Reserved on : 15.07.2025
Pronounced on : 21.07.2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JUL 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.6626 OF 2025 (LA - RES)

BETWEEN:

1 . SMT. GANGAMMA

2 . SRI SRINIVAS,

3 . SMT. MUNIYAMMA,

4 . SRI MANJU B.,

5 . SMT. LAKSHMI,

... PETITIONERS

(BY SRI K.N.PHANINDRA, SR.ADVOCATE A/W
SRI BHARATH KUMAR V., ADVOCATE)

AND:

1 . STATE OF KARNATAKA
THROUGH ADDL. CHIEF SECRETARY,
REVENUE DEPARTMENT,
VIDHANA SOUDHA,
AMBEDKAR VEEDHI,
BENGALURU – 560 001

2 . SPL. LAND ACQUISITION OFFICER
HAVING OFFICE AT V.V. TOWERS,
6TH FLOOR, AMBEDKARVEEDHI,
BENGALURU – 560 001.

3 . M/S GAVIPURAM EXTENSION HOUSE BUILDING
COOPERATIVE SOCIETY LTD.,

REGISTERED UNDER
CO-OPERATIVE SOCIETIES ACT 1959
HAVING OFFICE AT NO. 50, 3RD CROSS,
GAVIPURAM EXTENSION,
BENGALURU – 560 019.
REPRESENTED BY ITS PRESIDENT.

4 . ASSISTANT COMMISSIONER OF POLICE,
KENGERI GATE SUB-DIVISION,
HAVING OFFICE AT
GNANABHARATHI POLICE STATION,
NAGARBHAVI,
BENGALURU – 560 072.

5 . INSPECTOR OF POLICE,
GNANABHARATHI POLICE STATION,
NAGARBHAVI,
BENGALURU – 560 072.

... RESPONDENTS

(BY SRI SPOORTHY HEGDE N., HCGP FOR R-1, 2, 4 AND 5;
SRI D.R.RAVISHANKAR, SR.ADVOCATE A/W
SRI K.ANANDA, ADVOCATE FOR C/R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTION DECLARING THAT THE LAND MEASURING 2 ACRES AND 20 GUNTAS RESPECTIVELY GRANTED TO THE PREDECESSORS IN INTEREST OF THE PETITIONERS, i.e., LATE VENKATA BHOVI @ DASAPPA AND LATE HANUMANTHA BHOVI RESPECTIVELY HAVE BEEN WITHDRAWN FROM THE ACQUISITION PROCESS INITIATED VIDE PRELIMINARY NOTIFICATION DATED 31.07.1986 AND BEARING NO. LAQ(1)(SR).7.86-87 ISSUED UNDER SECTION 4(1) OF THE LAND ACQUISITION ACT, 1894 VIDE ANNEXURE-B AND FINAL NOTIFICATION DATED 22.01.1987 BEARING NO RD.128 AQB 84, ISSUED UNDER SECTION 6(1) OF THE LAND ACQUISITION ACT, 1894, VIDE ANNEXURE-C FOR THE PURPOSE OF FORMATION

OF LAYOUT CALLED 'GAVIPURAM EXTENSION HBCS LAYOUT' VIDE NOTIFICATION DATED 03.09.1993 BEARING NO. RD 39 AQB 94 ISSUED UNDER SECTION 48(1) OF THE LAND ACQUISITION ACT 1894 VIDE ANEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.07.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners are before this Court seeking the following prayer:

> (a) Issue a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction declaring that the land measuring 2 acres and 20 guntas respectively granted to the predecessors in interest of the petitioners i.e., late Venkata Bhovi @ Dasappa and late Hanumantha Bhovi respectively have been withdrawn from the acquisition process initiated vide preliminary notification dated 31-07-1986 and bearing No.LAQ (1)(SR).7.86-87 issued under Section 4(1) of the Land Acquisition Act, 1894, vide Annexure-B and final notification dated 22-01-1987 bearing No.RD 128 AQB 84 issued under Section 6(1) of the Land Acquisition Act, 1894, vide Anenxure-C for the purpose of formation of layout called 'Gavipuram Extension HBCS Layout' vide notification dated 03-09-1993 bearing No.RD 39 AQB 94 issued under Section 48(1) of the Land Acquisition Act, 1894, vide Annexure-A."

2. Heard Sri K.N. Phanindra, learned senior counsel appearing for the petitioners, Sri Spoorthy Hegde N, learned High Court Government Pleader appearing for respondents 1, 2, 4 and 5 and Sri D.R. Ravishankar, learned senior counsel appearing for respondent No.3.

3. Facts, in brief, germane are as follows: -

The petitioners are said to be the legal representatives of late Venkata Bhovi and Hanumantha Bhovi who are said to have been granted 2 acres and 20 guntas of land in Sy.No.26 of Nagadevanahalli Village, Kengeri Hobli, Bangalore South Taluk in terms of an official memorandum dated 09-01-1979. The said land was said to be under unauthorized occupation and cultivation of the aforesaid two persons. Recognizing unauthorized occupation, they come to be granted by the Deputy Commissioner, Bangalore District in the aforesaid official memorandum and consequently the names of late Venkata Bhovi and late Hanumantha Bhovi were mutated into the revenue records in respect of Schedule A & B

properties. It is claimed, all the revenue entries stood in the name of those two persons.

4. On 31-07-1986 a preliminary notification is issued under Section 4(1) of the Land Acquisition Act, 1894 ('the Act' for short) seeking to acquire the property in question along with other properties in the said vicinity for formation of a residential layout on a plan prepared by the 3rd respondent/Gavipuram Extension House Building Co-operative Society Limited ('the Society' for short). After issuance of the preliminary notification, a final notification comes to be issued on 22-01-1987. After issuance of the final notification, the 2nd respondent passes an award under Section 11(2) of the Act fixing the amount of compensation at ₹65,000/- per acre and ₹15,000/- per acre for solatium and interest in terms of the award so notified on 06-06-1987. Subsequent to the notification of award, the Divisional Commissioner, Bangalore Division, deposits the amount of the award on 09-10-1987. After all the aforesaid events, it appears that Venkata Bhovi dies.

5. The legal heirs of Venkata Bhovi began submission of representations to drop the property in question from the process of acquisition. The representation dated 12-11-1992 is appended to the petition. Subsequent communications between the Government and the legal heirs of the original grantees galore. It is the averment in the petition that a report was sought for from the hands of the Special Deputy Commissioner and a recommendation was made on 23-04-1993 to drop the lands of the petitioners from acquisition and a draft notification under Section 48(1) of the Act was communicated. It is on the strength of this communication, the entire fulcrum of the present petition is based. The pleading travel from 1993 to 24-01-2025 when they approached the 2nd respondent for a no objection certificate, wherein the fact of promulgation of a particular notification by the 1st respondent dated 03-09-1993 was projected and on that ground the lands are said to be deleted from acquisition process. Non-consideration of those grounds that are projected in the representations leads the petitioners to this Court, seeking the aforesaid prayer of issuance of a writ in the nature of mandamus, declaring that the subject lands

are deemed to be withdrawn from preliminary notification dated 31-07-1986.

6. The learned senior counsel Sri K.N. Phanindra appearing for the petitioners would vehemently contend that this Court would secure the records and go into the issue of the lands being dropped from acquisition. The lands would be the properties of the petitioners. Therefore, the petition is filed only on the promise that the notification dated 03-09-1993, which is appended to the petition, would enure to the benefit of the petitioners. He would further contend that if the lands had been dropped pursuant to a notification, the acquisition process will have to be quashed insofar as the present lands are concerned.

7. Per contra, the learned senior counsel Sri D.R. Ravishankar appearing for respondent No.3, beneficiary of the acquisition would vehemently contend that the petition has to be dismissed with exemplary costs, as it is on the face it an abuse of the process of law. The family members of original grantees are before this Court for the seventh time. At every stage, the claim of these petitioners

challenging the acquisition has been dismissed, not only by the learned single Judges but even by the Division Bench. Those dismissals have become final. Now on a new plea of a notification of 1993 which at all times was available to be urged in all previous six petitions that stood dismissed is given up and now they are wanting it to be projected that the acquisition process should be quashed on the score that the lands are dropped from acquisition. The possession of the lands including the lands of the petitioners are taken in the year 1987 itself. Therefore, he would submit that without going into the merit of the matter as to whether the notification was in existence or otherwise, the petition should be dismissed with a caution that they should not approach this Court on the same cause of action over again.

8. Learned senior counsel for the petitioner would join issue in clarifying that this ground was never urged in the earlier petitions. They have come to know of the notification only recently and, therefore, they have now urged this ground in the subject petition. It is a right to property and, therefore, on the ground that six

petitions have been dismissed, the subject petition cannot be thrown out. They are entitled to relief without their seeking, notwithstanding the challenge to the acquisition process after close to 40 years of the notification and even 36 years after taking of possession of the property. He would seek the prayer be granted.

9. The learned High Court Government Pleader would, on verification of the records, submit that there is a communication found in the records which was not gazetted. If it is not gazetted Section 48(1) of the Act would not become applicable and would admit that all proceedings of acquisition got over in the year 1987 itself. He would further contend if the entire acquisition process was over in 1987, the passing of an order under Section 48(1) would not arise. He would seek dismissal of the petition.

10. I have given my anxious consideration to the submissions made by the respective learned senior counsel, as also the learned High Court Government Pleader and have perused the material on record.

11. The afore-narrated facts are a matter of record or are the averments in the petition or the statement of objections. The predecessors of the petitioners, one late Venkata Bhovi, and Hanumantha Bhovi were granted lands in the year 1979. The 3rd respondent is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. Respondent No.3 in order to meet the needs of its members had approached Government of Karnataka to acquire lands at Nagadevanahalli village, Kengeri Hobli, Bangalore South Taluk to form a layout of sites thereon and to allot them to its members. In furtherance of the said request, Government of Karnataka issues a preliminary notification on 31-07-1986 under Section 4(1) of the Act. This comes to be published in the Official Gazette on 14-08-1986 whereby 16 acres and 6 guntas of land was sought to be acquired including the granted lands of the petitioners.

12. Pursuant to issuance of preliminary notification, a final notification comes to be issued on 22-01-1987 for formation of the layout of the Society. An award is passed on 06-06-1987 under Section 11(2) of the Act and the 3rd respondent deposited the

compensation amount as awarded by the Special Land Acquisition Officer and notified the kathedars of the said compensation amount. The kathedars then i.e., the predecessors of the petitioners received the compensation amount in respect of their lands. Pursuant to the entire acquisition process coming to an end, the Special Land Acquisition Officer takes possession of entire 16 acres 6 guntas of land on 09-11-1987. The original grantees late Venkata Bhovi and Hanumantha Bhovi voluntarily handed over possession of lands to the 2nd respondent on 09-11-1987. The documents of voluntarily handing over possession are appended to the petition. These facts are not in dispute.

FIRST ROUND OF LITIGATION:

13. After the Special Land Acquisition Officer taking possession of land on 09-11-1987, there was some delay in handing over lands to the 3rd respondent. On the said score begins the saga of litigation by the original grantees, the predecessors or ancestors of the petitioners. The first of the writ petition was filed

in Writ Petition No.29888 of 1994. The prayer in the said writ petition is as follows:

"Prayer

Wherefore, the petitioner most respectfully prays that this Hon'ble Court be pleased to:

a). **Issue a Writ of Mandamus or any other appropriate order, direction or writ. thereby directing the second respondent to deliver the possession of the schedule land, and**

b) grant such other relief or reliefs as deemed just, to the petitioner, in the facts and circumstances of the case, In the interest of justice and equity.

Interim Prayer

Pending final disposal of the above writ petition, the petitioner prays that this Hon'ble Court be pleased to direct the second respondent to hand over the possession of the schedule land, in the petitioner Society, in the Interest of justice and equity.

Schedule

All that part and parcel of 16 acres 16 guntas of land situated in survey No.26 of Nagadevanahalli Kengeri Hobli, Bangalore South Taluka, which have been acquired under LA-.SR.7/87-88."

(Emphasis added)

The said writ petition comes to be dismissed by an order of the learned single Judge on 05-12-1994. The order reads as follows:

"**The Petitioners are House Building Co-operative Societies. For their benefit, the State Government initiated acquisition proceedings under the provisions of the Land Acquisition Act, 1894. The acquisition proceedings have been completed by passing of the award and taking possession of the lands from the owners/persons interested in the lands. It appears, the Government has also received the whole of the amount from the respective Co-operative Societies towards the compensation amount payable to the owners of the land/persons interested,**

2. The grievances of the petitioners are despite the fact that the Government has taken possession of the lands, the same have not been delivered to the respective Societies without assigning any reason.

3. Smt. Bharathi Nagesh, learned High Court Government Pleader was not is a position to give any valid reason except stating that it is a "policy decision of the Government" not to hand over possession of the lands acquired for the Societies without first collecting certain data in respect of the Societies in question. In this regard, the learned High Court Government pleader submitted that the State Cabinet has to take decision in these matters.

4. When the acquisition proceedings have been completed for the benefit of the respective Societies and its members and amounts have been received from them, it is difficult to understand the hesitation on the part of the Government to hand over possession. When there are no legal obstacles for handing over possession of the lands, the respondents cannot avoid their commitment by merely making a general statement that since handing over possession of the lands is a "policy decisions of the Government and the Cabinet has to take a decision in that regard, possession of the lands have not been given to the respective Societies. If the authorities think that Cabinet decision is necessary, such decision cannot be withheld for an indefinite period.

5. In this view of the matter, I issue the following directions:-

(i) In W.P.No.11349/93, a direction is issued to the 1st and 2nd respondents to deliver possession of the lands in question to the petitioner-Society on or before 31-1-1995;

(ii) In W.P.No.29888/94, a direction is issued to respondent Nos. 2 and 3 to deliver possession of the lands in question to the petitioner-Society on or before 31-1-1995; and

(iii) In W.P.No.31968/94, a direction is issued to the respondents to deliver possession of the lands in question to the petitioner-Society on or before 31-1-1995.

6. Though, I am convinced that the filing of these petitions by the Societies became necessary because of the inordinate delay on the part of the Authorities in handing over possession without valid reasons, I desist from imposing heavy costs on the assurance of the learned High Court Government Pleader that the Authorities would abide by the directions given above within the time stipulated. Writ Petitions allowed."

(Emphasis supplied)

The learned single Judge directed the Authorities to take possession of the property and desisted from imposing heavy costs on the assurance of the Government Pleader that the Authorities would abide by the direction of handing over possession. Immediately, thereafter, possession was handed over to the 3rd respondent and the 3rd respondent is said to be in possession of the said lands from

the said date. The documents of handing over possession are appended to the statement of objections. All nuances for formation of the layout takes place at the hands of the 3rd respondent.

SECOND ROUND OF LITIGATION:

14. Thereafter, second petition is filed in Writ Petition No.3470 of 1997 challenging the preliminary notification and the final notification afore-narrated, now by the wife and children of the first original grantee Venkatabovi. The prayer in the said writ petition is as follows:

> "i. **ISSUE a writ of certiorari or any other writ, or order quashing the acquisition notifications No. LAC (1) SR.07/86-87 dated 31.03.86 and as per 'ANNEXURE K' and notification No.RD.128.A0B.84 dated. 22.01.87 as per ANNEXURE 'L' in so far as it relates to the property bearing sy.no.26, khatha No.155, measuring 2 acres situated at Nagadevanahalli village, Kengeri Hobli, Bangalore South Taluk Bangalore district surrounded by**
>
> **East by : Entrance and Muniyappa's property**
> **West by: Hanumaiah's property**
> **North by: Lingappa's property.**
> **South by: Chinnappa's property,**
>
> **ii. ISSUE a writ of certiorari or any other writ or order, quashing the award passed by the third respondent dated.06.06.07 in No.SLAC/HBCS/17/64-85 vide**

ANNEXURE 'M' in so far as it relates to the petition lands.

iii. Issue a writ of mandamus or any other writ, order or direction, directing the respondents not to disturb the petitioners' possession of the land in any way;

iv. PASS such other order or direction as deems fit under the facts and circumstances of the case including an order of costs of this application in the interest of justice and equity."

(Emphasis added)

This writ petition comes to be dismissed again by an order dated 11-03-1997 by the very same learned single Judge who had dismissed the first writ petition. This becomes the second dismissal. Observations in the said order assume certain significance. They read as follows:

"…. …. ….

2. Under Preliminary Notification, dated 31-3-1986, gazette copy of which is marked as Annexure-K, certain lands were notified for acquisition, including two acres in Sy.No.26 situated at Nagadevanahalli village, Kengeri Hobli, Bangalore South Taluk, Bangalore. The proposed acquisition was for the benefit of the 4th respondent-House Building Co-operative Society. The final notification is dated 22-1-1987, gazette copy of which is marked as Annexure-L. Copy of the award, dated 6-6-1987, is marked as Annexure-M. From a perusal of the award, it is obvious that the husband of the 1st petitioner and father of petitioner Nos.3 to 5 had participated in the award proceedings and had claimed compensation of Rs. 80,000/- per acre. Accordingly, the award has been passed.

> 3. Since it is a consent award, question of assailing the validity of the notification does not arise. Besides as noticed above, the final notification is of the year 1987. The petition is liable to be dismissed on the ground of delay and laches also.
>
> **4. Sri K.L. Manjunath, learned Counsel for the 4th respondent-Society with reference to the statement of objections filed by the Society submitted that the 1st petitioner, as a matter of fact had filed original suit bearing No.O.S. 379/93 on the file of the II Munsiff, Bangalore, seeking an injunction order against the 4th respondent-Society. Ultimately, the said suit was dismissed on 4-10-1993. This material fact has been suppressed by the petitioners in the petition. The petition also fails on the ground of suppressing material facts.**
>
> 5. In the result, this petition is dismissed."
>
> (Emphasis supplied)

The learned single Judge observes that since it is a consent award, question of assailing the validity of the notification does not arise. Besides, as noticed above, the final notification is of the year 1987. The petition is liable to be dismissed on the ground of delay as well. On all the said grounds comes the dismissal second in line.

THIRD ROUND OF LITIGATION:

15. The petitioners therein had also filed a civil suit in O.S.No.379 of 1993 seeking injunction against the Society which also had been dismissed on 04-10-1993 and this has been

suppressed by the petitioners. Rejection is third in line, as the civil suit had also been dismissed.

FOURTH ROUND OF LITIGATION:

16. A third writ petition comes to be filed by the son of late Venkata Bhovi in Writ Petition No.36917-22 of 2003 seeking the very same prayer. The prayer reads as follows:

"PRAYER

Wherefore, the petitioners pray that this Hon'ble Court be pleased to

(a) **Issue a writ of certiorari any other appropriate writ, order or direction quashing the notifications in No. LAQ (1) SR 7/8687 dated 31.7.1986 and final notifications No. RD 128 AQB 84 dated 22.1.1987 issued by the second respondent produced at Annexures A and B and the award under section 11 (2) of the Land Acquisition Act in case No. SLAQ HBCS 17/1984-85 produced at Annexure C and endorsement dated 10.01.2003 No. LAQ HBCS 17/84-85 produced at Annexure E issued by the second respondent.**

(b) Pass an order directing respondent No.3 not to interfere with the peaceful possession and enjoyment of the property.

(c) Grant such other reliefs as this Hon'ble Court deems fit to grant in the facts and circumstances of the case, in the interest of justice and equity."

(Emphasis added)

This also comes to be dismissed by a learned single Judge on 25-08-2003. The order reads as follows:

> "**All these petitioners claim to be the owners of different portions of the land situate at Nagadevanahalli, Kengeri hobli, Bangalore. These lands were notified for acquisition by the Land Acquisition Officer for the benefit of 3rd respondent by a Preliminary Notification dated 31.7.1986, followed by a Final Notification dated 22.1.1987. Subsequently, award has been passed. The petitioners were also awarded by compensation which has been received by them. After happening of all these events and after a lapse of 16 years, they have approached this court questioning the acquisition proceedings on many grounds.**
>
> **2. In my view, it is unnecessary to go into the merits of the case, in as much as these petitions are liable to be rejected on the ground of delay and laches. The petitioners having filed these petitions after lapse of 16 years from the date of Final Notification and also after having received the compensation, cannot be permitted to challenge the very notification.**
>
> Therefore, the writ petitions are rejected."
>
> (Emphasis supplied)

It is dismissed on the ground of delay of 16 years in filing the petition challenging the acquisition. There as well, the earlier proceedings were not divulged. Thus, comes the fourth petition dismissed.

FIFTH ROUND OF LITIGATION:

17. A second suit is filed before the civil Court in O.S.No.17534 of 2004 and connected cases. The plaint comes to be rejected as not maintainable. The said order has become final. Thus, ends the fifth attempt to litigation.

SIXTH ROUND OF LITIGATION:

18. The sixth litigation and the fourth writ petition is preferred in Writ Petition No.9496 of 2007 by the family members viz., children of Venkata Bhovi. This comes to be dismissed by a detailed order capturing all the earlier facts. The learned Judge observes as follows:

"…. …. ….

> **4. In the light of the above, from a perusal of the record, it is evident that the land in Survey No. 26 of Nagadevanahalli had been notified for acquisition in favour of the Bangalore City Gavipuram Extension HBCS Ltd., with the issuance of a notification under Section 4 (1) of the LA Act, duly published in the Official Gazette on 14.8.1986. A final declaration under Section 6 (1) of the LA Act was also duly published in the official gazette on 5.3.1987. An award was passed determining the compensation payable in respect of the land, dated 6.6.1987. The same has been duly approved on 14.9.1987, and a notice in terms of Section 12(2) had**

been issued to the land owners. The possession of the land has been taken on 9.1.1987 and handed over to the Society and a notification under Section 16(2) has been duly published in the Gazette on 26.1.1987. It is also on record that the compensation amount in respect of the lands acquired has been paid to the land owners, who in turn have consented to the acquisition.

Insofar as the acquisition proceedings initiated by the BDA in respect of the very extent of land and its subsequent withdrawal would not have any effect on the validity of the aforesaid acquisition proceedings, on the face of it.

In the above circumstances, assuming that all or any one of the contentions raised in the writ petition was available to the petitioners to challenge the above acquisition proceedings – the primary question of the belated challenge would have to be addressed. The explanation offered by the petitioners is laconic and vague. A Division Bench of this court while taking into consideration the entire case law on the issue has expressed thus:-

> "40. In the instant case, the Division Bench of this Court as well as the Apex Court have upheld the acquisition which were filed by various land owners and the said orders would bind the petitioners herein. Therefore the petitioner's contention that there has been fraud in the acquisition proceedings and the earlier round of litigation did not take into consideration the said aspects and therefore, the present litigation has to be considered on merits cannot be accepted. The petitioners have nowhere stated as to when they became aware of any fraud in the acquisition and as to why they remained silent for over two decades before assailing the acquisition proceedings at this point of time. On the other hand, it is noted that the Division Bench of this Court has also taken in to consideration the original records and has given its findings upholding the acquisition. Therefore, the plea of fraud cannot be a sheet-anchor for the petitioners herein at this point of time, to approach this Court to assail the acquisition. In fact, it is only a semblance of a plea to once again seek a review of the legality of the acquisition proceeding.

> 41. In the absence of there being any explanation for approaching the Court at this point of time would only lead to an inference that silence and inaction of the petitioners for over two decades has resulted in petitioners' acquiescence to the acquisition and thereby they have lost their right to challenge the same.
>
> 42. We are therefore, of the view that the learned Single Judge in W.P.No.9412/2007 was not right in holding that there was no delay in assailing the acquisition proceedings and thereby, considering the writ petition on merits."

In the light of the above, this petition is dismissed on the sole ground of delay and laches without entering upon the other doubtful grounds raised in the petition."

(Emphasis supplied)

It was dismissed on the sole ground of delay and laches, without entering upon doubtful grounds raised in the petition.

SEVENTH ROUND OF LITIGATION:

19. The aforesaid order passed was challenged before the Division Bench in Writ Appeal No. 8556 of 2012. This comes to be dismissed on 09-11-2022. The Division Bench considering the entire spectrum of law holds as follows:

"…. …. ….

> 11. In the backdrop of aforesaid legal principles, we may advert to the facts of the case on hand. In the instant case, preliminary notification was issued on 31.07.1986, whereas declaration issued under Section 6 of the Act was issued on 22.01.1987. An award was passed on 19.10.1987 and the

possession of the schedule land was taken on 09.11.1987. Section 16(2) of the Act, which has been inserted by Karnataka Act No.17/1961 with effect from 24.08.1961 reads as under:

> **16. Power to take possession.**
>
> (1)xxxx
>
> (2)The fact of such taking possession may be notified by the Deputy Commissioner in the Official Gazette, and such notification shall be evidence of such fact.

12. Thus, it is evident that if a notification under Section 16(2) of the Act is issued, it raises a presumption that the possession of the land has been taken. In the instant case notification under Section 16(2) of the Act was published in gazette on 16.01.1995. The writ petition was filed nearly after a period of 20 years from the passing of the award on or about 18.06.2007. On account of efflux of time, all the steps taken for acquisition of the land had become final and the challenge to the land acquisition proceeding suffered from delay and laches. We have perused the averments made in the petition. No explanation has been offered for approaching this court after an inordinate delay of 20 years. Thus, the challenge to the land acquisition proceeding was barred by delay and laches.

13. So far as the submission made by learned counsel for the appellants that the acquisition of land was malafide is concerned, suffice it to say that there is no pleading in the writ petition in this behalf. In the absence of any pleading regarding plea of malafides, we are not inclined to examine the same. Even assuming that the land acquisition proceeding initiated under the Act were void, the same ought to have been challenged within a reasonable time. The decision of Hon'ble Supreme Court in *VYALIKAVAL HOUSE BUILDING COOPERATIVE SOCIETY* supra has no application to the facts of the case as in the said case Hon'ble Supreme Court found the acquisition to be malafide. In the instant case, the appellants in the writ petition has not assailed the land acquisition

proceeding on the ground of malafides. Similarly, Hon'ble Supreme Court in *TUKARAM KANA JOSHI* supra has held that where circumstances justify the conduct of a party in approaching the court belatedly, an illegality, which is manifest cannot be sustained on the sole ground of laches. In the instant case, no explanation has been offered by the appellants for approaching the court belatedly after two decades. Therefore, the aforesaid decision does not apply to the fact situation of this case.

14. We cannot lose sight of the fact that at this point of time, no relief can be granted to the appellants as the land ceases to be an agricultural land and has been utilized for the purposes of formation of a residential layout. Third party interest have been created, which is evident from the list of sites allotted to the members of the Society during the pendency of the writ petition.

For the aforementioned reasons, we do not find any merit in this appeal. The same fails and is hereby dismissed."

(Emphasis supplied)

After dismissal by the learned single Judge in Writ Petition No.9496 of 2007, another writ petition comes to be filed in Writ Petition No.37818 of 2016. This is, before the Division Bench could confirm the order of the learned single Judge. This is the eighth round of litigation.

EIGHTH ROUND OF LITIGATION:

20. The prayer in Writ Petition No.37818 of 2016 is as follows:

> "a) Issue a writ in the nature of certiorari or any other writ to declare that the acquisition initiated under the Land Acquisition Act, 1894, by virtue of the Preliminary Notification dated 31-07-1986 and followed by the Final Notification dated 23-01-1987 and gazetted on 05-03-1987 as per Annexure-C and C1 is superseded or abandoned by virtue of issuance of the preliminary notification under Section 17(1) of the Bangalore Development Authority Act, 1976 dated 19-01-1989 and final notification dated 19-01-1994 as per Annexure-J and K bearing No. HUD 483 MNX 91, in so far as the petitioners' lands are concerned;
>
> b) Issue a writ in the nature of certiorari or any other writ to declare that the issuance of the notification under Section 48(1) of the Land Acquisition Act dated 16-05-2001 bearing No. HUD 376 MNJ 2000 Gazetted on 22-05-2001 as per Annexure-S does not revive the notification issued under Sections 4 and 6 of the Land Acquisition Act in favour of the 6th respondent which is referred to as Annexure-C and C1 keeping in view of the principles laid down by Hon'ble Apex Court in the case of **Soorajmull Nagarmull** reported in **(2015) 10 Supreme Court Cases 270** (para-8);
>
> c) Issue a writ in the nature of certiorari or any other writ to declare that the acquisition of the petitioners' lands is deemed to have been lapsed in view of applying Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Re-habilitation and Re-settlement Act, 2013, in so far as the lands of the petitioners are concerned;
>
> d) Or, in the alternative, declare by issuing any appropriate writ including the writ of certiorari that the acquisition notification issued under Section 6(1) of the Land

> Acquisition Act, 1894 in favour of the 6th respondent society is void in view of non-compliance of the requirements under Section 3(f)(iv) of the Land Acquisition Act keeping in view of the law declared by the Hon'ble Apex Court in the case of **H.M.T. House Building Co-operative Society -vs- Syed Khader and others**, reported in **1995 (2) SCC 677**, as well as in case of **Bangalore city cooperative house society Ltd. v/s state of Karnataka and others reported on (2012) 3 SCC 727**."

The very same grounds are urged including the ground of notification under Section 48(1) of the Act.

21. During the pendency of the said petition, the subject petition is filed on 04-03-2025 and the said petition of 2016 is withdrawn. Again, seeking the very same prayer that had been sought for eight times right from 1993 to 2016, the subject petition is preferred. Therefore, the subject petition becomes the ninth round of litigation.

22. All these facts are borne out in the statement of objections along with the documents appended to it. The petition is preferred in the year 2025 i.e., the subject petition, without a whisper about eight litigations on the same subject matter coming

to end against the petitioners. Who are the petitioners; they are legal representatives of late Hanumantha Bhovi and Venkata Bhovi. These were the very petitioners in few of the earlier petitions. In the least, it was expected of a scrupulous litigant, to divulge all the earlier litigations and then seek the prayer that is now sought. Eight rounds of suffering of orders against them and those orders having become final are conveniently suppressed in the subject petition, on a specious plea that in 1993, about 32 years ago, there was a notification dropping the lands from acquisition.

23. The first of the petitions was filed in 1994. The information about Section 48(1) notification was always available to the petitioners. During eight rounds of litigation, this ground is not taken and on a new plea, the entire acquisition process is challenged all over again, notwithstanding the challenge being rejected not once but eight times. Therefore, the petitioners are guilty of suppression of material facts and have approached this Court with soiled hands. This becomes a case to caution every litigant that if they want the relief before this Court, they ought not

to approach the doors of this Court with unclean hands, suppressing material facts.

24. Deprecating such actions of unscrupulous litigants approaching the constitutional Courts under Article 226 of the Constitution of India, the Apex Court in the case of **PRESTIGE LIGHTS LIMITED v. SBI**[1] has held as follows:

> "…. …. ….
>
> **35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts**. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."
>
> (Emphasis supplied)

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[1] (2007) 8 SCC 449

24.1. The said judgment is reiterated by the Apex Court in the case of **DALIP SINGH v. STATE OF UTTAR PRADESH**[2] wherein the Apex Court has held as follows:

> **"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.**
>
> **2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.**
>
> **3.** In *Hari Narain* v. *Badri Das* [AIR 1963 SC 1558] this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)

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[2] (2010) 2 SCC 114

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

4. In *Welcom Hotel* v. *State of A.P.* [(1983) 4 SCC 575 : 1983 SCC (Cri) 872 : AIR 1983 SC 1015] the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In *G. Narayanaswamy Reddy* v. *Govt. of Karnataka* [(1991) 3 SCC 261 : AIR 1991 SC 1726] the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed: (SCC p. 263, para 2)

> "*2*. … Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for

> such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions."

6. In *S.P. Chengalvaraya Naidu* v. *Jagannath* [(1994) 1 SCC 1 : JT (1993) 6 SC 331] the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd.* v. *SBI* [(2007) 8 SCC 449] it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R.* v. *Kensington Income Tax Commissioners* [(1917) 1 KB 486 (CA)] , and observed: (*Prestige Lights Ltd. case* [(2007) 8 SCC 449] , SCC p. 462, para 35)

> In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

8. In *A.V. Papayya Sastry* v. *Govt. of A.P.* [(2007) 4 SCC 221 : AIR 2007 SC 1546] the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In

> other words, the Constitution has not made the Supreme Court a regular court of appeal or a court of error. This Court only intervenes where justice, equity and good conscience require such intervention.
>
> **9.** In *Sunil Poddar* v. *Union Bank of India* [(2008) 2 SCC 326] the Court held that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, **the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct.**
>
> **10.** In *K.D. Sharma* v. *SAIL* [(2008) 12 SCC 481] the Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in *G. Jayashree* v. *Bhagwandas S. Patel* [(2009) 3 SCC 141] ."

(Emphasis supplied)

The Apex Court observes that in the last 40 years then, and now 55 years, a new creed of litigants have cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants,

the Courts have to deal them with iron hands and deny relief, be it interim or final.

24.2. The Apex Court, later, in the case of **K. JAYARAM v. BANGALORE DEVELOPMENT AUTHORITY**[3] in identical circumstances has held as follows:

> "…. …. ….
>
> **10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.**
>
> **11.** This Court in *Prestige Lights Ltd.* v. *SBI* [*Prestige Lights Ltd.* v. *SBI*, (2007) 8 SCC 449] has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus : (SCC p. 461, para 33)
>
> > "*33*. It is thus clear that though the appellant Company had approached the High Court under Article 226

[3] **(2022) 12 SCC 815**

> of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

12. In *Udyami Evam Khadi Gramodyog Welfare Sanstha* v. *State of U.P.* [*Udyami Evam Khadi Gramodyog Welfare Sanstha* v. *State of U.P.*, (2008) 1 SCC 560 : (2008) 1 SCC (Civ) 359] , **this Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law**.

13. In *K.D. Sharma* v. *SAIL* [*K.D. Sharma* v. *SAIL*, (2008) 12 SCC 481] , it was held thus : (SCC pp. 492-93, paras 34-39)

> "*34*. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.
>
> *35*. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R.* v. *Kensington Income Tax Commissioners* [*R.* v. *Kensington Income Tax Commissioners*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)] in the following words : (KB p. 514)

> '… it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—*the court is supposed to know the law. But it knows nothing about the facts*, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.'

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, 'We will not listen to your application because of what you have done.' The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commissioners* [*R.* v. *Kensington Income Tax Commissioners*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)] , Viscount Reading, C.J. observed : (KB pp. 495-96)

> '… Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads

> the affidavit and knows the true facts. *But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit*.'
>
> *38*. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".
>
> *39*. If the primary object as highlighted in *Kensington Income Tax Commissioners* [*R.* v. *Kensington Income Tax Commissioners*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or mis-representation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."
>
> (emphasis in original)

14. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the

> **same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations were or are pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law."**

(Emphasis supplied)

25. **On a harmonious synthesis of the elucidation by the Apex Court, a singular and compelling truth crystallizes, that any litigant who dares to sully the sanctity of judicial proceedings through deceit, misrepresentation or fraud, commits on egregious affront to the majesty of justice itself. Such conduct constitutes a direct assault on the very edifice of judicial integrity. The Courts must respond not with mere disapproval, but resolute censure. Justice, if it is to remain untainted, demands that those who attempt to pervert its course, must be met not only with stern repudiation, but with consequences potent enough to serve as a salutary warning to others. Therefore, the writ petition does not**

merely merit dismissal; it calls for rejection with exemplary costs, so that justice does not become a playground for the unscrupulous.

26. Now let me turn my attention to the petitioners' latest endeavour – hitherto unprojected ground, namely, a purported notification of the year 1993. **This belated revelation is tendered as if it were an epiphany, on such score, the petitioners seek to undo decades of judicial deliberation. But, much water has flown beneath the bridge since that year, as the petitioners, or their kin, have embarked upon odyssey through eight rounds of litigation swinging between candour and concealment. What I witness is, not the pursuit of justice, but a game of judicial hide and seek, where one of the family members of the grantee seeks invocation of the writ jurisdiction, while the other member, hides. Later, the other member seeks, and the former hides. Such cynical use of writ jurisdiction under Article 226 of the Constitution of India, must be arrested in its tracks**.

27. The ground is that there is a notification of 1993. It is a notification of 1993. In eight rounds of litigation this notification was never projected. Today to contend that there was a notification of 1993 and therefore, the acquisition process should be quashed is a submission that is noted only to be rejected, as it runs contrary to the principles of constructive *res judicata*, which is a specie of the genes *res judicated*. It is also to be rejected on the Henderson principle. Both these principles need not detain this Court for long or delve deep into the matter. The Apex Court in the case of **CELIR LLP v. SUMATI PRASAD BAFNA**[4], has held as follows:-

"…. …. ….

> **b. The 'Henderson' Principle as a corollary of Constructive Res-Judicata.**
>
> **135. The 'Henderson Principle' is a foundational doctrine in common law that addresses the issue of multiplicity in litigation. It embodies the broader concept of procedural fairness, abuse of process and judicial efficiency by mandating that all claims and issues that could and ought to have been raised in a previous litigation should not be relitigated in subsequent proceedings. The extended form of *res-judicata* more popularly known as 'Constructive Res Judicata' contained in Section 11, Explanation VII of the CPC originates from this principle.**

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[4] 2024 SCC OnLine SC 3727

136. In *Henderson* v. *Henderson*, [1843] 3 Hare 999, the English Court of Chancery speaking through Sir James Wigram, V.C. held that where a given matter becomes the subject of litigation and the adjudication of a court of competent jurisdiction, the parties so litigating are required to bring forward their whole case. Once the litigation has been adjudicated by a court of competent jurisdiction, the same parties will not be permitted to reopen the *lis* in respect of issues which might have been brought forward as part of the subject in contest but were not, irrespective of whether the same was due to any form of negligence, inadvertence, accident or omission. It was further held, that principle of *res judicata* applies not only to points upon which the Court was called upon by the parties to adjudicate and pronounce a judgment but to every possible or probable point or issue that properly belonged to the subject of litigation and the parties ought to have brought forward at the time. The relevant observations read as under:—

> *"In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.* […]"
>
> (Emphasis supplied)

…. …. …

139. Even in a common law action it was said by Blackburn, J.:"*I incline to think that the doctrine of res*

***judicata applies to all matters which existed at the time of giving of the judgment, and which the party had an opportunity of bringing before the Court*.” [See : *Newington* v. *Levy*, [L.R.] 6 C.P. 180 (J)].**

140. The fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation benefits not the litigants whose rights have been determined, but those who seek to delay the enforcement of those rights and prevent them from reaching the rightful beneficiaries of the adjudication. The Henderson Principle, in the same manner as the principles underlying *res judicata*, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceeding. A party which avoids doing so does it at its own peril. In deciding as to whether a matter might have been urged in the earlier proceedings, the court must ask itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy. In holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future. The doctrine itself is based on public policy flowing from the age-old legal maxim *interest reipublicaeut sit finislitium* which means that in the interest of the State there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause.

141. The Henderson Principle was approvingly referred to and applied by this Court in *State of U.P.* v. *Nawab Hussain*, (1977) 2 SCC 806 as the underlying principle for *res-judicata* and constructive *res-judicata* for assuring finality to litigation. The relevant observations read as under:—

> *“3. The principle of estoppel per rem judicatam is a rule of evidence. As has been stated*

in Marginson *v.* Blackburn Borough Council *[[1939] 2 K.B. 426 at p. 437], it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories : (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.*

4. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and Somervell, L.J., has answered it as follows in Greenhalgh *v.* Mallard *[[1947] All ER 255 at p. 257]:"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.*

This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has some times been referred to as

> constructive res judicata which, in reality, is an aspect or amplification of the general principle."
>
> (Emphasis supplied)

142. This Court in *Devilal Modi* v. *Sales Tax Officer, Ratlam*, AIR 1965 SC 1150, held that if the underlying rule of constructive *res judicata* is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time, and would be inconsistent with considerations of public policy. The relevant observations read as under:—

> *"8. […] the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy […]"*
>
> (Emphasis supplied)

143. In *Shankara Coop. Housing Society Ltd.* v. *M. Prabhakar*, (2011) 5 SCC 607, this Court held that the ground of non-compliance of statutory provision which was very much available to the parties to raise but did not raise it as one of the grounds, cannot be raised later on and would be hit by the principles analogous to constructive res judicata. The relevant observations read as under:—

> *"89. In the present case, it is admitted fact that when the contesting respondents filed WP No. 1051 of 1966, the ground of non-compliance with statutory provision was very much available to them, but for the reasons best known to them, they did not raise it as one of the grounds while challenging the Notification dated 11-12-1952 issued under the Evacuee Property Act. In the subsequent writ petition filed in the year 1990, initially, they had not questioned the legality of the notification, but*

raised it by filing an application, which is no doubt true, allowed by the High Court. In our view, the High Court was not justified in permitting the petitioners therein to raise that ground and answer the same since the same is hit by the principles analogous to constructive res judicata."

(Emphasis supplied)

144. From the above exposition of law, it is clear that the 'Henderson Principle' is a core component of the broader doctrine of abuse of process, aimed at enthusing in the parties a sense of sanctity towards judicial adjudications and determinations. It ensures that litigants are not subjected to repetitive and vexatious legal challenges. At its core, the principle stipulates that all claims and issues that could and should have been raised in an earlier proceeding are barred from being raised in subsequent litigation, except in exceptional circumstances. This rule not only supports the finality of judgments but also underscores the ideals of judicial propriety and fairness.

145. There are, four situations where in second proceedings between the same parties doctrine res judicata as a corollary of the principle of abuse of process may be invoked : (i) cause of action estoppel, where the entirety of a decided cause of action is sought to be relitigated; (ii) issue estoppel or, "decided issue estoppel," where an issue is sought to be relitigated which has been raised and decided as a fundamental step in arriving at the earlier judicial decision; (iii) extended or constructive res judicata i.e., "unraised issue estoppel," where an issue is sought to be litigated which could, and should, have been raised in a previous action but was not raised; (iv) a further extension of the aforesaid to points not raised in relation to an issue in the earlier decision, as opposed to issues not raised in relation to the decision itself.

146. As part of the broader rule against abuse of process, the Henderson principle is rooted in the idea of preventing the judicial process from being exploited in any manner that tends to undermine its integrity. This

idea of preventing abuse of judicial process is not confined to specific procedure rules, but rather aligned to a broader purport of giving *quietus* to litigation and finality to judicial decisions. The essence of this rule is that litigation must be conducted in good faith, and parties should not engage in procedural tactics that fragment disputes, prolong litigation, or undermine the outcomes of such litigation. It is not a rigid rule but rather a flexible principle to prevent oppressive, unfair, or detrimental litigation.

147. We are conscious of the fact, that ordinarily this principle has been applied to instances where a particular plea or ground was not raised at any stage of the proceedings, but were later sought to be raised. However, it must be borne in mind that construing this rule in a hyper-technical manner or through any strait-jacket formula will amount to taking a reductive view of this broad and comprehensive principle.

148. Although in the present case, the Borrower had raised the issue of the validity of the measures taken by the Bank under the SARFAESI Act and the legality of the 9th auction conducted it in the earlier stages albeit in a different proceeding, yet its conduct of having conveniently abandoned the same in a different proceeding elected by it for the same cause of action and then later reagitating it in the pretence that the two proceedings were distinct, is nothing but a textbook case of abuse of process of law.

149. Piecemeal litigation where issues are deliberately fragmented across separate proceedings to gain an unfair advantage is in itself a facet of abuse of process of law and would also fall foul of this principle. Merely because one proceeding initiated by a party differs in some aspects from another proceeding or happens to be before a different forum, will not make the subsequent proceeding distinct in nature from the former, if the underlying subject matter or the seminal issues involved remains substantially similar to each other or connected to the earlier subject matter by a certain degree, then such proceeding would tantamount to 'relitigating' and the Henderson Principle would be applicable.

150. Parties cannot be allowed to exploit procedural loopholes and different foras to revisit the same matters they had deliberately chosen not to pursue earlier. Thus, where a party deliberately withholds certain claims or issues in one proceeding with the intention to raise them in a subsequent litigation disguised as a distinct or separate remedy or proceeding from the initial one, such subsequent litigation will also fall foul of this principle.

151. Similarly, where a plea or issue was raised in earlier proceedings but later abandoned it is deemed waived and cannot be relitigated in subsequent. Allowing such pleas to be resurrected in later cases would not only undermine the finality of judgments but also incentivize strategic behaviour, where parties could withdraw claims in one case with the intention of reintroducing them later. proceedings. Abandonment signifies acquiescence, barring its reconsideration in subsequent litigation. This ensures that judicial processes are not misused for tactical advantage and that litigants are held accountable for their procedural choices. Parties must litigate diligently and in good faith, presenting their entire case at the earliest opportunity.

152. The Henderson principle operates on the broader contours of judicial propriety and fairness, ensuring that the judicial system remains an instrument of justice rather than a platform for procedural manipulation. Judicial propriety demands that courts maintain the finality and integrity of their decisions, preventing repeated challenges to settled matters. Once a matter has been adjudicated, it should not be revisited unless exceptional circumstances warrant such reconsideration. Repeated litigation of the same issue not only wastes judicial resources but also subjects the opposing party to unnecessary expense and harassment. judicial processes are not merely technical mechanisms but are rooted in principles of equity and justice.

153. Both logic and principle support the approach that the judicial determination of an entire cause of action is in fact the determination of every issue which is fundamental to establishing the entire cause of action.

> **Thus, the assertion that the determination is only on one of the issues is flawed as it is nothing but an indirect way of asserting that the whole judgment is flawed and thereby relitigating the entire cause of action once more. The effect of a judicial determination on an entire cause of action is as if the court had made declarations on each issue fundamental to the ultimate decision.**"
>
> (Emphasis supplied)

The Apex Court has expounded the aforesaid doctrines of constructive *res judicata* and the Henderson principle with luminous clarity, which would unmistakably mean, that no litigant may withhold a plea and preserve it for further battle. The law frowns upon fragmented litigation and strategic silence. The reason is to prevent abuse of judicial process and give quietus to litigation and finality to judicial decision.

27.1. Long before the judgment of the Apex Court quoted hereinabove, a three Judge Bench of the Apex Court in the case of **FORWARD CONSTRUCTION CO., v. PRABHAT MANDAL**[5], has held as follows:

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[5] (1986) 1 SCC 100

"…. …. ….

20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force."

(Emphasis supplied)

27.2. Later again, the Apex Court in the case of **M.NAGABHUSHANA v. STATE OF KARNATAKA**[6], has held as follows:

"…. …. ….

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[6] (2011) 3 SCC 408

2. From the perusal of the judgment of the learned Single Judge it appears that the appellant claims to be the owner of the land bearing Survey No. 76/1 and Survey No. 76/2 of ThotadaGuddadahalli Village, Bangalore North Taluk. The appellant alleged that these two plots of land were outside the purview of the Framework Agreement (FWA) and notification issued under Sections 28(1) and 28(4) of the Karnataka Industrial Areas Development Act (the KIAD Act). While dismissing the writ petition, the learned Single Judge held that the acquisition proceedings in question were challenged by the writ petitioner, the appellant herein, in a previous Writ Petition No. 46078 of 2003 which was initially accepted and the acquisition proceedings were quashed. Then on appeal, the Division Bench (in Writ Appeals Nos. 713 and 2210 of 2004) reversed the judgment of the learned Single Judge. Thereafter, the Division Bench order was upheld by this Court and this Court approved the acquisition proceedings. Therefore, the writ petition, out of which this present appeal arises, purports to be an attempt to litigate once again, inter alia, on the ground that the aforesaid blocks of land were outside the purview of the FWA dated 3-4-1997.

3. The learned Judges of the Division Bench held that the second round of litigation is misconceived inasmuch as the acquisition proceedings were upheld right up to this Court. The Division Bench in the impugned judgment noted the aforesaid facts which were also noted by the learned Single Judge. Apart from that the Division Bench also noted that another batch of public interest litigation in WP No. 45334 of 2004 and connected matters were also disposed of by this Court directing the State of Karnataka and all its instrumentalities including the Housing Board to forthwith execute the project as conceived originally and upheld by this Court and it was also directed that the FWA be implemented. The Division Bench, however, noted that on behalf of the appellant an additional ground has been raised that the acquisition stood vitiated since no award was passed as contemplated under Section 11-A of the Land Acquisition Act (hereinafter "the said Act").

… … …

7. Challenging the aforesaid judgment, the present appellant filed a special leave petition before this Court, which, on grant of leave, was numbered as Civil Appeal No. 3878 of

2005. The grounds which were substantially raised by the present appellant in the previous appeal (No. 3878 of 2005) have been raised again in this appeal. The alleged grounds in the present appeal about acquisition of land beyond the requirement of the FWA were raised by the present appellant in the previous Appeal No. 3878 of 2005 also.

… … …

16. It is nobody's case that the appellant did not know the contents of the FWA. From this it follows that it was open to the appellant to question, in the previous proceeding filed by it, that his land which was acquired was not included in the FWA. No reasonable explanation was offered by the appellant to indicate why he had not raised this issue. Therefore, in our judgment, such an issue cannot be raised in this proceeding in view of the doctrine of constructive res judicata.

… … …

20. This Court in *AIMO case* [(2006) 4 SCC 683] explained in clear terms that principle behind the doctrine of res judicata is to prevent an abuse of the process of court. In explaining the said principle the Bench in *AIMO case* [(2006) 4 SCC 683] relied on the following formulation of Somervell, L.J. in *Greenhalgh* v. *Mallard* [(1947) 2 All ER 255 (CA)] (All ER p. 257 H): (*AIMO case* [(2006) 4 SCC 683] , SCC p. 700, para 39)

> "*39*. … 'I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that *it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them*.' "
>
> (emphasis supplied in *AIMO case* [(2006) 4 SCC 683])

The Bench in *AIMO case* [(2006) 4 SCC 683] also noted that the judgment of the Court of Appeal in *Greenhalgh* [(1947) 2 All ER 255 (CA)] was approved by this Court in *State of U.P.* v. *Nawab Hussain* [(1977) 2 SCC 806 : 1977 SCC (L&S) 362] , SCC at p. 809, para 4.

21. Following all these principles a Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn.* v. *State of Maharashtra* [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] laid down the following principle: (SCC p. 741, para 35)

> "*35*. … an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to writ petitions."

(Emphasis supplied)

28. **In the light of the foregoing, the petition, replete with suppression, bereft of bonafides, must meet its dismissal, not dismissal simpliciter, but with exemplary cost. If the petition is now entertained on any score, it would amount to putting a premium on litigative persistence of the petitioners and rewarding abuse of the process and tacit fraud played on this Court, as this forms the ninth petition on the same cause of action, seeking the very same prayer,**

differently worded, after the dismissal of eight rounds of litigation, all of which are suppressed in the subject petition.

29. For the aforesaid reasons, the following:

O R D E R

Writ Petition is ***dismissed*** with exemplary costs of ₹10,00,000/- (Ten lakhs) to the paid by the petitioners to the Karnataka State Legal Services Authority within a period of 4 weeks from the date of receipt of the copy of this order.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ