assigned, shall not otherwise be used without sanction of the Deputy Commissioner. However, the aforesaid order is subject to general orders of the State Government. Section 71 of the 1964 Act reads as under:

> ***71**. Lands may be assigned for special purposes and when assigned, shall not be otherwise used without sanction of the Deputy Commissioner.—Subject to the general orders of the State Government, Survey Officers, whilst survey operations are proceeding under this Act, and at any other time, the Deputy Commissioner, may*

set apart lands, which are the property of the State Government and not in the lawful occupation of any person or aggregate of persons in any village or portions of a village, for free pasturage for the village cattle, for forest reserves or for any other public purpose; and lands assigned specially for any such purpose shall not be otherwise used without the sanction of the Deputy Commissioner; and in the disposal of lands under section 69 due regard shall be had to all such special assignments.

12. The relevant extract of the communication dated 07.08.2015 sent by Principal Secretary to the Revenue Department, Government of Karnataka to Deputy Commissioner, Bangalore Urban District, Bangalore reads as under:

In view of the same, I am directed to inform that, prior approval of the government is hereby accorded reserving the park/plantation for the specific purpose of forming park/plantation as per Section

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71 of Karnataka Land Revenue Act, 1964 and to transfer the said Lake land to BBMP, subject to the following conditions:

Thereafter, the Deputy Commissioner by an order dated 15.10.2015 has passed an order under Section 71 of the 1964 Act reserving the land for the purposes of park / plantation. The relevant extract of the order is reproduced below for ready reference.

It is hereby ordered, reserving government land measuring 3-16 acres in Survey No.4 of Chandrashekharapura village, Begur Hobli, Bangalore South Taluk for the purpose of Park/Plantation as per Section 71 of Karnataka Land Revenue Act, 1964 subject to the following conditions:

12. From perusal of revenue records of houses and vacant lands maintained by BBMP, it is evident that land measuring 3.16 acres of survey No.4 has been recorded in the name of BBMP. In the list of

lakes prepared by Karnataka Lake development Authority , it is evident that in the aforesaid list also Chandrashekarapura Lake has been shown as reserved for development of tree park. The land bearing Survey No.4 measuring 3 Acres and 16 Guntas cannot be used for any other purpose and from perusal of the order dated 15.10.2015 passed by the Deputy Commissioner, the land is directed to be protected by putting up a barbed wire fencing to protect the trees and to prevent encroachment.

13. It is also pertinent to note that in the Master Plan-2015 land bearing Survey No.4 measuring 3 Acres and 16 Guntas has been shown to be reserved for residential purposes. For the aforementioned reasons, there appears to be no justification for the Authority to contend that the land in question is a lake and the appellant is required to set apart a buffer zone of 30 meters and to obtain a modified

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development plan. The impugned communication dated 16.10.2020 and communication dated 17.02.2017 are hereby quashed. The Authority is directed to approve the modified development plan, treating land bearing Survey No.4 measuring 3 Acres and 16 Guntas to be a land earmarked for the purposes of a tree park. The BBMP shall issue a building plan and the license.

Accordingly, the appeal is disposed of.

Sd/-
ACTING CHIEF JUSTICE

Sd/-
JUDGE

ss

[ANNEXURE-D]

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 325-326 OF 2015

[Arising out of Special Leave Petition (Civil) Nos.5029-5030 of 2011]

Jt. Collector Ranga Reddy Dist. & Anr. Etc. .. Appellants

-vs-

D. Narsing Rao & Ors. Etc. Etc. .. Respondents

With

CIVIL APPEAL NO. 327 OF 2015

[Arising out of Special Leave Petition (Civil) No.5031 of 2011]

The Chairman, Joint Action Committee of Employees Teachers and Workers A.P. .. Appellant

-vs-

D. Narsing Rao & Ors. etc. etc .. Respondents

J U D G M E N T

C. NAGAPPAN, J.

1. Leave granted.

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2. These appeals are directed against the common judgment dated 8.6.2010 passed in Writ Appeal No.273 and 323 of 2010 by the Division Bench of High Court of Andhra Pradesh at Hyderabad.

3. Broadly speaking, the facts leading to filing of these appeals are as follows: There is no dispute that Gopanpally village in Ranga Reddy district was a Jagir village. According to the writ petitioners Survey Nos.36 and 37 measuring Ac 280.00 guntas and Ac.378.14 guntas of the said village were Jagir lands and Jagirdar had given Pattas to different persons who were in possession of the lands and after abolition of Jagirs the same were reflected as Pattas in Khasra Pahani for the year 1954-55 which was prepared under Section 4(2) of the Andhra Pradesh (Telangana Area) Record of Rights in land Regulation, 1358F and subsequently the Pattadars had alienated the lands to the petitioners under registered sale deeds and they are in possession of the same. It is their further case that Patta was granted to an extent of Acre 44-00 in Survey No.36 and to an extent of

acre 46-00 in Survey No.37 and while the matter stood thus, the petitioners on inquiry came to know that the Government has reserved and allotted a total extent of 477 acres in Survey Nos.36 and 37 of Gopanpally village for house sites to the Government employees by Government Orders dated 10.7.1991 and 24.9.1991, without mentioning the sub-division Nos. of the survey numbers and the Patta lands of the petitioners are also sought to be included within the area reserved and the petitioners challenged the same by filing writ petition No.21719 of 1997 on the file of the High Court. The writ petitioners have further stated that the Respondent No.1 at the instance of Respondent No.2 had issued notice dated 19.12.2003 to the writ petitioners and others stating that on verification of records i.e. namely Faisal Patti for the year 1953-54 in respect of the land bearing Survey Nos.36 and 37 of Gopanpally village there is no "Ain Izafa" (i.e.) (implementation of changes) taken place in respect of the said land and the entries in the Khasra Pahani appears to be incorporated by the then Patwari without order from the competent

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authority and an enquiry under Section 9 of the Andhra Pradesh Rights in Land to Pattadar Passbooks Act, 1971, is scheduled for hearing on 27.12.2003 and the writ petitioners challenged the said notice by filing Writ Petition No.26987 of 2003 and the learned Single Judge of the High Court allowed the said Writ Petition by order dated 30.8.2004 and set aside the impugned show cause notice. It is further stated by the writ petitioners that the first respondent on the very same basis issued subsequent notice dated 31.12.2004 for enquiry under Section 166B of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F fixing the date of hearing on 5.2.2005 and the petitioners challenged the same in their writ petition No.1731 of 2005 and the learned single Judge of the High Court heard both the writ petitions i.e. 21719 of 1997 and 1731 of 2005 together.

4. The said writ petitions were resisted by the Government by stating that the Jagirs were abolished on 15.8.1948 by the Andhra Pradesh (Telangana Area) (Abolition of Jagirs) Regulation, 1358 fasli and

the pre-existing rights in all the Jagirs were taken away and as per the Khasra Pahani for the year 1954-55 the sub-divisions were made under Survey Nos.36 and 37 of the village Gopanpally fraudulently by the Patwari and those sub-divisions and names were not approved by Nizam Jamabandi in Faisal Patti during the year 1954-55 as per the procedure in vogue and the schedule land bearing survey Nos. 36 and 37 from the time of Jagir abolition on 15.8.1948 is classified as Chinna Kancha (grazing land) and it belongs to the Government and the said unauthorized entries in Khasara Pahani made by the then Patwari were detected by the Revenue Authorities and hence enquiry has been ordered under Section 166B of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F and only a show cause notice has been issued.

5. The learned single Judge by common order dated 15.9.2009 set aside the impugned Government order in GOMS No.850 dated 24.9.1991 insofar as the lands held by the writ petitioners to the total extent

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of Acre 90-00 in Survey Nos.36 and 37 are concerned and also set aside the impugned notice dated 31.12.2004 and accordingly allowed the writ petitions. Aggrieved by the same respondents 1 and 2 namely the Government preferred appeal in writ Appeal Nos. 273 and 323 of 2010 and the Division Bench of the High Court after hearing both sides dismissed both the writ appeals by common judgment dated 8.6.2010. Challenging the same the State Government has preferred the present appeals. Respondent No.13 in writ appeal 323 of 2010 has also preferred an independent appeal before this Court and all the three appeals are heard together.

6. Mr. Nageshwar Rao, learned Additional Solicitor General appearing for the appellant State contended that the land was held by Jagirs as 'crown grant' and it was not heritable and that the Jagir system was abolished on 15.8.1948 and the entire Jagir land by operation of law came to be vested with the Government and as per the land Revenue records prepared under A.P. (Telangana Area) Record of

Rights in Land Regulation, 1358, Fasli for the year 1950-52 the land comprised in survey Nos. 36 and 37 of Gopanpally village was owned by the Government and it is classified as "grazing land (Kancha China Sarkari non agriculture) and as per land revenue records called faisal-patti for 1953-54, the said land continued to be "Government grazing land". It is his further submission that for the first time in August 1997 the Respondent Nos. 1-12 by filing Writ Petition No.21719 of 1997 claimed to have acquired right on 75 acre GTS in Survey Nos. 36 and 37 based on their predecessor name recorded in the Khasra Pahani of 1954-55 whereas no sub-division of the Survey Nos.36 and 37 was ever carried out and the land was allotted to employees co-operative societies as one consolidated plot of land as shown in the Government records. According to the appellants the names of the vendor of the respondents have been recorded in the Khasra Pahani in the year 1954-55 surreptitiously by the then Patwari without any order issued by the competent authority under the relevant

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provisions of law and no right can be claimed merely on the basis of the fraudulent entries.

7. It is his further contention that the High Court failed to appreciate that the Government cannot be precluded from taking action to correct fraudulent entries in the Khasra Pahani by citing long lapse of time and the dismissal of the Writ Appeals is unsustainable in law. Mr. R. Venkataramni, learned senior counsel appearing for the other appellant also assailed the impugned order for the same reasons. In support of their submissions reliance was placed on the following decisions of this Court.

In the decision in ***Collector and others vs. P. Mangamma and others*** (2003) 4 SCC 488 this Court while dealing with suo motu action against irregular assignments under the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 held that it would be hard to give an exact definition of the word "reasonable" and a reasonable period would depend upon the facts of the case concerned and on the facts of the case in which the decision

arose, suo motu action taken after a period of thirty years was remitted to the High Court for fresh consideration.

In the decision in ***State of Maharashtra and another vs. Rattanlal*** (1993) 3 SCC 326 this Court while dealing with revisional power under Section 45 of Maharashtra Agricultural Land (Ceiling and Holdings)Act, 1961 held that suo motu revisional power may not be exercised after the expiry of three years from the date of the impugned order, however, where suppression of material facts, namely, existence of the undeclared agricultural land had come to the knowledge of the higher authorities after a long lapse of time, the limitation would start running only from the date of discovery of the fraud or suppression.

In the decision in ***State of Orissa and others vs. Brundaban Sharma and another*** (1995) Supp.(3) SCC 249 this Court while dealing with the power of revision under Section 38-B of Orissa Estates Abolition Act, 1951 held that the Board of Revenue exercised the power of revision 27 years

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after the date of alleged grant of patta but its authenticity and correctness was shrouded with suspicious features and, therefore, exercise of revisional power was legal and valid.

8. We heard the submissions made by Mr. U.U. Lalit, Mr. Pravin H. Parekh, Mr. Ranjit Kumar, Mr. P.V. Shetty, learned senior counsels and also the other learned counsels appearing for the respondents. The main submissions of the learned counsels appearing for the respondents are that the names of the predecessors in title of the respondents are found mentioned in the Khasra Pahani of the year 1954-55 and the purchase of the subject land by the respondents from them under registered sale deeds are not in dispute and they have been regularly paying land revenue continuously since the year 1954 and substantial rights on account of continuous possession and enjoyment of the subject property has been accrued to the respondents and the exercise of suo-motu revisional power after long lapse of time is arbitrary and summary remedy of enquiry and

correction of records cannot be invoked when there is bonafide dispute of title and liberty has been given to the appellants to work out its remedies by way of filing civil suit and the findings of the High Court are sustainable on facts and law. In support of their submissions reliance was placed on the following decisions of this Court.

In the decision in ***State of Gujarat vs. Patil Raghav Natha and others*** (1969) 2 SCC 187 this Court while adverting to Sections 65 and 211 of the Bombay Land Revenue Code, 1879 held that though there is no period of limitation prescribed under Section 211 to revise an order made under Section 65 of the Act, the said power must be exercised in reasonable time and on the facts of the case in which the decision arose, the power came to be exercised more than one year after the order and that was held to be too late.

In the decision in ***Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim*** (1997) 6 SCC 71 this Court while dealing with Section 84-C of Bombay Tenancy and Agricultural Lands Act,

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1976 held that though the said Section does not prescribe for any time limit for initiation of proceeding such power should be exercised within a reasonable time and on the facts of the case, the suo motu enquiry initiated under the said Section after a period of nine months was held to be beyond reasonable time.

In the decision in ***Santoshkumar Shivgonda Patil and others vs. Balasaheb Tukaram Shevale and others*** (2009) 9 SCC 352 this Court while dealing with the power of revision under Section 257 of the Maharashtra Land Revenue Code, 1966 held as follows :

> **"11.** It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.

> **12.** Ordinarily, the reasonable period within which the power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of the Tahsildar passed on 30-3-1976 is flawed and legally not correct."

In the decision in ***State of Punjab and others vs. Bhatinda District Cooperative Milk Producers Union Ltd.*** (2007) 11 SCC 363 this Court while dealing with the revisional power under Section 21 of the Punjab General Sales Tax Act, 1948 held thus :

> **"17.** A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time.
>
> **18.** It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

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19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years....."

In the decision in ***Ibrahimpatnam Taluk Vyavasaya Coolie Sangham vs. K. Suresh Reddy and others*** (2003) 7 SCC 667 this Court while dealing with suo motu power of revision under Section 50-B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950 held as follows :

"9. .....In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the non-official respondents. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from

the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act). Hence, it appears that without stating from what date the period of limitation starts and within what period the suo motu power is to be exercised, in sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suo motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of the parties. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words "at any time", the suo motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a

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> reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

9. Consequent to the merger of Hyderabad State with India in 1948 the Jagirs were abolished by the Andhra Pradesh (Telangana Area) Abolition of Jagirs Regulation, 1358 fasli. 'Khasra Pahani' is the basic record of rights prepared by the Board of Revenue Andhra Pradesh in the year 1954-55. It was gazetted under Regulation 4 of the A.P. (Telangana Area) Record of Rights in Land Regulation 1358F. As per Regulation No.13 any entry in the said record of rights shall be presumed to be true until the contrary is proved. The said Regulation of 1358-F was in vogue till it was repealed by the A.P. Rights in Land and Pattadar Pass Books Act, 1971, which came into force on 15.8.1978. In the 2nd edition (1997) of "The Law Lexicon" by P. Ramanatha Aiyer (at page 1053) 'Khasra' is described as follows:

> "Khasra is a register recording the incidents of a tenure and is a historical record. Khasra would serve the purpose of a deed of title, when there is no other title deed."

10. Admittedly, the names of the predecessors in title of the respondents are found mentioned in the Khasra Pahani of the year 1954-55 pertaining to Survey Nos.36 and 37 of Gopanpally village. The purchase of the said lands by the respondents from them under registered sale deeds are also not seriously disputed. The further fact is that they have been regularly paying land revenue continuously since the year 1954. The appellants herein issued the impugned notice dated 31.12.2004 under Section 166B of A.P. (Telangana Area) Land Revenue Act,1317 F (1907) for cancellation of entries in the Khasra Pahani of the year 1953-54, by fixing the date of inquiry as 5.2.2005 and that notice is the subject matter of challenge here.

Regulation 166B reads as follows:

"166-B. Revision:—

(1) Subject to the provisions of the Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358 F, the Government or any Revenue officer not lower in rank to a Collector the Settlement

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Commissioner of Land Records may call for the record of a case or proceedings from a subordinate department and inspect it in order to satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and may make suitable order in that behalf;

Provided that no order or decision affecting the rights of the ryot shall be modified or annulled unless the concerned parties are summoned and heard.

(2) Every Revenue Officer lower in rank to a Collector or Settlement Commissioner may call for the records of a case or proceedings for a subordinate department and satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and if, in his opinion, any order or decision or, proceedings should be modified or annulled, he shall put up the file of the case and with his opinion to the Collector or Settlement Commissioner as the case may be. Thereupon the Collector or Settlement Commissioner may pass suitable order under the provisions of sub-section (1).

(3) The original order or decision or an authentic copy of the original order or decision sought to be revised shall be filed along with every application for revision."

11. No time limit is prescribed in the above Regulation for the exercise of suo motu power but the question is as to whether the suo motu power could be exercised after a period of 50 years. The Government as early as in the year 1991 passed order reserving 477 acres of land in Survey Nos. 36 and 37 of Gopanpally village for house-sites to the government employees. In other words the Government had every occasion to verify the revenue entries pertaining to the said lands while passing the Government Order dated 24.9.1991 but no exception was taken to the entries found. Further the respondents herein filed Writ Petition No.21719 of 1997 challenging the Government order dated 24.9.1991 and even at that point of time no action was initiated pertaining to the entries in the said survey numbers. Thereafter,

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the purchasers of land from respondent Nos.1 and 2 herein filed a civil suit in O.S.No.12 of 2001 on the file of Additional District Judge, Ranga Reddy District praying for a declaration that they were lawful owners and possessors of certain plots of land in survey No.36, and after contest, the suit was decreed and said decree is allowed to become final. By the impugned Notice dated 31.12.2004 the suo motu revision power under Regulation 166B referred above is sought to be exercised after five decades and if it is allowed to do so it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties.

12. In the light of what is stated above we are of the view that the Division Bench of the High Court was right in affirming the view of the learned single Judge of the High Court that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law.

13. Thus, we find no merit in these appeals. Consequently they are dismissed with no order as to costs.

.....J.
(C. Nagappan)

New Delhi;
January 13, 2015.

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 325-326 OF 2015

(Arising out of S.L.P. (C) Nos.5029-5030 of 2011)

Jt. Collector Ranga Reddy District

& Anr. etc. ...Appellants

Versus

D. Narsing Rao & Ors. etc. etc. ...Respondents

WITH

CIVIL APPEAL NO. 327 OF 2015

(Arising out of S.L.P. (C) Nos.5031 of 2011)

The Chairman,

Joint Action Committee of Employees

Teachers and Workers A.P. ...Appellant

Versus

D. Narsing Rao & Ors. etc. etc. ...Respondents

JUDGMENT

T.S. THAKUR, J.

1. I have had the privilege of reading the order proposed by my esteemed Brother C. Nagappan, J. Though I entirely agree with the conclusion drawn by His Lordship that revisional powers vested in the Joint Collector under Section 166B of A.P. (Telangana Area) Land Revenue Act cannot be exercised 50 years after the making of the alleged fraudulent entries and that the High Court was justified in quashing notice dated 31st December, 2004 issued to the respondents, I would like to add a few lines of my own.

2. The facts giving rise to the filing of the writ petitions and the writ appeals before the High Court out of which arise the present appeals have been set out at length by my esteemed Brother in the order proposed by him. Narration of the factual matrix over again would, therefore, serve no useful purpose. Suffice it to say that the dispute in these proceedings is confined to an extent of 44 acres of land situate in Survey No.36 and 46 acres of land in Survey No.37

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of Gopanpally village of Ranga Reddy district in the state of Andhra Pradesh. The case of the respondents (writ petitioners before the High Court) was that the said extent of land was granted by the Jagirdar concerned on Patta to persons in actual cultivating possession. The Patta was, according to the respondents, recongnised by the Government, with the result that the names of the holders were shown in the Khasra Phanis since the year 1954-55.

3. In terms of G.O.Ms 850 Rev. (Asn.III) Dept. dated 24th September, 1991 the Government appears to have allotted an extent of 477 acres of land in Survey Nos. 36 and 37 of Gopanpally village for grant of house sites to Government employees. This was followed by a notice dated 31st December, 2004 from the Joint Collector, Ranga Reddy District, whereunder the writ-petitioners (respondents herein) were asked to appear on 5th February, 2005 to show cause why the Khasra Phani entries in respect of land comprising Survey No.36 measuring 460.07 acres and Survey No.37 measuring 424.17 acres situate in the village mentioned above should not be cancelled. Aggrieved by the Government order and the show-cause notice Writ Petitions No.21719 of 1997 and 1731 of 2005 were filed before the

High Court which were disposed of by a learned Single Judge of the High Court of Andhra Pradesh by his order dated 15th September, 2009. The High Court was of the view that the entries in the Khasra Pahani for the year 1954-55 reflected the names of the predecessors-in-title of the writ-petitioners although according to the Government the said entries were made fraudulently by the then Patwari of the village. The High Court further held that since the entries showing ownership and possession of the writ-petitioners had continued unchallenged for nearly 40 years before the Government issued G.O.M.s 850 Rev. (Asn.III) Dept. dated 24th September, 1991 the Government was not justified in making any allotment in disregard of the same. The High Court also took the view that the proposed correction of the alleged fraudulent entries nearly 50 years after the entries were first made was also legally impermissible even when the revisional power being invoked to do so did not prescribe any period of limitation. The High Court recorded a finding that the predecessors-in-title of the writ-petitioners had registered sale-deeds in their favour and that the State Government or its officers had not denied that the writ-petitioners or their predecessors-in-title had remained in

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possession of the subject land. The High Court held that exercise of revisional powers, even where no period of limitation is prescribed, must be within a reasonable period.

4. Aggrieved by the order passed by the High Court the appellants preferred Writ Appeals No.273-323 of 2010 which were also dismissed by a Division Bench of that Court in terms of its order dated 8th June, 2010. The Division Bench relying upon the decisions of this Court in ***Santoshkumar Shivgonda Patil and Anr. v. Balasaheb Tukaram Shevale (2009) 9 SCC 352*** and ***Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. (2004) 3 SCC 440*** held that the proposed correction of the revenue entries 50 years after the same were made was not legally permissible. The present appeals assail the correctness of that view.

5. The writ-petitioners, as noted earlier, claim to have purchased an extent of 90 acres of land in Survey Nos.36 and 37 from the erstwhile Pattadars recorded in the revenue records. The present dispute is, therefore, limited to that extent of land only. That being so, if the notice invoking the

revisional jurisdiction under Section 166B of A.P. (Telangana Area) Land Revenue Act has been not assailed by any other effected party, we should not be understood to be interfering with the same *qua* such persons. Having said that the only question which the High Court has addressed and which has been elaborately dealt with by it in the impugned orders is whether revisional powers vested in the competent authority under Section 166B of the Act aforementioned could be invoked 50 years after the alleged fraudulent entries were made. The contention urged on behalf of the appellant primarily was that since there is no period of limitation prescribed for invoking the revisional powers under the provisions mentioned above, there should be no impediment in the exercise of the same intervening delay notwithstanding. There is no error much less any perversity in that view. The legal position is fairly well-settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power revisional or otherwise such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to

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some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference in so far as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period.

6. In one of the earlier decisions of this Court in ***S.B. Gurbaksh Singh v. Union of India 1976 (2) SCC 181***, this Court held that excercise of *suo motu* power of revision must also be within a reasonable time and that any unreasonable delay in the exercise may affect the validity. But what would constitute reasonable time would depend upon the facts of each case.

7. To the same effect is the decision of this Court in ***Ibrahimpatnam Taluk Vyavasaya Coolie Sangham V. K. Suresh Reddy and Ors. (2003) 7 SCC 667*** where this Court held that even in cases of fraud the revisional power must be exercised within a reasonable period and that several factors need to be kept in mind while deciding whether relief sooner be denied only on the ground of delay. The Court said:

> *"In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act)."*

8. To the same effect is the view taken by this Court in ***Sulochana Chandrakant Galande. v. Pune Municipal Transport and Others (2010) 8 SCC 467*** where this Court reiterated the legal position and held that the power to revise orders and proceedings cannot be exercised arbitrarily and interminably. This Court observed:

> *"The legislature in its wisdom did not fix a time-limit for exercising the revisional power nor inserted the words "at any time" in Section 34 of the 1976 Act. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute".*

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9. In ***State of H.P. and Ors. v. Rajkumar Brijender Singh and Ors. (2004) 10 SCC*** this Court held that in the absence of any special circumstances a delay of 15 years in *suo motu* exercise of revisional power was impermissible as the delay was unduly long and unexplained. This Court observed:

> *"We are now left with the second question which was raised by the respondents before the High Court, namely, the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provides that such a power may be exercised at any time but this expression does not mean there would be no time-limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo motu action could be exercised. For example, in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, it could well be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn sometime in March 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while*

holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, maybe, by the State. Thus the view taken by the High Court is not sustainable. But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub-section (3) of Section 20".

10. We may also refer to the decision of this Court in ***M/s Dehri Rohtas Light Railway Company Ltd. V. District Board, Bhojpur and Ors. (1992) 2 SCC 598*** where the Court explained the legal position as under:

"The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending

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proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed".

11. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount

to a fraud upon the statute that vests such power in an authority.

12. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact, which ought to be clearly asserted in the notice issued to the respondents. The attempt of the appellant-State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore, futile. At any rate, when the Government allowed the land in question for housing sites to be given to Government employees in the year 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the ordinary course of official business. In as much as, the notice was issued as late as on 31st December, 2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the

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entries made half a century ago, was clearly beyond reasonable time and was rightly quashed.

13. Having said that we must make it clear that we have not gone into the correctness of the alleged fraudulent entry nor have we expressed any opinion whether, the quashing of the notice dated 21st December, 2004 would prevent the State from taking such other steps as may be permissible under any provision of law. The High Court has, as a matter of fact, made it clear that the State Government shall be free to take any other steps or proceedings in accordance with law *qua* the land in question. That liberty should suffice for we have examined the matter only from the narrow angle whether the Khasra Phani entry of 1954-55 could be corrected at this belated stage in exercise of the revisional powers vested in the competent authority under Section 166-B of the A.P. (Telangana Area) Land Revenue Act. That question having been answered in the negative these appeals must fail and are hereby dismissed leaving the parties to bear their own costs.

.....J.

(T.S. THAKUR)

New Delhi

January 13, 2015

[ANNEXURE-E]

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 23RD DAY OF OCTOBER 2021

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

W.P.No.17240/2008 (KLR-RES)

BETWEEN:

1. SRI BHIMAPPA S/O DODDABHARAMAPPA @
BHARAMAPPAKUNTIGOUDRA,
AGE:57 YRS, OCC:AGRICULTURE,
R/O RAHUTHANAKATTI, RANEBENNUR, HAVERI.

2. BASANAGOUDA S/O DODDABHARAMAPPA @
BHARAMAPPAKUNTIGOUDRA,
AGE:47 YRS, OCC:AGRICULTURE,
R/O RAHUTHANAKATTI,
RANEBENNUR, HAVERI.

...PETITIONERS

(By Sri.ARAVIND D KULKARNI, ADV.)

AND:

1. THE DEPUTY COMMISSIONER
HAVERI DISTRICT, HAVERI.

2. THE JOINT DIRECTOR OF LAND RECORDS
BELGAUM, BELGAUM DISTRICT.

3. SANNA HANUMAPPA GUDDAPPA POOJAR
S/O GUDDAPPA POOJAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

4. DODDA HANUMAPPA

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S/O GUDDAPPA POOJAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

5 . NEELAPPA GUDDAPPA POOJAR
S/O GUDDAPPA POOJAR,
MAJOR:R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

6 . FAKKEERAPPA GUDDAPPA POOJAR
S/O GUDDAPPA POOJAR,
MAJOR:R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

7 . MAHADEVAKKA
W/O MANJAPPA BAGALAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

8 . MANJAPPAA S/O SHIDDALINGAPPA POOJAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI

9 . DHARMAPPA S/O SHIDDALINGAPPA POOJAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

10 . KUMAR GUTTEPPA S/O SHIDDALINGAPPA POOJAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

11 . GUDDAPPA S/O SHIDDALINGAPPA POOJAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

12 . KUMAR KARIYAPPA S/O MARIYAPPA POOJAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

13 . KUMAR MALATHESH S/O MARIYAPPA POOJAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

R12 AND 13 ARE MINORS, R/BY THEIR
NATURAL GUARDIAN SMT.NINGAVVA.

14 . NINGAVVA W/O MARIYAPPA SAMALAD,
SINCE DECEASED BY HIS LRS.

14(a).VEENA D/O LT.MARIYAPPA SAMALAD,
AGE: 18 YEARS, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

14(b).KARIYAPPA S/O MARIYAPPA SAMALAD,
AGE: 16 YEARS, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

14(c).MALTESH S/O MARIYAPPA SAMALAD,
AGE: 13 YEARS, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

15 . KARIYAPPA GUDDAPPA GOUDAR
S/O GUDDAPPA GOUDAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

16 . SMT.HONNAVVA W/O HANUMANTHAGOUDA PATIL,
SINCE DECEASED BY HER LRS.

16(a).BHARAMAPPA S/O HANUMANTHAGOUDA PATIL,
AGE:50 YEARS, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

16(b).GUDDAPPA S/O HANUMANTHGOUDA PATIL,
AGE: 46 YEARS, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

16(c).KALLAPPA S/O HANUMANTHGOUDA PATIL,
AGE: 35 YEARS, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

17 . KARIYAPPA S/O KARIYAPPA POOJAR,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

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18 . MARIYAPPA S/O KARIYAPPA KAMBLI,
MAJOR, R/O RAHUTHANAKATTI VILLAGE,
RANEBENNUR, TALUK:HAVERI.

.....RESPONDENTS

(By Sri.VINAYAK KULKARNI, AGA FOR R1 & R2;
SRI.N.P.VIVEK MEHTA, ADV. FOR R3 TO R11;
SRI.NAVEEN CHATRAD, ADV. FOR R14(A-C);
R12, R13, R15, R16(a-c), R17 & R18 ARE
SERVED & UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DT. 28.8.2008 PASSED BY THE RESPONDENT NO,.1- DEPUTY COMMISSIONER, HAVERI DISRTICT, HAVERI VIDE ANNEXURE-A BY ISSUING A WRIT OF CERTIORARI AS ILLEGAL.

THIS PETITION COMING ON FOR PRELIMINARY HEARING 'B GROUP', THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioners are challenging the order of the Joint Director of Land Reforms (for short 'JDLR'), which was confirmed by the order of the Deputy Commissioner vide Annexure-A.

2. An appeal was preferred before the JDLR alleging that the division of Sy.No.8/1 and 8/5 was incorrect inasmuch as the said sub numbers were interchanged. In these

proceedings, admittedly, the petitioners were not arrayed as parties.

3. The JDLR on consideration of the appeal and without hearing the petitioners proceeded to come to the conclusion that there were many irregularities in the division of Sy.No.8 and ultimately proceeded to allow the appeal and proceeded to cancel the PT Sheet in respect of sub numbers 4 and 11 of Sy.No.8. He further ordered that fresh notices be issued and *phodi* be done fresh by the Additional Director of Land Reforms.

4. Since the petitioner was not made a party and the land at Sy.No.8/2 was also involved in the appeal before the JDLR and a fresh *phodi* has been ordered by the JDLR, he filed a second appeal under Section 56 of the Karnataka Land Reforms Act.

5. The Deputy Commissioner in the second appeal concurred with the view of the JDLR and dismissed the appeal. The Deputy Commissioner took the view that the petitioner had availed a loan and name of the petitioner had

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been entered and the Bank had been notified and it was not therefore necessary to notify the writ petitioner.

6. It is against the dismissal of this appeal by the Deputy Commissioner and order directing *phodi* of Sy.No.8, the present writ petition is filed.

7. As stated above, it is not in dispute that the only challenge made before the JDLR was in respect of Sy.No.8/1 and 8/5. The *phodi* of the land of the petitioners i.e., 8/2 was not the subject matter of any challenge and the petitioner was not even made party in this petition. However, the JDLR even without hearing the petitioner proceeded to direct *phodi* to be conducted a fresh in respect of entire Sy.No.8.

8. In my view any order affecting the interest of the petitioner in respect of Sy.No.8/2 could have been passed only after hearing the petitioner. In the instant case, admittedly the petitioner was not even arrayed as party and was not heard in the matter at all. I am therefore of the view that Annexure-D and confirmation of the said order by the Deputy Commissioner Vide Annexure-A cannot be sustained and the same are quashed.

9. The JDLR is directed to implead the writ petitioner and thereafter decide the matter afresh after giving an opportunity to the petitioner to have his say in the matter. The writ petition is accordingly **allowed.**

Sd/-
JUDGE

KGK


GPS Map Camera
Bengaluru,Karnataka,India
Vastu Bhoomi, Sesgehalli, Bengaluru, Karnataka 560067, India
Lat 13.013717, Long 77.763846
Tuesday, 03/02/2026 01:22 PM PMT-05:30
Note : Captured by GPS Map Camera