

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 17TH DAY OF AUGUST, 2021
BEFORE
THE HON'BLE MR.JUSTICE G.NARENDAR
WRIT PETITION NO.38312/2017 (KLR-RES)

BETWEEN

M/S CHAMUNDESWARI BUILD TECH
PRIVATE LIMITED,
NO.2581, 9TH MAIN,
BANASHANKARI 2ND STAGE,
BANGALORE-560 070
REPRESENTED BY ITS MANAGING DIRECTOR
MR.KIRAN KUMAR MEDA.

... PETITIONER

(BY SRI: K.G. RAGHAVAN, SR. ADVOCATE FOR
SRI: NISCHAL DEV B.R., ADVOCATE)

AND

1. GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA,
BENGALURU-560 001
REPRESENTED BY ITS CHIEF SECRETARY.
2. THE CHAIRMAN OF CABINET SUB COMMITTEE
LAND POLICY,
GOVERNMENT OF KARNATAKA,
AMBEDKAR VEEDHI,
BENGALURU-560 001.
3. PRINCIPAL SECRETARY,
REVENUE DEPARTMENT,
GOVERNMENT OF KARNATAKA
MULTI STORIED BUILDING, 5TH FLOOR,

BENGALURU-560 001.
REPRESENTED BY ITS
PRINCIPAL REVENUE SECRETARY.

4. THE DEPUTY COMMISSIONER
RAMANAGARAM DISTRICT,
RAMANAGARAM-571511
5. THE ASSISTANT COMMISSIONER
RAMANAGARAM TALUK,
RAMANAGARAM-571511
6. THE TAHSILDAR
RAMANAGARAM TALUK,
RAMANAGARAM-571511

... RESPONDENTS

(BY SRI: PRABHULING K. NAVADGI ADVOCATE GENERAL A/W
SRI: R. SRINIVASAGOWDA, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE GOVERNMENT ORDER DTD.3.8.2017 VIDE ANNEX-A ISSUED BY R-3 ALONG WITH IMPUGNED PROCEEDINGS OF THE CABINET SUB-COMMITTEE HELD ON 30.5.2016 AND QUASH ENDORSEMENT DTD.7.8.2017 VIDE ANNEX-B ISSUED BY THE R-4 WHICH WAS RECEIVED BY THE PETITIONER ON 8.8.2017 AND DIRECT THE RESPONDENTS TO CONFIRM THE ACCEPTED AMOUNT OF RS.12.35 CRORES FROM THE PETITIONER AS THE MARKET VALUE FOR 77 ACRES 19 GUNTAS OF LAND IN PURSUANCE TO THE ORDER OF THE HON'BLE SUPREME COURT DTD.16.1.2014 VIDE ANNEX-W PASSED IN CIVIL APPEAL NO.5181 OF 2003 AS PER THE DECISION OF THE EARLIER SUB-COMMITTEE DTD.21.1.2015, ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR 'PRONOUNCEMENT OF ORDERS', THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Heard Sri. K. G. Raghavan, learned Senior counsel along with Sri. Nischal Dev B. R, learned counsel appearing on behalf of the petitioner and learned Advocate General Sri. Prabhuling K. Navadgi, along with Sri. R. Srinivasa Gowda, learned Additional Government Advocate for the respondents.

2. The petitioner is before this Court praying for quashing of the proceedings of the State Government dated 03.08.2017 vide Annexure-A, whereby the Government has communicated the decision of the Cabinet Sub-Committee, which has assessed the market value of 77 acres 19 guntas of land, at the rate of Rs.982,07,77,480/- and also to quash the Endorsement bearing No.RDCO/LND/CR/109-2009-10 dated 07.08.2017, vide Annexure-B to the writ petition, whereby the Deputy Commissioner, Ramanagara, has called upon the

petitioner to deposit the amount, less the amount already deposited and further notified the petitioner to pay the same within one month failing which, the petitioner's occupation would be concluded as unauthorised occupation and action will be initiated to take possession of the lands. The petitioner has further prayed for writ of mandamus and thereby direct the respondents to accept the amount of Rs.12.35 Crores as market value for 77 acres 19 guntas of land in pursuance to the order of the Hon'ble Supreme Court dated 16.01.2014 vide Annexure-W passed in Civil Appeal No.5181/2003 and as per the decision of the Valuation Sub-Committee dated 21.01.2015.

3. The case of the petitioner is that the petitioner-Company was incorporated on 26.09.1994 with the object of developing a world-class golf course under the banner of 'Eagleton Golf Resort'. In pursuance of the objective, an extent of nearly 400 acres of land was identified and purchased by the petitioner in Ramanagara District. That in 1995, the

project was registered with the State Level Single Window Agency as a 'Tourism Industry'. That amidst the parcels of lands purchased by the petitioner, some extent of government land came to be enclosed i.e., pieces of government land came to be encompassed by the lands purchased by the petitioner. That in the interregnum, Karnataka Industrial Area Development Board Authority (KIADB) notified Bidadi Hobli (lying on the outskirts of the Bengaluru City) as an industrial area and large and medium scale industries had been set-up.

3.1. That KIADB acquired and allotted 16 acres 26 guntas of land on 04.04.1998 to the petitioner. That in the interregnum, the petitioner was served with an Eviction Notice issued by the jurisdictional Tahsildar. That apart, the jurisdictional Tahsildar by letter dated 03.10.1998, called upon the petitioner to vacate and hand-over possession of 'B' kharab lands i.e., lands reserved for public purpose like cart-track, halla, nalas, water ways, roads, community lands etc.

measuring 14 acres 18 guntas and with this started the multiple rounds of legal battles.

4. Initially, the petitioner approached the Karnataka Appellate Tribunal by way of revision in R.P.No.126/1998. The Appellate Tribunal was initially pleased to grant an interim order. But later on, by order dated 10.03.2000, the Appellate Tribunal was pleased to dismiss the revision petition.

4.1 Aggrieved, the petitioner approached this Court in W.P.No.29705/2000 praying for quashment of the Eviction Notices emanating from the office of the jurisdictional Tahsildar. That apart, the petitioner also preferred another Writ Petition No.2493/2001. This Court was pleased to reject the first Writ Petition by order dated 02.04.2002. While so rejecting, in paragraph No.9 the Co-ordinate Bench has observed that the petitioner had altered the nature of the lands reserved for public purpose and in paragraph No.10, taking note of the illegalities also directed action against

certain government officials who, the Court was of the opinion had facilitated the encroachment by the petitioner.

4.2 The second writ petition also came to be rejected by an order of even date. The Court while so dismissing the writ petition has in paragraph No.8 held that the petitioner is an unlawful occupant of the government lands and acquisition of large extents of gomal lands were facilitated under the cover of agreements, with unauthorized occupants and some of whom had merely made applications and in respect of some of whom, grant orders were made. That the agreements for sale had been made even without completing the 15 years prohibitory period. In paragraph No.10, this Court observed that the petitioner is in unauthorized occupation over an area of 208 acres and 39 guntas and deemed it a fit case requiring invocation of provision Section 94 (3) of the KLR Act and for recovery of damages for the unauthorized use and occupation of lands. It also rendered a finding that the petitioner was putting the lands in its unauthorized occupation to commercial

use and was earning revenue. Further, in paragraph No.12, the Court also made scathing remarks against the conduct of the KIADB and even went to the extent of observing that it is a clear case of legal malafides and hence, directed the State Government to initiate disciplinary actions.

4.3 The petitioner aggrieved by the order in W.P.No.29705/2000 dated 02.04.2002 preferred W.A.No.2861/2002. The Division Bench, taking note of the findings of the learned Single Judge that there can be no grant of lands reserved for public purposes, was pleased to uphold the same and reject the appeal by order dated 22.08.2002.

4.4 Aggrieved by the second order, the petitioner preferred another Writ Appeal in W.A.No.2887/2002, which also came to be rejected. Aggrieved, the petitioner preferred Civil Appeal No.5181/2003 before the Apex Court. In Civil Appeal No.5181/2003, the Apex Court passed the following interim order:-

'Once the areas are identified, the State Government may consider whether this is a fit case for fixing the present actual market value (and not upset value) of the lands which belong to Government/KIADB and recover the same from the appellant. It can also decide whether KIADB should proceed with the acquisition or take steps for negotiations regarding 64 A 7 G or such other extent, which is not government land. To enable the Government and KIADB to take appropriate decisions in the matter, we adjourn the matter by eight weeks.

Nothing stated above shall be construed as accepting or recognizing any right/contention by either the appellant or the respondents.'

4.5 The above order came to be passed on 16.04.2009. Pursuant to the interim directions dated 16.04.2009, the State Government carried out various exercises to identify the excess lands, the lands that were to be recovered and the structures to be demolished etc.

4.6 The result of the exercise was placed before the Apex Court as annexures accompanying the affidavit that was

filed by the Principal Secretary to Government, Revenue Department, GoK. In the affidavit dated 04.09.2010, it was stated that the area encroached measures 132 acres 26 guntas. It was also noticed that the petitioner has put-up various facilities for golf courts, hotel, restaurant, complex etc. That there is no compliance with the provisions of Section 95 of the Karnataka Land Revenue Act, 1964, Rule 21 (2) of the Karnataka Land Revenue Rules, 1966 and Sections 79A and 79B of the Karnataka Land Reforms Act, 1961. That by Circular dated 16.09.1994 it was ordered that in the event of holders seeking conversion of lands, the value of 'A' kharab lands attached to the lands of the Hiduvalidar be collected along with conversion fine. That proceedings would be initiated against the grantees for forfeiture of lands, who have sold in contravention of the grant condition. That decision has been taken to direct the Deputy Commissioner to take action in terms of Section 68 of the Karnataka Land Revenue Act and further levy fine for the entire area unauthorizedly occupied

and as a special case, grant 55 acres and 13 guntas under Rule 97 (4) of Karnataka Land Revenue Rules, 1966. Further, to initiate action against persons, who got lands converted for housing purposes and later sold the same to the petitioner in contravention of the provisions of Sections 95 and 96 of Karnataka Land Revenue Act, 1964 and to recover balance portion of the Government lands and to demolish certain structures.

4.7 The matter came up and after hearing the parties, the Apex Court issued certain interim directions in paragraph No.5 by order dated 03.03.2011 and was pleased to adjourn the hearing by three months. Pursuant to the directions dated 03.03.2011, meeting came to be held on 04/05.07.2011 and 07.07.2011 and approval came to be sought on 07.07.2011 by the Deputy Commissioner to grant 77 acres and 19 guntas of Government land for a total consideration of Rs.7,49,75,000/-. That apart, the Deputy Commissioner also recommended that

50% concession be given, as establishment of golf courses was one of the policies of the Tourism Department.

4.8 The matter again got listed 06.09.2011 before the Apex Court and on that date, the petitioner made a plea expressing his willingness to surrender 28.33 acres of land in one contiguous lot and also expressed his willingness to pay 50% of the value fixed by the Deputy Commissioner. The counsel for the State requested that the petitioner be directed to make a representation to the Government and hearing was adjourned by six weeks. Pursuant to the same, a representation was made by the petitioner to the Revenue Department on 08.09.2011. Matter was again listed on 10.01.2012 and matter was adjourned by a further period of six weeks.

4.9 Thereafter, a Cabinet Note came to be prepared and opinion of the Revenue Department and the Finance Department was also placed and it was opined that action be

initiated for recovery of the encroached land with the permission of the Hon'ble Court and an affidavit of the then Chief Secretary, dated 25.02.2012, came to be filed before the Hon'ble Apex Court in the pending Civil Appeal.

4.10 That thereafter, the Deputy Commissioner by intimation dated 14.03.2012 called upon the petitioner to deposit a sum of Rs.82,69,52,405/-. The same was resisted by the petitioner by reply dated 17.03.2012.

4.11 Another Affidavit came to be filed before the Hon'ble Apex Court by the Principal Secretary on 31.03.2012, wherein it has been clarified that the proposal of the Deputy Commissioner dated 07.07.2011 is only a proposal and the same has not been approved by the Government of Karnataka. Thereafter, Civil Appeal No. 5181/2003 came to be disposed of by the following order dated 16.01.2014.

"O R D E R

(1) Heard Mr. Bharukha and Mr. R.S. Suri learned senior counsel appearing for the appellant and Mr.

Basava Prabhu S. Patil and Ms. Kiran Suri learned senior counsel for the respondents.

(2) Application for substitution is allowed.

(3) After the matter was heard for sometime, we are of the view that in pursuance of the order passed by this Court on 6th September, 2011, the matter can be closed by passing the following order which we hereby pass: (Emphasis supplied)

(i) The appellant will hand over the excess land (28 acres and 33 gunthas) as recorded in the order of this Court dated 6th September, 2011;

(ii) As stated by Mr. Patil learned senior counsel appearing for the State of Karnataka, a Sub-Committee of the Cabinet of the Government of Karnataka will thereafter decide the market rate for the remaining land (77 acres and 19 gunthas) in accordance with law. This will be done after considering the report of the Deputy Commissioner, report of the Secretary as well as the statements filed or to be filed by the appellant. The Sub-Committee will afford a personal hearing to the appellant. The appellant shall pay to the Government of Karnataka the

amount fixed by the Cabinet Sub-Committee within four months from the communication of the decision of the Cabinet Sub-Committee. In the event, the appellant fails to make payment, it will be open to the Government of Karnataka to resume the land.

(4) The appeals stand disposed of with this order."

5. On a reading of the order of the Hon'ble Apex Court finally disposing off the appeal, what could be deduced is that the appeal came to be disposed of by directing the petitioner herein to hand-over excess land measuring 28 acres 33 guntas. Nextly, the submission of the counsel for the State was recorded that the Sub-Committee of the Cabinet, will thereafter decide the market price for the remaining 77 acres 19 guntas in accordance with law and that the said fixation would be done after considering the Report of the Deputy Commissioner, the Report of the Secretary and the Statements filed or to be filed by the appellant and after affording a personal hearing to the appellant (petitioner

herein). Thirdly, the appellant (petitioner herein) shall pay the amount within four months from the date of communication of the decision and fourthly, in the event, the appellant (petitioner herein) fails to make the payment, it is open to the Government of Karnataka to resume the land and the appeal came to be disposed of in the above terms.

6. Pursuant to the final order dated 16.01.2014, the petitioner addressed a representation dated 30.01.2014 enclosing a copy of the sketch of the land proposed to be handed-over and requested for expeditious disposal by fixing the value in terms of the Report of the Deputy Commissioner. Along with the Representation, a written statement also came to be enclosed. A perusal of the written statement would reveal only an insistence by the petitioner to fix the value as per the Report of the Deputy Commissioner but it has nowhere whispered as to what the market value was despite the Hon'ble Apex Court speaking of "market value".

6.1 Thereafter, a Report came to be obtained by the jurisdictional Deputy Commissioner dated 12.05.2014. The Report is accompanied by three annexures. Under Annexure – A, the value is fixed as per the guideline value fixed by the State Registration and Stamp Department for the year 2013-14 and concluded the price at Rs.17,79,08,183/-. Under Annexure – B, the price of the lands as per prevailing market value was concluded as Rs.93,83,74,433/-, and that if the market value is calculated as per the guideline value fixed by the Government, the same works out Rs.526,47,05,160/-.

6.2 Thereafter, one more Report came to be submitted by the jurisdictional Deputy Commissioner on 11.06.2014 and in the said Report, the Deputy Commissioner has taken note of the average of the highest sale transaction (by the petitioner himself) executed in the vicinity of the lands in question and calculated the market value at Rs.980,04,51,144/-. Agitated by the Report, the petitioner submitted objections to the Chairman of the Sub-Committee

on 18.06.2014. On perusal of the same, it is seen the objection hovers around the adoption of the sale deed value and reliance is placed on ruling of the Hon'ble Apex Court in the land acquisition arena, more particularly, ruling rendered in the cases of ***Naval Singh & Others Vs. Union of India & Others***, reported in ***1995 SUPP (3) SCC 315*** and ***Tarlochan Singh and Another Vs. State of Punjab and Others*** reported in ***(1995) 2 SCC 424***. That apart, several other objections are raised to the manner in which Report is prepared and a request is made to accept the value fixed by the erstwhile Deputy Commissioner on 07.07.2011 i.e., at the rate of Rs.7,49,75,000/- as determined by the then Deputy Commissioner one Sri. Chakravarthi Mohan (incidentally the petitioner has not sought for deduction of 50% as recommended).

6.3 Yet again, it can be observed that the petitioner has not stated as to what is the market value nor has it denied the price collected by it under the Sale Deeds executed by it.

7. Thereafter, the handing over of the 28 acres and 33 guntas of land came to be completed in October-2015.

8. Thereafter, the petitioner preferred a Contempt Petition before the Apex Court complaining of deliberate non-implementation of the order dated 16.01.2014. The said Contempt Petition came to be answered by the then jurisdictional Deputy Commissioner stating that he has retired from service and his name be deleted. The first respondent is the Chief Secretary and interestingly the Chairman of the Cabinet Sub-Committee came to be arrayed as the third respondent by name. The Chairman was none other than the then Revenue Minister and it was submitted that the Cabinet Sub-Committee had taken a decision and communicated the same. The said Affidavit of the then Chairman is dated 30.07.2016.

8.1 Thereafter, the first respondent i.e., Chief Secretary has endeavored to file his affidavit to file on 25.08.2016.

Under the Affidavit, it is stated that the matter of fixation of market value of the lands was referred to the existing Cabinet Sub-Committee comprising of Hon'ble Minister for Revenue as Chairman, Minister for Large and Medium Industries and Infrastructure Development, Minister for Law, Parliamentary Affairs and Minor Irrigation, Minister for Transport, Minister for Higher Education and Minister for Urban Development. That in all, five Reports of the Deputy Commissioner were forwarded to Government i.e., Cabinet Sub-Committee, which met on seven occasions and the petitioner was afforded an opportunity on 21.01.2015 and that the petitioner has represented vide his letters dated 24.01.2014 and 18.06.2014 expressing willingness to pay 50% of the market rate indicated in the first Report of the Deputy Commissioner. That though the Cabinet Sub-Committee met on 21.01.2015, the file note was written and signed by the Chairman only and as the Sub-Committee was yet to take a final decision, the matter was required to be placed before the Sub-Committee

and accordingly placed before it on 07.08.2015 in which meeting, the Sub-Committee resolved to obtain the opinion of the Finance Department in view of the huge financial implications involved.

8.2 Later, the Finance Department has disagreed with the earlier Report and opined that the market value be fixed at Rs.980 crores.

8.3 That thereafter, another meeting was convened on 03.12.2015 and the file was forwarded by the Revenue Minister to the Minister for Law and Parliamentary Affairs. That the Minister for Law refused concurrence and recommended that the file be placed before the Sub-Committee by his note dated 05.12.2015.

8.4 Consequently, the meeting of the Sub-Committee was held on 25.01.2016 and it was resolved that opinion of the Law Department be obtained pursuant to which it reiterated its earlier opinion dated 12.09.2014.

8.5 That on receipt of the opinion of Law Department, the same was placed before the then Hon'ble Minister for Revenue on 30.05.2016 and the Hon'ble Minister for Revenue, who is the Chairman made a noting in the file that 77.19 acres be handed over and a sum of Rs.12,35,85,000/- be received as market value. That the said file was received from the office of the Hon'ble Minister for Revenue on 22.06.2016. But in the meanwhile, there was a reshuffle in Ministry on 19.06.2016, whereby the Revenue Portfolio was assigned to a new Minister.

8.6 That the Hon'ble Chief Minister called for the file and after perusing the same, has noted that the stand adopted by the then Hon'ble Revenue Minister and the Chairman of the Committee was not correct and directed that the same be placed before the Sub-Committee and the Cabinet.

8.7 Thereafter, the file was received in the Revenue Department on 25.06.2016. That the Cabinet Sub-Committee

held a meeting on 10.08.2016 and the Sub-Committee called for certain information from the Deputy Commissioner within a week's time.

8.8 That the Sub-Committee met again on 24.08.2016 and as the proposal involved more than Rs.50 lakhs, approval of the Cabinet was mandatory as per the Karnataka Government (Transaction of Business) Rules, 1977. That earlier the matter was placed before the Cabinet without mentioning the financial implication and hence, in principle clearance was granted. That the matter would be required to be placed again before the Cabinet for approval. That the Cabinet Sub-Committee has taken a final decision in the meeting held on 24.08.2016 regarding the market price to be fixed and that the decision is being placed before the Cabinet as mandated under the Rules and on those grounds, sought for closure of the contempt proceedings.

8.9 The 2nd respondent – Principal Secretary, Revenue Department has also filed his Affidavit, independently, reiterating the said facts.

9. Thereafter, by proceedings dated 24.09.2016, the petitioner was intimated of the fixation of the market price. The same was resisted by the petitioner by way of a writ petition canvassed on the short ground that the same was passed without affording an opportunity of personal hearing, as directed by the Hon'ble Apex Court under the Order dated 16.01.2014 and prayed for quashing of the proceedings of the Sub-Committee dated 24.08.2016.

9.1 Upon which, a memo came to be filed by the State praying that the impugned proceedings of the Sub-Committee be treated as a Show-Cause Notice and that the Sub-Committee will afford a personal hearing to the appellant. Taking note of the same, the Co-ordinate Bench disposed of

the petition by directing the petitioner to appear before the Chief Secretary/Cabinet Sub-Committee.

10. Pursuant to the same, the petitioner submitted one more objections to the decision of the Sub-Committee Report. A perusal of the statement of objections (apparently submitted prior to the personal hearing) would reveal that the petitioner has traversed the history and apart from reiterating its earlier objections and few additional objections, has proceeded to request the Government to fix the market value at the price determined by the erstwhile Chairman of the Sub-Committee i.e., at Rs.12 crores and odd, who admittedly was divested of the Portfolio thereafter. That apart, an attempt is made to distinguish the transaction as a Grant and not as a Sale and hence, it is submitted that reliance on the sale deed value is erroneous. The only saving grace is the petitioner's omission or rather not insisting that the value of the lands be fixed as per the first Deputy Commissioner's Report dated 07.07.2011 at Rs.3,74,87,500/-.

11. The learned senior counsel Sri K.G. Raghavan would submit that in the light of the order dated 16.04.2009 and if read with order dated 03.03.2011, the market rate has to be fixed as per the rates prevailing on 03.03.2011.

11.1 He would take the Court through the order dated 16.04.2009 and lay emphasis on the phrase "present actual market value" contained in the order and would submit that the same has been reiterated under the interim order dated 03.03.2011. He would take the Court through paragraph 5 of the order dated 03.03.2011. On perusal of paragraph 5, it is seen that the Hon'ble Apex Court has noted that there being a broad agreement between the parties and on account of the same, the Hon'ble Apex Court deemed it fit to issue the interim directions in sub-paragraphs (a) to (c). In fact, the words used in sub-paragraph (c) is "actual market value to be determined by the Deputy Commissioner". Laying emphasis on the same, the learned senior counsel would elaborate that the first report following the order dated 03.03.2011 is the

report of the Deputy Commissioner dated 07.07.2011 and hence, he would submit that it is this rate that has to be construed as the actual market value in terms of the interim direction as noted supra and there could not have been any further determination or re-determination of the value of the lands. It would be imperative to answer this contention here itself.

11.2 A perusal of the report produced as Annexure-L1 would reveal that the Deputy Commissioner has adopted the guideline value notified by the department of Stamps and Registration for the year 2010-11. In the considered opinion of this Court, the same does not reflect either the "actual market value or the present market price" and it is the admitted position that the guideline value is fixed to ensure that there is no escapement of stamp duty on account of collusive under valuation. In other words, the guideline value is only reflective of the minimum sale consideration that is foreseen in the locality and it can, by no stretch of

imagination, be presumed to reflect the true market price or actual market value. To top it, the Deputy Commissioner has further compounded the issue by recommending for a discount a 50% which is beyond the parameters set by the Hon'ble Apex Court itself. This adventurism on the part of the Deputy Commissioner contrary even to the Hon'ble Apex Court's interim direction is suffice to hold that the said report is biased and is a case of legal *misfeasance*.

11.3 It is also relevant to note that though much emphasis is laid on the said report/recommendation dated 07.07.2011, the material on record would reveal that even the petitioner has not accepted the same and in fact, has deposited a sum of Rs.12,35,80,000/-. Hence, the contentions advanced on behalf of the petitioner, with the said report as the foundation merits rejection.

12. Nextly, the learned senior counsel would take the Court through the second report by the jurisdictional Deputy

Commissioner dated 14.03.2012 (Annexure-S) wherein, the Deputy Commissioner by his report dated 14.03.2012 re-determined the market value at Rs.82,69,52,405/-. He would contend that the said report is baseless as no material reflecting market value or guideline value has been relied upon by the officials namely the Deputy Tahasildar and Revenue Inspector or the Deputy Commissioner. That the report is a result of the whimsical report of the authorities and is not in consonance with the directions of the Hon'ble Apex Court and he would contend that the said report has to go, as there is no reference to any material reflecting the market value as on 03.03.2011. Thereafter, the same was followed by the 3rd and 4th reports by the jurisdictional Deputy Commissioners on 01.01.2013 wherein, the occupant of the office, once again reiterated the market value at Rs.82,69,52,405/- as fixed by his predecessor. Thereafter, the Civil Appeals came-up for consideration and after hearing the parties, the Hon'ble Apex Court was pleased to dispose off

the matter vide order dated 16.01.2014 which is already extracted supra.

13. As can be noted, the order of the Hon'ble Apex Court can be read in four parts viz; 1) the petitioner herein was required to hand-over excess parcel of land measuring 28 acres 33 guntas. 2) **Thereafter**, the Cabinet Sub-Committee was required to decide the market rate for the remaining 77 acres and 19 guntas **in accordance with law** and after considering the report of the Deputy Commissioner, a report of the Secretary and the statements are to be filed by the appellant, the petitioner herein and after affording an opportunity of personal hearing. 3) The appellant (petitioner herein) was required to pay the amount within four months, and 4) In the event, the appellant (petitioner herein) fails to make the payment, it is open to the Government of Karnataka to resume the land. Thus, the appeal came to be disposed off in the above terms. From a reading of the above, it is apparent that an onus was also cast on the petitioner.

14. The learned senior counsel would vehemently contend that after disposal of the appeal by the Hon'ble Apex Court, the Government with a malafide intention sought for and obtained a fourth report from the jurisdictional Deputy Commissioner, who this time around valued the lands at Rs.526,47,05,160/-. He would submit that there is absolutely no legal basis. He would contend that the alleged market value has been arrived at, after placing reliance on the guidance value for developed piece of plot. He would vehemently contend that the methodology adopted is unknown to law and has no legs to stand on. He would submit that the State Government not being satisfied with the same, again obtained an another valuation report dated 11.06.2014 that is known as 5th report. He would yet again point out that the methodology adopted is contrary to the law laid down by the Hon'ble Apex Court and this Court, in respect of matters in the domain of land acquisition and calculation of market value. He would submit that the basis for the Deputy Commissioner,

to calculate the market value at an astronomical sum of Rs.980,04,51,144/- (Rupees Nine Hundred Eighty Crores, Four Lakhs, Fifty One Thousand, One Hundred and Forty Four), is the sale consideration received by the petitioner in respect of a Villa plot developed and sold by it. It is not denied that the said Villa plot is part of the lands developed by the petitioner and lying adjacent to the Golf course within which the disputed lands lie.

15. The learned senior counsel would contend that it is impermissible to adopt the sale consideration paid for a developed plot measuring 1,600 sq. feet, as the basis for calculating the market value of a large expanse of land measuring over 77 acres. He would submit that this methodology is unknown to and alien to the law settled by the Hon'ble Apex Court and this Court.

15.1 He would contend and reiterate that the cut off date for fixing the market value is to be reckoned as

03.03.2011 and the reliance on the guideline value or the market value of the subsequent years is in the teeth of the Hon'ble Apex Court's order and hence, the said recommendation of the Deputy Commissioner stands vitiated as being contrary to the interim directions of the Hon'ble Apex Court.

15.2 The learned senior counsel would submit that the errors in calculation go to the very root of the matter and he would contend that it is an admitted fact that the author of the 5th report has admitted before the Hon'ble Apex Court that there are no sale exemplars between 2010-2012 and that this coupled with the opinion of the law department that the cut off date is 03.03.2011, then the reliance on sale exemplars of subsequent periods is unjustified and is contrary to the criterion settled by the Hon'ble Apex Court.

15.3 He would further contend that the valuation by the Sub-Committee is on account of extraneous influences viz; by

the Cabinet and the Chief Minister. That the Cabinet Sub-Committee was required to independently assess the market value and this has been done and also placed before the Hon'ble Apex Court in the Contempt proceedings initiated by the petitioner. He would take the Court through the affidavit of the then Chairman of the Cabinet Sub-Committee and the Hon'ble Minister for Revenue filed in the Contempt proceedings to contend that the market value of the lands has been crystallized by the Sub-Committee at rupees twelve crores and odd. He would contend that the Sub-Committee having once determined the price, no authority was vested in it to re-determine the market price as no such right of re-determination or review has been permitted under the orders of the Hon'ble Apex Court, that is, either under interim direction or under the final order. That the determination was required to be one time exercise and no review is permissible.

15.4 He would further elaborate that the Cabinet Sub-Committee had taken a decision on 21.01.2015 and the

market price was fixed at Rs.12,35,85,000/-. He would submit that the decision of the Sub-Committee was revealed by the Chairman of the Sub-Committee itself. That being the authoritative position, the subsequent actions of re-determination of price stands vitiated.

16. With regard to the objection regarding the maintainability of the petition raised by the State, the learned senior counsel would contend that the present action can be traced to the earlier writ petition preferred by it, which ended up before the Hon'ble Apex Court as Civil Appeal Nos.5181/2003 and 5182/2003.

16.1 That the determination of the market value by the Cabinet Sub-Committee is subject to judicial review and invocation of Article 226 is justifiable, more so, in the light of the fact that the decision is tainted by the extraneous influence brought upon the Committee, by the then Hon'ble Chief Minister and Cabinet of Ministers.

16.2 It is pertinent to note at this juncture itself that, no material is placed to demonstrate as to whether the Chief Minister or the Cabinet of Ministers have suggested any particular market value that is to be charged or fixed by the Cabinet Sub-Committee. Mere calling of the files by the Chief Minister and expression of displeasure or mere placing of the proceedings of the Sub-Committee before the Cabinet of Ministers can by, no stretch of imagination, be construed as an external influence. No material is placed to demonstrate as to whether the then Chief Minister or the then Cabinet of Ministers suggested any particular methodology for determining the market price or suggesting any price to be fixed as the market price. In that view, the allegation of external influence is not very appealing. It is also not in dispute that the Karnataka Government (Transaction of Business) Rules, 1977 mandate the placing of files before the Cabinet of Ministers where, the financial implications are more than Rs.50.00 lakhs.

17. The learned senior counsel would place reliance on the rulings of **(1994) 6 SCC 651 (Tata Cellular Vs. Union of India)** - to contend that where the decision of the Executive is vitiated by arbitrariness, unfairness, illegality, irrationality or Wednesbury unreasonableness etc. the Courts exercising authority under Article 226 of the Constitution of India are required to intervene to set right the wrong, more so, when the decision making process is highly unreasonable and erroneous.

2) (1995) 2 SCC 424 – Tarlochan Singh and Another Vs. State of Punjab and Another.

3) (1998) 2 SCC 385 – Land Acquisition Officer Revenue Divisional Officer, Chittor Vs. L. Kamamma (Smt) Dead by Lrs And Others.

4) (2019) 8 SCC 56 – Namdeo Shankar Govardhane (Dead) Through Legal Representatives Vs. State of Maharashtra and Others,

5) (1989) 2 SCC 505 – State of U.P. and Others Vs. Maharaja Dharmander Prasad Singh And Others.

The above rulings are relied upon in support of their contention that the adoption of the sale exemplar pertaining to a small piece of developed plot for calculating the market value of large chunk of agricultural land is impermissible.

6) (2008) 8 SCC 92 – State Bank of India And Others Vs. S.N. Goyal - this ruling is relied upon to contend that the Sub-Committee having taken a decision on 21.01.2015, it has been rendered *functus officio* and had no right to review or recall the said decision.

18. Per contra, the State has preferred a detailed statement of objections wherein, it is stated that admittedly the petitioner is an encroacher and has encroached huge extents of land and is in occupation since decades.

18.1 The interim directions passed by the Hon'ble Apex Court in the Civil Appeals on 16.04.2009 and 03.03.2011 are admitted. That the interim directions alternatively got merged with the final orders that came to be passed on 16.01.2014 and that the touchstone for determination of the rights of the parties is the order dated 16.01.2014 by which, a final closure came to be given to the pending dispute.

18.2 That the mere fact, that the petitioner has failed to honour the final order passed by the Hon'ble Apex Court is suffice to demonstrate that the petitioner has not approached this Court with clean hands and on that ground alone the writ petition is liable to be rejected.

18.3 That the scope of judicial review in cases of instant nature is very limited.

18.4 That where discretion is vested with the administrative authority under a statute, exercise of such discretion is not amenable to judicial review unless and until it

is demonstrated that the exercise of discretion is either malicious or with an oblique motive or for extraneous consideration or suffers from arbitrariness or non application of mind.

18.5 That a Co-ordinate Bench and a Division Bench have categorically held that the petitioner is a land grabber and the petitioner is trying to take undue advantage of the State's munificence and the petition by such a person ought not to be entertained.

18.6 That the petition is by a person who has no respect for the rule of law and if such petitions are entertained, it would diminish the faith of the litigants and the general public in the very institution and hence, petition requires to be dismissed in limine.

18.7 That the petitioner has been granted a fair opportunity by the Sub-Committee, in that, the petitioner has

not only been permitted to file his statements, but has also been afforded a personal hearing in the matter.

18.8 That thereafter for the reasons noted in the proceedings, the Cabinet Sub-Committee has determined the market price on the strength of the sale exemplars placed before it and after taking into consideration the report of the authorities and the objections filed by the petitioner. In the absence of the petitioner being deprived of fair opportunity, the decision making process can neither be complained about nor condemned.

18.9 He would contend that the extent of 77 acres had been illegally encroached upon and that the Apex Court has not set aside the findings holding the petitioner to be a squatter or encroacher.

18.10 That no decision was taken by the Cabinet Sub-Committee on 21.01.2015. That this fact was asserted before the Hon'ble Apex Court and the claim of the then Chairman of

the said committee was repudiated by an affidavit sworn to by a person holding the office of the Chief Secretary to the Government of Karnataka.

18.11 That market value is one as defined under Section 2(mm) of the Karnataka Stamp (Amendment) Act, 1975 and is the price which such property would have fetched in the opinion of the Deputy Commissioner or the appellate authority or the Chief Controller of Revenue Authority, if sold in the open market on the date of its instrument. (Emphasis supplied).

18.12 That the objection regarding the relevant period for adopting the market price is baseless as no such cut off date has been fixed by the Hon'ble Apex Court in any of its order much less in the final order dated 16.01.2014.

18.13 That the market value was required to be assessed only after the petitioner surrendered the excess land of 28 acres 33 guntas of land. That the surrender happened only in

2015 and hence, the alleged cut off date on 03.03.2011 is without substance.

18.14 That the petitioner having been given four months' time by the Hon'ble Apex Court to pay the market price fixed by the Government, and the petitioner having failed to pay the amount within the stipulated time it is no more than an encroacher.

18.15 That the petitioner has been utilizing the public properties and has put it for commercial use and is raking in huge profits.

18.16 That the project of the petitioner has not been approved as a tourism industry.

18.17 That the lands are lying near the outskirts of Bengaluru City and occupies a huge chunk of an area declared as an Industrial Area by the KIADB.

18.18 That the valuation by the then Deputy Commissioner on 07.07.2011 is neither binding on the State nor does it reflect the true market value. That the guidelines value is fixed only for the purpose of recovery and proper collection of stamp duty and that the market price is always and is invariably higher than the guidelines value.

19. That the encroacher is not only squatting on Government land but selling the land to third parties and the same amounts to criminal misappropriation.

20. Per contra, the learned Advocate General would contend that writ petition involving and calling upon the Court to adjudicate such disputed facts is not maintainable and is an abuse of the process of the Court. That, by the impugned order dated 03.08.2017 the Sub-Committee fixed the market price of the lands encroached and in an occupation of the petitioner at Rs.982,07,77,480/-. That the price includes the fine, conversion charges and penalty payable by an

encroacher/occupant of Government land under the relevant statute. That the impugned communication is in compliance with the order finally disposing off all the claims of the petitioner.

21. That the Hon'ble Apex Court had directed the completion of the process in a particular manner that is the petitioner was first required to hand over the possession of the excess lands and thereafter, the Cabinet Sub-Committee was required to look into the report of the Deputy Commissioner, the Secretary and as well as statements filed by the petitioner and Cabinet Sub-Committee was required to complete the proceedings after affording an opportunity of personal hearing of the petitioner. That thereafter the petitioner shall pay the amount fixed by the Government within four months from the date of communication of the decision of the Cabinet Sub-Committee. That if the petitioner fails to make the payment it is open for the Government to resume the lands.

22. He would submit that the action of the State has been in strict compliance with the final orders passed while the instant petition is in complete disobedience of the said order and on that ground alone the instant petition requires to be rejected.

23. The learned Advocate General would submit that the contention of the petitioner that the Cabinet Sub-Committee had fixed the market price on 21.01.2015 is baseless. He would take the Court through the affidavits filed before the Hon'ble Apex Court by the then Principal Secretary of the Department of Revenue and the Chief Secretary. He would submit that the instant argument was also canvassed before the Hon'ble Apex Court on the strength of the affidavit filed by the erstwhile Chairman of the Cabinet Sub-Committee in the very same proceedings. He would submit that the erstwhile Chairman of the Sub-Committee was in no manner representing the Sub-Committee and was before the Hon'ble Apex Court in his individual capacity. That the other members

of the Sub-Committee are no minions and are persons of high stature being Ministers of Cabinet rank of the Government. That it was clearly explained before the Hon'ble Apex Court that the Sub-Committee had met on 21.01.2015, but no decision was taken and the price of Rs.12,35,85,000/- was part of the note recorded by the then Revenue Minister only and who incidentally happens to be the Chairman of the Sub-Committee and that the officers of the department having noticed the same, have noted and submitted it before the Revenue Minister on 07.08.2015 in order to enable the convening of the next meeting date. That the matter was placed before the Sub-Committee in its meeting on 27.08.2015 and in the said meeting, the Sub-Committee decided to obtain the opinion of the Finance Department in view of the large financial implication. It is further elaborated that the Finance Department by its opinion dated 28.10.2015 conveyed its disagreement with the views of the Law Department and further opined that the matter has to be

placed before the cabinet as the financial implications was more than Rs.50.00 lakhs. That the file was again submitted before the Minister for Revenue on 03.12.2015 for convening the next meeting of the Sub-Committee. But the Revenue Minister sent the file directly to the Minister for Law & Parliamentary Affairs, who is one of the members of the Cabinet Sub-Committee and the Minister for Revenue indicated that the land could be granted to the petitioner on payment of Rs.12,35,85,000/- and reference was invited to the proceedings dated 21.01.2015. That the Minister for Law & Parliamentary Affairs has recorded in the file on 05.12.2015 that the matter has to be placed before the Sub-Committee and the file was returned to the Minister for Revenue on 13.01.2016. Elaborating further, the learned Advocate General would submit, that the Cabinet Sub-Committee in its meeting held on 25.1.2016 resolved that the views of the Law Department be once again obtained and accordingly the file was forwarded and the law department has reiterated its

earlier opinion dated 12.09.2015. That the file was returned to the Minister for Revenue on 30.05.2015. But this time around the Minister for Revenue without calling for a meeting of the Sub-Committee made the file noting which virtually reiterates the note dated 21.01.2015.

24. The learned Advocate General would vehemently contend that the noting in the file that was received from the office of the Minister for Revenue on 22.06.2016 is a mere note of the Minister for Revenue in his individual capacity and as a Member and Chairman of the Sub-Committee and it can, by no stretch of imagination be construed as the decision of the cabinet Sub-Committee itself. Elaborating further he would submit that the file noting was noticed when the file was received on 22.06.2016 only and that it is relevant to note that the then Revenue Minister had been divested of the revenue portfolio on 19.06.2016 on account of a cabinet reshuffle and the Revenue Department portfolio was assigned to a new minister. He would contend that the note is of no

relevance as the Supreme Court had mandated that the price be fixed by the Cabinet Sub-Committee and no special or extraordinary power was delegated by the Hon'ble Apex Court to the Chairman of the Sub-Committee, who is none other than the Minister for Revenue.

25. The learned AG elaborating further would submit that neither the note nor the alleged decision of the chairman was ever communicated to the petitioner. There being no communication of the note, the reliance placed on the same is wholly misplaced. He would contend that the insistence of the petitioner on the cut off date as 3.3.2011 is misplaced and that the interim directions came to be subsumed by the final orders of the Hon'ble Apex Court dated 16.01.2014 wherein, the Hon'ble Apex Court has not only directed the fixation of the market value but also the manner and method in which the parties were required to act.

26. The learned Advocate General elaborating further would submit that the report of the Deputy Commissioner was after the handing over of the excess land by the petitioner and in compliance with the final orders dated 16.01.2014. That the use of the word "thereafter" is not without significance.

27. He would contend that the exercise of the determination of the market value has to be preceded by the handing over the possession and that the exercise was commenced after the possession of the excess land was handed over. That the Deputy Commissioner looked into the sale exemplars and he would submit that it is pertinent to note that the sale exemplars are none other than the sale deeds executed by the petitioner itself while disposing off plots developed by it in the lands lying in the vicinity of the encroached lands.

28. He would contend that the petitioner cannot approbate and reprobate. He would submit that the sale

exemplars represent the price which a willing purchaser is ready to pay. He would contend that it is settled law that the market price is nothing but a price which a purchaser is willing to pay and a price which a seller is willing to receive. Elaborating further he would submit that the market price is the one which is fixed by the petitioner himself and is a price which the purchaser has willingly paid. The learned Advocate General would also point out that nowhere has the petitioner pointed out as to what is the market price the petitioner is willing to pay. Accordingly, he would pray for dismissal of the writ petition.

29. This Court having heard the learned senior counsel on behalf of the petitioner and the learned Advocate General on behalf of the respondent-State and having perused the material on record, the point that arises for consideration is;

"Whether the petitioner is entitled for the relief sought for in the writ petition?"

30. The petitioner has prayed for the following reliefs:-

- “1. Issue a writ of certiorari and/or any appropriate writ(s) of like nature quashing the Government Order No.RD399 LGB 2011 Bengaluru dated 03.08.2017 (**ANNEXURE A**) issued by Respondent No.3 along with impugned proceedings of the Cabinet Sub-Committee held on 30.05.2016;
2. Issue a writ of certiorari and/or any appropriate writ(s) of like nature quashing endorsement No.RDCO/LND/CR/109-2009-10 dated 07.08.2017 (**ANNEXURE B**) issued by the Respondent No.4 which was received by the Petitioner on 08.08.2017;
3. Issue a writ of certiorari and/or any appropriate writ(s) of like nature directing the Respondents to confirm the accepted amount of Rs.12.35 crores from the Petitioner as the market value for 77 Acres 19 Guntas of land in pursuance to the order of the Hon'ble Supreme Court dated 16.01.2014 (Annexure W) passed in Civil Appeal No.5181 of 2003 as per the decision of the earlier Sub-Committee dated 21.01.2015;
4. Award costs of this proceedings, in the interest of justice and equity; and,
5. Pass such other/further order(s) as may be necessary, in the interests of justice.”

31. From a reading of the above, in the first prayer, the petitioner has sought for quashing of the proceedings issued by the 3rd respondent pursuant to the recommendation of the Cabinet Sub-Committee determining the market value of the encroached lands measuring 77 Acres, 19 Guntas of various villages in Bidadi Hobli.

31.1 By the second prayer, the petitioner is seeking for quashing of the endorsement issued by the 4th respondent the jurisdictional Deputy Commissioner, calling upon the petitioner to deposit the amount demanded under Annexure-A and further notifying the petitioner that in the event of default by the petitioner to deposit the said sums within the time stipulated, the authority would be constrained to initiate proceedings to refund the amount deposited by the petitioner and initiate proceedings to take possession of the Government lands.

31.2 Thirdly, the petitioner seeks for a mandamus or any appropriate writ of like nature and thereby, direct the respondents to confirm the accepted amount of Rs.12.35 crores received from the petitioner as the market value for the 77 Acres 19 Guntas of Government land in pursuance to the order of the Hon'ble Apex Court dated 16.01.2014 passed in C.A. No.5181/2003 as per the decision of the earlier Sub-Committee dated 21.01.2015.

32. The first prayer is predominantly canvassed on the grounds that the proceedings of the Cabinet amounts to a review or re-determination by the new Sub-Committee, secondly, on the ground of external dictate or extraneous consideration and thirdly on the ground of there being a cut-off date.

33. The contention is that the price fixation by the Cabinet Sub-Committee under impugned Annexure-A is a re-determination of the price already fixed by the Cabinet Sub-Committee pursuant to a review. The said contention is

premised and canvassed on the strength of the affidavit, filed by the erstwhile Chairman of the Sub-Committee i.e. the Minister for Revenue prior to 19.06.2016. It cannot be disputed that the erstwhile Minister for Revenue was divested of his revenue portfolio in the Cabinet reshuffle completed on 19.06.2016. It is relevant and pertinent to note the date of the affidavit filed before the Hon'ble Apex Court in Contempt proceedings at the instance of the petitioner.

33.1 The erstwhile Chairman was named as a Contemnor and in his affidavit filed before the Hon'ble Apex Court on 30.07.2016 (i.e. after his removal as Minister for Revenue and consequential removal from the post of Chairman of Sub-Committee). This stand of the erstwhile Chairman necessitated a response and the same was authored by no less a person of the standing of Chief Secretary, who in categorical terms has repudiated the claim of the erstwhile Chairman of the Sub-Committee by his affidavit dated 25.08.2016. The deposition in paragraphs 12 and 13 clearly

repudiates the claim of the erstwhile Chairman that the Sub-Committee took a decision on 21.01.2015. Further the contents of paragraph 18 clearly assert that the decision was taken on 24.08.2016 only. None of this are demonstrated to be erroneous and the arguments advanced on the hypothetical basis does not hold much water.

33.2 The deposition in paragraph 16 and 17 are an answer to the allegation of external dictation. If the statute requires a thing to be performed in a particular manner, then the said thing shall be performed in that manner only or not at all. In support of this dictum, this Court places reliance on the rulings reported in AIR 1963 SC 1077 (Pr.12), (1980) 1 SCC 554 (Pr.17) and (2015) 13 SCC 722 (Pr.14).

33.3 If the law requires that the Sub-Committee ought to take the consent of the Cabinet, it cannot be gainfully argued otherwise. Further, if the law enables the Chief Minister to call for and peruse any files, it cannot be argued

that it tantamount's to interference or tantamount's to an external dictation or extraneous reason.

33.4 It is not the case of the petitioner that either the Cabinet of Ministers or the Chief Minister has suggested any particular price. If that be the admitted position, then the allegation has no basis and is rendered irrelevant. That apart, a unique and striking facet of the litigation by the petitioner is the absence of any market price calculated and quoted by it.

34. Though the petitioner has been raising a hue & cry about the five reports by the Deputy Commissioner and has filed reams of papers before the Cabinet Sub-Committee including the two volumes of papers filed before this Court, a detailed perusal of the papers would reveal that the petitioner has nowhere ever even attempted to calculate and quote the market price, which according to it is the correct market price.

34.1 In this regard, no elaborate discussion is required as the Hon'ble Apex Court be it in its interim directions or in

its final order has been consistently holding that the price to be paid is the market price on the market value. In fact, in the final order the words used are "market rate". In the interim order dated 16.04.2009 the words used are "present actual market value (and not upset value) of the lands" and in the order dated 03.03.2011 in paragraph 5(c) the words employed by the Hon'ble Apex Court is "actual market value..... and convey the land to the appellant".

34.2 The repeated use of the above terms by the Hon'ble Apex Court leaves no scope for interpretation or to contend that what can be perceived under the orders of the Hon'ble Apex Court, is a grant and not a conveyance.

34.3 If this be the conclusion, then the position in law is no more res-integra. The market price or the market value is interpreted to mean the price a willing purchaser (petitioner) is willing to pay and a willing seller (State) is willing to accept.

34.4 If that be the undisputed position in law, then the onus was on the petitioner to state in categorical terms, based on verifiable data, the prevailing market price or in other words the prevailing market value of the lands, it had encroached upon and put to commercial use. The factum of encroachment of Government lands and the factum of putting them to commercial use is admitted. It is not the case of the petitioner that it is carrying on any charitable or philanthropic activities over the said land. If that be so, the onus was primarily also on the petitioner to quote and demonstrate the market price.

34.5 The petitioner having miserably failed to do so, it is not open for the petitioner to come running to the Courts and complain about the methodology or the parameters adopted by the respondents to calculate the price. The petitioner having maintained a resounding silence on this critical and substantial aspect of the matter, cannot be permitted to "cry wolf". The petition does not disclose any market data which

could be construed as the basis for the petitioner to complain against the price quoted by the respondents.

35. That apart, it is not in doubt that the petitioner has been in illegal possession and enjoyment of the Government lands for well over two decades and under the relevant statutes such occupation entails consequences like fine, penalty, etc.

36. In view of the above discussion, the challenge to the impugned proceedings at Annexure-A is required to be negated and accordingly, the first prayer is liable to be rejected and is accordingly, rejected.

37. Insofar as the second prayer is concerned, it is merely consequential to the first prayer and it cannot be gainfully argued that it constitutes a substantial relief. In terms of the order of the Hon'ble Apex Court, the petitioner has the option to either pay the market value as decided by the Cabinet Sub-Committee or be relieved of its possession.

Annexure-B is merely a reminder of the said terms imposed under the order dated 16.01.2014 and the action proposed under Annexure-B is a consequential to Annexure-A, the same also requires to be rejected and is rejected in the light of this Court having negated the first prayer.

38. On a reading of the third prayer, what can be deduced is that the petitioner expects this Court to act as a negotiator and enforcer. It is not the case of the petitioner that any vested right over the encroached land is conferred upon it.

39. To better appreciate, it is necessary to revisit the order dated 16.01.2014. As noted supra, the order can be read in four parts. One pertaining to handing over the excess land and the second part is critical for appreciating the contentions advanced on behalf of the petitioner. In the second part, the Apex Court order reads thereafter the Cabinet Sub-Committee shall determined the market rate by

following certain procedure including affording a personal hearing to the petitioner and also permitting the petitioner to file its statement. To quote the words of the Hon'ble Apex Court in paragraph 3 "(ii) As stated by Mr. Patil learned senior counsel appearing for the State of Karnataka, a Sub-Committee of the Cabinet of the Government of Karnataka **will thereafter decide the market rate** for the remaining land (77 acres & 19 guntas) in accordance with law." (emphasis supplied by this Court).

40. A reading of the above highlighted portion would leave no doubt in the mind of this Court that the exercise pertaining to fixation of the market rate of the remaining lands was to commence after the excess land was handed over and the petitioner offered to hand over the excess land only.

41. On 30.01.2014 (Annexure-X) the petitioner requested for joint survey to identify their lands as a contiguous block and fact remains that the possession was

taken over only in October 2015 (Annexure-AE). In fact, a reading of Annexure-X leaves no doubts in the mind of this Court, that the petitioner has also understood the order of the Hon'ble Apex Court in the above term only. To quote the words of the petitioner as found in Annexure-S would set at rest the controversy regarding the alleged cut off date "as per the Hon'ble Supreme Court order, handing over of the aforesaid land to put an end to all the litigations concerning the land except for payment to be made for another 77 Acres 19 Guntas of land as mentioned in the Deputy Commissioner's report which has to be decided by the Government as per the terms mentioned in the Hon'ble Supreme Court order dated 16.01.2014".

42. This being the factual position, the contention now being advanced that price fixation ought to be done in accordance with the 07.07.2011 report is per-se unsustainable.

43. Another aspect of the litigation which has a bearing on the contention is the deposit of the sum of Rs.12.35 crores. The deposit is a voluntary deposit and made by the petitioner at the time of disposal of the earlier petition. The writ petition in W.P. No.65494/2016 was preferred by the petitioner calling in question Annexure-AN i.e. the proceedings dated 24.08.2016 i.e. the decision of the Cabinet Sub-Committee communicating the market rate. It was clarified during the hearing that the writ petition was canvassed on the short ground that no personal hearing, as mandated by the Hon'ble Apex Court, was afforded to the petitioner by the Sub-Committee prior to finalizing the market price. That the State Government realizing the faux-pas immediately filed a memo (Annexure-AP1) and submitted that they would undo the error and prayed that the petitioner be directed to appear on any particular date. In the course of disposal of the writ petition, the Co-ordinate Bench has noted in paragraph 3 as under:-

"3. The learned Senior Counsel appearing for the petitioner submits that as submitted by him in the earlier hearing, he would make a deposit of a sum of Rs.12,35,80,000/- within a period of one week from today."

44. Thus the deposit is a voluntary deposit by the petitioner and it is relevant to note that it is nearly 300 times more than the price recommended under the first Deputy Commissioner's report (upon which much reliance is placed). It can be safely inferred that even according to the petitioner the said price does not reflect the true market value. The petitioner itself having volunteered to deposit a higher amount, cannot now be permitted to turn around and contend that the cut off date is 03.03.2011. The language employed in the order dated 16.01.2014 does not leave much scope for imagination or interpretation. That apart, it is also not open for this Court to enter upon and conduct an interpretational exercise of the Hon'ble Apex Court's order and the settled law in this regard also does not permit the same. Hence, the

contentions that the cut off date ought to be 03.03.2011 and that the report of the Deputy Commissioner dated 07.07.2011 is the touchstone for fixing the market price is wholly without merit. The conduct of the petitioner would amply demonstrate considerable approbation and reprobation on its part.

45. The petitioner having made the deposit voluntarily and the deposit being on the insistence of the petitioner, the consequent direction to receive it, can by, no stretch of imagination, be equated with an "acceptance". It cannot be gainfully argued that the provisions of Article 226 can be invoked to enforce private contractual rights (assuming there is one).

46. In the light of the above discussion, the said prayer also requires to be rejected and is accordingly, rejected.

47. Before parting, this Court endeavours to record its opinion with regard to the manner in which the petitioner has been resorting to litigation to continue its illegal hegemony

over Government's property and that too for decades together. The petitioner can by, no stretch of imagination, be labeled as a bonafide litigant. The petitioner being a commercial entity and being well aware of its rights and reciprocal duties, has been deliberately using litigation as an instrument to give a cover of respectability to its illegal acts. Petitioner having acquired huge tracts of private land and being well versed with the manner and method in which title over immovable properties can be acquired cannot be permitted to don a saintly garb and project innocence.

48. The detailed discussions above and the fact that the Hon'ble Apex Court has not intervened to set-aside the finding of the Co-ordinate Bench and Division Bench, describing it as an encroacher, leaves no doubt in the mind of the Court that the present petition is nothing but an abuse of the process in order to enable the petitioner to achieve its narrow ends, that is to illegally continue its possession and commercial use of public property.

49. The writ petition being wholly devoid of merits is accordingly dismissed.

In view of dismissal of the writ petition on grounds other than maintainability, the objection regarding maintainability of the petition is kept open.

In view of disposal of the writ petition, I.A. 1/2017 does not survive for consideration and is accordingly, disposed off.

Sd/-
JUDGE

dn/Chs