



Appeals. In all these Appeals a common question arises for consideration viz., *"whether initiation of proceedings for acquisition of land for the purposes of the Karnataka Housing Board, invoking the power under Section 33(2) of the Karnataka Housing Board Act, 1962, without the housing scheme being in existence or the housing scheme not having been sanctioned under Section 24(2) thereof, would render such acquisition proceedings void and non-est"*. Certain allied questions may also call for consideration. We may hasten to state that we do not propose to dispose of the appeals on merits under this judgment and it would only resolve the stated common question and cognate issues. Nonetheless, if nothing survives for consideration in any appeal, upon answering the moot question and allied

issues, then its fate would depend upon the nature of their answers.

**2.** The Karnataka Housing Board Act, (hereinafter for short "the KHB Act") was enacted with an object to provide for measures to be taken to deal with and satisfy the need for housing accommodation. For effectuating the said object, under Section 3 thereof, the Karnataka Housing Board (for short "KHB"), was constituted. Different modes for acquisition of properties for the purposes of KHB are provided under the KHB Act, including the power for compulsory acquisition under Section 33(2). With this short prelude we will proceed to consider the moot question and the allied issues, for which it is proper and profitable to state succinctly the situation occurring

in the appeals from which they stem for consideration.

We refer to the rival contentions raised in the appeals solely for the said purpose.

**Civil Appeal arising out of Special Leave Petition  
(Civil) No. 1361 of 2021**

3. This appeal is preferred by 'KHB' and its Special Land Acquisition Officer against the judgment and final order dated 01.12.2020 of a Division Bench of the High Court of Karnataka at Bengaluru in WA No. 5712 of 2012 (LA-KHB) filed against the order in WP No.25184 of 2011 dated 29.05.2012. The Government of Karnataka as per Annexure 'A' Notification dated 15.12.1998, (marked thus in the appeal) issued under Clause(c) of Section 3 of the Land Acquisition Act, 1894 (for short "L.A. Act"), appointed the Housing Commissioner of KHB to perform the functions of Deputy Commissioner under

Section 4 of the L.A. Act in respect of the lands to be acquired for the purposes of KHB in Bengaluru and Mysore Revenue Divisions, namely, Bengaluru Urban and Bengaluru Rural, etc. S.3(c) itself makes it clear that the appropriate Government is empowered to appoint any officer to perform the functions of a collector under the L.A. Act. In exercise of the powers thus conferred, the Housing Commissioner, KHB, issued Annexure 'B' Preliminary Notification dated 18.4.2007 under Section 4(1) of the L.A. Act in respect of two places, namely, Kowdenahalli village and K.R. Puram village in Bengaluru District for acquisition of a total extent of 56 acres and 37 guntas of land, for the housing projects of KHB. The said Notification was published in the official Gazette on 12.07.2007 and

thereafter, in two daily newspapers on 18.08.2007 and local offices during the period from 13.08.2007 to 24.08.2007. Subsequently, the State Government issued the declaration and final Notification Annexure 'C' under Section 6(1) of the L.A. Act, dated 26.3.2009 declaring that the notified properties are required for public purpose, i.e., for construction of different categories of houses by KHB. It was also duly published in the official Gazette and in two local newspapers. Mrs. Dawn D'souza, the mother of Respondents 2 and 3 in this Appeal, filed WP No.25184/2011 challenging the afore-mentioned preliminary and final Notifications before the High Court of Karnataka. An interim order was granted in the said petition on 28.7.2011. Earlier, three other writ petitions, viz., WP Nos.25435/2010,

23002/2010 and 23083/2010, were filed by some other land owners challenging the very same Notifications. Obviously, only one point was raised in all the four cases, viz., 'whether acquisition Notifications could be issued until and unless scheme is finalized as per the provisions of the KHB Act'. They were heard together and allowed by a Learned Single Judge as per the order dated 29.05.2012, upholding the contention of the petitioners therein that sanction of the housing scheme concerned is *sine qua non* for initiation of acquisition proceedings therefor, following his own judgment in WP No.9593/2007 in respect of acquisitions of the year 1991 for a different area. As a matter of fact, the said relied upon judgment in WP No.9593/2007 was rendered, relying mainly on the decision of this

Court in **State of Tamil Nadu & Anr. Vs. Mohammed Yousef & Ors. (AIR 1992 SC 1827)**. Later, on 29.06.2012, a proposal for 53 housing schemes, including for the aforesaid two places, namely, Kowdenahalli village and K.R. Puram village, were submitted to the Government for approval by KHB. On 04.09.2012, the State Government accorded sanction for all the said 53 housing schemes as per Annexure 'H' dated 4.9.2012. In respect of 30 acres and 3½ guntas out of 56 acres and 37 guntas in the said villages, awards were passed and according to the appellants, in respect of the remaining extent, awards were not passed in view of the interim orders of the High Court. KHB filed four writ appeals against the aforesaid common order dated 29.05.2012. The Division Bench vide judgment dated

01.12.2020 dismissed Writ Appeal No.5712/2012

rejecting the contention that initiation of process for acquiring land for the purposes of KHB prior to the framing and sanctioning of the scheme for which acquisition is required will not invalidate the acquisition proceedings and holding thus:-

"In the circumstances, we are of the view that the sanction of a scheme by the State Government under sub-Section (2) of Section 24 of the Act is a condition precedent and a mandatory requirement before the Housing Board would execute any housing scheme, land development scheme or labour housing scheme. This is irrespective of whether any housing scheme would entail acquisition of land or not as opposed to a scheme entrusted by Board under Section 32 of the Act."

It is the said judgment that is impugned in this appeal arising out of SLP(C)No.1361/2021.

**4.** It is contended by the appellants that the power of acquisition conferred under Section 33(2) of the KHB

Act is an independent power and it could not be conditioned on prior approval of the scheme by the Government. According to them, schemes could be framed simultaneously or even subsequently and acquisition could be initiated for a contemplated scheme. It confers the power to acquire land required for execution of a housing scheme. The expression 'required for execution of a housing scheme' denotes the 'purpose' for which the land could be acquired and not the 'stage' at which it could be acquired, it is also contended on their behalf. The further contentions raised on their behalf are as follows: -

It is illogical to infer that a scheme of KHB should obtain two successive sanctions; one under Section 20 and the other under Section 24(2) of the KHB Act. Such

an interpretation would be nothing but misconstruction of the provisions of the KHB Act. In exercise of the delegated powers, if Notification is issued by the Commissioner, it could only be construed that acquisition is by the Government. The fact that the acquisition is for the KHB and that the acquired land would be handed over to KHB for its purpose(s) would not and could not invalidate the said acquisition. KHB Act received the assent of the President of India on the ninth day of March, 1993 and Section 33(2) of the KHB Act modifies L.A. Act and declares that acquisition for the purposes of KHB Act be deemed to be for 'public purpose' within the meaning of L.A. Act. The decision of this Court in Mohammed Yousef's case (supra) is not applicable to the cases on hand falling within the

purview of KHB Act as the said decision dealt only with the provisions under the Tamil Nadu Housing Board Act (TNHB Act) and further that the provisions and scheme of both the said Acts are different and distinct. The provisions under Section 49(1)(b) of the TNHB Act, virtually, persuaded this Court in Mohammed Yousef's case (supra) to hold that acquisition of land is part of the housing scheme and therefore, Notification for the acquisition of land for the housing scheme concerned could be issued only on finalization of the scheme and its sanction by the Government. However, a provision *pari materia* to the same is conspicuously absent in KHB Act.

**5.** Respondents 2 and 3 in this appeal filed a synopsis, pursuant to the permission granted to the parties to

file written submissions along with relevant documents/compilation, whereunder they have raised various contentions to resist the claims and contentions of KHB. We may hasten to add here that we will not advert to all the contentions advanced by them and in view of the nature of the order we propose to pass, as stated hereinbefore, we need only to deal with those contentions which are relevant for the consideration of the stated common question posed for resolution and also to the allied issues. In that view of the matter, it is relevant to refer to the following contentions: -

When Section 4(1) Notification under the L.A. Act was issued prior to the finalization of the scheme concerned it would be vague and, in such circumstances,

the land owners would be deprived of the benefit of filing effective objections under Section 5A of the L.A. Act. (As a matter of fact the impugned judgment itself would reveal that their deceased mother had filed objections on 17.09.2007 and later, an enquiry under Section 5A of the L.A. Act was held). If the housing scheme involves acquisition of land, prior sanction under Section 24(2) of the KHB Act is mandatory and framing and finalizing the scheme is a pre-requisite for acquiring land for the purpose of KHB under Section 33(2) of KHB Act. Issuance of Notification under Section 6 (1) of the L.A. Act by the State Government could not be construed as sanction as contemplated under Section 24(2) of the KHB Act. Any such construction, as canvassed by the appellants, if

accepted would offend the language of Sections 24(2) and 33(2) of the KHB Act. In terms of sub-Section (4) of Section 3 of the KHB Act, KHB shall be deemed to be a local authority for its purpose and also for the purpose of L.A. Act. Ergo, by virtue of Section 3(f) of L.A. Act, prior approval of the Government for the housing scheme concerned is necessary in order to make acquisition as the one for 'public purpose'. They have also referred to sections 17 to 24 of the KHB Act to buttress the contention that without prior sanction under section 24(2) of the KHB Act, KHB could not execute any scheme by acquiring land. To drive home the point, they rely on the decisions of this Court in Mohammed Yusef's case (supra) and in **State of T.N. &**

**others Vs. L. Krishnan's & Others** reported in **(1996) 1 SCC 250.**

**Civil Appeal Nos. 7011-7013 of 2013, 7017-7019 of 2013 & 9002-9003 of 2013**

6. These companion appeals are filed by persons whose properties are sought to be acquired for the purposes of KHB under Notifications prior to the one involved in the appeal arising from SLP(C) No.1361/2021, substantially raising contentions similar to that of the party respondents in the said appeal. Their core contention is that absence of sanction for the building scheme concerned prior to the initiation of acquisition proceedings would vitiate the entire acquisition proceedings and would render it null and void.

6.1 The relevant details, as regards the companion appeals, are stated infra in a tabulated form for convenience.

<b>Relevant Dates</b>	<b>B.N. Byregowda &amp; Ors. Vs. State of Karnataka &amp; Ors. (CA Nos. 7017-7019 of 2013)</b>	<b>M. Nagaraju &amp; Anr. Vs. Govt. of Karnataka &amp; Ors. (CA Nos. 9002-9003 of 2013)</b>	<b>S. Udaya Shankar Vs. State of Karnataka and Ors. (CA Nos. 7011-7013 of 2013)</b>
<b>Name of the scheme</b>	<b>100 housing scheme</b>	<b>225 housing scheme</b>	<b>100 housing scheme</b>
<b>Framing of the scheme by KHB</b>	<b>06.10.2000</b>	<b>2009 (modified scheme)</b>	<b>06.10.2000</b>
<b>Sanctioning of the scheme by the Govt.</b>	<b>25.01.2001</b>	<b>18.05.2010 (modified scheme)</b>	<b>25.01.2001</b>
<b>S.4(1) Notification</b>	<b>31.03.2001</b>	<b>12.04.2005</b>	<b>31.03.2001</b>
<b>S.6 declaration</b>	<b>10.05.2002</b>	<b>02.11.2006</b>	<b>10.05.2002</b>
<b>Date of publication of final notification in the official gazette</b>	<b>17.05.2002</b>	<b>09.11.2006</b>	<b>17.05.2002</b>

6.2 The tabulated details would go to show that in these cases either the framing or sanctioning or publication or all such processes relating to the

Housing Scheme concerned was/were effected only subsequent to the initiation of acquisition proceedings therefor. The Appellant in C.A. Nos.7011-7013 of 2013 (S. Udaya Shankar) filed W.P.No.46250/2004 and the Appellants in C.A.Nos.7017-7019 of 2013 (B.N. Byregowda & Ors.) filed W.P.No.47616/2004 challenging the selfsame Notifications, viz., preliminary Notification under Section 4 dated 31.03.2001 and Section 6 declaration and final Notification dated 10.5.2002 of the L.A. Act. During the pendency of the said Writ Petitions the Appellants in C.A. Nos. 9002-9003 of 2013 approached the High Court by filing W.P. Nos. 18596/2006 and 11568/2008 respectively challenging a subsequent preliminary Notification under Section 4 dated 01.04.2005 and Section 6 declaration dated

02.11.2006 in respect of another area for the purpose of KHB. A Learned Single Judge of the High Court, as per judgment dated 06.02.2009, dismissed them holding that prior sanction of the housing scheme concerned is not necessary for initiating acquisition for the purposes of the KHB under the KHB Act by placing reliance on the decision of this Court in L. Krishnan's case (supra). The said common judgment dated 06.02.2009 was taken in appeal as W.A. Nos. 1244-45/2009 (LB-KHB). During its pendency, another learned Single Judge of the High Court vide judgment dated 28.06.2012 in W.P.No.9593/2007 and connected cases held that a sanctioned housing scheme is condition precedent, for initiation of acquisition proceedings under the KHB Act for its purpose. When W.P No.46250/2004 filed by the

Appellant in Civil Appeal Nos.7011-7013 of 2013 came up for consideration, taking note of the pendency of Writ Appeal Nos.1244-45 of 2009 and also of the conflicting decisions of two learned Single Judges in WP No.18596/2006 and WP No.9593/2007 and connected matters, it was referred to a Division Bench. On the same grounds the learned Single Judge referred WP No.47616/2004 also to a Division Bench.

**7.** In the judgment in Writ Appeal Nos.1244-45 of 2009 the Division Bench took note of the fact that the land involved therein was notified for acquisition by invoking Section 33 of the Act read with Section 4(2) of the L.A. Act and identified the point to be answered, as can be seen from paragraph 6 of the judgment passed thereon dated 26.04.2013, thus: -

"6. The only point to be answered by us in these appeals is whether the Housing Board is required to obtain sanction of a Housing Scheme u/s 24 of the Act before initiation of the acquisition of the land or not in order to implement the Housing Scheme."

Paragraph 7 therein also assumes relevance, in this regard. It reads thus:-

"7. It is the contention of the appellants that without their being a Scheme sanctioned as required u/s 24 of the Act, lands of the appellants could not have been acquired."

8. After referring to Sections 18 to 24 of the Act, vide paragraphs 14, 15 and 18 the Division Bench held

thus: -

"14. A reading of Sections-18 to 24, it is clear that there is no necessity for obtaining the sanction of the Housing scheme or the Land Development scheme in order to acquire the property for the aforesaid projects. But without their being a sanction from the Government under Section 24, no scheme shall be executed by the Housing Board. Therefore, it is clear that obtaining of sanction under the Housing Scheme or Land Development Scheme would arise only after preparation of all preliminary preparation of the scheme, preparation of the Housing project, Land Development Project, Budgetary provision, identifying the lands or acquiring the lands

and the staff required and estimation and other things as contemplated under sections-18 to 23. Only after strict compliances of Sections-18 to 23, before actual execution of the Housing Scheme or Land Development Scheme, obtaining of the sanction u/s 24 would arise.

15. In this background, after considering the Judgment of the Learned Single Judge, we cannot find fault with his order because he has clearly ruled that no prior permission is required u/s 24 of the Act, in order to identify the lands or to acquire the lands. Accordingly, we answer the said point, agreeing with the findings of the Learned Single Judge.

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18. With the above observations, the appeals are allowed confirming the finding of the Learned Single Judge on the question of section-24 of the Housing Board Act, the matter is remanded to the Learned Single Judge with a request to reconsider the matter afresh as observed above."

9. Thus, obviously, the Division Bench, as per judgment dated 26.04.2013 in Writ Appeal Nos.1244-45/2009 affirmed the decision of the learned Single Judge in W.P. Nos.18596/2006 and 11568/2008 that existence of a sanctioned housing scheme is not

required for initiation of compulsory acquisition under the KHB Act. Civil Appeal Nos.9002-9003/2013 were filed challenging the judgment and final order dated 26.04.2013 in Writ Appeal Nos.1244-45 of 2009. It is a fact that on the same day, the Division Bench, obviously relying on the decision in Writ Appeal Nos.1244-45/2009, dismissed W.P. Nos.46250 and 47616 of 2004 vide separate judgments. Civil Appeal Nos.7011-7013/2013 and 7017-7019/2013 were filed in the circumstances challenging the judgment and final Order dated 26.04.2013 in the respective writ petitions and also against the relied upon judgment and final Order in Writ Appeal Nos.1244-45/2009, dated 26.04.2013.

**10.** The pleadings in the captioned Civil Appeals and the submissions made by the respective learned counsel

for the appellants would reveal the common contention of the parties in C.A.Nos.7011-7013, 9002-9003 and 7017-7019 of 2013 that acquisition of land for the purposes of KHB under the KHB Act is part of the housing scheme to be prepared in terms of Sections 18-23 of the KHB Act and, therefore, acquisition proceedings could not have been initiated before the sanctioning of the housing scheme concerned. Since, acquisition proceedings preceded the sanction of the housing scheme(s) concerned, they are to be deemed as null and void and as such, liable to be set aside, they would further contend. It is to support the said contentions that they are relying on the decision in Mohammed Yousef's case (supra). The KHB, which is the appellant in the appeal by Special Leave arising from

SLP(C)No.1361/2021 would contend that acquisition proceedings for its purposes invoking the power under Section 33(2) of the KHB Act could not be said to be part of the housing scheme to be prepared in terms of Sections 18-23 of the Act by the KHB and the only condition for executing the scheme would be that prior to its execution Governmental sanction should be obtained therefor.

**11.** On perusal of the relevant provisions and hearing the rival contentions in all the above appeals we think that construction of Section 33 (2) of the KHB Act would be a pointer to answer the stated common question involved in the appeals. In that pursuit, it is also to be ascertained, with reference to the relevant provisions under the Act, as to whether acquisition

proceedings by KHB invoking the power thereunder would form part of a housing scheme, as defined under the KHB Act. Subject to its answer, the question whether 'acquisition forming part of housing scheme' by itself is decisive as to the validity of the initiation of acquisition proceeding prior to the sanction of the scheme concerned, may also have to be considered in this pursuit.

**12.** The case of the Appellants, (other than the KHB and its co-appellant) who canvass the position that sanctioning of the scheme is a pre-condition for compulsory acquisition for KHB under Section 33 (2) of the Act, is founded on the decision of this Court in Mohammed Yousef's case (supra) and other judicial pronouncements rendered relying on/referring to the

said decision. In that regard they also contend that the provisions in the TNHB Act (then referred to as Madras State Housing Board Act, 1961), that persuaded this Court to lay down law as mentioned hereinbefore have *pari materia* provisions in the KHB Act. We may hasten to state at this juncture that the learned counsel for KHB resisted the contention. He submitted that the claim of existence of provisions in the KHB Act *pari materia* to the provisions under the TNHB Act, 1961 that formed the ground for laying the law in the decision in Mohammed Yousef's case (supra), is absolutely incorrect and baseless. It is further submitted on behalf of KHB that the said decision is inapplicable to the instant cases. Still, the learned counsel for KHB relied on L. Krishnan's case, which

again was rendered with reference to acquisition for the purpose of Tamil Nadu Housing Board. In that context learned counsel for KHB would submit that reliance is placed on the decision in L. Krishnan's case solely to fortify the contention that the decision in Mohammed Yousef's case is not applicable to the appeals on hand. Furthermore, it is contended on behalf of KHB that the embargo under Section 24 (2) of the KHB Act would not stand against initiation of acquisition proceedings under Section 33(2) of the KHB Act without waiting for formation, sanctioning or publication of a housing scheme. According to the learned counsel what is legally required in terms of the provisions under Section 33 (2) of the KHB Act is that before execution of the scheme viz., implementation of the scheme,

sanction should be obtained.

**13.** In the light of the rival contentions referred to hereinbefore it is apropos to consider, at first, the applicability of decision of this Court in Mohammed Yousef's case (supra) in the matter of resolution of the stated question and the allied issues. In view of the scanned analysis of the decision in Mohammed Yousef's case by a three-Judge Bench of this Court in the decision in L. Krishnan's case (supra), from paragraphs 23 onwards, we need only to refer to the relevant recitals and conclusions/findings from the decision in L. Krishnan's case in our pursuit to answer the applicability of the decision in Mohammed Yousef's case. The three-Judge Bench was called upon to consider the correctness of the law laid down in Mohammed

Yousef's case while considering the questions that arose in Civil Appeal Nos.1865-66 and 1868-70 of 1992. Those appeals were directed against a judgment of the Madras High Court in a batch of Writ Petitions whereunder it quashed three Notifications issued under Section 4(1) of the L.A. Act for the implementation of housing schemes, relying mainly on the decisions of this court in Mohammed Yousef's case (supra) and in Munshi Singh Vs. Union of India [(1973) 2 SCC 337]. In paragraph 22 of L. Krishnan's case this Court observed:

"But before we refer to them, it would be appropriate to deal with the decision of a two-Judge Bench of this Court in State of T.N. Vs. A Mohd. Yusuf, affirming the decision of the Madras High Court, upon which strong reliance is placed by the respondents. In this decision, it has been held that a proceeding under the Land Acquisition Act read with Section 70 of the Housing Board Act can be commenced only after the framing of the scheme for which the land is required, but not before."

(Emphasis added)

In this context, it is also worthy to note the first question posed for consideration before the three-Judge Bench in L. Krishnan's case (supra), which was mentioned in paragraph 7 thereof thus:-

"The first question that arises in these appeals is whether a final and effective scheme prepared and published under the provisions of the Housing Board Act is a precondition to the issuance of notification under Section 4. This question has to be answered with reference to the provisions of the Land Acquisition act as well as the Housing Board Act."

(Underline supplied)

**14.** The three-Judge Bench in L. Krishnan's case further mentioned thus:-

"We may mention, at the outset, that these appeals have been referred to a three-Judge Bench by a Bench of two learned judges because they doubted the correctness of the decision in Mohd. Yusuf, vide order dated 16.09.1993."

**15.** Paragraphs 24 to 33 of the decision in L. Krishnan's case are worthy to be extracted to decide

on the applicability of the decision in Mohammed Yousef's case to decide the stated mooted question involved in these appeals. Paragraphs 24 to 28 read thus:-

"24. The facts in Mohammed Yousef are these: the notification under Section 4 of the Land Acquisition Act was issued stating the public purpose as construction of houses by the Tamil Nadu Housing Board. Admittedly not even a draft scheme was framed by the Housing Board by the date of the said notification. On the contrary, the contention of the State was that only after the acquisition proceedings are completed and possession of the land taken, would they frame a scheme. Alternately, it was contended by the State that framing of a scheme is not a precondition for issuance of a valid notification under Section 4 of the Land Acquisition Act proposing to acquire the land for construction of houses by the Housing Board. The High Court had struck down the notification on the ground that the public purpose mentioned therein was too vague in the absence of details relating to the scheme for which the acquisition was sought to be made. The High Court opined that in the absence of such a scheme with necessary particulars the land-owners cannot effectively avail of the opportunity given by Section 5-A. In this Court, however, the main contention of the respondents-land-owners was that the framing of a scheme by the Housing Board under the provisions of the Housing Board Act is a precondition to a valid notification under Section 4 where the land is proposed to be acquired for the purpose of the Housing Board. In view of the said

contention, this Court examined the scheme of the Act and held that inasmuch as acquisition of the land is a part and parcel of the execution of a scheme framed by the Board under the Act, the acquisition must follow the scheme and cannot precede it. The Bench further observed that unless such a scheme with requisite particulars is duly published, it may not be possible for the land-owners to object to the proposed acquisition on the ground that the land is not suitable for the scheme at all and/or that it does not serve the stated public purpose. The Bench observed that the power of the Board to frame a scheme is regulated by the provisions of the Act which, inter alia, provide a full opportunity to the affected persons to object to the scheme. Even after the final publication of the scheme and after its coming into force, it was pointed out, the scheme can yet be altered or cancelled as provided under Section 56 of the Act. For all these reasons, the Bench held that: (SCC p. 229, para 11)

"a proceeding under the Land Acquisition Act read with Section 70 of the Madras Housing Board Act, can be commenced only after framing the scheme for which the land is required".

25. Unfortunately, the provisions in sub-Sections (2) and (3) of Section 35 and Section 36 were not brought to the notice of the Bench nor were the earlier Constitution Bench decisions of this Court brought to its notice, to which decisions we may now turn. But one more relevant aspect before we refer to them.

26. After, and in the light of, the impugned judgment, the Tamil Nadu Legislature has amended the Housing Board Act *with*

*retrospective effect* with a view to remove the basis of the said judgment and providing expressly that existence of a scheme framed by the Housing Board is not a pre-condition for acquiring land for the purpose of the Board. The validity of the said Amendment Act has also been questioned in the connected matters but the necessity to go into that question will arise only if we agree with the reasoning and conclusions in the decision under appeal. Indeed, Shri Salve's argument was that the decision of the High Court is unsustainable even without reference to the said Amendment Act and it is on that basis that he made his submissions.

27. In *Arnold Rodricks v. State of Maharashtra*, the Constitution Bench dealt with the question whether the statement in the notification under Section 4 that the land was required for "development and utilisation of the said lands as an industrial and residential area" cannot be said to be a public purpose within the meaning of Section 4 of the Land Acquisition Act. The Court held, relying upon the decisions of this Court in *Babu Barkya Thakur v. State of Bombay* (SCR at p. 137) and *Pandit Jhandu Lai v. State of Punjab* – as well as the statement in the counter-affidavit filed on behalf of the State Government – that the purpose stated in the notification is indeed a public purpose. The Constitution Bench pointed out that in *Babu Barkya Thakur*, this Court had relied upon the decision in *State of Bombay v. Bhanji Munji* to the effect that "providing housing accommodation to the homeless is a public purpose (and that) where a larger section of the community is concerned, its welfare is a matter of public concern".

The counter-affidavit filed on behalf of the Government explained that the pressure of housing in Bombay is acute and that there was any amount of need for fresh housing. The Court (majority) observed:

"In our view the welfare of a large proportion of persons living in Bombay is a matter of public concern and the notifications served to enhance the welfare of this section of the community and this is public purpose."

28. Another contention urged for the petitioners was that the Government had not prepared any scheme before issuing the notification under Section 4. This argument was also negatived in the following words: "This is true that the Government has not upto now prepared any scheme for the utilisation of the developed sites. But the notification itself shows that the sites would be used as residential and industrial sites. There is no law that requires a scheme to be prepared before issuing a notification under Section 4 or Section 6 of the Act. We have, however, no doubt that the Government will, before disposing of the sites, have a scheme for their disposal."

(Emphasis added)

16. After making such reference in L. Krishnan's case it was further held in paragraphs 29 to 33 thus:-

"29. We have held hereinbefore that merely because the Housing Board Act contemplates acquisition of land as part of a housing or improvement scheme, it does not follow that no land needed for the purpose of the

Housing Board Act can be acquired until and unless a scheme is prepared and finalised by the Board and becomes effective under the provisions contained in Chapter VII.

30. In *Aflatoon v. Lt. Governor of Delhi*, another Constitution Bench dealt with a similar contention, viz., that before publishing the notification under Section 4, the Government had not declared any area in Delhi as a development area under Section 12(1) of the Delhi Development Act nor was there a master plan drawn up in accordance with Section 7 of that Act. The notification under Section 4 was attacked on that basis. It was argued that under Section 12(3) of the Delhi Development Act, no development of land can be undertaken or carried out except as provided in that sub-Section. This argument was negatived by the Constitution Bench holding that: (SCC pp. 294-95, para 23)

"The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force, but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready (See the decision in *Patna Improvement Trust v. Lakshmi Devi*). In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes

*development. For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority."*

(emphasis added)

31. It is significant to notice that Section 12 of the Delhi Development Act, 1957 provided for declaration of any area as development area by the Central Government and it further provided that except as otherwise provided by the said Act, the Delhi Development Authority shall not undertake or carry out any development of land in any area which is not a development area. Sub-Section (3) of Section 12, however, provided that after the commencement of the said Act, no development of land shall be undertaken or carried out in any area by anyone unless (i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provisions of the Act and (ii) where the area is an area other than a development area, approval of the local authority or other authority concerned is obtained according to law. Section 15 of the said Act provided for acquisition of any land required for the purpose of development under the Act.

32. In our opinion, the observations quoted and emphasised hereinabove, and the broad similarity between the provisions of the Delhi Act and the Tamil Nadu Housing Board Act, establish that the acquisition of the land is not dependent upon the preparation and approval of a scheme under Sections 37 to 56 and that the Government's power of

acquisition extends to other purposes of the Board and the Housing Board Act referred to in Sections 35 and 36. Moreover, under Tamil Nadu Housing Board too, there is no inhibition against acquisition of land for the purpose of the Board except in accordance with and as a part of the scheme.

33. For all the above reasons, we find it difficult to read the holding in Mohammed Yousef as saying that in no event can the land be acquired for the purpose of the Act/Board unless a final and effective scheme is framed by the Housing Board under the provisions of Sections 37 to 56. The said limitation applies only where the land is sought to be acquired avowedly for the purpose of execution of a housing or improvement scheme prepared by the Housing Board under Chapter VII of the Tamil Nadu Housing Board Act. In other words, unless the notification under Section 4 of the Land Acquisition Act expressly states that land proposed to be acquired is required for executing a housing or improvement scheme (i.e., a final and effective scheme) framed by the Housing Board under the provisions of the Tamil Nadu Housing Board Act, the principle and ratio of *Mohammed Yousef* is not attracted. Mere statement in the notification that land is required for the purpose of the Housing Board would not by itself attract the said principle and ratio. In the instant appeals, the notifications do not even state that the land proposed to be acquired is meant for the purpose of the Housing Board."

(Emphasis added)

17. Thus, a perusal of the decisions in Mohammed Yousef's case and L. Krishnan's case (supra) would disclose that both the decisions were rendered with reference to the provisions under the L.A. Act and the TNHB Act. It is true that a two-Judge Bench of this Court in Mohammed Yousef's case, after referring to the provisions under the Madras State Housing Board Act, 1961, which was later renamed as 'TNHB Act', held that a proceeding under the Land Acquisition Act read with Section 70 of the Housing Board Act could be commenced only after the framing of the scheme for which the land is required, and not before. But then, upon doubting the correctness of the decision in Mohammed Yousef's case, two learned judges of this Court referred the appeals (decided under L. Krishnan's case) to a three-Judge Bench. It is in those appeals that the three-Judge Bench in L. Krishnan's case observed that unfortunately neither the provisions in sub-Sections (2) and (3) of Section 25 and Section 36 of Act 17 of 1961 nor earlier Constitution Bench decisions of this Court, were brought to the notice of the Bench which rendered the decision in Mohammed Yousef's case.

Thereafter, upon considering all the relevant provisions under Act 17 of 1961, the provisions of the very Act which were dealt with or not dealt with in the decision in Mohammed Yousef's case and also various decisions of this Court the three-Judge Bench in L. Krishnan's case held :-

"For all the above reasons, we find it difficult to read the holding in Mohd. Yusuf as saying that in no event can the land be acquired for the purposes of the Act/Board unless a final and effective scheme is framed by the Housing Board under the provisions of Sections 37 to 56."

**18.** The afore-extracted recitals in L. Krishnan's case would reveal that the position held as above holding in Mohammed Yousef's case was held applicable only where the land is sought to be acquired avowedly for the purpose of execution of a housing or improvement scheme prepared by the Housing Board under Chapter VII of the Tamil Nadu Housing Board Act. Further it was clarified in paragraph 33 itself thus:-

"In other words unless the notification under Section 4 of the Land Acquisition Act expressly states that the land proposed to be acquired is required for

executing a housing or improvement scheme (i.e., a final and effective scheme) framed by the Housing Board under the Tamil Nadu Housing Board Act, the principle and ratio of Mohd. Yusuf is not attracted."

19. The contention of vagueness in the matter of public purpose in the Notifications and its impact was considered and negated in view of the Constitution Bench decisions of this Court in **Aflatoon Vs. Lt. Governor of Delhi [(1975) 4 SCC 285]** and in **Arnold Rodricks Vs. State of Maharashtra [AIR 1966 SC 1788]**. The decision in **Pt. Lila Ram Vs. Union of India [(1975) 2 SCC 547]** was also referred to in that regard. It was observed that the decision in Munshi Singh's case (supra) would not come to the rescue of the Writ Petitioners - Respondents. Based on such conclusions and findings and those made in paragraphs 24-33 this Court allowed Civil Appeal Nos.1865-66, 1868-70 of 1992 and set aside the judgment of the Madras High Court under Appeal and dismissed the Writ Petitions from which those appeals arose. It is also relevant to note that the Civil Appeals filed against the judgments of the Madras High Court upholding the validity of the

Tamil Nadu Housing Board Amendment Act 5 of 1992 were also dismissed by the three-Judge Bench following the judgment in Civil Appeal Nos.1865-66, 1868-70 of 1992.

**20.** Decision in L. Krishnan's case would thus reveal that the three-Judge Bench after careful consideration held that merely because the TNHB Act contemplates acquisition of land as part of a housing or improvement scheme, it could not be said that no land needed for the purpose of the Housing Board could be acquired until and unless the scheme was prepared and finalized by the board and became effective under the provisions contained in chapter VII of the TNHB Act that deals with acquisition and disposal of land. The three-Judge Bench further found it difficult to read the dictum in Mohammed Yousef's case (supra) as saying that in no event land could be acquired for the purpose of the Act/Board unless a final and effective scheme is framed by the Housing Board under the provisions of Sections 37 to 56. We have already noted the further conclusions and findings of the three-Judge Bench in L. Krishnan's

case and the outcome of such consideration, conclusions and findings.

**21.** The long and short of the above discussion is that the contention that initiation of acquisition for the purposes of KHB/the KHB Act, prior to the sanction and/or the publication of housing scheme concerned/land development scheme concerned, is null and void in view of the decision in Mohammed Yousef's case is untenable. So also, the contention that in view of the decision in Mohammed Yousef's case acquisition proceedings form part of housing scheme/land development scheme and hence, acquisition for the purposes of KHB/the KHB Act prior to the sanction and/or the publication of housing scheme concerned/land acquisition scheme concerned, is null and void cannot be countenanced. Suffice it to say that the moot question and allied issues are to be considered and answered independently without reference to the decision in Mohammed Yousef's case, but with reference to the L.A. Act as well as KHB Act. In that view of the matter, we will now proceed to

consider them with reference to the L.A. Act and the KHB Act and not with reference to other authorities pronounced under different enactments. We are fortified in that view by a Constitution Bench decision of this Court in **Offshore Holdings Pvt. Ltd. vs. Bangalore Development Authority & Ors. (2011) 3 SCC 139**. It, in so far as relevant, reads thus:-

"85..... the dictum stated in every judgment should be applied with reference to the facts of the case as well as its cumulative impact. Similarly, a statute should be construed with reference to the context and its provisions to make a consistent enactment i.e. *ex visceribus actus*."

**22.** We may also add that a judgment rendered with respect to the position obtained under a particular provision(s) in one enactment cannot be applied while dealing with a similar situation falling under a different enactment, unless *pari materia* provision(s) exist in that enactment, without looking into the facts and law.

23. Now, we will refer to the various relevant provisions to have panorama on the scheme of the KHB Act for answering the moot question. Section 2 of KHB Act carries such definitions and the relevant among them are extracted hereunder:-

"S.2 **DEFINITIONS**:- In this Act, unless the context otherwise requires.-

(a) "**Board**" means the Housing Board constituted under Section 3'

(f) "**Competent Authority**" means any person authorized by the State Government, by notification to perform the functions of the Competent Authority under Chapter VI for such area as may be specified in the notification;

(h) "**Housing Scheme**" means a housing scheme under this Act;

(i) "**Land**" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(i-1) "**Land Development Scheme**" means a scheme framed under this Act for the purpose of providing house sites in any Area;

(n) "**Programme**" means the annual housing programme and land development programme prepared by the Board under Section 19;

24. Chapter III (Sections 17 to 32A) provides for and deals with housing schemes and land development

schemes. The relevant provisions for the purpose of these cases are extracted infra:-

**"17. Duty of Board to undertake housing schemes and land development schemes.-**

Subject to the provisions of this Act and subject to the control of the state Government, the Board may incur expenditure and undertake works in any area for the framing and execution of such housing schemes and land development schemes as it may consider necessary from time to time, or as may be entrusted to it by the State Government.

**18. Matter to be provided for by housing schemes.-**

Notwithstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely.-

- (a) the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme;
- (b) the laying or relaying out of any land comprised in the scheme;
- (c) the distribution or redistribution of sites belonging to owners of property comprised in the scheme;
- (d) the closure or demolition of dwellings unfit for human habitation;
- (e) the demolition of obstructive buildings or portions of buildings;
- (f) the construction and reconstruction of buildings, their maintenance and preservation;
- (g) the sale, letting or exchange of any property comprised in the scheme;

- (h) the construction and alteration of streets and back lanes;
- (i) provision for the draining, water-supply and lighting of the area included in the scheme and carrying out by the Board in such area, drainage, sewerage and water supply works;
- (j) the provision of parks, playing-fields and open spaces for the benefit of any area comprised in the scheme and the enlargement of existing parks, playing fields, open spaces and approaches;
- (k) the provision of sanitary arrangements required for the area comprised in the scheme, including the conservation and prevention of any injury or contamination to rivers or other sources and means of water-supply;
- (l) the provision of accommodation for any class of inhabitants;
- (m) the advance of money for the purpose of the scheme;
- (n) the provision of facilities for communication and transport;
- (o) the collection of such information and statistics as may be necessary for the purposes of this Act;
- (p) any other matter for which, in the opinion of the State Government, it is expedient to make provision with a view to provide housing accommodation and to the improvement or development of any area comprised in the scheme or the general efficiency of the scheme.

**18-A. Matters to be provided for by Land Development Schemes.**- Notwithstanding anything contained in any other law for the

time being in force, a land development scheme may within the limits of the area comprised in the scheme, provide for all or any of the following matters, namely:-

- (a) the acquisition by purchase, exchange or otherwise, of any land which in the opinion of the Board will be necessary for or affected by the execution of scheme;
- (b) laying or re-laying of all or any land comprised in the scheme and formation and alteration of streets;
- (c) drainage, water supply and electricity and carrying out by the Board in the area included in the scheme, drainage sewerage and water supply works;
- (d) the distribution or redistribution of sites comprised in the scheme;
- (e) raising the level of any land which the Board may consider expedient to raise to facilitate better drainage;
- (f) forming open space for the better ventilation of the area comprised in the scheme or any adjoining area;
- (g) sanitary arrangements required;
- (h) sites for Parks, Playgrounds, Stadium, recreation grounds, School buildings, Markets, Motor Vehicle Stands, Theaters, Police Stations, Post Offices, Co-operative Societies, Public Urinals and Latrines, Petrol Service Stations, Hospitals, Dispensaries, Banks, Burial and Cremation Grounds and Sites for public purposes of other kinds.

**19. Preparation and submission of annual housing programme and land development**

**programme budget and establishment schedule.**- (1) Before the first day of December in each year, the Board shall prepare and forward,-

- (i) a programme,
- (ii) a budget for the next year,
- (iii) a schedule of the staff of Officers and servants already employed and to be employed during the next year;

To the State Government in such form as may be prescribed.

(2) The programme shall contain.-

- (a) such particulars of housing schemes, land development schemes and labour housing schemes which the Board proposes to execute whether in part or whole during the next year as may be prescribed;
- (b) the particulars of any undertaking which the Board proposes to organize or execute during the next year for the purpose of the production of building materials; and
- (c) such other particulars as may be prescribed.

(3) The budget shall contain a statement showing the estimated receipts and expenditure on capital and revenue accounts for the next year.

**20. Sanction to programme, budget and establishment schedule.**- The State Government may sanction the programme, the budget and the schedule of the staff of Officers and servants forwarded to it with such modifications as it deems fit.

**21. Publication of sanctioned programme.-**

The State Government shall publish the programme sanctioned by it under Section 20 in the official Gazette.

**22. Supplementary programme and budget.-**

The Board may, at any time, during the year, in respect of which a programme has been sanctioned under Section 20 submit a supplementary programme and budget and the additional schedule of the staff, if any, to the State Government and the provisions of Sections 20 and 21 shall apply to such supplementary programme.

**23. Variation of programme by Board after it is sanctioned.-** The Board may, at any time, vary any programme or any part thereof included in the programme sanctioned by the State Government;

Provided that no such variation shall be made if it involves an expenditure in excess of twenty per cent of the amount as originally sanctioned for the execution of any housing scheme or land development scheme included in such programme or affects its scope or purpose.

**24. Sanctioned housing schemes and land development schemes to be executed.-**(1)

After the programme has been sanctioned and published by the State Government under sections 20 and 21, the Board shall, subject to the provisions of Section 23, proceed to execute the housing scheme, land development scheme or labour housing scheme included in the programme.

(2) The Board shall not execute any housing scheme, land development scheme or labour housing scheme unless the same has been sanctioned by the State Government.

**32. Schemes entrusted to Board by Government, etc.-**(1) The provisions of

sections 18 to 24 (both inclusive) shall not be applicable to any housing scheme, land development scheme or labour housing scheme entrusted to the Board by the State Government except to such extent and subject to such modifications as may be specified in any general or special order made by the State Government, and every such order shall be published in the Official Gazette.

(2) Notwithstanding anything contained in this Act, the Board shall not be competent to carry on any trading or financing activity for profit, whether in the execution of any scheme undertaken by, or entrusted to it, or otherwise."

**25.** A conjoint reading of the afore-extracted provisions of KHB Act will unfold the duties of the KHB as to undertake housing schemes and land development schemes as it may consider necessary from time to time or as may be entrusted to it by the State Government. What are the matters to be provided for by housing schemes and land development schemes are mentioned respectively under Sections 18 and 18A. Going by Section 2(n) 'programme' means the annual housing programme and land development programme prepared by KHB under Section 19. Section 19 mandates that before the first day of December in each year, KHB shall

prepare and forward a programme, a budget for the next year and a schedule of the staff of officers and servants already employed and to be employed during the next year, to the State Government. As per the said section, the said programme shall contain such particulars of the housing schemes, land development schemes and labour housing schemes which it proposes to execute whether in part or whole during the next year as may be prescribed. Under Section 20 the State Government may sanction the programme, the budget and the schedule of the staff of officers and servants forwarded to it with such modifications as it deems fit. As per Section 21, the State Government shall publish the programme sanctioned by it under Section 20 in the official Gazette. Section 22 permits submission of supplementary programme and budget in respect of which a programme and budget had been sanctioned under Section 20 and in the eventuality of submission of such a supplementary programme and budget the provisions of Sections 20 and 21 would apply.

**26.** Section 23 confers power on the board to vary any programme or any part thereof included in the programme sanctioned by the State Government, at any time. The bare perusal of the proviso thereunder would reveal that it is not an unfettered power. Going by the proviso, no such variation shall be made if it involves an expenditure in excess of 20 per cent of the amount as originally sanctioned for the execution of any housing scheme or land development scheme included in such programme or affects its scope or purpose. Thus a bare perusal of the provisions under Sections 17 to 23, contained in Chapter-III of the KBH Act, would reveal that they deal with duties of KHB to undertake housing schemes and land development schemes, matters to be included in such schemes, preparation and submission of annual housing programme and land development programme, budget and establishment schedule and such other procedures to be followed ultimately unto the sanctioning of the programme and also the power of KHB to make variance of sanctioned programme and its limit.

27. Going by the scheme of the KHB Act, it deals with the subject of execution of housing schemes, land development schemes and labour housing schemes under Section 24. Bearing in mind the provisions under Sections 18-23 we will consider the scope and purport of Section 24 of the KHB Act. A careful scrutiny of sub-Sections (1) and (2) of Section 24 would bring forth their distinct differences. Section 24(1) prescribes that after the programme has been sanctioned and published by the State Government the board shall, subject to the provisions of Section 23, proceed to execute the housing scheme, land development scheme and labour housing scheme included in the programme. Thus, Section 24(1) states in unequivocal terms as to when the KHB shall proceed to execute the housing schemes, land development schemes and labour housing schemes included in the programme. Indisputably, in terms of the said statutory mandate KHB could proceed to execute any of the aforesaid schemes included in the programme only after the sanction and publication of the programme wherein the scheme concerned is included.

28. Now, we will consider the question of executability or otherwise of housing schemes, land development schemes and labour housing schemes other than those included in a programme, by the KHB. As noticed earlier, the unambiguous terms in Section 24(1) would reveal that it speaks only of such schemes included in a programme and thereby make such 'housing schemes, land development schemes and labour housing schemes' a definite category. The further question is whether any other category containing such schemes is contemplated in the KHB Act and if so, when such scheme(s) would become executable? The word 'any' that qualifies the words 'housing scheme, land development scheme and labour housing scheme' employed in sub-Section (2) thereof in contradistinction to the words 'included in the programme' employed under sub-Section, positively indicates the executability of scheme(s) other than those included in the sanctioned programme. Indeed it is couched in a negative form, as can be seen from sub-Section (2) thereof, extracted hereinbefore. As per the said provision KHB shall not execute any housing scheme, land development scheme or labour housing

scheme unless the same has been sanctioned by the State Government.

**29.** As noted earlier, what sub-Section (2) proscribes is execution of such a scheme, be it a housing scheme or land development scheme or labour housing scheme, evidently not included in the programme for any particular year unless the same has been sanctioned by the State Government. Pithily put, the schemes falling under sub-Sections (1) and (2) are different. If they are one and the same in view of the positive mandate under sub-Section (1) of Section 24 with respect to the time of executability of such schemes included in the programme, viz., only after their sanction and publication by the State Government, there was absolutely no necessity for incorporating sub-Section (2) under Section 24 in the negative form. Certainly, the legislative intention under sub-Section (2) can be taken only as one to enable KHB to undertake such schemes which were not included in the programme, as exception, but subject to the condition of obtainment of sanction of the State Government before execution.

In short, as a whole, the purport of Section 24 is that no housing scheme or land development scheme or labour housing scheme, undertaken by the KHB shall be executed sans sanction from the State Government. Sub-Section (2) of Section 24 cannot be interpreted as one requiring obtainment of a second sanction for executing such schemes included in the programme. On the contrary, the provision under Section 24(2) has to be interpreted as one enabling KHB to undertake such schemes which were not included in the programme, but became necessary to undertake, subject to sanction from the Government. According to us, such a construction will only sub-serve the purpose of constitution of KHB.

**30.** There can be no doubt that for executing a housing scheme, land development scheme and labour housing scheme, be it included or not included in the programme, necessary extent of land has to be acquired. For, without the required extent of land, construction of houses under housing and labour housing schemes or development of land under land development schemes could not be effected. It is a fact that, the expression

'execution' is not defined in the KHB Act. Therefore, the question is how the expressions 'execute/execution' employed in sub-Sections (1) and (2) of Section 24 and Section 33(2) are to be understood. In that regard bearing in mind the object and purpose of Constitution of KHB and its duties the dictionary meaning of the said expression has to be looked into. Accordingly, the following meanings given for the word 'execution' in the Black's Law Dictionary, Tenth Edition, are ascribable to the expressions 'execution' or 'execute' employed in Sections 24(2) and 33(2) of the KHB Act:

- (1) To perform or complete (a contract or duty);
- (2) The performance or completion of a thing;
- (3) The final process of an action.

**31.** Chapter-IV of the KHB Act deals with the acquisition and disposal of land. Section 33 reads thus:-

**"S.33. Power to purchase or lease by agreement.-** (1) The Board may enter into an agreement with any person for the acquisition from him by purchase, lease or

exchange, or any land which is needed for the purposes of a housing scheme or land development scheme or any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith:

Provided that the previous approval of the State Government shall be obtained in case of purchase or exchange involving land worth more than rupees ten lakhs or lease for more than five years.

(2) The Board may also take steps for the compulsory acquisition of any land or any interest therein required for the execution of a housing scheme or land development scheme in the manner provided in the Land Acquisition Act, 1894, as modified by this Act and the acquisition of any land or any interest therein for the purposes of this Act shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894, "

Section 33 was subsequently substituted in the year 2016 as per Act 24 of 2016. Taking into account the fact that the substitution took place subsequent to the notifications impugned in these proceedings it is unnecessary for us to look into the said substituted provision. In fact, no serious argument was advanced by any one with reference to the said provision.

**32.** Section 33 in Chapter-IV actually deals with the power of KHB to acquire land. Sub-sections (1) and (2) thereof envisage different modes of acquisition which are different in nature. To put it succinctly, in the matter of acquisition under Section 33(1), 'consent' is required and in respect of unwilling owners acquisition may be effected under sub-Section (2) thereof. What is relevant to be noted is that Section 33 deals with acquisition of land or interest thereon and it is not dealing with sanction of the schemes. Obviously, for acquiring land or interest thereon, upon entering into an agreement with any person, by following anyone of the three modes prescribed under Section 33(1) prior approval of the State Government is mandatory, subject to its proviso.

**33.** Under sub-section (1) of Section 33, the KHB may enter into agreement with any person for the acquisition from him by purchase, lease or exchange of any land which is needed for the purposes of housing scheme or land development scheme or any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or

interference therewith. The proviso to sub-section (1) makes it mandatory to obtain previous approval of the State Government in case of purchase or exchange, involving land worth more than Rs.10 lakhs. For lease such previous approval is mandatory if it is for more than 5 years. The necessary corollary is that even in respect of acquisition of land needed for the purposes of such schemes either by purchase, lease or exchange previous approval of the State Government need not be obtained in case purchase or exchange, involved land worth Rs.10 lakhs or less and in the case of lease if it is for 5 years or lesser period.

**34.** Sub-section (2) of Section 33 permits KHB to take steps for compulsory acquisition of any land or any interest therein required for the execution of a housing scheme or land development scheme.

**35.** In the case of compulsory acquisition of land required for the execution of a housing scheme or land development scheme obtainment of no such prior approval is prescribed under sub-Section (2) thereof. The reason is obvious. A perusal of the sub-Section (2) would

reveal that what is permissible thereunder is compulsory acquisition of any land or interest thereon in the manner provided in the L.A. Act as modified by the KHB Act. Section 4(1) of the L.A. Act is worthy for reference in this context and it reads thus:-

**"S.4 Publication of preliminary notification and power of officers thereupon.-**

(1) Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)]."

**36.** But then, Section 4 (1) in its application to the State of Karnataka reads as hereunder:-

In Section 4 of the principal Act,-

(1) In sub-section (1),-

- (a) after the words "the appropriate Government", the words "or the Deputy Commissioner" shall be inserted;
- (b) for the words "notification to that effect", the words "notification stating the purpose for which the land is needed, or likely to be needed, and describing the land by its survey number, if any, and also by its boundaries and its approximate area" shall be substituted;
- (c) after the words "the said locality", the following sentence and explanation shall be added, namely,-

"the Deputy Commissioner may also cause a copy of such notification to be served on the owner, or where the owner is not the occupier, of the land."

*Explanation.* - The expression "convenient places" includes, in the case of land situated in a village, the office of the *Panchayat* within whose jurisdiction the land lies.

This State amendment was brought vide Land Acquisition (Mysore Extension and Amendment Act) Act 17 of 1961. We have already noted that the Government of Karnataka as per Annexure-'A' Notification dated 15.12.1998 (marked thus in the appeal arising from SLP

(C)No.1361 of 2021), which was issued under Clause (c)of Section 3 of the L.A. Act, appointed the Housing Commissioner of KHB to perform the functions of Deputy Commissioner under Section 4 of the L.A. Act in respect of lands to be acquired for the purpose of KHB in Bengaluru and Mysore Revenue Divisions. In such circumstances, no error or defect can be attributed against his issuing preliminary notification under Section 4(1) of the L.A. Act.

**37.** A bare perusal of L.A. Act would reveal that the acquisition proceedings begin with issuance of a notification under Section 4(1) thereof that land in any locality is needed or is likely to be needed for any public purpose. The Notification under Section 4(1) is a formal expression of the decision to start acquisition proceedings for a public purpose. The said notification takes the concrete shape and form by publication in the official Gazette of the appropriate Government, when that be mandatory procedures and when they are strictly complied with it would be without rhyme or reason to prescribe obtainment of a further approval of the Government for such compulsory

acquisition by KHB. It is also to be noted that in the cases on hand subsequently, Government had issued declaration and final Notification as prescribed under Section 6 of the L.A. Act.

**38.** As noted earlier in L. Krishnan's case a three-Judge Bench of this Court clearly found that there is nothing in Section 4(1) of the L.A. Act which insists for availability/existence of a sanctioned and published scheme for initiation of land acquisition under L.A. Act. In paragraph 9 of L. Krishnan's decision this Court held and observed thus:

"Section 4 of the Land Acquisition Act does not state expressly or by necessary intendment that before a Notification is issued/published thereunder proposing to acquire land for the purposes of a body like the Tamil Nadu Housing Board, a duly published final scheme prepared in accordance with the relevant Act should be in force. The respondents/writ petitioners, however, seek to deduce such a requirement from the provisions of the TNHB Act."

In view of the provisions under Section 4 of the L.A. Act and the decision in L. Krishnan's case as

extracted above, it cannot be said that for initiation of land acquisition proceedings under Section 4(1) of the L.A. Act proposing to acquire any particular land for the purpose of KHB a duly published final scheme prepared in accordance with the provisions of KHB Act should be in force. Despite the said position obtained from Section 4 of the L.A. Act and the decision in L. Krishnan's case the attempt herein is to deduce such a mandate from the provisions under the KHB Act. The scanning of Section 33(2) of the KHB Act, as above would clearly show that it contains no condition, either expressly or by necessary implication, that before a Notification under Section 4(1) of the L.A. Act is issued proposing to acquire land or interest therein, for the purpose of KHB, a sanctioned and published housing scheme/land development scheme/labour housing scheme should be in force. In the said circumstances, the said contention cannot be sustained.

**39.** Unlike the provisions under TNHB Act, which mandate for acquisition of land for the purpose of TNHB Act and Tamil Nadu Housing Board only in accordance with the provisions of L.A. Act, Section 33(2) of the KHB Act

empowers the KHB to take steps for compulsory acquisition of any land or any interest therein, required for the execution of a housing scheme in the manner provided in the L.A. Act, as modified by KHB Act.

**40.** Therefore, the next question is whether L.A. Act stands modified in any manner by the KHB Act in respect any particular aspect or procedure. A bare perusal of sub-Section (2) of Section 33 itself would answer this question. Its latter limb contains 'a deeming provision'. Certainly, that is attracted only on establishing the foundational fact that the acquisition of land or interest therein is for the purposes of KHB Act. The said provision, extracted hereinbefore, would go to show that upon establishing the same the acquisition of land concerned or interest therein, as the case may be, shall have to be deemed as an acquisition for the purpose within the meaning of L.A. Act, viz., Section 3(f) of the L.A. Act that defines "public purpose". Therefore, in terms of the same L.A. Act stands modified by KHB Act to the extent mentioned above. Hence, it would be suffice if the

Notification specifies that the acquisition is for the purpose of KHB. It is a fact that in the TNHB Act no provision *pari materia* to Section 33(2) of the KHB Act enabling the Housing Board to take steps for compulsory acquisition for the purposes of the Act/the Board as also a deeming provision relating 'public purpose', as mentioned hereinbefore, is available.

**41.** Another allied question arises for consideration is whether non-particularisation with sufficient specificity of the land to be acquired can be a reason for annulling acquisition proceedings initiated under the L.A. Act as modified by KHB Act for the purpose of KHB Act. The contention raised is to the effect that owing to such vagueness in the Notification the holders/land owners would be deprived of the opportunity to file an effective objection under Section 5A of the L.A. Act. In that context, it is worthy to refer to the Constitution Bench decision of this Court in *Aflatoon's case* (supra). That was a case where the question was whether before publishing the Notification under Section 4 of the L.A. Act the Government had not declared any area in Delhi as a

development area under Section 12(1) of the Delhi Development Act nor was there a Master Plan drawn up in accordance with Section 7 of the Act. On that basis Notification under Section 4 was attacked. The contention that no development of land could be undertaken or carried out in such circumstances in terms of Section 12(3) of the said Act was negatived by the Constitution Bench. In the said case, it was held that the wording of Section 5A of the L.A. Act would make it clear that all that is necessary to be specified in a Notification under Section 4 is that the land is needed for a public purpose. It is true that the specific purpose is also to be mentioned. In L. Krishnan's case the decision in Aflatoon was referred to. It was held that whether a particular Notification is vague or not is a question of fact to be decided in the facts and circumstances of each case. In the cases falling under the provisions of KHB Act mentioning of the fact that the acquisition is required for the purposes of the KHB would make it one for public purpose within the meaning of L.A. Act and a further mentioning of the locality in which acquisition would be effected,

would save it from the attack based on Section 5A. At the stage of Section 4 Notification to enable persons interested to file objection, especially in the light of the provisions under Section 33(2) carrying the aforesaid deeming provision, a mention on the aforesaid lines would be sufficient. As already noted that in the appeal arising from SLP(C)No.1361/2021, the deceased mother of Respondent Nos.2 and 3 had filed objections under Section 5A. It is also relevant to note that the High Court had also noted the fact that in some of the cases acquisition based on the selfsame Notification were effected and awards were also passed.

**42.** We have already noted the provisions under Section 24 of the KHB Act and held that Section 24(1) speaks of the question as to when KHB could proceed to execute the housing schemes, land development schemes and labour housing schemes included in the programme. That apart, we have also held that Section 24(2) pertains to executability of such a scheme not included in the programme and in respect of such a scheme falling within

the sweep of Section 24(2) the mandate thereunder is that it shall not be executed unless the same has been sanctioned by the State Government. In such circumstances, a conjoint reading of Section 33(2) and Section 24(2), of the KHB Act would make it clear that prior approval or sanction of any scheme is not required for compulsory acquisition invoking the power under Section 33(2). This is because in terms of the State amendment of Section 4(1), notification marking initiation of acquisition proceedings under L.A. Act, is issued by the appropriate Government or by the Deputy Commissioner and thereafter, the said formal expression of the decision to start acquisition proceedings gets into concrete shape and form by publication in the Official Gazette of Government of Karnataka. In such circumstances, if it is for the purposes of KHB, in other words, for implementation of a scheme of the KHB, what is statutorily required is to wait for its execution till the same is sanctioned by the State Government. In other words, the mere factum of non-existence of a sanctioned and published scheme prior to the initiation of acquisition proceedings, by itself,

will not make the notifications and the initiated acquisition proceedings null and void.

**43.** One another aspect also requires reference in the context of the rival contentions and situation. The scheme of the Act reveals that KHB has also a duty to undertake the schemes entrusted to it by the State Government. Section 32(1) of the KHB Act exclusively make it clear that in respect of scheme entrusted to KHB by Government, provisions under Sections 18-24 (both inclusive) shall not be applicable, except to such an extent and subject to such modifications as may be specified in general or special order made by the State Government. It is also to be noted that in respect of housing schemes, land development schemes or labour housing schemes entrusted to the Board by the Government, sometimes such entrustment takes place only after acquisition of the necessary extent of land by the State Government. All the above mentioned provisions and situations would reveal that the contention of the appellants other than the appellants

in the appeal arising from SLP(C)No.1361/2021 and Respondent Nos.2 and 3 therein that existence of a finally sanctioned scheme is a pre-condition for initiation of acquisition of any land or any interest therein is a pre-condition and its non-existence must invariably make the acquisition proceedings null and void, are unsustainable and liable to be rejected. Hence, on a careful perusal of Sections 18 to 24 (both inclusive) and Section 33(2) we have no hesitation to hold that KHB Act carry no statutory insistence that for initiation of acquisition invoking the power under Section 33(2), for the purposes of the KHB Act/KHB, framing, finalization and publication of a housing scheme or land development scheme or labour housing scheme, is a pre-condition.

**44.** For all the above reasons we answer the mooted question in the negative and to the effect that initiation of proceedings for acquisition invoking the power under Section 33(2) of the KHB Act without the housing scheme being in existence or the housing scheme not having been sanctioned under Section 24(2) thereof,

would not render such proceedings null and void. We also hold that unless sanction is obtained from the State Government for execution of any scheme therein, in terms of Section 24(2) of KHB Act, the actual act to complete the process, viz., execution shall not be effected thereon.

**45.** In view of the answers to the moot question and the other allied issues we pass the following orders:

**(i)** In the appeal arising from SLP(C) No.1361/2021 no question other than the moot question (decided as per this judgment) was considered. In view of our clear conclusions and findings the judgment and order dated 01.12.2020 in Writ Appeal No.5712/2012, where the law on the question was exposted to the contrary, is liable to be set aside. Accordingly, it is set aside. Nothing further survives for consideration in this appeal. Consequently, Writ Petition No.25184/2011 from which Writ Appeal No.5712/2012 arose, stands dismissed.

**(ii)** In Civil Appeal Nos.7011-13/2013, 9002-9003/2013 and 7017-19/2013 the position is that as per

the common judgment and orders respectively in Writ Petition Nos.4625/2004, 18596/2006, 11568/2008 and 47616/2004 dated 26.4.2013 and also the judgment in Writ Appeal Nos.1244-45/2009, the Division Bench virtually decided that for initiation of acquisition proceedings for the purposes of KHB, existence of a sanctioned and published scheme is not a pre-condition. Consequently, the Division Bench confirmed the decision of the learned Single Judge on that question and thereupon, the Writ Petitions concerned/Writ Appeals were disposed of with request to the learned Single Judge to decide whether Sections 18-23 of the KHB Act were complied with or not. Obviously, those Writ Petitions are now pending. The issue is whether in view of the facts involved in those cases, the question of scrupulous adherence of Sections 18-23 of the KHB Act survives or needs to be followed, requires consideration depending upon the nature of acquisition and other relevant facts. Hence, Civil Appeals shall be listed before appropriate Bench for consideration on their own merits, subject to this judgment.

....., J.  
(A.M. KHANWILKAR)

....., J.  
(DINESH MAHESHWARI)

....., J.  
(C.T. RAVIKUMAR)

NEW DELHI;  
28 July, 2022