+IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

HON'BLE MR. JUSTICE M. SATYANARAYANA MURTHY

AND

HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

W.P.Nos.13203, 13204, 13205, 13521, 13645, 13665, 13666, 13887, 13919, 13925, 13966, 13983, 14003, 14053, 14054, 14282, 14338, 14768, 14897, 14996, 15035, 15094, 15097, 16514, 16830, 16840 OF 2020;
W.P. (PIL) Nos.184, 185, 200, 201, 208, 209, 215, 217, 230, 235, 236, 239, 253, 256 OF 2020

WP (PIL) Nos.177 OF 2020
W.P.Nos.13206, 16634 OF 2020;

W.P.Nos.9154, 9528, 10700 OF 2020

WP (PIL) Nos.179 of 2019
WP (PIL) Nos.8, 24, 40, 102, 213 of 2020
W.P.Nos.925, 1207, 4004, 5057 of 2020

W.P. (PIL) Nos.7, 153 of 2020
W.P.Nos.932, 933, 8472 of 2020

W.P. (PIL) No.121 of 2020 & W.P.No.1388 of 2020

% Dated 03.03.2022

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WRIT PETITION NO.13203 OF 2020 AND 62 OTHERS WRIT PETITIONS

Rajadhani Rythu Parirakshnana Samithi,
Office at H.No.1194 Tullur,
Amaravati, Andhra Pradesh
Rep by its Secretary
Sri Dhanekula Rama Rao and others ..... Petitioners

Versus

The State of Andhra Pradesh,
rep by its Chief Secretary
1st floor Secretariat, Velagapudi,
Amaravati and others .... Respondents

Counsel for the Petitioners :

1. Mr. Sai Sanjay Suraneni
2. Mr. Unnam Sravan Kumar
3. M/s. Bharadwaj Associates
4. Mr. P.V.N. Kiran Kumar
5. Mr. Karumanchi Indraneel Babu
6. Mr. Sudhakar Rao Ambati
7. Mr. Ponnekanti Mallikarjuna Rao
8. Mr. G.V.R.Chowdary
9. Mr. D.S.N.V. Prasad Babu
10. Mr. Prabhunath Vasireddy
11. Mr. Srinivasa Rao Narra
12. Mrs. T. Srilakshmi
13. Mr. G. Ronald Raju
14. Mr. Kishore Babu Manne
15. Mr. Chalasani Ajay Kumar
16. Mr. K.M. Krishna Reddy
17. Mrs. Avanijalnuganti
18. Ms. Sodem Anvesha
19. Mr. Yelamanchili Shiva Santosh Kumar
20. Mr. Sunkara Rajendra Prasad
21. Mr. Kishore Para
22. Mr. Ravi Shankar Jandhyala
23. Mr. M. Lakshminarayana
24. Mrs. S. Pranati
25. Mr. Subba Rao Korrapati
26. Mr. Balaji Medamalli
27. Mr. Nagaraju Naguru
28. Mr. K.S. Murthy
29. Mr. Vivek Chandrasekhar
30. Mr. V.V. Lakshminarayana
31. Mr. P. Vasu Sekhar
32. Mr. Nalin Kumar
33. Mr. T.V.P. Sai Vihari
34. Mr. Y. Surya Prasad

Counsel for Respondents :

1. Advocate General for the State
2. Mr. Mahfooz Nazki, Senior Counsel
3. Mr. Kasa Jagan Mohan Reddy, Standing Counsel for APCRDA
4. Mr. Harinath, learned Assistant Solicitor General
5. Mr. Metta Chandrasekhar Rao, Standing Counsel for Legislative Council
6. G.P. for Municipal Administration & Urban Development
7. G.P. for Legislative Affairs
8. G.P. for General Administration Department

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> HEAD NOTE:

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W.P. (PIL) No.121 of 2020 & W.P.No.1388 of 2020

DATE:03.03.2022

COMMON ORDER:

The tussle between poor land owners who allegedly sacrificed their livelihood by surrendering their agricultural land in the Land Pooling Scheme for development of capital city and capital region with mighty Government who failed to undertake development of infrastructure, capital city, capital region, failed to handover developed reconstituted plots as agreed in Development Agreement-cum-Irrevocable General Power of Attorney in Form No.9.14, lead to filing of batch of writ petitions on different grounds.

1) As the reliefs claimed in all the writ petitions, plea of the petitioners and respondents are almost one and the same, we find that it is expedient to dispose of all these writ petitions by common order, treating W.P.No.13203 of 2020 as leading case.

2) W.P.No.13203 of 2020 is filed under Article 226 of the Constitution of India, claiming the following relief(s):

To issue writ of mandamus -

a. *declaring that the State of Andhra Pradesh has no legislative competence to change the Capital of the State or to denude Amaravati from being the city of three civic wings of the State including the Legislature, Executive and the Judiciary;*
b. *declare that the Andhra Pradesh Capital Region Development Repeal Act, 2020, is ultra vires to Articles 3, 4, 14, 19, 21, 197, 174, Parts IX and IXA, Article 300-A of the Constitution of India r/w Sections 5, 31(2) and 94 of the A.P State Reorganisation Act, 2014 and consequently declare it to be null and void;*
c. *declare that the Andhra Pradesh Decentralisation and Inclusivement of All Regions Act, 2020 is ultra vires Articles 3, 4, 14, 19, 21, 197, 174, Parts IX and IXA, Article 300-A of the Constitution of India r/w Sections 5, 31(2) and 94of the A.P State Reorganisation Act, 2014 and consequently declare it to be null and void*
d. *declare the report of the High Powered Committee dated 17.01.2020 as being bad in law and ultra vires of Articles 14 and 21 of the Constitution of India;*
e. *direct the Respondents to forthwith forbear from acting pursuant to or in furtherance of the report of the High Powered Committee dated 17.01.2020 directing the Respondents to forthwith forbear from shifting any of the offices of the 3 civic wings of the State including but not limited to the Raj Bhavan, Chief Ministers Camp Office offices of the Secretariat Heads of Departments of the Government Police Department State Corporations State Government Offices and Officers from their current locations in*

and around Amaravati and from trifurcating the Capital for a period of 30 years or such time as this Honble Court deems fit and proper in the circumstances of the case

f. direct the Respondents to implement the Master Plan as notified on 23.06.2016 under Section39 of the Andhra Pradesh Capital Region Development Authority Act, 2014, including by constructing the necessary buildings and housing the offices of the 3 civic wings of the State Government including the Executive Judiciary and Legislature in Amaravati.

3) During arguments, learned Advocate General for the State informed that the Andhra Pradesh Capital Region Development Authority Repeal Act, 2020 (Act No. 27 of 2020) and The Andhra Pradesh Decentralisation and Inclusive Development of All Regions Act, 2020 (Act No.28 of 2020) are likely to be withdrawn and at his request, it was adjourned. Later, these Act Nos.27 & 28 of 2020 were repealed by the State Legislature, an affidavit and additional affidavits to that effect are filed by the Principal Secretary and Additional Secretary of Municipal Administration & Urban Development Department and they are taken on file. Copy of Repeal Act i.e. Act No.11 of 2021 is also placed on record. Thus, Act No. 27 of 2020 and Act No.28 of 2020 were repealed, while restoring the Andhra Pradesh Capital Region Development Authority Act, 2014 (Act No.11 of 2020). In the affidavits, the Principal Secretary and Additional Secretary of Municipal Administration & Urban Development Department asserted about the development activities being taken up by the authorities.

4) In view of repeal of Act No. 27 of 2020 and Act No.28 of 2020, Mr. Shyam Divan, learned Senior Counsel for the petitioners contended that, all the reliefs, except the constitutionality, validity of Act No. 27 of 2020 and Act No.28 of 2020 all other reliefs are still surviving for adjudication by this Court. Therefore, the claims of the petitioners are still alive and they are required to be adjudicated by this Court

5) All the learned counsels for the petitioners filed memos informing about the prayer(s) surviving for adjudication by this Court and as per their contentions, the issues that survive for adjudication are as follows:

> *a. The State has failed and is refusing to deliver on its promise to return the developed plots as per the final master plan dt. 23.02.2016 within a period of 3 years from the date of the final LPS (para 78 & 79, p. 35, Vol I]. The deadline for completion of all the said development was January 2020, as per Rule 12(6) of the LPS Rules, 2015. The Respondents are contending that the period prescribed for completing the works under the final LPS has been extended. Whereas, the Petitioners claim that they have a right to a developed plot (of enhanced value) in the master plan as notified under the APCRDA Act, 2014 within the time prescribed by the State itself.*
>
> *b. The Respondents have suo moto sought to modify the Master Plan vide Gazette notification No. 355, MAUD (APCRDA) Department, dated 10.03.2020. They have made their intention clear to do away with the concept of electronic city (which is one of the 9 thematic cities within Amaravati). In its Affidavit dated 01.02.2022 the State has contended that the Master Plan can be revised, reviewed or modified unilaterally by the Respondent Authority under Section38(5) or the proviso to Section39(2) of the APCRDA, Act. And also, under Section41 of the APCRDA Act. It is the submission of the Petitioners that the Master Plan cannot be amended unilaterally by the Respondents and can only be amended upon a reference by the local bodies in Amaravati.*

c. The State is contending that it does not have the resources to implement the Master Plan and the Land Pooling Infrastructure. The Petitioners submit that the State is estopped from claiming it does not have the financial capacity to implement the Master Plan,

6) Whereas, learned Advocate General representing the State submitted a note to contend that, none of the reliefs survived for adjudication by this Court and requested to dismiss the writ petitions as infructuous.

7) In view of the rival contentions about survival of reliefs claimed by these petitioners, it is necessary to advert to various reliefs shown above, allegedly survived for adjudication by this Court, keeping in view the contentions urged by both the learned counsel for the petitioners, learned Advocate General for the State, Sri S. Niranjan Reddy, learned Senior Counsel appearing for APCRDA, Sri S. Satyanarayana Prasad, learned Senior Counsel appearing for the State Legislative Assembly and decide the issues survived for adjudication by this Court.

8) Admittedly, Act No. 27 of 2020 and Act No.28 of 2020 were repealed by Act No.11 of 2021. As Act No. 27 of 2020 and Act No.28 of 2020 were repealed by Act No.11 of 2021, this Court is now not required to adjudicate upon the legality, validity and arbitrariness in passing Act No. 27 of 2020 and Act No.28 of 2020 need no further adjudication. Therefore, the issue regarding constitutionality, legality, validity of Act No. 27 of 2020 and Act No.28 of 2020 does not survive for adjudication by this Court.

9) Sri Shyam Divan, learned Senior Counsel, Sri Unnam Muralidhar, Sri Prabhunath Vasireddy and Sri P.B. Suresh, learned Counsel for the petitioners vehemently contended that the petitioners challenged the power of Andhra Pradesh State Legislature to enact any law for trifurcating or bifurcating the capital or to shift the capital from Amaravati to any other place in the State. Since the petitioners questioned the very legislative competency of the State Legislature, the Court is required to adjudicate upon the issue. But, learned Advocate General, Sri S. Niranjan Reddy and Sri S. Satyanarayana Prasad, learned Senior Counsel contended that, the Court cannot issue a preemptive direction holding that the State is denuded to exercise legislative power to enact any law relating to trifurcating or bifurcating or shifting of capital from Amaravati to any other place, since it amounts to preemptive mandamus and this Court cannot decide purely academic issues and they relied on several judgments in support of their contentions.

10) Sri S. Niranjan Reddy, Learned Senior Counsel appearing for APCRDA would draw attention of this Court to judgment of the Constitutional Bench of the Apex Court in ***Islamic Academy of Education and another vs. State of Karnataka***[1], where the Court held that, It is not necessary to raise hypothetical question to drive home a point which is of not much consequence. As and when laws are made, their constitutionality, will have to be tested on their own merit. Preemptive answers should not be given on hypothetical questions.

[1] (2003) 6 SCC 697

11) Similarly, in ***National Insurance Company limited vs. Laxmi Narain Dhut***[2] the Apex Court held that, the Court cannot issue any declaration interpreting the liability hypothetically in vaccum, once the law is repealed, the Court cannot issue any direction which is preemptive in nature i.e writ of mandamus. On the strength laid down by the Apex Court in the judgment referred supra, learned Senior Counsel would submit that this Court cannot issue preemptive mandamus in anticipation of passing any legislation by the Andhra Pradesh State Legislature in future.

12) Sri A. Satyanarayana Prasad, learned Senior Counsel, while reiterating the same contentions, contended that, the Court cannot adjudicate on infructuous petitions, as cause of action in the writ petitions does not survive as the impugned Act Nos.27 & 28 of 2020 were repealed by Act No.11 of 2021, thereby, consequential reliefs do not survive. Therefore, this Court is not required to adjudicate on the issue of legislative competency of the State Legislature to enact such law and placed reliance on judgments of the Apex Court in ***Harsharan Verma vs. Charan Singh and others***[3]***, Rajinder Prasad Aggarwal vs. Chief Metropolitan Magistrate and others***[4]***, State of Haryana vs. M/s. Krishna Rice Mills***[5]***, S.R. Chaudhuri vs. State of Punjab***[6]***, State rep by Inspector of Police vs. N.M.T. Joy***

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[2] (2007) 3 SCC 700
[3] (1985) 1 SCC 162
[4] 1985 (Supp) SCC 607
[5] AIR 1982 SC 1106
[6] (2001) 7 SCC 126

Immaculate[7], P.H. Pandian vs. P. Veldurai and another[8], J.R. Raghupathy vs. State of A.P[9], Supreme Court Employees Welfare Association vs. Union of India[10], Collector of Central Excise, Calcutta-II vs. M/s. Eastend Paper Industries Limited[11]

13) Learned Advocate General also raised similar contentions based on the judgments referred above.

14) No doubt, in view of the law declared by the Apex Court in various judgments referred above, this Court is denuded to issue any preemptive declarations in vaccum and this Court is not required to adjudicate on infructuous and academic issues. In the present writ petition, the petitioners not only challenged vires of Act Nos. 27 & 28 of 2020, but also claimed different independent reliefs, which are not "consequential reliefs", to the main relief of vires of A.P. Act nos. 27 & 28 of 2020.

15) As can be seen from the claim in the present writ petition and other petitions, none of the reliefs are consequential to the vires of Act Nos. 27 & 28 of 2020 and they are independent, except the relief of vires of Act Nos. 27 & 28 of 2020. The other reliefs, more particularly, the Legislative Competency of the Andhra Pradesh State Legislature and other reliefs would survive for adjudication by this Court. Therefore, it is necessary to advert to the relevant pleadings pertaining to the issues survive for adjudication by this Court for deciding the real controversy between the parties.

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[7] (2004) 5 SCC 729
[8] (2013) 14 SCC 685
[9] AIR 1988 SC 1681
[10] (1989) 4 SCC 187
[11] (1989) 4 SCC 244

At the same time, pleadings of both sides relating to vires of A.P Act Nos. 27 & 28 of 2020 are ignored in *toto*.

16) The pleas raised by the petitioners in the present writ petition are that, the Andhra Pradesh Reorganisation Act, 2014 was enacted by the Parliament under Article 3 of the Constitution of India, 1950, to provide for the division of the erstwhile State of Andhra Pradesh into the states of Telangana and Andhra Pradesh (collectively, "Successor States"). Section5 of the Reorganisation Act stipulated that the city of Hyderabad would act as a common capital of the Successor States for a period of ten years. Section5(2) of the Reorganisation Act stipulated that after the expiry of the aforementioned period, "Hyderabad shall be the capital of the State of Telangana and there shall be a new capital for the State of Andhra Pradesh". Further, under Section30 of the Reorganisation Act, the High Court at Hyderabad was to serve as a common High Court for the Successor States, until the President of India notified the principal seat of the High Court of Andhra Pradesh under Section31(2). Section6 of the Reorganisation Act obligated the Central Government to constitute an expert committee to study various alternatives for the new capital for the residuary State of Andhra Pradesh and make appropriate recommendations.

17) Sections 94 (3) & (4) of the Reorganisation Act, 2014 foisted an obligation on the Central Government to provide special financial support for the creation of essential facilities in the new capital of the successor State of Andhra Pradesh including the Raj Bhawan, High Court, Government Secretariat, Legislative

Assembly, Legislative Council, and such other essential infrastructure to facilitate the creation of "a" new capital for the successor State of Andhra Pradesh.

18) The Reorganisation Act came into force on 02.06.2014, thereby abolishing the erstwhile State of Andhra Pradesh while giving birth to the Successor States. Sivaramakrishnan Committee was constituted by the Central Government to Study the Alternatives for a New Capital for State of Andhra Pradesh after Bifurcation, under Section6 of the Reorganisation Act. Sivaramakrishnan Committee was tasked with consultation with various stakeholders, including the Central Government, the Government of the erstwhile State and the successor State of Andhra Pradesh to conduct an assessment of potential for planned growth for the estimated population with appropriate zoning regulations as well as the feasibility of accommodating large structures to house the Raj Bhawan, State Legislature (Assembly and Council), Secretariat, High Court, Office buildings, guest houses, residential quarters and physical infrastructure including stadia, conference halls, convention centres, hotels, schools, colleges, educational and training institutions, libraries, museums, theatres, places of recreation and tourism, parks and market etc. it was also clarified in the terms of reference that the Sivaramakrishnan Committee would consider the effects that the proposed capital would have on dislocation of agriculture system, preservation of local ecology, vulnerability assessment from natural disasters, minimizing the cost of construction and acquisition of land etc.

19) The Sivaramakrishnan Committee, on taking into consideration various criteria like availability of water, connectivity, favourable climate, proximity to the existing large urban centre, capital land availability, suitability and cost in case of construction, ease of construction, topography, centrality, defence and security and historical significance, identified the criteria that were to be used to decide particular location.

20) The observations made in the aforementioned report are as follows:

a. In its introductory part, the Report unequivocally acknowledged the prerogative of the State of Andhra Pradesh to decide the location of its capital city ***"in consultation with the Central Government"***. Accordingly, it was clarified that the Sivaramakrishnan Committee Report was primarily concerned with compiling and analysing the relevant data.

b. It considered three possible approaches and made the following observations with respect to the proposed approaches:

i. ***A single city/super city is a Greenfield location***: The large-scale land acquisition to create such a city posed a serious hurdle.

ii. ***Expanding existing cities***: As regard the considered proposal for setting up the capital city in the Vijayawada-Guntur-Tenali Managalagiri urban area, it was felt that the same was not suitable as it would entail displacing agricultural labour and result in unplanned urban growth.

iii. ***Distributed Development***: Keeping in view the diverse landscape of Andhra Pradesh, it was proposed that three sub-regions be developed, i.c. Vizag region, Rayalaseema region and Kalahasti – Nadikudi region, each of which, it was recommended could be developed in a manner that suited their special conditions.

c. In a separate study annexed to the Sivaramakrishnan Committee Report, Indian Institute Human Settlements, viability, various methods securing land for the purpose of establishing new Government necessary successor State Andhra Pradesh Indian Institute Human Settlements was concerned acquisition, PPP model-based acquisition and Land acquisition considered to financially unfeasible owing the spike the base-price land. As regards Land Pooling, was observed consolidation vast area of house the attempted before and non-contiguous land that available method may not be suitable the intended purpose. Accordingly, the Study concluded land acquisition based PPP model would most suitable the area of the case study.

21) Significantly, in the survey conducted by Sivaramakrishnan Committee, about 52% of the surveyees favoured the new capital city to be located around Vijayawada Guntur Region.

22) After considering the Sivaramakrishnan Committee Report and conducting various consultations and discussions with the stakeholders and the general public, a motion was moved in the Andhra Pradesh Legislative Assembly on 04.09.2014 to locate the Capital City in the central part of the State and more particularly around Vijayawada-Guntur region and to go for decentralized development of the State with 3 Mega Cities and 14 smart cities and adopt a Land Pooling System (LPS) to be worked out by a Cabinet Sub-Committee. This motion was carried, and the Resolution was adopted without any significant opposition in the Legislative Assembly.

23) The factors that favoured the choice of location for a new capital city after extensive consultations with experts and public

Organizations included its low risk to cyclones and destructive seismic activities, access to all, centrality to the States geography, access to Rail, Road and Airways connectivity, proximity to the Ports like Kakinada and Machilipatnam, availability of water, existing infrastructure to kick start the development, proximity to urban areas like Vijayawada, Guntur and Tenali. The capital city area was identified by the State of A.P, between Vijayawada and Guntur along River Krishna comprising 24 revenue villages and part of Tadepalli Municipality of Guntur District covering an area of 53,748 Acres.

24) On 22.12.2014, the Andhra Pradesh Capital Region Development Authority Bill, 2014 was introduced for consideration in the Andhra Pradesh Legislative Assembly. It is pertinent to note that none of the Members of the Legislative Assembly raised any serious opposition to the proposed bill, thereby suggesting the existence of a broad consensus that existed in the Legislative Assembly of the State. It was in these circumstances that the Andhra Pradesh Capital Region Development Authority Act 2014 (Act 11 of 2014), ("the Act" or "the APCRDA Act") was enacted and the Andhra Pradesh Capital Region. Development Authority ("Authority" or "APCRDA") was constituted. The Act received the assent of the Governor and the said assent was published in Andhra Pradesh Gazette on 30.12.2014 vide G.O.Ms.No.252, MA&UD.

25) The objective of the APCRDA Act is to provide for the declaration of the new capital area for state of the Andhra Pradesh and establishment of the Andhra Pradesh Capital

Region Development Authority for the purposes of planning, coordination, execution, supervision, financing, funding and for promoting and securing the planned development of the capital region development area, undertaking the construction of the new capital region development area, undertaking the construction of the new capital for the State Of Andhra Pradesh and for managing and supervising urban services.

26) The Chief Secretary filed a counter affidavit on behalf of Respondent Nos.4,5 and 6 mostly denying the allegations regarding unconstitutionality of Act Nos. 27 & 28 of 2020 and in support of the reports submitted by K.T. Raveendran Committee, Boston Consultancy Group and High Powered Committee, while highlighting obligation of the State under Article 38 of the Constitution of India. But, those contentions are not relevant for the present, as Act Nos. 27 & 28 of 2020 are repealed by Act No.11 of 2021 reserving the Right of Legislature to introduce another Bill after due consultation for decentralization of administration and to that effect, affidavits were filed by Principal Secretary and Additional Secretary of Municipal Administration and Urban Development along with Repeal Act No.11 of 2021. Hence, the pleadings relating to the constitutional validity of Act Nos. 27 & 28 of 2020 are ignored for the present, as no adjudication is required.

27) The respondents also filed additional and common counter affidavits, reiterating the contentions, supporting the action of the legislature in passing Act Nos. 27 & 28 of 2020.

28) The respondents supported their action, while refuting contentions of the petitioners based on equitable Doctrine of Promissory Estoppel and Legitimate Expectation, as public interest overrides Promissory Estoppel and Legitimate Expectation. The pleadings relating to the issue of Promissory Estoppel and Legitimate Expectation will be referred while deciding the question relating to applicability of Doctrine of Promissory Estoppel and Legitimate Expectation. In fact, the contentions of the Respondent Nos. 4,5, & 6 are not available for the present, in view of the repeal of Act Nos. 27 & 28 of 2020.

29) The Principal Secretary to Government, Municipal Administration and Urban Development filed a preliminary counter affidavit, reiterating the contentions raised by the Respondent Nos. 4,5 & 6, while highlighting the various works undertaken by APCRDA and amount spent on different works which will be discussed at appropriate stage, while deciding the points framed for consideration.

30) Dr. P. Lakshminarasimham filed counter and additional counter affidavits on behalf of Commissioner, APCRDA in the lines of Respondent Nos. 4,5, & 6. But, they need no reiteration at this stage, since these contentions will be referred while deciding the points.

31) Respondent No.6 also filed another counter affidavit in W.P.No.20622 of 2018, while supporting the legislative process, denying malice that is attributed to the legislature. But, those contentions are not relevant for the present, in view of repeal of Act Nos. 27 & 28 of 2020.

32) Respondent Nos. 2 & 3 filed common counter affidavits in W.P (PIL) No.40 of 2020 where the reports of committees viz., K.T. Raveendran Committee, Boston Consultancy Group and High Powered Committee were filed and the allegations made in the counter affidavit are nothing but reiteration of common counter affidavit filed by Respondent Nos. 4,5 & 6. Whereas, in the counter affidavit filed by Respondent No.1 in W.P.No.13203 of 2020, the respondents not only supported the report submitted by various committees referred above, while pointing out failure of the political party in power by then in considering the report of Sri Sivaramakrishnan Committee and highlighting the performance of decentralization of administration, establishing three capitals i.e. Executive Capital at Visakhapatnam, Judicial Capital at Kurnool and Legislative Capital at Amaravati. But, they are not required to be stated in detail. At the same time, respondents also supported the action of the respondents to constitute K.T. Raveendran Committee, Boston Consultancy Group and High Powered Committee, while disputing the legality of Technical Expert Committee constituted by earlier government in power. But, these contentions with regard to Committees are irrelevant for the purpose of deciding the points i.e. Act Nos. 27 & 28 of 2020 are already repealed by Act No.11 of 2021 and no cause survives for adjudication to adjudicate upon the legality and constitutionality of Act Nos. 27 & 28 of 2020.

33) Similarly, the respondents disputed the rights of these petitioners, while contending that they have no vested right in the land pooled by the respondents and it is only a scheme,

while agreeing to undertake development activities whenever they procured funds from any other sources and they did not ignore the developmental activities in the land pooled.

34) As the relevant pleadings will be referred at appropriate stage while deciding the points for consideration, the pleadings of the respondents in detail are not narrated herein. Finally, the respondents in their counter affidavits, with one voice, requested this Court to dismiss all the writ petitions.

35) Considering rival contentions, perusing the material available on record, the points need be answered by this Court are as follows:

(1) Whether the Development Agreement cum Irrevocable General Power of Attorney i.e. Form 9.14 constitutes a statutory agreement? If so, whether the State is liable to implement the terms of Form 9.14 Agreement-cum-Irrevocable General Power of Attorney?

(2) Whether the action of the State defeats the legitimate expectation of farmers regarding construction of capital city and developmental activities in the land pooled? If so, whether the action of the respondents be declared as illegal, arbitrary and contrary to doctrine of legitimate expectation?

(3) Whether the action of the State and the APCRDA amounts to violation of statutory promise made by the State and the APCRDA in terms of the Andhra Pradesh Capital Region Development Authority Act, 2014 and the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015? If so, whether the State and the APCRDA be estopped from continuous violation of such promise, applying the doctrine of promissory estoppel?

(4) Whether the State and the APCRDA infringed the farmers right to life guaranteed under the Article 21 of

the Constitution of India so also the constitutional right guaranteed under Article 300-A of the Constitution of India by their acts?

(5) Whether the change of Government can result in change of the policy or liable to continue the capital city and region development projects undertaken by the earlier Government?

(6) Whether the State and the APCRDA abandoned the project to construct the capital city in capital region and failed to develop the infrastructure in the land pooled by the APCRDA, which was voluntarily surrendered by the farmers under the Land Pooling Scheme? If so, the abandonment or failure to implement the projects would infringe the vested right of the farmers in terms of the provisions of the APCRDA Act and the Land Pooling Scheme?

(7) Whether the State is competent to modify the Master Plan without any reference from the local authority?

(8) If the issues referred above are decided in affirmative, whether this Court while exercising jurisdiction under Article 226 of the Constitution of India issue a writ of continuous Mandamus?

(9) Whether the non-statutory reports submitted by K.T. Raveendran Committee, Boston Consultancy Group and High Powered Committee be declared as illegal and arbitrary?

(10) Whether the legislature of the State of Andhra Pradesh lacks competence to make any legislation for shifting or relocating the capital including the High Court in any area other than the capital city notified under Section3 of the Andhra Pradesh Capital Region Development Authority Act, 2014?

P O I N T No.1 :

36) The main contention of the petitioners in W.P.No.13204 of 2020 is that, the agreement between the State, APCRDA and farmers is a Development Agreement-cum-Irrevocable General Power of Attorney and neither of the parties are entitled to revoke the Development Agreement-cum-Irrevocable General Power of Attorney, since it is coupled with interest, that it is a statutory contract and that, the right is vested on the petitioners, thereby, the respondents – State and APCRDA are bound to develop the capital city, since the land is pooled only for establishment of capital city and capital region strictly adhering to the terms of Development Agreement-cum-Irrevocable General Power of Attorney in Form 9.14 while discharging their duties in Schedule II and III by the State and APCRDA, annexed to the Land Pooling Scheme Rules. Failure to adhere to the statutory contract committing anticipatory breach of such Development Agreement-cum-Irrevocable General Power of Attorney is a matter of serious concern and the Court can interfere with such breach of statutory contract, more particularly, when the farmers are not entitled to approach civil court or authority for redressal of their grievance in terms of conditions incorporated in Development Agreement-cum-Irrevocable General Power of Attorney in Form 9.14.

37) Whereas, respondents – State and APCRDA contended that the farmers are not entitled to claim any vested right and that, though Form-9.14 Development Agreement-cum-Irrevocable

General Power of Attorney appears to be in the nature of an irrevocable contract, it is not a statutory contract. Apart from that, the respondents agreed to undertake developmental activities subject to funding. As such, the petitioners are not entitled to claim any relief based on the alleged Development Agreement-cum-Irrevocable General Power of Attorney and statutory contract, as absolutely there is no violation of the terms of Development Agreement-cum-Irrevocable General Power of Attorney, so also the provisions of APCRDA and Land Pooling Rules.

38) In view of enactment of A.P.Act Nos. 27 & 28 of 2020 which were repealed by A.P. Act No.11 of 2021, virtually the State and APCRDA denied the development strictly adhering to the terms and conditions of Form 9.14 and it amounts to revocation of irrevocable power of attorney by State and APCRDA's conduct.

39) Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 cannot be revoked in view of Section202 of Indian Contract Act, which deals with termination of agency, where agent has an interest in subject-matter. In the present facts of the case, the agency is between farmers/ryoths who surrendered the land and the Andhra Pradesh Capital Region Development Authority, who agreed to develop the land pooled and allot one such developed reconstructed plot to the farmers as per the scheme. The interest created in faovur of Andhra Pradesh Capital Region Development Authority is only retaining such land of an extent of approximately 3400 sq.yds in one acre, in lieu or in consideration for the development activities

undertaken by the Andhra Pradesh Capital Region Development Authority. On execution of Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, possession of the lands pooled were taken and development activities have commenced, and a major part of the developmental activities like laying seed access roads and other internal roads; construction of buildings is completed. Therefore, interest is created by the agency by virtue of execution of Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. Such agency cannot be terminated in the absence of any express contract. On a bare look at Form 9.14, we find no such express clause for termination between the farmers and Andhra Pradesh Capital Region Development Authority. Therefore, either of the parties to the agreement are entitled to terminate the agreement in the absence of any express contract between the parties, for such termination.

40) In ***Smart v. Sanders[12]; Re Rose[13]; Frith v. Frith[14]*** and in number of judgments, the Courts held that, the interest of the agent should have arisen anterior to the authority which therefore affords security for such interest. If the agent is authorized to sell and get remunerated out of the sale proceeds it is a subsequent interest and therefore the authority is revocable. In the present case, no remuneration is paid for undertaking such development activities, however, consideration for the agent is to retain 3400 sq.yds by APCRDA and development, providing

[12] (1848) CB 895, 917-918
[13] .(1894) 1 Mans 218
[14] (1906) AC 254

infrastructure in the capital city is the benefit to farmers who surrendered the land. Thus, interest is created to both parties to the contract, since it is the mutual obligation of both parties.

41) In Bowstead on Agency, 14th Edition, page 423 it is stated as follows:-

> *"(I) Where the authority of an agent is given by deed or for valuable consideration, for the purpose of effectuating any security, or of protecting or securing any interest of the agent, it is irrevocable during the subsistence of such security or interest. But it is not irrevocable merely because the agent has an interest in the exercise of it or has a special property in, or lien for advances upon, the subject matter of it, the authority not being given expressly for the purpose of securing such interest or advances;*
>
> *(ii) Where a power of attorney, whenever created is expressed to be irrevocable and is given to secure a proprietary interest of the donee of the power, or the performance of an obligation owed to the donee, then, so long as the donee has that interest, or the obligation remains undischarged, the power is irrevocable;*
>
> *(iii) Authority expressed by this article to be irrevocable is not determined by the death, insanity or bankruptcy of the principal, nor .....where the principal is an incorporated company, but its winding up or dissolution, and cannot be revoked by the principal without the consent of the agent." (Emphasis.....) The author thereafter points out that the mere fact that a power is declared in the instrument granting it to be irrevocable does not make it so. Irrevocability requires something further. It must satisfy the requirements mentioned above and it is then called a power coupled with an interest. The mere right to earn commission is not an interest rendering a grant of authority irrevocable nor is an agent's lien. The fact that the agent subsequently acquires an interest in the property is irrelevant, to be irrevocable. The authority must be conferred as protection of the agent's interest.*

42) The Delhi High Court in ***Harbans Singh v. Smt. Shanti Devi***[15], pointed out in that case that the interest created under an irrevocable power of attorney does not necessarily amount to an interest in the property which is the subject matter of the power of attorney. Unless the document itself created a right in immovable property thereby attracting Section17 of the Registration Act there is no question of the power of attorney becoming compulsorily registerable. The Court examined with respect to Registration Act to find out whether it is compulsorily registerable or not.

43) In the American Restatement of Law, on Agency, it is stated as follows in Chapter V at para)138 pages 351) as follows:-

> *"If, however, the power so given is held for the benefit of the principal and the agent is interested in its exercise only because it entitles him to compensation in exercising it, then even though the principal contracts not to terminate it, and although the agent gives consideration therefor, as by acting or agreeing to act, the power is not a power given as security as the term is herein used. An agent's interest in earning his agreed compensation is an ordinary incident of agency and neither a contract that the principal will not revoke nor a contract that the agent may protect his right to earn commissions, in spite of the revocation, will deprive the principal of control over act to be done by the Agent on his behalf.*
>
> *On the other hand, if an agent acquires an interest in the subject matter, as where he engages in a joint enterprise in which another supplies the subject matter, a power given him by the other to protect such interest is a power given as security."*
>
> *Thus it will be seen that if the interest created in the agent is in the result or the proceeds arising after the exercise of the power then the agency is revocable and cannot be said to be an irrevocable agency. However, if the interest in the subject matter, say a debt payable to the principal, is assigned to the agent as security simultaneously*

[15] (ILR (1977) 2 Delhi 649

> *with the creation of the power and thereafter the agent exercises the power to collect the debt for discharge of an obligation owed by the principal in favour of the agent or owed by the principal in favour of a third party, then the agency becomes irrevocable.*

44) Similarly in CORPUS JURIS SECUNDUM. Vol. 2 (Agency) it is stated as follows at page 1163:

> *"The interest to which the agent gets in the estate or property must be simultaneous with the power given him in order to give him a power coupled with an interest and nor this reason an interest in the result of the exercise of the power as distinguished from an interest in the subject matter of the power itself, is insufficient, for if the agent's interest exists only in the proceeds arising from an execution of the power , the power and the interest cannot be simultaneous in point of time since the power, in order to produce the interest, must be exercised, and by its exercise it is extinguished."*

45) Following various principles with the approval of agency regarding irrevocability and following the principle laid down in ***Smart v. Sanders*** (referred supra), held that, power of attorney which cannot be revoked, can be described as an agency coupled with interest.

46) In the facts of present case, the clauses in the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, such power of attorney cannot be revoked and both parties to the agreement are denuded from revoking the agreement of agency coupled with interest. Therefore, there can be no revocation of agency, and the Capital Region Development Authority is bound to develop, in view of statutory contract of irrevocable agency in Form No.9.14 of the Land Pooling Rules.

47) It is an undisputed fact that the lands were pooled under the scheme by issuing G.O.Ms.No.1 M.A & U.D (M2) Department

dated 01.01.2015. Rules 1, 3(c), 3(e), 5 and 12 of the Scheme speaks about the procedure to be followed, more particularly, Rule 12 deals with Implementation of final LPS and it is extracted hereunder for better appreciation of the case:

> *"12. Implementation of final LPS.*
>
> *(1) After the notification of the Final LPS:*
>
> *(a) the Authority shall take over all lands reserved for the parks, play grounds and open spaces, roads, social amenities and affordable housing which are deemed to be handed over to the Authority and enter the details in Form 9.26 in separate registers pertaining to each category.*
>
> *(b) the Authority shall take over all lands allotted to it and shall enter the details of all such lands in Form 9.27 register.*
>
> *(2) The notified Final LPS is a deemed layout development permission by the Authority valid for a period of three years. The land owners may apply for the development permission and the Commissioner shall accord approval for such cases expeditiously.*
>
> *(3) Within one year from the date of notification of final LPS, the Authority shall complete the basic formation of roads and physical demarcation of plots in the Final LPS.*
>
> *(4) Within twelve months of the date of notification of final LPS, the Authority shall handover physical possession of reconstituted plots in Form 9.28 to the land owners.*
>
> *(5) The Commissioner shall ensure that LPOCs granted under Section51 and sub-Section(4) of Section57 of the Act are in accordance with the provisions of the Registration Act, 1908 without charging registration fee from the land owners.*
>
> *(6) Within three years from the date of final LPS the Authority shall develop the infrastructure in a phased manner."*

48) The authority has not completed its obligation covered by Sub-rules (1) to (5), or development of infrastructure in a phased manner in terms of Sub-rule (6) of Rule 12 of the Rules. At the same time, Andhra Pradesh Capital Region Development Authority is under obligation to maintain the common

infrastructure and facilities after issue of completion certificate for reconstituted plots in terms of Rule 14 of the Rules.

49) The learned Senior Counsel mainly pointed out that, in view of the undertaking given in Schedule I, the State is disentitled to resile from its promise and they are under obligation to complete the development activities. Schedule I deals with process of the scheme. According to Schedule I:

> *(a) finalise the LPS area after calling for objections and suggestions.*
>
> *(b) prepare draft LPS, invite objections and notify final LPS.*
>
> *(c) transfer ownership rights to the Authority from willing land owners for the purpose of development and reconstitution.*
>
> *(d) assemble original plots and reconstitute the plots on ground after ear marking.*
>
> *(e) transfer ownership rights to the land owners through issue of land pooling ownership certificates to the land owners.*
>
> *(f) handover physical possession of reconstituted plot to the land owners.*
>
> *(g) incorporate final LPS in the sector development plans.*
>
> *(h) complete development under LPS.*

50) Thus, it is the obligation of the State to complete the development activities in the land pooled under the scheme, in view of the terms and conditions contained in the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 of the Land Pooling Rules. Any deviation from the terms and conditions amounts to violation of the terms of the Andhra Pradesh Capital Region Development Authority Act and Land Pooling Rules.

51) Statutory contract is defined as, a contract for which a statute prescribes certain terms. Statutes usually, govern the contracts made by public entities. However, some contracts by private persons are also governed by statutes.

52) A statutory contract is nothing but a statutory transaction. Statutory transactions are contracts under compulsion of law whereby parties are mandated by executive orders or legal regulations to enter into either contractual relations or contract–like relations. Therefore, it would not be a sale of goods as the consensual element which forms the basis of contract is absent. However, lately there has been a characterization of statutory transactions as consensual contractual arrangements. This reflects the growth of a novel jurisprudence of contract by law distinct from the ordinary contracts by consent of parties, as understood throughout the legal history.

53) The present Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 of Land Pooling Rules directly would fall under contract by law, but not a private contract. In other words, it is a contract created by statute incorporating certain terms which form part of the scheme or arrangement without any bargain by either of parties which is a standard form or contract adhesion. Thus, statutory transactions are those transactions in which the property is surrendered to the Andhra Pradesh Capital Region Development Authority by the farmers by virtue of statutory obligations, though voluntarily. Though such statutory contracts are contracts voluntarily made when entered into by the farmers

with Andhra Pradesh Capital Region Development Authority, but strictly in terms of The Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015.

54) In normal course, a contract is "consensual, bilateral and commutative". So the first essential which we get from the definition given by "Potheir" is that the contract must be consensual; that means parties must give their free consent because forced purchase and procurement is acquisition. In order to see that whether there was an agreement or consensuality between the parties, regard must be had to their conduct at or about when the property is transferred.

55) In the present case, Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 is between two parties i.e. farmers and Andhra Pradesh Capital Region Development Authority, which satisfies one of the major ingredients of the contract in ordinary law of contract and the subject matter is an agricultural land, it is strictly a transfer of part of the land and the consideration being paid for the farmers by the Andhra Pradesh Capital Region Development Authority is development of plots for capital region and establishment of capital. At the same time, either of the parties are not entitled to revoke the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 in terms of the conditions incorporated in the agreement.

56) One of the major terms of the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 is that, the farmers are not entitled to claim any amount in addition to the

amount agreed upon as aforesaid compensation and accept it without any protest and that the farmers further agree that they will not claim for payment of higher compensation in any court of law and will not be entitled to file any petitions and such petition if filed shall be void and illegal and that they shall abide by the orders of the Authority. (vide Clauses (i) and (ii) of Form 9.14) and thereby, the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 is statutory in nature. When the Andhra Pradesh Capital Regional Development Authority is a state instrumentality established under the statute, the State is under obligation to perform its obligation under the contract. In such statutory contracts, the outward form is that of contract; the substance, however, is not of free bargaining, but submission to a process of private legislation. While in, and in contract law, complete freedom remains in that, the other party has the alternative of not entering into the agreement, in practical effect that choice turns out to be no choice at all.

57) Conveniently, in the present case, the Andhra Pradesh Capital Region Development Authority prepared the terms in Form 9.14 which have totally taken away the rights of the farmers to approach any Court.

58) No doubt, the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 is between a statutory authority and the farmers of capital region area. The land is pooled for specific purpose of development of capital region and establishment of capital city area. The Development Agreement –

cum - Irrevocable General Power of Attorney in Form-9.14 is only a standard form of contract without giving scope for any bargaining and thus, both the parties to the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 are denuded from bargaining the terms under the land pooling scheme. The basis for such agreement is Chapter IX of Andhra Pradesh Capital Region Development Authority Act, 2014 and The Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015. The Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 contained the statutory obligations mentioned in The Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 and the schedules annexed thereto forms part to the Rules. Thus, the basis for Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 is the Andhra Pradesh Capital Region Development Authority Act, 2014 and the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015, incorporating the terms mentioned in the Rules. Hence, the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 is a statutory contract or agreement.

59) One of the major contentions of the learned counsel for the petitioners is that, Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 is a statutory contract and it would not fall under Articles 298 and 299 of the Constitution of India.

60) Article 298 of the Constitution of India deals with power to carry on trade by the State and enter into contracts. The executive power of the Union and of each State shall extend to the carrying on any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose; provided that;

> (a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and
>
> (b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.

61) Article 298 of the Constitution of India permits either the State or Central Government to carry on any trade or business and to the acquisition, holding and disposal of property, enter into contracts for any purpose. Here, the Andhra Pradesh Capital Region Development Authority, which is a statutory authority under the Andhra Pradesh Capital Region Development Authority Act, 2014 framed The Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015, as referred above and pooled the land to develop the same, issued certificate for reconstructed plots, completed part of development, as agreed in terms of Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, alienated such reconstituted plots which vested in Andhra Pradesh Capital Region Development Authority in favour of

National Institutes/Universities, Hospitals etc on nominal rates as part of development of capital city. Therefore, Andhra Pradesh Capital Region Development Authority which is a state instrumentality created by the statute is competent to carry on such trade, though not for profit. Article 298 of the Constitution of India is applicable only when State is a party/agent to contract, but not applicable to Corporations constituted or established under any statute.

62) Article 299 of the Constitution of India deals with Contracts and it specifies as to how the State has to execute such contract or agreements

a) all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

b) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

63) Here, in this case, the Agreement-cum-Irrevocable General Power of Attorney in Form-9.14 of Land Pooling Rules would not strictly fall within the ambit of government contract, to attract Article 299 of the Constitution of India, it is a still statutory

contract, as the Andhra Pradesh Capital Region Development Authority is state instrumentality, created by statute. From a plain reading of the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014, The Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 coupled with the Schedules and Form 9.14 is a statutory contract and in case of any breach on the ground of Doctrine of Frustration or impossibility of performance or otherwise it will necessarily destroy all the incidents of an ordinary contract that are otherwise governed by the Contract Act.

64) Further, in a case in which the consequences of non-performance of contract is provided in the statutory contract itself, the parties shall be bound by that and cannot take shelter behind Section56 of the Contract Act. Rule 5(15) in no uncertain terms provides that "on the failure of the auction purchaser to make such deposit referred to in sub-rule 10" or "execute such agreement temporary or permanent" "the deposit already made by him towards earnest money and security shall be forfeited to Government". When we apply the aforesaid principle we find that the appellant had not carried out several obligations as provided in sub-rule (10) of Rule 5 and consequently, by reason of sub-rule (15), the State was entitled to forfeit the security money. (vide ***Mary v. State of Kerala***[16])

[16] AIR 2014 SC 1

65) In ***Zonal Manager, Central Bank of India v. M/s. Devi Ispat Limited***[17], the Apex Court relying upon earlier judgment in ***State of U.P. and others v. Bridge & Roof Company (India) Limited***[18] held that, a statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the facts of the case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract.

66) In ***C.L.P. India Private Limited v. Gujarat Urja Vikas Nigam Limited***[19] the Apex Court held that, merely because a contract is entered into in exercise of an enacting power conferred by a statute that by itself cannot render the contract a statutory contract. If entering into a contract containing prescribed terms and conditions is a must under the statute,

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[17] (2010) 11 SCC 186
[18] (1996) 6 SCC 22
[19] 2020 Latest Caselaw 357 SC

then that contract becomes a statutory contract. If a contract incorporate certain terms and conditions in it which are statutory then the said contract to that extent is statutory. A contract may contain certain other terms and conditions which may not be of a statutory character and which have been incorporated therein as a result of a mutual agreement between the parties. Therefore, the PPAs can be regarded as statutory only to the extent that they contain provisions regarding determination of tariff and other statutory requirements of Section43A(2).

67) In ***E.I.D. Parry (I) Ltd and others v. State of Tamil Nadu***, the Madras High Court held that the PPAs can be regarded as statutory only to the extent that they contain provisions regarding determination of tariff and other statutory requirements of Section43-A(2). Opening and maintaining of an escrow account or an escrow agreement are not the statutory requirements and, therefore, merely because PPAs contemplate maintaining escrow accounts that obligation cannot be regarded as statutory."

68) In ***Har Shankar and other v. Deputy Excise and Taxation Commissioner and others***[20], the Constitution Bench of Apex Court held that, the writ jurisdiction of High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred." At the same time, it was observed that the licencees are not precluded from seeking to enforce the statutory provisions governing the contract. It must,

[20] AIR 1975 SC 1121

however, be remembered that we are dealing with parties to a contract, which is a business transaction, no doubt governed by statutory provisions. While examining complaints of violation of statutory rules and conditions, it must be remembered that violation of each and every provision does not furnish a ground to the Court to interfere. The provision may be a directory one or a mandatory one. In the case of directory provisions, substantial compliance would be enough. Unless it is established that violation of a directory provision has resulted in loss and/or prejudice to the party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not follow as a matter of course. A mandatory provision conceived in the interest of a party can be waived by that party, whereas a mandatory provision conceived in the interest of public cannot be waived by him. In other wards, wherever a complaint of violation of a mandatory provision is made, the Court should enquire- in whose interest is the provision conceived.

69) In ***Indian Oil Corporation v. M/s Raja Transport Private Limited***[21] the Apex Court held that, Arbitration is a binding voluntary alternative dispute resolution process by a private forum chosen by the parties. It is quite common for governments, statutory corporations and public sector undertakings while entering into contracts, to provide for settlement of disputes by arbitration, and further provide that the Arbitrator will be one of its senior officers. If a party, with open eyes and full knowledge and comprehension of the said

[21] (2009) 8 SCC 520

provision enters into a contract with a government/statutory corporation/public sector undertaking containing an arbitration agreement providing that one of its Secretaries/Directors shall be the arbitrator, he can not subsequently turn around and contend that he is agreeable for settlement of disputes by arbitration, but not by the named arbitrator who is an employee of the other party. No party can say he will be bound by only one part of the agreement and not the other part, unless such other part is impossible of performance or is void being contrary to the provisions of the Act, and such part is severable from the remaining part of the agreement. The arbitration clause is a package which may provide for what disputes are arbitrable, at what stage the disputes are arbitrable, who should be the arbitrator, what should be the venue, what law would govern the parties etc. A party to the contract cannot claim the benefit of arbitration under the arbitration clause, but ignore the appointment procedure relating to the named Arbitrator contained in the arbitration clause.

70) The principle laid down in the above judgment though not applicable directly, is that the petitioners are denuded from ventilating their grievance before any Court of law or authority as per the conditions enumerated in Form No.9.14. When the petitioners voluntarily agreed to surrender their land, the respondents – the State and the APCRDA being the State and its instrumentality are bound by the terms and conditions of the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14.

71) In ***Pimpri Chinchwad Municipal Corporation v. M/s. Gayatri Construction Company and another***[22], the Apex Court referred the judgment of ***Kerala State Electricity Board v. Kurien E. Kalathil and others***[23], where the Apex Court dealt with the question of maintainability of petition under Article 226 of the Constitution and the desirability of exhaustion of remedies and availability of alternative remedies, as also difference between statutory contracts and non-statutory contracts. In paras 10 and 11 of the judgment it was noted as follows:

> "10. We find that there is a merit in the first contention of Mr Raval. Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory.
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> 11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the

22 (2008) 8 SCC 172
23 2000 (6) SCC 293

> Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

72) The principle laid down in the above judgment has no direct application, for the reason that the agreement -cum-General Power of Attorney in Form No.9.14 contains a condition that the farmers cannot approach any Court for redressal, that does not take away the jurisdiction of this Court under Article 226 of the Constitution of India, in view of the law declared by the Apex Court in "***L.Chandra Kumar vs. Union of India***[24]"

73) Learned counsel for the petitioners mainly relied on the judgments of the Apex Court in ***India Thermal Power Limited v. State of Madhya Pradesh and others***[25] where the Apex Court held that, merely because a contract is entered into in exercise of an enabling power conferred by a statute that by itself cannot render the contract a statutory contract. If entering into a contract containing the prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If a contract incorporates certain terms and conditions which are statutory then the said contract to that extent is statutory. A contract may contain certain other terms and conditions which may not be of a statutory character and which have been incorporated therein as a result of mutual agreement between the parties.

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[24] AIR 1997 SC 1125

[25] (2000) 3 Supreme Court Cases 379

74) The principle laid down in the above judgment is directly applicable to the facts of the present case, for the simple reason that the terms and conditions incorporated in the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 amended by G.O.Ms.No.52 M.A & U.D (M2) Department dated 16.03.2015 is a statutory contract, since the terms and conditions contained therein are based on The Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015. Even in the reference of Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, Sections 55 and 56 of Andhra Pradesh Capital Region Development Authority Act, 2014 and Rule 8(8) of The Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 are specifically mentioned and they are the basis for Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. Therefore, by applying the principle laid down therein, it can safely be held that Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 is statutory in nature.

75) In ***Kapila Hingorani v. State of Bihar***[26], the Apex Court laid down certain tests to determine whether the Government company is a State within the Constitution of India and concluded that, SAIL is a government company within Article 12 of the Constitution of India, as an agency or instrumentality of the State and finally held that the State may not be liable in relation to the day to day functioning of the Companies, but its

[26] (2003) 6 SCC 1

liability would arise on its failure to perform the constitutional duties and functions by the public sector undertakings, as in relation thereto the State's constitutional obligations. The State acts in a fiduciary capacity. The failure on the part of the State in a case of this nature must also be viewed from the angle that the statutory authorities have failed and/or neglected to enforce the social welfare legislations enacted in this behalf e.g. Payment of Wages Act, Minimum Wages Act etc. Such welfare activities as adumbrated in Part IV of the Constitution of India indisputably would cast a duty upon the State being a welfare State and its statutory authorities to do all things which they are statutorily obligated to perform. The power of the State in the sphere of exercise of its constitutional power including those contained in Article 298 of the Constitution of India inheres in it a duty towards public, whose money is being invested Article 298 of the Constitution of India confers a prerogative upon the State to carry on trade or business While so the State must fulfill its constitutional obligations. It must oversee protection and preservation of the rights as adumbrated in Articles 14, 19, 21 and 300-A of the Constitution of India.

76) In the facts of the above judgment, the question came up for consideration was about vicarious liability of the State Government of Bihar for payment of arrears of salaries to the employees of the State owned corporations, public sector undertakings or the statutory bodies. Since it is a purely a question of law based on various contentions, in Paragraph 67 of the judgment, the Apex Court held that, “However, before we

issue any direction, we may state that by no stretch of imagination, the liability of the State of Bihar can be shifted to the Union of India. Only because the Union of India allegedly is repository of funds raised by it through Central excise and other levies and impost, the same by itself would not mean that it is indirectly or vicariously liable for the failings on the part of the State Public Sector Undertakings. Either precedentially or jurisprudentially the Union of India cannot be held liable and no such direction can be issued. The Apex Court further held that, The State must thank itself for having placed itself in such a state of affairs. If at an appropriate stage, having regard to its right of deep and pervasive control over the Public Sector Undertakings it had properly supervised the functioning of the Government Companies and take necessary steps to refer the sick companies to B1FR in terms of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, the position might have been different. It even failed to take any positive action even after coming to know the starvation deaths and immense human sufferings. The States of India are welfare States. They having regard to the constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof laying down the Directive Principles of the State Policy and Part IVA laying down the Fundamental Duties are bound to preserve the practice to maintain the human dignity.

77) In view of the law declared by the Apex Court in various judgments referred supra, it is clear that, when the contract is entered into by the State or State instrumentalities or Statutory

authority of the State, incorporating terms of the statute, such contract must be held to be a statutory contract, though not a government contract as adumbrated under Article 299 of the Constitution of India and the State is liable for its default of statutory authorities i.e Andhra Pradesh Capital Region Development Authority. When APCRDA failed to develop the capital region, as agreed in Form 9.14 of Land Pooling Rules, the State is liable to develop the capital region and city, since APCRDA is state instrumentality and has total control over APCRDA.

78) Here, the State on its instrumentality has total control over the APCRDA. Denial of development as per the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 to provide infrastructure to the land owners, who surrendered their land, under land pooling scheme, amounts to violation of the fundamental rights. At the same time, the petitioners also lost their livelihood of agriculture on account of surrender of lands. Thus, in both ways, they lost their livelihood in present and in future on account of the action of the respondents. Thus, the respondents violated Articles 21 and 300-A of the Constitution of India.

79) Right to property is a human right and the petitioners failed to enjoy their property on account of surrender of lands and the failure to deliver reconstituted developed plots as agreed in Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. Such denial would amount to denial of

human right in view of the law declared by the Apex Court in ***Tukaram Kana Joshi vs. MIDC***[27]***.***

80) Accordingly, point is decided in favour of the petitioners and against the respondents.

P O I N T Nos.2 and 3:

81) As point Nos.2 and 3 are interrelated, we deem it expedient to decide both the points by common discussion.

82) During hearing, Sri Shyam Divan, learned Senior Counsel would submit that, the petitioners surrendered their land voluntarily with a strong hope that the State would establish a premier capital and thereby, the value of the developed plots allotted to them will grow its value and that the land itself was pooled for specific purpose of establishing capital, the process of land pooling will be completed only after issue of final completion certificate under the Rules and other obligations were imposed on the State and APCRDA, as APCRDA is the beneficiary under the scheme for construction of a Peoples Capital in the land pooled. When the State and APCRDA failed to establish capital after sale of large extent of property for different reasons by the State to different persons, failure to take up development activities in the land pooled would seriously infringe the rights of the petitioners guaranteed under Articles 21 and 300-A of the Constitution of India. Further, the State failed to keep up its promise under the statutory contract, defeating the legitimate expectation of the land owners who voluntarily surrendered their

[27] (2013) 1 SCC 353

land under the Land Pooling Scheme with expectation that the fully developed plots, either residential or commercial will be given to them. Though the authority is under obligation to complete the process within three years from the date of land pooling, the respondents/authorities did not take any steps towards final completion of the Land Pooling Scheme after developing the area. In any event, it is clear that the respondent/State and APCRDA did not keep up its promise and on the other hand, started carrying on real estate business and mortgaging the property, for raising loans to meet different expenses. In such case, the land pooled from the land owners shall be returned to them or otherwise deal with for the purpose for which it is pooled. Instead of establishing a Capital. Still even as per the objects and reasons of Act No.11 of 2021, the respondent/State is again intending to take steps for shifting of capital to any other place after due consultation with the stakeholders. Very mention of their intention to shift capital in the statement of objects and reasons and in the affidavit filed by the Principal Secretary and Additional Secretary of Municipal Administration & Urban Development would clinchingly establish that the State confirmed it's intention that they intended to present a suitable legislation in future addressing all the concerns of all the regions of the State favouring decentralization, in the Andhra Pradesh State Legislative Assembly after due consultations. In such case, the rights of the petitioners will be prejudiced and it will seriously invade their right to property having parted with large parcels of land in the Land Pooling Scheme with a strong hope that they will get fully

developed plots. When the petitioners agreed to forego 3/4th of the land, while accepting return of plot equivalent to 1/4th with an expectation that a Peoples Capital would be constructed in the pooled land of 34385.27 Acres in an around Amaravati Region, but the State still intends to present suitable legislation in future addressing all the concerns of all regions of the State favouring decentralization, the land owners lost their hope, more particularly, on account of State's failure to keep up its promise, it will defeat the legitimate expectation of these petitioners. On this ground alone, the State is bound to keep up its promise and meet the legitimate expectation of the petitioners by constructing a Peoples Capital in the land pooled.

83) Sri Shyam Divan, Sri B. Adinarayana Rao, Sri M.S. Prasad, learned Senior Counsel, Sri Narra Srinivasa Rao, Sri Unnam Muralidhar Rao, learned Counsel, relying on several judgments, vehemently contended that the State is bound to keep up it's promise, keeping in view the legitimate expectation of the land owners who parted with huge extent of land with an expectation of developed reconstituted plots, both residential and commercial for their future sustenance and livelihood. But, on account of the repealed Acts i.e. Act Nos. 27 & 28 of 2020 and proposed introduction of Bill after due consultation as per the statements of objects and reasons in Act No.11 of 2021, the livelihood of these petitioners is drastically affected and right to livelihood guaranteed under Article 21 of the Constitution of India and right to property guaranteed under Article 300-A of the Constitution of India is violated by the State itself, besides

violation of Human Rights, since right to property is a Human Right. Therefore, the Court can issue continuous mandamus for development of the land pooled, strictly in terms of the Land Pooling Scheme. Failure to implement the scheme in letter and spirit is a serious infraction of fundamental and constitutional right of the petitioners guaranteed under the Constitution of India and requested to issue a writ of continuous mandamus, against the State and A.P.C.R.D.A for implementation of Land Pooling Scheme strictly.

84) In view of these contentions, it is appropriate for us to decide the nature of contract between the land owners and the State under the A.P.C.R.D.A Act and the Land Pooling Scheme formulated by the State under the Act. In view of the specific contentions, the following are the points to be considered.

a) Whether the voluntary surrender of land to the State and its instrumentalities is made as per the provisions of A.P.C.R.D.A Act and the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015?
b) Whether the State is under obligation to keep up its promise and is it liable to be estopped, applying the principles of promissory estoppel?
c) Whether the state failed to implement the Land Pooling Scheme in its letter and spirit. If so, does it amount to defeating the legitimate expectation and constitutional trust of the land owners who surrendered their land under the Land Pooling Scheme? If so, what is the liability of the State.

85) As per the respondents, the plea of the petitioners that any review of the activities in the Capital would be in violation of the equitable doctrines of promissory estoppel and legitimate

expectations is untenable and there is overriding public interest which is backed by cogent material that were taken into consideration before the Government decided to review the activities in the capital region. They placed reliance on the judgment of the Hon'ble Apex Court in ***Sharma Transport rep. by D.P. Sharma vs. Government of Andhra Pradesh***[28] and ***Union of India v. Godfrey Philips India Limited***[29]. It is submitted that the promises made in the previous regime without weighing the expert committee reports given by a committee appointed by the Central Government and in the interests of the public cannot estop the Government from reviewing the said decisions taken earlier. In view of the fact that there is a public outcry and deep resentment, the constitutional obligations under Article 38 and preliminary findings of the cabinet sub committee, it is just and equitable to review the decisions taken earlier and the equitable relief of promissory estoppel cannot be claimed by the petitioners.

86) The Government have chosen to revise the policy of a centralized capital at a single place to the exclusion of the participation of other regions on the following grounds:

a) Inclusive and equitable development of all the regions of the State;
b) Deterrent costs in carrying forward the plans of development as planning under the APCRDA Act, 2014;
c) Overriding public interest of saving monies of the State in the process of locating the Seats of Governance

[28] AIR 2002 SC 322
[29] AIR 1986 SC 806

87) As per the respondents, the material available was elaborately considered and concluded by the High Power Committee and its report has been accepted by the Government. The Government in its objective and bonafide wisdom in respect of overall public welfare, has, on the basis of various studies taken a decision to review the existing works that are being carried out at the Capital Region for enabling the growth of all the regions and the people residing in such under developed regions of the State. The Government has taken the said decision to review the existing projects while placing "public purpose" of development of the entire State over the public necessity of a particular region which, apart from being unviable hiners the public purpose of equitable development of the State and placed reliance on the judgments of the Apex Court in ***Sooraram Pratap Reddy and others vs. District Collector, Ranga Reddy District***[30]***.***

88) It is submitted by the respondents that, when there is an imminent clash between individual loss and larger public interest, individual loss must make way for furtherance of larger public interest, which is the upliftment of all the regions of the State, in such circumstance, where individual loss was being cause while taking a decision in larger public interest and placed reliance on ***Union of India vs. Unicorn Industries***[31] and ***Monnet Ispat and Energery Limited vs. Union of India***[32]***, State of Haryana vs. Eros City Developers Private Limited***[33]***,***

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[30] (2008) 9 SCC 552
[31] AIR 2019 SC 4436
[32] (2012) 11 SCC 1
[33] AIR 2016 SC 451

Hira Tikkoo vs. Union Territory, Chandigarh[34] to contend that larger public interest would outweigh an individual loss, if any, and promissory estoppel must yield to overriding public interest.

89) Adverting to the contention that the farmers who surrendered their lands with a legitimate expectation that a word class Capital City would be constructed, it is submitted that the Government is taking all steps possible to ensure that there would be no injustice caused to farmers who have surrendered their lands. In any event the farmers who have surrendered their lands are not being deprived of their guaranteed returns. However, the anticipation of the farmers that all Government functionaries carrying out their judicial and capital functions must be carried out from the Capital Region notified as per Act No.11 of 2021 at the cost of overriding public interest does not amount to Legitimate Expectation. Therefore, it is not within the right of the petitioners to state that the Government has acted in an arbitrary or unreasonable manner. Reliance was placed on the judgments of the Apex Court in ***M/s. Sethi Auto Service Station vs. Delhi Development Authority and others***[35], ***Madras City Wine Merchants Association vs. State of Tamil Nadu***[36].

90) It is further submitted that the Doctrine of legitimate expectation is held to become inoperative when there was a change in public policy or in public interest. The decision under

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[34] 2004) 6 SCC 765
[35] (2009) 1 SCC 180
[36] (1994) 5 SCC 509

challenge has been taken with a view to cater the interests of the public at large and it is only reasonable to review the decision that was taken in the previous regime, considering the financial distress that is prevalent at the State coffers. The Government, in overriding public interest, on the basis of material on record and on consideration of the expert committee reports, have undertaken the said decisions which are unexceptionable in law.

91) It is further submitted that, all the decisions taken by the State immediately prior to the passing of impugned legislations are in furtherance of public interest, larger public good and bonafide in the light of the findings tendered by the Committees so far and the State in furtherance of its economic policy, wisdom concluded decentralization of seats of authority and developments of all regions equally, is the constitutional goal to be achieved so as to create a sense of participation and involvement amongst the entire populace of the state rather than to continue with earlier models of centralized development in the capital regions in exclusion of all other areas. Having regard to the limited economic capacity of the State, after considering the financial position of the State and factoring in all the relevant parameters necessary for balanced growth of all regions, the State embarked on the policies reflected in the impugned legislations. The petitioners do not have a fundamental right to insist the contracts entered into, the works initiated at exaggerated costs are to be continued until its completion, notwithstanding the derogation of public interest and State's

interest. The writ petitioners are put to strict proof of the pleadings contained in the writ petitions.

92) Respondent/APCRDA also filed a counter affidavit on the same lines.

93) The doctrine of legitimate expectation was first developed in English law as a ground of judicial review in administrative law to protect a procedural or substantive interest when a public authority rescinds from a representation made to a person. It is based on the principles of natural justice and fairness, and seeks to prevent authorities from abusing power. The courts of the United Kingdom have recognized both procedural and substantive legitimate expectations. A procedural legitimate expectation rests on the presumption that a public authority will follow a certain procedure in advance when a decision being taken, while a substantive legitimate expectation arises where an authority makes a lawful representation that an individual will receive or continue to receive some kind of substantive benefit. In determining a claim for an alleged breach of a legitimate expectation, a court will deliberate over three key considerations:

1. whether a legitimate expectation has arisen;
2. whether it would be unlawful for the authority to frustrate such an expectation; and
3. if it is found that the authority has done so, what remedies are available to the aggrieved person.

94) The doctrine of 'Legitimate Expectations' is one amongst several tools incorporated by the Court to review administrative

action. This doctrine pertains to the relationship between an individual and a public authority. According to this doctrine, the public authority can be made accountable in lieu of a 'legitimate expectation'. A person may have a reasonable or legitimate expectation of being treated in a certain way by the administrative authorities owing to some consistent practice in the past or an express promise made by the concerned authority.

95) In Halsbury's Laws of England, Fourth Edition, Volume I(I) 151 a passage explaining the scope of 'legitimate expectation' runs thus:

> ***Legitimate expectations***. *A person may have a legitimate expectation of being treated in a certain way but an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.*
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> *The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must afford" him an opportunity to make representations on the matter. The courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant.*

96) The doctrine is not a specific legal right engraved in a particular statute or rule book. The first time, an attempt was made to establish the principles of the doctrine were in the case of ***Council of Civil Service Unions and Others v. Minister for the Civil Service***[37], that the decision by the public authority should affect the person such that his rights or obligations are altered, which are enforceable by or against him; he is deprived of some benefit or advantage which he had been permitted by the authorizing body in the past and which he could have legitimately expected to enjoy until a valid ground for withdrawal of the same was communicated to him or he had been assured by the decision making body that such a benefit or advantage would not be withdrawn until he is being given an opportunity of contending reasons as to why they were withdrawn.

97) Procedural legitimate expectations have been recognized in a number of common law jurisdictions. In contrast, notwithstanding their acceptance and protection in the United Kingdom.

98) Since its inception, the doctrine of legitimate expectation has been viewed as an offshoot of natural justice. The duty to act fairly is a core tenet of administrative law and a predominant feature in the application of the rules of natural justice. With each individual's entitlement to natural justice and fairness, legitimate expectation reinforces the duty of public bodies to act fairly. It is this protection of fairness that made way for the courts' acknowledgement of legitimate expectations. In their

[37] [1985] AC 374

elaboration of the doctrine, courts of the United Kingdom adopted other key aspects of judicial review such as Wednesbury unreasonableness, fairness (vide ***R v. Inland Revenue Commissioners, exparte M.F.K. Underwirting Agents Limited***[38]) and abuse of power (***R. (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs***[39]) to justify the existence and the protection of legitimate expectations. The term legitimate expectation was first used in the case of ***Schmidt v Secretary of State for Home Affairs***[40] but was not applied on the facts. Subsequently, in ***O'Reilly v Mackman***[41] the doctrine of legitimate expectation was recognized as part of judicial review in public law, allowing individuals to challenge the legality of decisions on the grounds that the decision-maker "had acted outwith the powers conferred upon it". Although initially unclear, the nature and boundaries of the doctrine of legitimate expectation have been elucidated by seminal cases such as ***Council of Civil Service Unions v Minister for the Civil Service***[42] *and* ***R v North and East Devon Health Authority, ex parte Coughlan***[43]**.** Notwithstanding efforts of the courts, some ambiguity as to when legitimate expectations arise persisted. In response, Lord Justice of Appeal John Laws proposed the aspiration of "good administration" as a justification for the protection of legitimate

38 (1989) [1990] 1 W.L.R 1545 at 1569-1570 High Court (Queen's Bench) (England & Wales)
39 [2009) A.C. 456 at 513 para 135, House of Lords (UK)
40 [1968] EWCA Civ 1, [1969] 2 Ch. 149 at 170-171, Court of Appeal (England and Wales)
41 [1983] UKHL 1, [1983] 2 A.C. 237, H.L. (UK)
42 [1985] A.C. 374, H.L. (U.K)
43 [2001] Q.B. 213, C.A (England & Wales)

expectations.(***Nadarajah v. Secretary of State for the Home Department***[44]).

99) A procedural legitimate expectation is created when a representation is made by a public authority that it will follow a certain procedure before making a decision on the substantive merits of a particular case. Upon reviewing a claim for the protection of a legitimate expectation against a public authority's decision, courts will deliberate over three key considerations, (a) the situations and circumstances in which legitimate expectations arise, (b) instances in which it would be unlawful for the public authority to frustrate such an expectation, (c) the remedies that would be available to the aggrieved party if it is found that the public authority had unlawfully frustrated a legitimate expectation.

100) To find out whether there is any legitimate expectation, the parties who approach the Court have to satisfy that, the representation must be clear, unambiguous, and not have any relevant qualification; the expectation must be induced by the behaviour of the public authority; the representation must have been made by someone who had actual or apparent authority; the representation must be applicable to the aggrieved parties. Courts take into account not only the reasonableness of the expectation but other considerations such as the nature of representation made.

101) One of the contentions urged by the learned counsel for the petitioners is that, the State being a constitutional authority

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[44] [2005] EWCA Civl 1363 at para.68, C.A (England & Wales)

is under obligation to perform its obligation through its authority i.e. APCRDA when the statutory authority entered into the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 with the farmers of the capital region for pooling their land by applying the principle of Doctrine of Legitimate Expectation.

102) A legitimate expectation does not arise when it is made ultra vires of the decision-maker's statutory powers, that is, when the decision-maker lacked legal power to make the representation. Courts are reluctant to protect such an expectation that has been created. In the present case, Andhra Pradesh Capital Region Development Authority is invested with such power to pass subordinate legislation i.e. land pooling scheme and to enter into Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 in terms of provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014. As such, such Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 created bilateral legal obligations between the parties under the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. Various obligations that cast upon the state instrumentality i.e. Andhra Pradesh Capital Region Development Authority are more in particular, as per Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, as modified by G.O.Ms.No.52 Municipal Administration & Urban Development (M2) Department dated 16.03.2015. The reason for adopting Andhra Pradesh Capital

Region Development Authority Act, 2014 is the recommendations made by Sivaramakrishnan Committee making three recommendations for choosing capital city for the residuary State of Andhra Pradesh. One of the recommendations is to establish Green Field Capital City. The Legislature in its meeting passed a resolution to establish Green Field Capital City in Amaravati. The present Chief Minister of the State who was the opposition leader in the Assembly along with the other People Representatives, unanimously accepted the proposal made by the then Government in power without any protest. Thus, they gave consent and on the basis of such resolution, G.O.Ms.No.253 M.A & U.D (M2) Department dated 30.12.2014 and G.O. i.e. G.O.Ms.No.254 M.A & U.D (M2) Department dated 30.12.2014 were passed declaring Amaravati as the capital city, thereby, the scheme was formulated basing on the power that is invested with the Andhra Pradesh Capital Region Development Authority for land pooling. In terms of the land pooling scheme, the farmers of the Capital Region Area including Capital City entered into Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 accepting that single capital constituting Executive, Judiciary and Legislature would be established in Amaravati. In fact, the authority has taken up the works and completed part of the works. Therefore, the farmers who entered into Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 legitimately expected that the capital includes Executive, Judiciary and Legislature at Amaravati Area. But, now a proposal is made by Act 28 of 2020 which was repealed during the pendency of petitions dividing

single capital into three capitals as Executive Capital, Judicial Capital and Legislative Capital, proposing to shift the Executive Capital to Visakhaptnam and Judicial Capital to Kurnool in terms of Section8 of Act 28 of 2020, but A.P. Act Nos.27 & 28 of 2020 are repealed while intending to present a suitable legislation in future addressing all the concerns of all the regions of the State favouring decentralization, as per the statement of objects and reasons of repeal Act No.11 of 2021. On account of this proposal, the legitimate expectation of the farmers who entered into Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 are totally frustrated in view of the serious consequences that flow from such proposed shifting, as development activities in the land pooled are abandoned. Hence, we find that there is a representation i.e. agreement between Andhra Pradesh Capital Region Development Authority and the ryoths/farmers and thereby, question of unilateral exercise of power to decentralization of the make such representation does not arise.

103) The other requirement is that such statements or representations must be made by a competent person. For an expectation to be legitimate, the individual making the representation must have actual or apparent authority to make it on behalf of the public authority. Such representations would *prima facie* bind the public authority. (vide ***South Bucks District Council v. Flanagan***[45]).

[45] [2002] EWCA Civ 690, [2002] W.L.R. 2601 at 2607, para. 18, C.A. (England & Wales)

104) Lastly, Sri M.S. Prasad, learned counsel also placed reliance on the judgment of the Apex Court in ***Manuelsons Hotels (P) Limited vs. State of Kerala***[46]**,** wherein it is held that, in fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court reported in The **Commonwealth of Australia v. Verwayen**[47], in the following words:

> *1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.*
>
> *2. The central principle of the doctrine is that the law will not permit an unconscionable - or, more accurately, unconscientious - departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.*
>
> *3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will*

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[46] (2016) 6 Supreme Court Cases 766
[47] 170 C.L.R. 394

involve an examination of the relevant belief, actions and position of that party.

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party: (a) has induced the assumption by express or implied representation; (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;

(c) has exercised against the other party rights which would exist only if the assumption were correct; (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so. Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed."

105) In the present case, representation was made by Andhra Pradesh Capital Region Development Authority, having authority to make such representation, in view of the provision of Andhra Pradesh Capital Region Development Authority Act, 2014 and The Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015, framed therein. Hence, the representation so made by the competent authority or authorized officer to the farmers, who in-turn voluntarily surrendered, accepting proposed allotment of reconstructed plots and development of the capital area, as agreed. But, the proposal to shift Executive and Judiciary to some other places though ceased to exist, it is asserted that the State Legislature is intending to present a suitable legislation in future addressing all the concerns of all the regions of the State favouring decentralization, as per the statement of objects and reasons of Repeal Act.

106) A representation must be reasonable to decide whether the expectation held by the aggrieved party is legitimate; the courts will consider whether the expectation was, in all circumstances, reasonable when it was formed. The reasonableness test requires the court to assess the behaviour of the parties in the events which occurred prior to the making of the alleged representation,

keeping in view that the representation may arise from either the words used or the behaviour of the parties; the aggrieved party must not have utilized fraudulent measures to obtain the representation, and must have disclosed all relevant information; the representation must usually be "clear, unambiguous and devoid of all relevant qualification". However, this is not required to establish the existence of a legitimate expectation if the public authority acted so unfairly such that its conduct constituted an abuse of power.

107) In the present facts of the case, a representation arose on the entering into Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 without any qualification. On the other hand, Terms/Clauses (iii) and (iv) of Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 denuded the farmers to make any claim before any Tribunal or Authority or Court. The agreement discloses all relevant information with clear and unambiguous language without any disqualification and not obtained by fraud. Therefore, the representations i.e. Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 is reasonable, clear and unambiguous. Thus, based on the principle of substantive legitimate expectation, the State is under obligation to fulfill its obligations as there is a substantive legitimate expectation by farmers from the public body i.e. Andhra Pradesh Capital Region Development Authority and the Government.

108) The only exception to such legitimate expectation is public interest. Public interest over rides the legitimate expectation. The

Court must keep in mind the public interest while deciding the applicability of Doctrine of Substantive Legitimate Expectation. The Court has to determine whether there is any overriding public interest justifying the public authority's decision to resile from its representation, or whether fairness dictates that the representation should be given effect to.

109) In the present case, the respondents raised the plea of public interest to override the legitimate expectation before repeal of A.P. Act Nos. 27 & 28 of 2020, as they proposed three capitals. But, after repeal, the alleged public interest for establishment of three capitals vanished. Having agreed in the Agreement-cum-General Power of Attorney in Form 9.14, the State and APCRDA cannot resile from its agreement without any reasonable cause, even in the affidavits filed by Principal Secretary and Additional Secretary of Municipal Administration & Urban Development, agreed to undertake development activities including infrastructure in the land pooled. Hence, the State and APCRDA have to discharge their obligation strictly in terms of agreement and Land Pooling Rules and provisions of APCRDA Act.

110) Though, the Doctrine of Legitimate Expectation is imported from United Kingdom and other countries, still, in India, the Courts are applying the principle of Legitimate Expectation.

111) In ***State of Kerala vs. K.G. Madhavan Pillai***[48], the principle of Legitimate Expectation was considered. In the facts of the above judgment, a sanction was issued for the

[48] (1988) 4 SCC 669

respondents to open a new aided school and to upgrade the existing schools, however, an Order was issued 15 days later to keep the previous sanction in abeyance. This Order was challenged by the respondents in lieu of violation of principles of natural justice. The Supreme Court ruled that the sanction had entitled the respondents with legitimate expectation and the second order violated principles of natural justice.

112) In ***Navjyoti Coop. Group Housing Society v. Union of India***[49], the new criteria for allotment of land was challenged. In the original policy, the seniority with regards to allotment was decided on the basis of date of registration. Subsequently, a change in policy was made in 1990, changing the criteria for deciding seniority based on the date of approval of the final list. The Supreme Court was of the opinion that the Housing Societies were entitled to 'legitimate expectation' owing to the continuous and consistent practice in the past in matters of allotment. Court further elucidates on the principle stating that presence of 'legitimate expectations' can have different outcomes and one such outcome is that the authority should not fail 'legitimate expectation' unless there is some justifiable public policy reason for the same. It is further emphasized that availability of reasonable opportunity to those likely being affected by the change in a policy which was consistent in nature is well within the ambit of acting fairly.

113) The principle laid down in the above judgment is applicable to the present facts of the case, for the simple reason

[49] (1992) 4 SCC 477

that, the then Government took a decision to declare Amaravati as Capital City, in view of the unanimous resolution passed in the Assembly, thereby accepting the recommendation made by Sivaramakrishnan Committee to establish Green Field Capital city. But, the present Government in the Assembly took a policy decision to trifurcate the single capital and establish an Executive Capital at Visakhapatnam and a Judicial Capital at Kurnool, while continuing Legislative Capital at Amaravati, however the policy became Act No.28 of 2020, but was repealed by Act No.11 of 2021. Thus, on account of proposed change of policy, nothing will remain in Amaravati, where Legislative Capital is proposed to be continued. When Amaravati is declared as Legislative Capital, no development will take place, except construction of building(s) for holding meetings whenever the Legislative Assembly and Legislative Council meets on summoning by the Governor of the State, by exercising power under Article 174 of the Constitution of India.

114) The Governor may summon either of the Houses or both the Houses to meet at a place at any time and such meeting need not be in the Assembly Building or Council building in a Legislative Capital. It is for the Governor to decide where to meet, when to meet with the advise of Council of Ministers under Article 163 of the Constitution of India. When the Governor Bungalow is proposed to be shifted to the Executive Capital, being the Executive Head of the State, there is every possibility of summoning either of the Houses or both the Houses to meet at any other place other than the Legislative Capital also. That

directly deprives the farmers of the Capital City or Capital Region Area to have developmental activities and thereby their legitimate expectation is totally frustrated on account of the proposed legislation. The change of the policy shall not frustrate the legitimate expectation of the farmers who voluntarily surrendered their lands under land pooling scheme. Hence, on this ground, the proposed action of the State cannot be sustained.

115) The Supreme Court elaborated on the nature of the doctrine of legitimate expectations in ***Food Corporation of India v. Kamdhenu Cattle Feed Industries***[50], that the duty to act fairly on part of public authorities, entitles every citizen to have legitimate expectation to be treated in a fair manner and it is imperative to give due importance to such an expectation in order to satisfy the requirement of non-arbitrariness in state action or otherwise it may amount to abuse of power. The Court further made a remarkable point that such a reasonable or legitimate expectation may not be a directly enforceable legal right but failure in taking it into account may deem a decision arbitrary. To decide whether an expectation is a legitimate one is contextual and has to be decided on a case by case basis.

116) In ***Union of India v. Hindustan Development Corporation***[51], the Supreme Court has dealt with the doctrine in great detail, starting with the explanation of the scope of the doctrine in Halsbury's Laws of England, Fourth Edition, Volume

[50] (1993) 1. S.C.C. 71
[51] (1993) 3 SCC 499

I (I) 151 which says that a person can have a legitimate expectation of being treated in a certain fashion even though he doesn't have a legal right to receive the same legitimate expectation.

117) If, these principles are applied to the present facts of the case, the State and APCRDA being the responsible public authority are under obligation to perform the obligation under the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. When the State proposes to decentralize the administration as proposed in the statement of objects and reasons, it would amount to violation of Principle of Doctrine of Legitimate Expectation.

118) In ***M.P. Oil Extraction v. State of M.P***[52] the Apex Court held that that the Doctrine of Legitimate Expectations operates in the realm of public law and is considered a substantive and enforceable right in appropriate cases. It was held that the industries had a legitimate expectation with regards to past practice and the renewal clause, that the agreements are renewed in a similar manner. In ***National Buildings Construction Corporation vs. S. Raghunathan***[53] the respondents were brought on deputation for an overseas project that was to be carried out in Iraq by NBCC (Government Company). The Respondents chose to draw their salary in the same scale as of employee of Central P.W.D along with Deputation allowance. They were also given foreign allowance at

[52] (1997) 7 SCC 592
[53] *(1998) 7 SCC 66*

125% of the basic pay, however, their basic pay was revised. It was contended by them that this allowance should be paid out of the revised pay scale. The Apex Court held that the claim which was based on legitimate expectations was rejected by NBCC and agreed with the decision that no such promise or agreement was carried out by NBCC. The Apex Court while elaborating on the doctrine, stated that the doctrine has its genesis in the administrative law and that Government departments ought not to act in an unfettered manner guided by abuse of discretion. The Apex Court also pointed to a procedural aspect stating that the contention of 'legitimate expectation' should have been raised in the pleadings itself.

119) In view of the law laid down in the above judgment, the State and instrumentalities ought not to act in an unfettered manner abusing their discretion. In the facts of the present case, the State and the APCRDA by exercising their unfettered discretion abused their power and when the State or the APCRDA acted in such a manner, the Court can issue a direction as the act of the respondents is arbitrary and defeats the very legitimate expectation of these petitioners as they parted their property believing the representation of the State and APCRDA and the entire property is under their control. Thus, the act of the respondents – State and APCRDA is directly defeating the legitimate expectation of the petitioners. In such case, the Court while exercising power under Article 226 of the Constitution of India can issue a direction.

120) The development of the Doctrine of Legitimate Expectation in India has been in line with the principles evolved in common law English Courts. In fact, it was from these English cases itself that the doctrine first came to be recognized by the courts in India. It, therefore, creates a new category of remedy against an administrative action and furthers the rule of law in India.

121) The doctrine's use has essentially been embedded into Article 14 of the Constitution and thus 'non-arbitrariness and unreasonableness' have been made the necessary qualifiers for assessing as to whether there was a denial of legitimate expectation or not.

122) In the facts of the case, the farmers of the capital region voluntarily surrendered their land under Andhra Pradesh Capital City Land Pooling Scheme formulated under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014. The terms and conditions contained in the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 deprived the farmers of their right to approach any authority or Tribunal or Court by express condition, thereby, they are denuded to approach any authority to claim any loss or damages. At the same time, in view of irrevocability of the authorization executed in favour of Andhra Pradesh Capital Region Development Authority by these petitioners i.e. Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, the State or Andhra Pradesh Capital Region Development Authority is incompetent to revoke the same, as discussed above and at the same time, as per the

provisions of APCRDA Act and Land Pooling Rules the property shall continue to vest on the constituted authority known as APCRDA, as such, the property of farmers surrendered by them under the Land Pooling Scheme for the specific purpose of Capital City and Capital Region is vested on Amaravati Metropolitan Region Development Authority, but conveniently, the State reserved its right to develop the region comprised of Capital Region Development Authority within the means of economic capacity and in consistent with the policy enumerated in the APCRDA Act, Land Pooling Scheme Rules and Form 9.14. Failure to develop and construct capital in the land pooled will seriously affect the rights of the farmers and imposition of such clause is contrary to the terms of Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, thereby, inaction of the State and APCRDA is unreasonable and arbitrary. On this ground, the Court can exercise power to strike down the inaction of the State and APCRDA and direct to discharge its obligation in the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14.

123) One of the major contentions raised by the learned counsel for the petitioners in all the writ petitions is that, when the State or its instrumentality made a promise and obtained a Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, the State and APCRDA is under legal obligation to perform its part of the agreement without any qualification. Failure to perform their obligation or part of obligation under the agreement of Andhra Pradesh Capital Region Development Authority is violation of statutory obligation

under the statutory contract and by applying the Doctrine of Estoppel, the respondents are bound to undertake development, consequently, any action if taken conferred discretion on the State Government and APCRDA to develop the region comprised of APCRDA within the means of economic capacity and consistent with the policy of decentralized development. Such act can be said to be arbitrary and unreasonable, drastically affecting the rights of the farmers who voluntarily surrendered their valuable agricultural land. Learned counsel for the petitioners relied on various judgments of the Apex Court, which will be referred at appropriate stage.

124) Whereas, learned Senior Counsel appearing for the State, vehemently contended that, based on the Principle of Promissory Estoppel, the Legislation cannot be set at naught by mere asking by the farmers who are parties to the contract in Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. The remedy to such farmers is to approach competent civil court to claim damages or compensation for the land they surrendered under the Land Pooling Scheme, but on that ground, the legislation cannot be quashed and requested not to quash Act 28 of 2020 and Act 27 of 2020, on the ground of violation of Doctrine of Promissory Estoppel. This contention is no more available, as Act Nos. 27 & 28 of 2020 are already repealed during pendency of the writ petitions.

125) Estoppel is a rule of equity. That rule has gained new dimensions in recent years. A new class of estoppel i.e. promissory estoppel has come to be recognised by courts in the country, as well as in England. The full implication of

'promissory estoppel' is yet to be spelled out, but the principle was stated and invoked in ***Central London Property Trust Ltd. vs. High Trees House Limited***[54] that, when one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect ' the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the party who gave the assurance or promise cannot afterwards be allowed to revert to the previous relationship as if no such promise or assurance has been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced even though it is not supported in point of law by any consideration, but only by his word. But that principle does not create any cause of action which did not exist before, so that, where a promise is made which is not supported by consideration, the promisee cannot bring an action on the basis of the promise. The rule laid down in these decisions undoubtedly advances the cause of justice and hence we have no hesitation in accepting it.

126) Promissory estoppel is a relatively new development. In order to trace the evolution of the doctrine in England, we need to refer to some of the English decisions. The early cases did not speak of this doctrine as estoppel. They spoke of it as 'raising equity'. Lord Cairns stated the doctrine in its earliest form in the following words in ***Hughes vs. Metropolitan Railway Company***[55]. "It is the first principle upon which all courts of

[54] [1956] 1 All ER 256; 62 TLR 557
[55] (1877)2 App Case 439

equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results afterwards by their own act or with their won consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties." This principle of equity made sporadic appearances but it was only in 1947 that it was restated as a recognized doctrine by Lord Denning in ***Central London Properties Ltd. v. High Trees House Limited*** (referred supra) who asserted that, "A promise intended to be binding, intended to be acted upon, and in fact acted upon is binding." The correctness of Denning J.'s dictum has however been subject of considerable controversy. In particular, two criticisms have been leveled against it. First, it was argued that the concept of 'Promissory' estoppels offends against the rule in ***Jorden v. Money***[56] in which it was held that only a representation of existing or past fact, and not one relating to future conduct, will ground an estoppels. Estoppel would not therefore apply, as in ***Central London Properties Ltd. v. High Trees House Limited*** (referred supra), to a promise as to the future. The rule in **Jordan v. Money** (referred supra), however is not an absolute one, and it is qualified by a number of exceptions. One of this exception is that the principle expressed in ***Hughes v. Metropolitan Railway Company***

[56] (1854) 5 HL Cas 185, 10 ER 868 (PC)

(referred supra) which applies where two parties stand together in a contractual or other similar legal relationship, and one of them makes to the others promise to forbear from enforcing its strict legal rights. To this situation the rule in ***Jorden v. Money*** (referred supra)has no application. Secondly, it was that the dictum of Denning J. is inconsistent with the decision of the House of Lords in ***Foakes v. Beer***[57]. But the principle upon which he relied in the High Trees was that of estoppels, which must be specially pleaded. A plea of estoppel was never raised in ***Foakes v. Beer*** (referred supra). 'Estoppels' in the sense in which the term is used in English legal phraseology, are matter of infinite variety, and are by no means confined to subjects which are dealt with in Chapter VIII of The Indian Evidence Act. A man may be estopped not only from giving particular evidence, but from doing acts, or relying upon any particular arguments or contention which the rules of equity and good conscience prevent him from using as against his opponent.

127) Thus, the Principle of Estoppel is traced only under Section115 of the Indian Evidence Act to limited extent to describe it as an equitable estoppel. In India, there are two stages in the evolution of the application of this doctrine; pre-Anglo Afghan case and post- Anglo Afghan case. Prior to this case, the position was that promissory estoppel did not apply against the Government. But the position altered with this case. In ***Union of India v. Anglo Afghan Agencies***[58], the Government of India announced certain concessions with regard to the import

[57] (1883) LR 9 App Case 605
[58] AIR 1968 SC 718

of certain raw materials in order to encourage export of woolen garments to Afghanistan. Subsequently, only partial concessions and not full concessions were extended as announced. The Supreme Court held that the Government was estopped by its promise. Thereafter the courts have applied the doctrine of promissory estoppel even against the Government. In the above case, the Government of India promulgated an Export Promotion Scheme for providing incentives to exporters of woollen goods. The respondent exported goods of a certain value and claimed import entitlement, equal to the full value of exports as notified in the scheme, but the Textile Commissioner reduced the import entitlement. The Supreme Court held in favour of the respondent on the ground that the Textile Commissioner and the Union of India did not act in exercise of the power under Clause 10 of the scheme under which the Textile Commissioner may assess the value of the goods exported and issue an entitlement certificate on the basis of such assessed value, and that on the contrary, the Textile Commissioner reduced the import entitlement without giving an adequate opportunity to the respondent to present its case. The Court also observed as follows:

> *"We hold that the claim of the respondent is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondent acting upon that representation under the belief that the Government would carry out the representation made by it.*
>
> *Having held in favour of the respondent on the ground that the provisions of the Scheme had not been followed by the appellants, any reference to promissory estoppel for using against the Government was totally uncalled for and the observation must be treated as obiter pure and simple."*

128) Jurisprudence behind the Doctrine is that the doctrine of promissory estoppel is an equitable doctrine. Like all equitable remedies, it is discretionary, in contrast to the common law absolute right like right to damages for breach of contract. The doctrine has been variously called 'promissory Estoppel', 'equitable Estoppel', 'quasi Estoppel' and 'new Estoppel'. It is a principle evolved by equity to avoid injustice and though commonly named 'promissory Estoppel', it is neither in the realm of contract nor in the realm of Estoppel. The true principle of promissory Estoppel is where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it. It is not necessary, in order to attract the applicability of the doctrine of promissory Estoppel that the promisee acting in reliance of the promise, should suffer any detriment. The only thing necessary is that the promisee should have altered his position in reliance of the promise.

129) This rule is applied by the Courts of Equity in England, as Estoppel is a rule of equity. In India, however, as the rule of Estoppel is a rule of evidence, the ingredients of Section115 of the Indian Evidence Act, 1872, must be satisfied for the application of the doctrine. The doctrine of promissory Estoppel

does not fall within the scope of Section115 as the Sectiontalks about representations made as to existing facts whereas promissory Estoppel deals with future promises. The application of the doctrine would negate the constitutional provision, as under Article 299, which affords exemption from personal liability of the person making the promise or assurance.

130) The ingredients to constitute Doctrine of Promissory Estoppel are as follows:

(i) That there was a representation or promise in regard to something to be done in the future,

(ii) That the representation or promise was intended to affect the legal relationship of the parties and to be acted upon accordingly, and,

(iii) That it is, one on which, the other side has, in fact, acted to its prejudice.

131) In the formative period the doctrine of promissory estoppel could not be invoked by the promisee unless he had suffered 'detriment' or 'prejudice'. All that is required is that the party asserting the estoppel must have acted upon the assurance given by him. The alteration of position by the party is the only indispensable requirement of the doctrine. Thus, a party who approached the Court claiming relief based on Promissory Estoppel must establish the requirement stated above, otherwise he is not entitled to claim any relief either as a defense or claim.

132) According to Halsbury, Promissory Estoppel is defined as follows:

> *"Where, by wards or conduct a person makes an unambiguous representation as to his future conduct, intending the representation to be relied on and to affect the legal relations between the parties, and the representee alters his position in reliance on it, the representor will be unable to act inconsistently with the representation if by so doing the representee would be prejudiced."*

133) Promissory estoppel contains a number of features which distinguish it from estoppel by representation of fact. First, in that the representation may be one of intention and not one of fact; which raises the question whether it is inconsistent with the House of Lords decision in ***Jordan v. Money*** (referred supra). But the doctrine is now well established. Secondly, the requirement of detriment to the representee is less stringent in the case of promissory estoppel. Financial loss or other detriment is of course sufficient; but it seems that it is not necessary to show more than that the representee committed himself to a particular course of action as a result of the representation. Thirdly, the effect of the estoppel may not be permanent. The representator may escape from the burden of the equity if he can ensure that the representee will not be prejudiced. But, consistently with estoppel by representation, promissory estoppel does not create a cause of action; it operates to give a negative protection. It is a shield and not a sword.

134) The Doctrine of Promissory Estoppel is developed in all countries, including United Kingdom and United States of

America. A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee, and which does induce such action or forbearance, is binding if injustice can be avoided only by enforcement of the promise. As per American Jurisprudence, there is considerable dispute as to the application of estoppel with respect to the State. While it is said that suitable estoppel will be invoked against the State when justified by the facts, clearly the doctrine of estoppel should not be lightly invoked against the State. Generally State is not subject to an estoppel to the same extent as is an individual, or a private corporation. Otherwise it might be rendered helpless to assert its powers in. government. Therefore, as a general rule" the doctrine of estoppel will not be applied against the State in its governmental, public or soverign capacity. An exception, however, arises in the application of estoppel to the State when it is necessary to prevent fraud or manifest injustice.

135) In India, there is vast expansion of this Doctrine of Promissory Estoppel. The Principle of Promissory Estoppel in India is a Rule of Evidence incorporated in Section115 of the Indian Evidence Act and the requirements to constitute Promissory Estoppel are identical to the principles enumerated hereinabove.

136) As discussed above, in the present case, based on the promise made by Andhra Pradesh Capital Region Development Authority, which is a state instrumentality by framing a statutory scheme of land pooling and exercising power under Andhra Pradesh Capital Region Development Authority Act,

2014 and believing the representation of the Andhra Pradesh Capital Region Development Authority, the farmers in the capital region area voluntarily surrendered their agricultural land, thereby altered their position and handed over possession of the property to Andhra Pradesh Capital Region Development Authority for development activities, as agreed under the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, as modified by G.O.Ms.No.52 Municipal Administration & Urban Development (M2) Department dated 16.03.2015. In compliance of the terms and conditions of Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, the Andhra Pradesh Capital Region Development Authority took up developmental activities, laid seed access roads and other connected roads, spent huge amount, divided the property surrendered by the farmers under the land pooling scheme into plots, both commercial and residential to deliver reconstructed plots to the farmers to surrender their plots under the Land Pooling scheme, accordingly issued Certificates, allotted plots at different areas. The land was converted from agriculture to non-agriculture and approved lands were allotted to various Central Government Institutions, Universities, private entrepreneurs for development on payment of its value. The government also raised constructions in the land pooled, including Secretariat, High Court, I.A.S Officers quarters, M.L.As and M.Ps residential quarters, 90% of the work is completed, started construction of permanent iconic High Court building near the present judicial complex in the Justice City where High Court is functioning,

started construction of residential quarters to Secretaries and Ministers which are partly completed. But, at this stage, the Government took a policy decision to trifurcate the capital into three i.e. Executive Capital, Judicial Capital and Legislative Capital, proposed to shift Executive Capital to Visakhapatnam and Judicial Capital to Kurnool, to decentralize the administration and develop all three regions in the State, however, during pendency of the petitions, it was withdrawn. The land pooling was taken up only for development of capital region under capital city and on the promise to develop both capital region and capital city by Andhra Pradesh Capital Region Development Authority, lured the farmers of the villages and made them to surrender their lands. But, now, Andhra Pradesh Capital Region Development Authority resiled from its promise. Therefore, except continuing and constructing building for meeting Members of Assembly and Members of Legislative Council, no further activity is being undertaken. Even if the State or Andhra Pradesh Capital Region Development Authority intended to return the property to the farmers, it is difficult to identify the property on ground and in fact, it will have a disastrous effect on the rights of the farmer, for the reason that the land was kept fallow for the last five years with grown-up bushes, wild growth. They raised constructions in some parts of the property, laid roads, drainages, electricity lines which totally destroy the nature of the agricultural land making it now unfit for cultivation.

137) As discussed above, believing the promise made by Andhra Pradesh Capital Region Development Authority, which is a state

instrumentality, the farmers of Capital Region including Capital City Area, voluntarily surrendered their land, entered into Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 agreeing for delivery of reconstructed plots, depending upon the extent mentioned in the agreement, both residential and commercial. The farmers also agreed without any qualification that they shall not approach any Tribunal or Authority or Court claiming compensation in terms of Clauses (iii) and (iv) of the conditions mentioned in Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. Now the property is continued to vest in terms of APCRDA Act.

138) The affidavits filed by Principal Secretary and Additional Secretary of Municipal Administration & Urban Development and the argument of Sri S. Niranjan Reddy, learned Senior Counsel for APCRDA, indicates that the authority does not want to develop the area indirectly, may be on account of economic constraints. Thus, the farmers are denuded from raising any claim before any competent authority or Tribunal or even any civil court for damages or otherwise and whereas the Government does not want to develop, as agreed in terms of Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 and in terms of the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. Such act of the State or its instrumentality is highly unreasonable and arbitrary exercise of power, being the law makers.

139) In ***M/s Motilal Padampat Sugar Mills Company Limited v. State of U.P***[59], the Appellant before the Apex Court was primarily engaged in the business of manufacture and sale of sugar. An assurance was given by the State Government in that case that new Vanaspati units in the State which go into commercial production by 30th September, 1970 would be given partial concession in sales tax for a period of three years. The Appellant having set up such Vanaspati unit thereafter went into the production of Vanaspati on 2nd July, 1970 and sought exemption. The Government apparently turned around and rescinded its earlier decision of January, 1970 in August 1970, by which time the factory of the Appellant had gone into commercial production. A Writ Petition was filed in the High Court of Allahabad asking for a writ directing the State Government to exempt the sales of Vanaspati manufacturer from sales tax for a period of three years commencing 2nd July, 1970 as per the promise held out. This plea fell upon deaf ears in the High Court, as a result of which the Petitioner in that case appealed to the Supreme Court. After discussing the authorities in detail, the Apex Court held that The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee,

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[59] (1979) 2 SCC 409

notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

140) It is elementary that in a republic governed by the Rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and Rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned. The former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, be committed to the Rule of law, and claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the *Indo-Afghan Agencies* case and the supremacy of the Rule of law was established.

141) It was laid down by this Court that the Government cannot claim to be immune from the applicability of the Rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action

to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a

promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the *Indo-Afghan Agencies* case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government.

142) Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act

unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the Rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming ***that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden.*** But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. [Vide *Emmanuel Avodeji Ajaye* v. *Briscoe* [(1964) 1 WLR 1326]. [pp. 682-685]

143) The doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render

justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court reported in ***The Commonwealth of Australia vs. Verwayen*** (referred supra), by Deane, J. in the following words:

> 1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.
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> 2. The central principle of the doctrine is that the law will not permit an unconscionable-or, more accurately, unconscientious-departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.
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> 3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.
>
> 4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party: (a) has induced the assumption by express or implied representation; (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption; (c) has exercised against the other party rights which would exist only if the assumption were correct; (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so. Ultimately, however, the

question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the Defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the

> prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed.

144) However, when it came to the applicability of the doctrine of promissory estoppel, the Hon'ble Apex Court relied upon the observations made in ***State of Rajasthan and Anr. vs. J.K. Udaipur Udyog Ltd. and Anr***[60]., and ***Arvind Industries and Ors. vs. State of Gujarat and Ors***[61]. From the ***State of Rajasthan and Anr. vs. J.K. Udaipur Udyog Ltd. and Anr*** (referred supra), para 25 was quoted by the Apex Court in order to arrive at a conclusion that the recipient of an exemption granted by a fiscal statute would have no legally enforceable right against the Government inasmuch as such right is a defeasible one in the sense that it may be taken away in exercise of the very power under which the exemption was granted. What was missed from that case was the very next paragraph which states as follows:

> "In this case the Scheme being notified under the power in the State Government to grant exemptions both Under Section15 of the RST Act and Section8(5) of the CST Act in the public interest, the State Government was competent to modify or revoke the grant for the same reason. Thus what is granted can be withdrawn unless the Government is precluded from doing so on the ground of promissory estoppel, which principle is itself subject to considerations of equity and public interest. (See STO v. Shree Durga Oil Mills). The vesting of a defeasible right is therefore, a contradiction in terms. There being no indefeasible right to

[60] (2004) 7 SCC 673
[61] (1995) 6 SCC 53

> the continued grant of an exemption (absent the exception of promissory estoppel), the question of the Respondent Companies having an indefeasible right to any facet of such exemption such as the rate, period, etc. does not arise. (at Para 26)"

145) The aforesaid paragraph 26 has been noticed by the Court in ***Mahabir Vegetable Oils (P) Ltd. and Anr. vs. State of Haryana and Ors***[62]. It is clear, therefore, that the reliance by this Court in ***Shree Sidhbali Steels Limited and Ors. vs. State of Uttar Pradesh and Ors***[63]**,** case upon the aforesaid judgment when it comes to non application of the principle of promissory estoppel to exemptions granted under statute would be wholly inappropriate.

146) In ***State of Punjab vs. Nestle India Ltd***[64], for the period from 1.4.1996 to 4.6.1997, purchase tax on milk was to be abolished by the State Government. An announcement to this effect was given wide publicity in several newspapers in the State and a speech was given to the aforesaid effect by the Finance Minister of the State while presenting the budget for the year 1996-1997. That was further translated into a memorandum of the financial Commissioner, dated 26.4.1996, which was addressed to the Excise and Taxation Commissioner of the State. When a meeting was held on 27th June, 1996 by the Chief Minister and the Finance Minister with the Excise and Taxation Commissioner and various Financial a financial notification would be issued "in a day or two". For the first time, on 4th June, 1998, the Council of Ministers decided that the decision to

[62] (2006) 3 SCC 620
[63] (2011) 3 SCC 193
[64] (2004) 6 SCC 465

abolish purchase tax on milk was not accepted and, consequently, the authorities issued notice to the Respondents requiring them to pay purchase tax on milk for the year 1996-1997. The High Court held that the State Government was bound by its promise and representation to abolish purchase tax. According to the High Court, the absence of a financial notification was no more than a ministerial act which remained to be performed. As the Respondents had acted on the representation made, they could not be asked to pay purchase tax for the year 1996-1997. The Writ Petition was allowed and the demand notice of tax for the aforesaid year was struck down. The Apex Court, after adverting to Section30 of the Punjab General Sales Tax Act, 1948, which gave the State Government the power to exempt from purchase tax, by notification, any of the goods mentioned in the Schedule, recapitulated the entire law of promissory estoppel in great detail, referred to ***M/s Motilal Padampat Sugar Mills Company Limited vs. State of U.P*** (referred supra), and other judgments, and finally held:

> "The Appellant has been unable to establish any overriding public interest which would make it inequitable to enforce the estoppel against the State Government. The representation was made by the highest authorities including the Finance Minister in his Budget speech after considering the financial implications of the grant of the exemption to milk. It was found that the overall benefit to the State's economy and the public would be greater if the exemption were allowed. The Respondents have passed on the benefit of that exemption by providing various facilities and concessions for the upliftment of the milk producers. This has not been denied. It would, in the circumstances, be inequitable to allow the State Government now to resile from its decision to exempt milk and demand the purchase tax with retrospective effect from 1-4-1996 so that the Respondents cannot in any event readjust the expenditure already made. The High Court was also right when it held that the operation of the estoppel would come to an end with the 1997 decision of the Cabinet."

147) The same is the case in the present dispute also. Over riding public interest is not adequately pleaded or proved. The rigorous standard of proof has not been met at all.

148) Similarly, ***Arvind Industries and Ors. vs. State of Gujarat*** (referred supra) is again a judgment in which it is clear that the doctrine of promissory estoppel could have no application because the Appellant in that case was not able to show that any definite promise was made by or on behalf of the Government and that the Appellant had acted upon such promise.

149) It is clear, therefore, that ***Shree Sidhbali Steels Limited and Ors. vs. State of Uttar Pradesh and Ors*** (referred supra) was a case which was concerned only with whether a benefit given by a statutory notification can be withdrawn by the Government by another statutory notification in the public interest, if circumstances change.

150) In view of the law declared by the Apex Court and applying the same to the present facts of the case, it is clear that the farmers based on the promise made by the Andhra Pradesh Capital Region Development Authority altered their position, thereby the State is under obligation to perform its obligation. This principle of Doctrine of Promissory Estoppel is directly applicable to the present facts of the case.

151) Doctrine of Promissory Estoppel can be used as a shield, but not as a sword. But, when the State is taking away the rights of the farmers, denuding them from claiming anything, though the State failed to perform its obligation substantially, it would amount to exercise of unreasonable and arbitrary power of the

State and APCRDA to fulfill their obligation as agreed under Agreement-cum-General Power of Attorney in Form 9.14.

152) In ***Kasturi Lal Laskhmi Reddy vs. State of Jammu and Kashmir***[65], the Supreme Court considered as to when a statute or State action can be declared as arbitrary and held that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of

[65] 1980 AIR 1992

reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

153) The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by the Supreme Court in ***Smt. Maneka Gandhi v. Union of India***[66], clearly demonstrated that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of this Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the Directive Principles.

154) It has been laid down by the Supreme Court in ***E.P. Royappa v. State of Tamil Nadu***[67], and ***Smt. Maneka Gandhi v. Union of India*** (referred supra) that Article 14 strikes at arbitrariness in State action and since the, principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is protected by this article, it must characterise every governmental action, whether it be under the authority of law or in exercise of executive power without making of law. So also the concept of reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable. Similarly Article 21 in the full plenitude of its activist magnitude as discovered by ***Smt. Maneka Gandhi v. Union of***

[66] AIR 1978 Supreme Court 597 (1)
[67] [1974] 2 S.C.R. 348

India (referred supra), insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and just. The Directive Principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other articles enumerating the fundamental rights. By defining the national aims and the constitutional goals, they setforth the standards or norms of reasonableness which must guide and animate governmental action. Any action taken by the Government with a view to giving effect to any one or more of the Directive Principles would ordinarily, subject to any constitutional or legal inhibitions or other over-riding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a Directive Principle would incur the reproach of being unreasonable.

155) In ***G.B. Mahajan vs. Jalgaon Municipal Corporation***[68], the Supreme Court observed that, the reasonableness in administrative law imposed, therefore, to distinguish between proper use and improper use of power, applicability of the test depends upon the given situation. Therefore, either failure to exercise proper use of the power or improper use of power constitutes unreasonableness.

156) Thus, by applying the principles laid down in the above judgments to the present facts of the case, the inaction of the State, APCRDA in development of capital region, providing infrastructure, roads, etc by constructing capital city in the land

[68] 1991 AIR 1153

pooled, strictly adhering to the terms of Form 9.14 of LPS Rules etc., is to the detriment of the farmers who surrendered their lands and failure to keep up the promise it made, would amount to improper abuse of power. Thereby such inaction is arbitrary and unreasonable. On this ground also, the State action can be said to be unreasonable and arbitrary and contrary to written agreement in Form 9.14.

157) In the recent judgment of the Apex Court in ***The State of Jharkhand and Ors. vs. Brahmputra Metallics Ltd. and Ors***[69]**,** while considering both the principles of Promissory Estoppel and Legitimate Expectation, the Apex Court set-aside part of the policy on the ground that it is violative of Principle of Promissory Estoppel and Legitimate Expectation of a citizen. In the facts of the above judgment, the State of Jharkhand notified the Industrial Policy 2012 on 16.06.2012 granting certain exemptions. Though the Industrial Policy 2012 which was notified on 16.06.2012 envisaged that notifications by the Departments of the State government would be issued within one month, there was a failure to comply with the time schedule. In order to give effect to the exemption from electricity duty, a notification Under Section9 of the Bihar Act 1948 was necessary. Since an exemption notification was not issued by the State of Jharkhand under Section9, a writ petition was filed under Article 226 of the Constitution of India before the High Court of Jharkhand by a company by name of Usha Martin Limited. Eventually, the State Government issued an exemption notification on 08.01.2015 giving prospective effect to the rebate

[69] Civil appeal Nos.3860-3862 of 2020 dated 01.12.2020

from the date on which it was issued. The respondent in pursuance of the Industrial Policy, 2012 availed certain benefits, particularly rebate/electricity duty in terms of the Industrial Policy, 2012 and in view of the later exemption notification dated 08.01.2015, giving retrospective effect to the same, taken away the benefits that conferred on the industries and the same was now challenged before the High Court and the High Court decided the same partly in favour of the Industry. Aggrieved by the same, the State of Jharkhand preferred Civil appeal Nos.3860-3862 of 2020, questioning the order passed by the High Court. For better understanding, little narration of the facts is necessary. The respondent was granted a certificate of commencement of commercial production on 31 May 2013. The certificate records that the integrated manufacturing unit of Sponge Iron and Mild Steel Billets, together with a captive thermal plant of 20 MW capacity set up by the respondent commenced commercial production on 17 August 2011. A certificate of registration was granted to the respondent on 22 November 2011 under Rule 4 of the Bihar (Jharkhand) Electricity Duty Rules 19493 , according to which it was liable to pay duty for distribution and/or consumption of the energy from 1 October 2011. On the basis of the returns submitted by the respondent in Form-III, read with Rule 9 of the Bihar Rules 1949, assessment orders were passed by the assessing officer for FY 2011-12 on 9 December 2014, for FY 2012-13 on 18 December 2015 and for FY 2013-14 on 16 December 2016. Though the Industrial Policy 2012 which was notified on 16 June 2012 envisaged that notifications by the Departments of

the State government would be issued within one month, there was a failure to comply with the time schedule. In order to give effect to the exemption from electricity duty, a notification under Section9 of the Bihar Act 1948 was necessary. Section9 recognizes the power of the State government to grant exemptions. Rule 6 of the Bihar Rules 1949 casts a duty on every assessee to pay the duty which falls due within two calendar months of the month to which it relates. Rule 9 requires the submission of a return in Form-III within a period of two calendar months from the expiry of the month to which the return relates. Since an exemption notification was not issued by the State of Jharkhand under Section9, a writ petition was filed under Article 226 of the Constitution before the High Court of Jharkhand by a company by the name of Usha Martin Limited. Eventually, the State government issued an exemption notification on 8 January 2015 but made it effective from the date on which it was issued. The exemption notification is extracted below:

> "S.O.67 dated 8th January, 2015 – In the light of Para 32.10 of Jharkhand Industrial Policy, 2012 and in exercise of the powers conferred by the Section9 of the adopted Bihar Electricity Duty Act, 1948, the Governor of Jharkhand is pleased to exempt new or existing industrial units setting up captive power plant for self-consumption or captive use (in respect of power being used by the plant) from the payment of 50% of Electricity Duty from the date of the commissioning of the power plant. This notification shall be effective from the date of issue and shall remain effective till the period mentioned in the relevant provisions of the Jharkhand Industrial Policy, 2012."

158) The Industrial Policy 2012 announced an incentive in the form of a rebate or deduction on electricity duty for a period of

five years from the commencement of production. If a notification under Section9 had been issued by the State government within a month, in terms of the representation held out by the Industrial Policy 2012, the respondent would have had the benefit of almost the entire period of exemption contemplated by the policy. But since the exemption notification dated 8 January 2015 was made prospective, the respondent (and other similar units) would receive the benefit of the exemption from electricity duty for a much lesser period. Faced with this situation, the respondent approached the High Court by filing the writ petition.

159) The High Court by relying on the judgment of ***State of Bihar vs. Kalyanpur Cement Limited***[70] and ***Manuelsons Hotels Private Limited vs. State of Kerala*** (referred supra), where the decisions are promised on the doctrine of promissory estoppel enunciated in ***Motilal Padampat Sagar Mills Co. Ltd. Vs. State of UP*** (referred supra). The High Court held that a promise was made by the State government to give the benefit of an exemption of 50 per cent in electricity duty for a period of five years, for self-consumption or captive use, to all new and existing industrial units setting up captive power plants in the State of Jharkhand. The High Court observed that it was not the case of the State government that it did not intend to give the benefit to these industrial units since, as a matter of fact, it had issued a notification, though belatedly, on 8 January 2015. The same was challenged before the Apex Court and the Division Bench of the Apex Court consisting of Hon'blwe Justice Dr. Dhananjaya Y. Chandrachud and Hon'bel Justice Indu

[70] (2010) 3 SCC 274

Malhotra, in detail discussed the Principle of Promissory Estoppel and Legitimate Expectation.

160) In the above judgment, the Apex Court analyzed the Principle of Doctrine of Promissory Estoppel and discussed its origin, evolution and application and it is appropriate to refer to the principles laid down by the Supreme Court once again.

161) The common law recognizes various kinds of equitable estoppel, one of which is promissory estoppel. In ***Crabb vs. Arun DC***[71] Lord Denning, speaking for the Court of Appeal, traced the genesis of promissory estoppel in equity, and observed:

> "The basis of this proprietary estoppel – as indeed of promissory estoppel – is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as "estoppel". They spoke of it as "raising an equity" If I may expand that, Lord Cairns said: "It is the first principle upon which all Courts of Equity proceed", that it will prevent a person from insisting on his legal rights – whether arising under a contract or on his title deed, or by statute – when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties."

162) The requirements of the doctrine of promissory estoppel have also been formulated by Hugh Beale in Chitty on Contracts (32nd Edition Sweet & Maxwell 2017).

> *"4.086. For the equitable doctrine to operate there must be a legal relationship giving rise to rights and duties between the parties; a promise or a representation by one party that he will not enforce against the other his strict legal rights arising out of that relationship; an intention on the part of the former party that the latter will rely on the representation; and such reliance by the latter party. Even if these requirements are satisfied, the operation of the doctrine may be excluded if it is, nevertheless, not "inequitable" for the first party to go back on his promise.*

[71] 3 [1976] 1 Ch 179 (Court of Appeal)

> *The doctrine most commonly applies to promises not to enforce contractual rights, but it also extends to certain other relationships.*
>
> *4.088…..The doctrine can also apply where the relationship giving rise to rights and correlative duties is non-contractual: e.g. to prevent the enforcement of a liability imposed by statute on a company director for signing a bill of exchange on which the company's name is not correctly given; or to prevent a man from ejecting a woman, with whom he has been cohabitating, from the family home."*

163) Chitty on "Contracts" clarifies that the doctrine of promissory estoppel may be enforced even in the absence of a legal relationship. Generally speaking under English Law, judicial decisions have in the past postulated that the doctrine of promissory estoppel cannot be used as a 'sword', to give rise to a cause of action for the enforcement of a promise lacking any consideration. Its use in those decisions has been limited as a 'shield', where the promisor is estopped from claiming enforcement of its strict legal rights, when a representation by words or conduct has been made to suspend such rights. In ***Combe vs. Combe***[72] the Court of Appeal held that consideration is an essential element of the cause of action:

> "It [promissory estoppel] may be part of a cause of action, but not a cause of action itself.
>
> …..
>
> The principle [promissory estoppel] never stands alone as giving a cause of action in itself, it can never do away with the necessity of consideration when that is an essential part of the cause of action. The doctrine of consideration is too firmly fixed to be overthrown by a side-wind."

164) Even within English Law, the application of the rule laid down in ***Combe*** (referred supra) has been noticed to be inconsistent. The

[72] [1951] 2 K.B. 215

scope of the rule has also been doubted on the ground that it has been widely framed. Hence, in the absence of a definitive pronouncement by the House of Lords holding that promissory estoppel can be a cause of action, a difficulty was expressed in stating with certainty that English Law has evolved from the traditional approach of treating promissory estoppel as a 'shield' instead of a 'sword'. By contrast, the law in the United States and Australia is less restrictive in this regard.

165) The Apex Court has given an expansive interpretation to the doctrine of promissory estoppel in order to remedy the injustice being done to a party who has relied on a promise. In ***Motilal Padampat*** (referred supra), the Apex Court viewed promissory estoppel as a principle in equity, which was not hampered by the doctrine of consideration, as was the case under English Law. The Apex Court, speaking through Justice P N Bhagwati (as he was then), held thus:

> "12....having regard to the general opprobrium to which the doctrine of consideration has been subjected by eminent jurists, we need not be unduly anxious to project this doctrine against assault or erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a justice device for preventing injustice...We do not see any valid reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so."

166) Under English Law, the doctrine of promissory estoppel has developed parallel to the doctrine of legitimate expectations. The doctrine of legitimate expectations is founded on the principles of fairness in government dealings. It comes into play if a public body leads an individual to believe that they will be a recipient of a substantive benefit. The doctrine of substantive legitimate expectation

has been explained in ***R vs North and East Devon Health Authority, ex p Coughlan***[73] in the following terms:

> "55.... But what was their legitimate expectation?" Where there is a dispute as to this, the dispute has to be determined by the court, as happened in In re Findlay. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion. ……
>
> 56....Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy."

167) Under English Law, the doctrine of legitimate expectation initially developed in the context of public law as an analogy to the doctrine of promissory estoppel found in private law. However, since then, English Law has distinguished between the doctrines of promissory estoppel and legitimate expectation as distinct remedies under private law and public law, respectively. De Smith's Judicial Review[74] notes the contrast between the public law approach of the doctrine of legitimate expectation and the private law approach of the doctrine of promissory estoppel:

> "[d]espite dicta to the contrary [Rootkin v Kent CC, (1981) 1 WLR 1186 (CA); R v Jockey Club Ex p RAM Racecourses Ltd, [1993] AC 380 (HL); R v IRC Ex p Camacq Corp, (1990) 1 WLR 191 (CA)], it is not normally necessary for a person to have changed his position or to have acted to his detriment in order to qualify as the holder of a legitimate expectation [R v Ministry for Agriculture, Fisheries and Foods Ex p Hamble Fisheries (Offshore) Ltd, (1995) 2 All ER 714 (QB)]. . . Private

[73] [2001] QB 213

[74] Harry Woolf and others, De Smith's Judicial Review (8th edn, Thomson Reuters 2018).

> law analogies from the field of estoppel are, we have seen, of limited relevance where a public law principle requires public officials to honour their undertakings and respect legal certainty, irrespective of whether the loss has been incurred by the individual concerned [Simon Atrill, 'The End of Estoppel in Public Law?' (2003) 62 Cambridge Law Journal 3]."

168) Another difference between the doctrines of promissory estoppel and legitimate expectation under English Law is that the latter can constitute a cause of action. The scope of the doctrine of legitimate expectation is wider than promissory estoppel because it not only takes into consideration a promise made by a public body but also official practice, as well. Further, under the doctrine of promissory estoppel, there may be a requirement to show a detriment suffered by a party due to the reliance placed on the promise. Although typically it is sufficient to show that the promisee has altered its position by placing reliance on the promise, the fact that no prejudice has been caused to the promisee may be relevant to hold that it would not be "inequitable" for the promisor to go back on their promise. However, no such requirement is present under the doctrine of legitimate expectation. In ***Regina (Bibi) vs Newham London Borough Council***[75], the Court of Appeal held:

> "55 The present case is one of reliance without concrete detriment. We use this phrase because there is moral detriment, which should not be dismissed lightly, in the prolonged disappointment which has ensued; and potential detriment in the deflection of the possibility, for a refugee family, of seeking at the start to settle somewhere in the United Kingdom where secure housing was less hard to come by. In our view these things matter in public law, even though they might not found an estoppel or actionable misrepresentation in private law, because they go to fairness

[75] [2002] 1 W.L.R. 237

> and through fairness to possible abuse of power. To disregard the legitimate expectation because no concrete detriment can be shown would be to place the weakest in society at a particular disadvantage. It would mean that those who have a choice and the means to exercise it in reliance on some official practice or promise would gain a legal toehold inaccessible to those who, lacking any means of escape, are compelled simply to place their trust in what has been represented to them."

169) Consequently, while the basis of the doctrine of promissory estoppel in private law is a promise made between two parties, the basis of the doctrine of legitimate expectation in public law is premised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities. This is not to suggest that the doctrine of promissory estoppel has no application in circumstances when a State entity has entered into a private contract with another private party. Rather, in English law, it is inapplicable in circumstances when the State has made representation to a private party, in furtherance of its public functions.

170) Under Indian Law, there is often a conflation between the doctrines of promissory estoppel and legitimate expectation. This has been described in Jain and Jain's well known treatise, Principles of Administrative Law[76].

> "At times, the expressions 'legitimate expectation' and 'promissory estoppel' are used interchangeably, but that is not a correct usage because 'legitimate expectation' is a concept much broader in scope than 'promissory estoppel'. …
>
> A reading of the relevant Indian cases, however, exhibit some confusion of ideas. It seems that the judicial thinking has not as yet crystallised as regards the nature and scope of the doctrine. At times, it has been referred to as merely a procedural doctrine; at times, it has been treated interchangeably as promissory estoppel. However both these

[76] M.P. Jain and S.N. Jain, Principles of Administrative Law (7th edn., EBC 2013).

> ideas are incorrect. As stated above, legitimate expectation is a substantive doctrine as well and has much broader scope than promissory estoppel.
>
> In Punjab Communications Ltd. v. Union of India, the Supreme Court has observed in relation to the doctrine of legitimate expectation: "the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way Reliance must have been placed on the said representation and the representee must have thereby suffered detriment." It is suggested that this formulation of the doctrine of legitimate expectation is not correct as it makes "legitimate expectation" practically synonymous with promissory estoppel. Legitimate expectation may arise from conduct of the authority; a promise is not always necessary for the purpose."

171) While this doctrinal confusion has the unfortunate consequence of making the law unclear, citizens have been the victims. Representations by public authorities need to be held to scrupulous standards, since citizens continue to live their lives based on the trust they repose in the State. In the commercial world also, certainty and consistency are essential to planning the affairs of business. When public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the trust reposed by citizens in the State. The generation of a business friendly climate for investment and trade is conditioned by the faith which can be reposed in government to fulfil the expectations which it generates. Professors Jain and Deshpande characterize the consequences of this doctrinal confusion in the following terms:

> "Thus, in India, the characterization of legitimate expectations is on a weaker footing, than in jurisdictions

> like UK where the courts are now willing to recognize the capacity of public law to absorb the moral values underlying the notion of estoppels in the light of the evolution of doctrines like LE [Legitimate Expectations] and abuse of power. If the Supreme Court of India has shown its creativity in transforming the notion of promissory estoppel from the limitations of private law, then it does not stand to reason as to why it should also not articulate and evolve the doctrine of LE for judicial review of resilement of administrative authorities from policies and longstanding practices. If such a notion of LE is adopted, then not only would the Court be able to do away with the artificial hierarchy between promissory estoppel and legitimate expectation, but, it would also be able to hold the administrative authorities to account on the footing of public law outside the zone of promises on a stronger and principled anvil. Presently, in the absence of a like doctrine to that of promissory estoppel outside the promissory zone, the administrative law adjudication of resilement of policies stands on a shaky public law foundation."

172) The need for this doctrine to have an independent existence was articulated by Justice Frankfurter of the United State Supreme Court in ***Vitarelli vs. Seton***[77] as follows:

> "An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

173) In ***Union of India vs. Lt. Col. P.K. Choudhary***, speaking through Chief Justice T.S Thakur, the Court discussed the decision in ***Monnet Ispat and Energy Ltd. vs. Union of India***[78]

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[77] 359 US 535 (1959); the principle espoused in this judgment has been followed by the Apex Court in Amarjit Singh Ahluwalia (Dr) vs State of Punjab, (1975) 3 SCC 503, Sukhdev Singh vs Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421 (concurring opinion of Justice K K Mathew) and Ramana Dayaram Shetty vs International Airport Authority of India, (1979) 3 SCC 489.

[78] 1 (2012) 11 SCC 1

and noted its reliance on the judgment in ***Attorney General for New South Wales vs. Quinn***[79]. It then observed:

> "This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

174) Thus, the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

175) Thus, the Apex Court in ***The State of Jharkhand and Ors. vs. Brahmputra Metallics Ltd. and Ors*** (referred supra) by relying on earlier judgments of the Apex Court, concluded that the respondent is entitled to rebate/deduction from electricity duty and affirmed the order passed by the High Court on the ground that the State violated its promise and legitimate expectation. If, the principle laid down in the above judgment is applied to the present facts of the case, the policy decision taken by the earlier Government which was translated into a resolution in the Legislative Assembly and Legislative Council unanimously accepting Amaravati as Capital City for the State of Andhra Pradesh and issuing G.O.Ms.No.253 M.A & U.D (M2) Department dated 30.12.2014 and G.O.Ms.No.254 M.A & U.D (M2) Department dated 30.12.2014 notifying Amaravati as Andhra

[79] (1990) 64 Aust LJR 327: (1990) 170 CLR 1.

Pradesh Capital Region and now after change of Government, a decision was taken to trifurcate the capital and decided to relocate High Court of Andhra Pradesh at Kurnool and Executive Capital at Visakhapatnam, leaving the Legislative Capital at Amaravati, though Act Nos. 27 & 28 of 2020 are repealed by Act No.11 of 2021, the repealed Act statement and objects made it clear that the State intends to present a suitable legislation in future addressing all the concerns of all the regions of the State favouring decnetralization, is violation of promise and legitimate expectation.

176) The farmers of the capital region, believing the representation of the State and APCRDA entered into Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14 and the State and APCRDA have to fulfill its part of obligation under the Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. However, the present Government took the decision totally violating the legitimate expectation of the farmers and in violation of the promise made by them by way of agreement in writing in Form 9.14.

177) One of the contentions of the State is that, legitimate expectation or Promissory Estoppel will not give rise to any cause of action. But, this contention is liable to be rejected, in view of the law declared by the Supreme Court in ***The State of Jharkhand and Ors. vs. Brahmputra Metallics Ltd. and Ors*** (referred supra), where the Supreme Court took note of similar issue and concluded that both Promissory Estoppel and Legitimate Expectation gives rise to cause of action, though

Promissory Estoppel was initially available as a defense, it gives rise to cause of action to claim relief. When once a policy decision under statute is taken by the State and APCRDA, made a representation to the public, relying on such representation, the general public and farmers altered their position, the State and APCRDA are bound to implement such representation and the person who altered his position will have remedy in the Court of law. Change of policy by the Government within a quick succession of five years when ex-propriety legislation was passed under the Land Pooling Scheme, certainly, the farmers are entitled to claim relief based on legitimate expectation and promise under Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14. Such decision taken by the Government is certainly highly unreasonable and it would destroy the rights of the farmers drastically, and there was no guarantee of development on account of such acts of State and APCRDA. When the State has taken such unreasonable and arbitrary decision, the Court can issue a direction to implement Land Pooling Scheme and Development Agreement – cum-Irrevocable General Power of Attorney in Form-9.14 to State and APCRDA by invoking the extraordinary jurisdiction of writ under Article 226 of the Constitution of India.

178) Proprietary estoppel is a legal claim, especially connected to English land law, which may arise in relation to rights to use the property of the owner, and may even be effective in connection with disputed transfers of ownership. Proprietary estoppel transfers rights if, someone is given a clear assurance that they will acquire a right over property, they reasonably rely

on the assurance, and, they act substantially to their detriment on the strength of the assurance it would be unconscionable to go back on the assurance. If these elements of assurance, reliance and detriment, and unconscionability are present, the usual remedy will be that the property will be transferred to the claimant, if the court views the reliance to warrant a claim in all the circumstances. In the instant case, in view of clauses, the land owner is not entitled to claim any remedy in any Court or any authority, in such case, the owner of land necessarily approach the Court invoking Article 226 of the Constitution of India to revert the property to the land owner.

179) The principle was laid down as early as in the year 1862 in **Dillwyn v. Llewelyn**[80] and later repealed in **Willmott v. Barber**[81] and **Inwards v. Baker**[82] and laid down the following five elements before proprietary estoppels could operate.

(i) the claimant must have made a mistake as to his legal rights;
(ii) the claimant must have done some act of reliance;
(iii) the defendant, the possessor of a legal right, must know of the existence of his own right which is inconsistent with the right claimed by the claimant;
(iv) the defendant must know of the claimant's mistaken belief; and
(v) the defendant must have encouraged the claimant in his act of reliance.

[80] (1862) 4 De GF&J 517
[81] (1880) 15 Ch D 96
[82] (1965) 2 QB 29

180) The above five elements were refined in **Waltons Store (Interstate) Limited v. Maher**[83] and the High Court of Australia recognised that both the principles of proprietary and promissory estoppel encompass the broader principle of equitable estoppels. If, these elements are present in any dispute relating to land, the person who believed representation and acted upon, can claims such relief through Court of Law.

181) The Delhi High Court in **Raj Kishan Dass v. Mrs. Kusum Singh**[84] considered the Scope of Proprietary Estoppel, wherein it was observed that, Proprietary estoppel operates in a variety of cases to disparate that it has been described as "***an amalgam of doubtful utility***". The cases can be divided broadly into two categories. In the first, one person acts under a mistake as to the existence or as to the extent of his rights in or over another's land. Even though the mistake was in no way induced by the landowner, he might be prevented from taking advantage of it. particularly if he "stood by" knowing of the mistake, or actively encouraged the mistaken party to act in reliance on his mistaken belief. These cases of so-called "acquiescence" do not raise any questions as to the enforceability of promises and therefore do not call for further discussion in this case. In the Second situation, there is not merely "acquiescence" by the landowner, but "encouragement". The other party acts in reliance on the landowner's promise (or on conduct or a representation from which a promise can be inferred) that the promise has a legally recognized interest in the land or that one will be created in his

[83] [1988] HCA 7, (1988) 164 CLR 387 High Court (Australia)
[84] 93 (2000) DLT 359

favor. The question then arises, to what extent such a promise can be enforced, even though it may not be supported by consideration, or fail to satisfy the other requirements (such as certainty) of a binding contract. The present facts would attract the second situation as on reliance on the terms made by the State, the farmers entered into a contract and delivered possession of the agricultural land which was converted into non-agriculture and development activities were taken place. Therefore, the farmers are entitled to insist the State to perform its obligation based on the Principle of Proprietary Estoppel, as the farmers altered their position like Promissory Estoppel, since it is an Equitable Doctrine, the Courts have to interpret the same and applying the principle to the facts on hand and extend the benefit to the concerned.

182) The Law Commission of India in its 108th Report on Promissory Estoppel dated 12.12.1984, considered both Promissory Estoppel and Proprietary Estoppel with reference to the provisions of Transfer of Property Act. Upon the expiration of the period of the settlement for which the lease of the barbarini lands had been granted, Government made a grant to the appellant's predecessor at a moderate assessment of a tract of land in full proprietary right and in the deed of settlement, Government stipulated that they had the right when necessary in the management of the canal. This however did not give the Government a right to seize and confiscate 'the canal. On the facts of the case, the appellant, under the Transfer of Property Act, 1882, would be entitled to a perpetual lease of the canal lands from the Government. But, perhaps, because the Act was

not in force at the time of the transaction, Lord Macnaghten applied the ***"Ramsden Rule"*** to give relief to the appellant. But the rule is the rule of Proprietary Estoppel and not of Promissory Estoppel and Proprietary Estoppel had always a special status in the English Law. The appellant surrendered its own -lands in favour of the 'Government in consideration of a 'lease of government lands in favour of the appellant on a nominal rent. After taking possession, the appellant spent enormous sums in making constructions. Twenty seven years later, the respondent filed a suit claiming a large amount as arrears of rent and for a declaration that the lease, if any, was determined. The High Court modified the decree of the trial court in favour of the respondent. The High. Court allowed the parties to redefine their rights, namely, the appellant's right to a leasehold and the respondent's right to a reasonable rent. In the 'course of the judgment, Sir Lawrence Jenkins CJ referred to the Ramsden rule and observed that the 'Crown comes within the range of this equity'.

183) The House of Lord in ***Ramsden vs. Dyson***[85] explains the above Rules as follows:

> " If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing under an expectation, created or encouraged by the landlord that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation."

[85] 1866 LR I HL 129 , 170

184) The Supreme Court in ***A.P Transco vs. Sai Renewable Power Pvt.Ltd***[86] referred to use of promissory estoppel as a basis of cause of action and held as follows:

> "It is a settled canon of law that doctrine of promissory estoppel is not really based on principle of estoppel but is a doctrine evolved by equity in order to prevent injustice There is no reason why it should be given only a limited application by way of defence. It can also be the basis of a cause of action."

185) In **Jai Narain Parasurampuria (Dead) & Ors v. Pushpa Devi Saraf & Ors**[87], the Apex Court noted the principle laid down in the judgments of the Supreme Court in **Pawan Alloys and Casting Pvt. Ltd. , Meerut vs. U.P. State Electricity Board & Ors**[88], where the Apex Court applied the principle of promissory estoppel and held that, the doctrine of estoppel by acquiescence was not restricted to cases where the representor was aware both of what his strict rights were and that the representee was acting on the belief that those rights would not be enforced against him. Instead, the court was required to ascertain whether in the particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment. Accordingly, the principle would apply if at the time the expectation was encouraged. **Taylor Fashions Ltd. v. Liverpool Victoria Trustees Co.**

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[86] (2011) (11) SCC 34
[87] (2006) 7 SCC 756
[88] (1997) 7 SCC 251

Ltd[89]). Similarly, in **Amalgamated Investment & Property Co. Ltd. vs. Texas Commerce International Bank Ltd**[90], it was held that; "Where the estoppel alleged was founded on active encouragement or representations made by the representator, it was only unconscionable for the representator to enforce his strict legal rights if the representee's conduct was influenced by the encouragement or the representation. However, it was not necessary for the encouragement or representation to have been the initial cause of the representee's conduct in order to be unconscionable but merely that his conduct was so influenced by the encouragement or representation that it would be unconscionable for the representor to enforce his legal rights."

186) In view of the law declared by the Apex Court and various High Courts in the judgments referred supra, when the farmers of Capital Region relying on the representation made by the State, which is reduced into writing as Development Agreement – cum - Irrevocable General Power of Attorney in Form-9.14, certainly, the petitioner is entitled to insist the State to fulfill its obligation, State is liable to discharge the obligation. In case of failure by exercising power under Article 226 of the Constitution of India, the Court can issue a direction to implement the Land Pooling Scheme and Development Agreement-cum-Irrevocable General Power of Attorney in Form 9.14.

187) The learned Advocate General, advanced the contention of the State that the public interest will out-weigh the private interest,

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[89] (1981) 1 All ER
[90] (1981) 1 All ER 923

thereby, question of application of legitimate expectation and promissory estoppels does not arise. Learned Advocate General placed on record several judgments in support of the contention of the State. Initially, he placed reliance on ***Punjab Communications Limited vs. Union of India***[91] ***and Kerala State Beverages (M&M) Corporation Limited vs. P.P. Suresh***[92], where the Court held that, it has been held under English law that the decision maker's freedom to change the policy in public interest, cannot be fettered by the application of the principle of substantive legitimate expectation. Observations in earlier cases project a more inflexible rule than is in vogue presently. In ***Re Findlay***[93] the House of Lords rejected the plea that the altered policy relating to parole for certain categories of prisoners required prior consultation with the prisoner. Lord Scarman observed:

> *"But what was their legitimate expectation. Given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case be examined individually in the light of whatever policy the Secretary of State sees fit to adopt provided always that the adopted policy is a lawful exercise of the discretion conferred upon him by the statute. Any other view would entail the conclusion that the unfettered discretion conferred by statute upon the minister can in some cases be restricted so as to hamper, or even to prevent changes of policy."*

188) Taking advantage of the decisions referred above, learned Advocate General would contend that, Principle of Legitimate Expectation will not come in the way of legislators to take any decision. At the same time, change in policy decision, if founded on "Wednesbury reasonableness", can defeat a substantive

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[91] 1999 (4) SCC 727
[92] (2019) 9 SCC 710
[93] (1985 AC 318)

legitimate expectation, as held by the Hon'ble Apex Court in ***Union of India vs. International Trading Company and another***[94] and ***Sethi Auto Service Station and another vs. Delhi Development Authority***[95]**.** This principle is not in quarrel. But, here, in this case, the policy decision proposed to be taken is in violation of the Development Agreement-cum-Irrevocable General Power of Attorney in Form-9.14 under Land Pooling Rules. Therefore, such proposed legislation may not meet the requirement of "Wednesbury reasonableness". But, it is premature to record any finding on such an issue, as the legislation is not yet passed, except expressing their intention in the Statement of Objects and Reasons.

189) The learned Advocate General also contended that, legitimate expectation is not a vested right and cannot be claimed against a statutory provision. In the instant case, the petitioners are claiming vested and accrued right based on the Development Agreement-cum-Irrevocable General Power of Attorney in Form-9.14 under Land Pooling Rules, which is a statutory scheme under APCRDA Act and it is not against any statutory provision. At the same time, in ***State of Jharkhand and others vs. Brahmputra Metallics Limited***[96]**,** the Hon'ble Apex Court held that, the Court can interfere if there is arbitrariness or any abuse of power or violation of principles of natural justice.

[94] (2003) 5 Supreme Court Cases 437
[95] (2009) 1 Supreme Court Cases 180
[96] 2021 (1) SCJ 131

190) In ***Ghaziabad Development Authority vs. Delhi Auto & General Finance Private Limited***[97], the Hon'ble Apex Court held that, no question of legitimate expectation would arise from the Master Plan stipulated. But the principle laid down in the above judgment will have no relevance to the present facts of the case. At best, as per ***State of Jharkhand and others vs. Brahmputra Metallics Limited*** (referred above), the Court can interfere if the decision taken is arbitrary and unreasonable.

191) Learned Advocate General, while refuting the contentions of the learned counsel for the petitioners in all the writ petitions about applicability of Promissory Estoppel, placed reliance on several judgments in support of his contention. The basic contention of the learned Advocate General is that, there can be no promissory estoppel against the legislature in the exercise of its legislative function and promissory estoppel cannot be invoked to compel the Government or a public authority to carry out a representation or promise which is contrary to law, as held in ***M/s. Motilal Padampat Sugar Mills Company Limited vs. State of Uttar Pradesh***[98]. But, this principle is not relevant for the present, as the legislations i.e. Act Nos.27 & 28 of 2020 were already withdrawn.

192) At the same time, learned Advocate General would contend that, The Doctrine of Promissory Estoppel would be displaced in such a case because on the facts, equity would not require that the Court could interfere only if the decision taken by the

[97] (1994) 4 Supreme Court Cases 42
[98] (1979) 2 Supreme Court Cases 409

authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot *ipso facto* give a right to invoke these principles based on the judgments of the Apex Court in ***Union of India vs. Godfrey Philips India Limited***[99]***, Food Corporation of India vs. M/s. Kamdhenu Cattle Feed Industries***[100]. In ***Union of India vs. Godfrey Philips India Limited*** (referred above), the Court held that, public authority is not bound by such promise. But this principle is changed due to march of law and even in ***State of Jharkhand and others vs. Brahmputra Metallics Limited*** (referred above), the Court did not agree with this contention and public authority is also bound by it. In ***Food Corporation of India vs. M/s. Kamdhenu Cattle Feed Industries*** (referred above), the Court is of the view that, there must be something more than legitimate expectation. In the instant case, as per the discussion in the earlier paragraphs, the petitioners accrued substantive, vested right under Development Agreement-cum-Irrevocable General Power of Attorney in Form-9.14 under Land Pooling Rules. Therefore, in view of the Development Agreement-cum-Irrevocable General Power of Attorney in Form-9.14, the respondents – State and APCRDA are bound by the agreement, in view of the obligations imposed on them by Schedule II and III of Land Pooling Rules and they cannot escape from their liability to discharge their obligations to the farmers under the APCRDA

[99] (1985) 4 Supreme Court Cases 369
[100] (1993) 1 Supreme Court Cases 71

and Land Pooling Rules, who surrendered their land under Land Pooling Scheme.

193) Relying upon the judgment of the Hon'ble Apex Court in ***Madras City Wine Merchants' vs. State of Tamil Nadu***[101] , learned Advocate General also contended that, to attract Promissory Estoppel, Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. Even if this principle is applied to facts on hand, there is express promise given by the public authority i.e. State and APCRDA in Development Agreement-cum-Irrevocable General Power of Attorney in Form-9.14 and the State is reasonably expected to continue the promise in view of part of the development completed and the State also agreed to continue the developments by filing affidavits by the Principal Secretary and Additional Secretary, Municipal Administration and Urban Development, while annexing note for spending Rs.3000/- cerores and it is reasonable. In view of this decision, the State and APCRDA are bound to fulfill or discharge their obligation in view of Schedule II and III and Land Pooling Scheme Rules, since the promise is express and reasonably expected.

194) Learned Advocate General also would draw attention of this Court to judgment of the Apex Court in ***Kasinka Trading and another vs. Union of India***[102] and ***Sales Tax Officer vs. Shree***

[101] (1994) 5 SCC 509
[102] (1995) 1 Supreme Court Cases 274

Durga Oil Mills[103] to contend that, the doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. The principle laid down in the above two judgments is that, taking aid of Promissory Estoppel, the Government cannot be compelled to fulfill their obligations, since Promissory Estoppel will not outweigh the public interest.

195) In the instant case, in view of repeal of Act Nos. 27 & 28 of 2020, proposing to establish three capitals i.e Administrative Capital at Visakhapatnam, Legislative Capital at Amaravati and Judicial Capital at Kurnool, the public interest is vanished, though the Government proposed to introduce another Bill after consultation with the stakeholders after overcoming the legal hurdles. For the present, there is no public interest to outweigh the principle of Promissory Estoppel. Therefore, those principles cannot be applied to the facts of the present case.

196) Learned Advocate General finally would draw the attention of this Court to ***Shree Sidhabali Steels Limited and others vs. State of Uttar Pradesh***[104] to contend that the plea of Promissory Estoppel is not applicable and that the State must think about pros and cons of policy and it is opposite to given benefits. The Apex Court held that, the doctrine of promissory estoppel is by now well recongized and well defined by catena of

[103] (1998) 1 SCC 572
[104] (2011) 3 Supreme Court Cases 193

decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise. Normally, the doctrine of promissory estoppel is being applied against the Government and defence based on executive necessity would not be accepted by the Court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be invoked. Government can change the policy in public interest. However, it is well settled that

taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary of law.

197) The principle laid down in the above judgment has no direct application to the present facts of the case, since the Land Pooling Scheme is not contrary to law and it is legally valid as on date, in view of restoration of APCRDA Act, 2014. Even otherwise, the Land Pooling Scheme is saved by the repealed Acts. In those circumstances, the State is bound to discharge its obligation in view of the Principle of Promissory Estoppel, since the Development Agreement-cum-Irrevocable General Power of Attorney in Form-9.14 is not contrary to any law.

198) In ***S.V.A. Steel Re-rolling Mills Limited vs. State of Kerala***[105] the Apex Court held that, before laying down any policy which would give benefits to its subjects, the State must think about pros and cons of the policy and its capacity to give the benefits. Without proper appreciation of all the relevant factors, the State should not give any assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the State not to act as per its promise.

[105] (2014) 4 Supreme Court Cases 186

199) Taking advantage of this principle, learned Advocate General contended that, the decision taken by the earlier government is without taking into consideration of pros and cons of the policy to give benefits and tried to confer benefits on certain ryoths who surrendered their lands. In fact, the earlier government made out its plan for financial resources, funding for construction of the capital. Thus, the earlier government took decision only after considering pros and cons of the policy and resources to meet such promise. Hence, the principle laid down in the above judgment has no application.

200) On overall consideration of the facts and circumstances of the case, including the plea of learned Advocate General, we find no substance in the contentions for the present to decide the present issue as on date and the same is rejected.

201) Accordingly, points are decided in favour of the petitioners and against the respondents.

P O I N T No.4:

202) One of the contentions of the Sri Shyam Divan, learned Senior Counsel for the petitioners is that, on account of proposed shifting of capital, in view of statement of objects and reasons of A.P. Act No.11 of 2021, the petitioners not only lost their livelihood of agriculture on account of land pooling, but also lost hope in future to restore their livelihood on account of proposed shifting of capital.

203) The specific plea in the petitions is that, the petitioners' right to their agricultural land is not a mere right to property under Article 300-A of the Constitution of India, but also the source of their livelihood. It is settled law that the fundamental right of a farmer to cultivate his land is a part of right to livelihood. (vide ***Bhusawal Municipal Council vs. Nivrutti Ramchandra Phalak***[106]). The petitioners herein are farmers who are solely depending upon agriculture for their source of livelihood and sustenance. Each of the petitioners in the petitions have lost title over the entirety of their agricultural lands by virtue of having been induced to surrender their lands on the promise of a reconstituted plot in the capital city under the Land Pooling Scheme and the APCRDA Act. Since the respondent's actions violate the right of the petitioners under Article 21 read with Article 300-A of the Constitution of India, it is not sufficient for the respondents to wash its hands off this grave violation of the petitioners' right to livelihood by offering compensation in the form of an annuity as prescribed under Section3(e) of the APCRDA Act.

204) It is also contended that, the petitioners are one of the most thriving agricultural communities in India. They were led to believe that greener prairies of opportunities would present themselves in a state of the art capital of Amaravati. Their livelihoods are inextricably linked with the status and nature of Amaravti since they reside in it. The acute deprivation of property will strike at the very heart of the livelihood of the

[106] (2015) 14 SCC 327

petitioners. In ***Lalaram vs. Jaipur Development Authority***[107], the Hon'ble Supreme Court recognized the acute impact of loss of property on other cherished fundamental rights.

205) In the present case, the petitioners are forced to comply with the decision of the State Assembly to remain an underdeveloped society without the bounties of its agrarian past or the crystallization of the promised developed through the location of the State Capital including all three civic wings of the State. Unlike other cities that are dealt with under the Decentralization Act, which is now repealed. The premature termination of its status as a State Capital will greatly dampen the prospects of livelihood and would be a criminal waste of the fertile swathes of land acquired which will now vest idly resulting in eventual economic downgrade. It is also an open secret that, as long as the development of Amaravati is subject to Government whims, if past conduct is any evidence, the assurances of development shall ring as empty words and it does not take a soothsayer's foresight to identify that the petitioners along with the protesting hundreds of thousands are staring at the beginning of a humanitarian catastrophe.

206) In ***Puttaswamy vs. Union of India***[108]**,** the Five Judge Bench of the Hon'ble Supreme Court held that, the proportionality review requires that any law that restricts the right to life or liberty be:

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[107] (2016) 11 SCC 31
[108] (2019) 1 SCC 1

a) in pursuance of a legitimate state interest,
b) adopting suitable means for realizing such state interest;
c) necessary, in that there is no less restrictive but equally effective alternative;
d) proportional, in that the measure must not have a disproportionate impact on the right holder

207) Applying the proportionality, review to the present case, it is submitted that the respondents have not made out any legitimate state interest. Instead, it is evident from the facts fully set out in the affidavit that the motivation behind proposed introduction of the Bill was entirely political after repeal of Act Nos.27 & 28 of 2020, owing to disagreements between the present political leadership and the predecessor government.

208) Sri B. Adinarayana Rao, Sri M.S. Prasad, Sri Narra Srinivasa Rao, Sri Unnam Muralidhar Rao, learned Senior Counsel raised a specific contention that, the Government's failure to develop the land pooled amounts to violation of fundamental rights guaranteed under Article 21 and Right to Property under Article 300-A of the Constituion of India, besides violation of promise under the statutes and defeating the legitimate expectation of the farmers who surrendered large parcels of land under Land Pooling Scheme, which is a statutory scheme under APCRDA Act.

209) The respondents filed counter affidavit explaining the extent of land pooled, works carried out and expenditure incurred. At this juncture it is pertinent to state that the status of work completed on the contracts initiated and at various stages of completion are indicated. The following is the table of

expenditure so far actually incurred in the AMRDA (formerly APCRDA) since December, 2014, with the following sources of funds:

S.No.	Capital Expenditure	Amount (Rs. In Crores)
1	Expenditure for infrastructure works (as explained in the table below)	5674.00
2	Consultancy Charges	323.00
3	Interest on loans	1039.00
4	Annuity to Capital City Farmers (Capital Expenditure) (Upto F.Y.2019-20)	798.00
5	Pensions to Landless Poor (Upto May, 2020)	308.77
6	Land Pooling Expenses	429.42
	Expenditure incurred for capital city	**8572.19**
	Expenditure split for Infrastructure works	
	Expenditure Split – Infrastructure works	**Amount (Rs. In Crores**
1	IGC Buildings	580.71
2	Miscellaneous Works for AGC	14.72
3	Housing Projects	1304.04
4	High Court (Judicial Complex)	155.13
5	Project Office	43.89
6	AGC Infra	34.40
7	Towers	332.15
8	Rerouting of Power Lines	191.40
9	Trunk, Blue & Green Infrastructure, consultancy/PMC Charges (ADCL)	2569.00
10	LPS Infra	448.54
	Expenditure Split for Infrastructure works	**5673.98**

210) It is submitted that, after May, 2019, annuity and pensions to a tune of Rs.240 crores have been disbursed. Further, bills have been received from contractors in respect of works executed, approximately amounting to Rs.1980 crores after May, 2019 and the same are pending for scrutiny and payment.

211) As on date 34385.27 Acres of land has been pooled by 28,526 farmers in 24 revenue villages and in 22 revenue villages

64709 returnable plots were allotted, out of which 39,769 plots were registered in the name of the persons who participated in the LPS Scheme. The High Power Committee on the basis of the records of transactions available, as of fact found that 10,050 farmers sold away their lands prior to handing over to APCRDA on comparison of the land records of 2014 with plot allotments made under the land pooling scheme. Further, after allotment nearly 7500 owners sold their plots. In view of the above, that the State prima facie found each one of the estimates leading to proposals to be based on exaggerated estimates, the State in its wisdom in the interests of protecting public monies, sought to be squandered by the relevant decision-makers as indicated in the Expert Committee Report and the Cabinet Sub Committee, and was thus constrained to take such decisions as to stop further works etc. The facts and figures suggest that most of the projects completed were designed to meet the interim needs of the various establishments of the State. The State intends deploying all such physical assets optimally for various purposes as indicated in the legislations and there is no factual justification for apprehension from the farmers that they would suffer enormous injury or hardship. While the petitioners insist that the State go ahead with the contracts initially entered into, notwithstanding the huge drain on the exchequer without checks and balances, in pursuance of such decisions which are reportedly made in compromise of public interest and for self-aggrandizement of a few individuals, the State has taken necessary steps to protect public money from splurging on those issues, based on material on record. Balancing the concerns of

all the regions especially the aspirations of the less endowed geography such as Rayalaseema, which is drought prone and the backward districts of North Coastal Andhra Region, the Government had to arrive at a policy decision so as not to repeat the mistakes of the past. The social, the human resource and the development costs, which would be suffered by the State, if it persists with, the model envisaged in the various policies under the erstwhile APCRDA would defeat the aspirations and growth potential of other regions of the State. The apprehension of the petitioner that the infrastructure so far built will be rendered waste and the region would not witness development at all is untenable. The State shall take all necessary steps to ensure that the development of the region at par with the other regions of the State. The period and the program envisaged for fruition of the capital under the A.P.C.R.D.A Act has a time frame which is more than 10 years away from today and for the petitioner to contend that all such developmental activities ought to be undertaken forthwith is untenable, as per the respondents.

212) Adverting to Ground VI, it is submitted by the respondents that the petitioners do not have a fundamental right nor any right in any other law, to insist on the State to organise its programmes of development to ensure appropriate accretion to the value of the property held by them. Most of the lands pooled so far have resulted return of a reconstituted plot such owners. addition thereto, under Chapter IX the repealed Act saved in the Repealing Act, read with land pooling rules, provide annuity to be paid to such farmers. The petitioners right to livelihood is

neither deprived nor their right property is infringed, in view of the continuance and saving their rights under the AMRDA Act. Consequent to the impugned legislation not infringe the right of petitioners their livelihood since development of region is subject economic capacity the state continue to be undertaken with the state. The indication in the master plan about possible over period of time does not petitioners with fruition all the development indicated therein even overridden economic incapacity and the public interest as narrated above, material resources community prohibitive capital city in land accumulated to be built from the facts and circumstances stated above, unviable. However the petitioners right to participate in and secure fruits of development of the land pooled is not infringed nor is their right to life livelihood affected by reason of impugned legislation.

213) The contention that petitioners are forced to remain as an undeveloped society and that impugned legislations would result in criminal waste of fertile swathes land. The social and economic policy of the state shall be so organised so as to ensure optimal utilisation of the lands available in AMRDA to realise the full potential and there shall be no deprivation of opportunities for livelihood. The assumption underlining the petitioners' contention that there is a beginning of a human catastrophe is without basis, as per the respondents.

214) The further contention of the petitioners that the continued retention of the petitioners land even after a decision to decentralise the seats of authority i.e case of acquisition of

land without consent and compensation is clear without any substance. Under the repealed Act, AMRDA continues to be the seat of Legislature and in the nature of the provisions of the statutory rule the petitioners cannot lay a claim to compensation, afresh, under the terms of the LARR Act, 2013. The rights of the petitioners as provided for under the repealed Act, belie the contention of the petitioners in this regard. It is denied that, in the impugned legislations have a consequence of depriving the petitioners of their right to property without adequate recompense is factually incorrect and requested to reject the plea of petitioners while denying the relief on this ground.

215) During hearing, Sri Shyam Divan, learned Senior Counsel contended that, taking property under the Land Pooling Scheme and failure to develop the land, as promised by the State would amount to deprivation of right to life, since they were eking out their livelihood by agriculture. Apart from that, failure to develop the land as promised denuding these petitioners to enjoy the property amounts to deprivation of right to property, as guaranteed under Article 300-A of the Constitution of India and relied on judgment of the Hon'ble Apex Court in ***Lalaram vs. Jaipur Development Authority***[109]***, Tukaram Kana Joshi vs. MIDC*** and ***Bhusawal Municipal Corporation vs. Nivrutti Ramachandra Phalak*** (referred supra). Based on the principles laid down in the above judgments, learned Senior Counsel requested to issue appropriate direction for development

[109] (2016) 11 SCC 31

of the lands pooled by issuing writ of continuous mandamus. Apart from that, depriving these petitioners from enjoying the property would amount to violation of Right to Property guaranteed under Article 300-A of the Constitution of India.

216) Whereas, Sri S. Sriram, learned Advocate General for the State contended that, when Act Nos. 27 & 28 of 2020 are repealed, restoring A.P.C.R.D.A Act, 2014, and undertook to develop the land pooled, question of violation of fundamental right guaranteed under Article 21 and Constitutional Right guaranteed under Article 300-A of the Constitution of India does not arise. G.O.Ms.Nos.23 & 133 Municipal Administration & Urban Development Department dated 23.04.2021 issued by the Government and the affidavits filed by Principal Secretary and Additional Secretary of Municipal Administration & Urban Development, indicates the intention of the authorities to undertake development activities to fulfill the obligations imposed on the State Government under the Land Pooling Rules. In the absence of any violation of fundamental right, based on apprehension, writ of mandamus cannot be issued and requested to dismiss the claim on this ground.

217) Indisputably, the ryoths in the villages in the capital region parted with large parcels of land in an extent of 34385.27 Acres under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015, laid seed access and internal roads. But, some of the roads are incomplete, water pipelines and drainage lines are not laid, though it is an obligation of the State Government. Section57 of the A.P.C.R.D.A

Act prescribes issue of final notification of land pooling scheme and implementation and completion of final land pooling scheme is prescribed under Sections 58 and 59 of the A.P.C.R.D.A Act, within the time schedule fixed thereunder. Similarly, Rules 11 and 12 of the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015, imposed an obligation on the A.P.C.R.D.A to complete the process of land pooling, provide infrastructure, laying roads, etc within the time frame. But, except completion of issue of final notification of final land pooling, the obligations imposed under Sections 58 and 59 of the A.P.C.R.D.A Act and Rules 11 and 12 of the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 are not discharged by the authorities.

218) Originally, the land was black fertile agricultural land, yielding three crops in a year. The farmers were lured by the State and its authorities to surrender their land voluntarily with a fond hope that they will get developed reconstructed plots, as specified in the notification issued by the State and APCRDA i.e. 1000 sq.yds of residential site and 400 sq.yds of commercial site. However, land vested in the authority and Land Pooling Ownership Certificates were issued to land owners in respect of the reconstituted plots, Final land Pooling Scheme was published in Form 9.22 for each village between 30.09.2016 to 27.01.2017 and The Amaravati Master Plan was notified on 23.02.2016. But, so far, nothing has been done by the authorities concerned towards implementation of the Land

Pooling Scheme and handing over of possession of developed reconstructed plots in terms of the provisions of APCRDA Act.

219) One of the major contentions of the learned Advocate General is that, when Act Nos. 27 & 28 of 2020 were repealed and issued G.O.Ms.Nos.23 & 133 Municipal Administration & Urban Development Department dated 23.04.2021, question of violation of fundamental right i.e. Right to Life under Article 21 of the Constitution of India and Right to Property under Article 300-A of the Constitution of India does not arise and the Court cannot issue writ of mandamus, based on apprehension of these petitioners.

220) This contention was strongly refuted by the learned Senior Counsel and learned counsel for the petitioners, contending that, when there is an apprehension about violation of fundamental right, the Court can issue writ of mandamus and placed reliance on the judgment of the Apex Court in ***S.M.D. Kiran Pasha vs. Government of Andhra Pradesh***[110]**.** In view of the principle laid down in the above judgment, writ of mandamus can be issued even in case of apprehended violation of fundamental right and in fact, as on date, Right to Livelihood by cultivating the land was totally infringed by the acts of the State and APCRDA, since the State and its instrumentalities i.e. APCRDA failed to fulfill its obligations under the APCRDA Act and Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015.

[110] (1990) 1 SCC 328

221) It is settled law that Right to Life embraces the right to livelihood. The right to life is not merely a right to an animal existence, but must enable one's livelihood. The right to property has been recognized to be a human right, which cannot be deprived except by a procedure established by law as held by Hon'ble Apex Court in ***Lalaram vs. Jaipur Development Authority, Tukaram Kana Joshi vs. MIDC*** and ***Bhusawal Municipal Corporation vs. Nivrutti Ramachandra Phalak*** (referred supra)). At the same time, the Apex Court succinctly held that, whenever the State policy provides for it there is an entitlement to rehabilitation in the form of developed land. The garb of development cannot be used to uproot persons from their lives and livelihood without compensation or rehabilitation made within a reasonable period of time. Delay in rehabilitation loses its efficacy and value when there is loss of sole source of livelihood. (vide ***Bhusawal Municipal Council v. Nivrutti Ramchandra Phalak*** (referred supra)). Keeping in view the law laid down in the judgments referred above, the present case is to be examined as to how these petitioners lost their livelihood and right to property guaranteed under Articles 21 and 300-A of the Constitution of India, respectively infringed.

222) The petitioners voluntarily traded the security of their ancestral livelihood, farming for access to jobs in the capital city coupled with the security of return of reconstituted residential and commercial plots. To earn a livelihood, there must be job/employment opportunities available in the Capital City Area. Otherwise, the residents of the capital area will be forced to

migrate great distances and get displaced. The following actions by the respondent/State violate the fundamental rights of the petitioners to livelihood and equal protection of the laws:

a) Construction and infrastructure development at Amaravati has stopped.
b) Development at Amaravati has been abandoned by the State. Numerous grounded contracts are not being implemented. Contractors left the works in the middle of execution of the work, thereby, the grounded works were totally abandoned, squandering the public money.
c) Infrastructure developed a great public expense with tax payers money has been allowed to decay, degenerate and generally waste away in a reckless manner.
d) The land pooling scheme has been unilaterally undermined by the State.
e) There is no prospect of employment opportunity arising at Amaravati in the Government and Private Sector, as envisioned in the Master Plan; comfort and enjoyment of amenities as envisioned in the Master Plan; appreciation in the value of the reconstituted plots due to world class infrastructure coming up; communities growing economic activity increasing through developing the financial city, government city, justice city, knowledge city, media city, sports city, health city, electronic city, tourism city.

223) If, these cities are developed and the Master Plan is implemented, as scheduled under the provisions of A.P.C.R.D.A Act and Rules, certainly the petitioners would have enjoyed their right to life as a common man. But, now, on account of abandonment of development works and failure to implement the Land Pooling Scheme, 30,000 farmers who faithfully honoured their part of the bargain, the State has consciously and wilfully breached the solemn assurances contained in the statutory Master Plan dated 23.02.2016 and completely abandoned its

duties and obligations, thereby, bringing ruin and misery upon nearly 30,000 families. This itself would amount to deprivation of Right to Life and Right to Property guaranteed under Articles 21 and 300-A of the Constitution of India.

224) The State assured guaranteed returns, but failed to keep up its promise as per APCRDA Act and Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015, and failed to complete the infrastructure development in the Capital city, as obligated under the APCRDA Act and Rules referred above. On account of the assurance, a right is vested on the petitioners with guaranteed return to the developed and reconstituted plots after final notification of Master Plan dated 23.02.2016.

225) The State in its counter affidavit averred that the petitioners do not have fundamental right nor any right in any other law to insist on the State to organize its programmes of development to ensure appropriate accretion to the value of the property held by them. The contention that a vested right inheres on the petitioners in the Master Plan is itself untenable.

226) The contention of the State is baseless, since the core of the petitioners contention is that they have a right to rehabilitation that is protected under Article 21 of the Constitution of India, arising from the assurances made by the State or APCRDA is that first, the land pooled from the voluntary surrender of their sole sources of livelihood would be used to develop the capital city of Amaravati and second, that they would receive, in exchange for surrendering their source of livelihood,

rehabilitation comprising guaranteed return, developed and reconstituted plots, development in accordance with the sanctioned Master Plan dated 23.02.2016 comprising of capital complex and all nine theme cities referred above, which will generate public and private employment to the residents of capital city area, mostly who surrendered their land voluntarily under the Land Pooling Scheme in view of the promise made by the State.

227) The State invited people to participate in the development, as partners, by pooling their lands for the sake of development of infrastructure and amenities as per the Master Plan dated 23.02.2016. The twin intention behind the scheme to make people equal partners in the development of the capital city, and to do justice to the families affected by the proposed pooling, is stated in the introduction to Land Pooling Scheme Rules, 2015 in the following terms:

> *"…The broad objective of the scheme is to do justice to the families affected by the construction of a liable and sustainable capital city for the State of Andhra Pradesh by making the land owners and local residents as partners in development."*

228) The same intention is also recorded in the undertaking enclosed with the application form to take part in the LPS (form 9.3 under Rule 6(2)(ii) in the following terms:

> *"….Verified that I/we have exercised the irrevocable option to become partners under the 'Land Pooling Scheme' after complete understanding of the Scheme and its provisions stipulated in the notified rules without any pressure or persuasion by any other person or authority…"*

229) In view of the above undertaking, the land owners who surrendered their land voluntarily under the Land Pooling Scheme are the main stakeholders under the scheme. Thus, the Land Pooling Scheme as conceived in Chapter IX of the A.P.C.R.D.A Act takes the consent of the land owners at several stages, and effects a voluntary surrender of the land owners at several stages and made the farmers to surrender their livelihood to the State and its instrumentalities with a strong hope that they will get benefits out of it and engage themselves either in public or private employment. But, on account of the act of the State, the hopes of the petitioners are dashed to ground.

230) At this stage, it is relevant to take note of certain events that occurred after passing APCRDA Act, 2014. The draft Master Plan under Section38 of the APCRDA Act was prepared and published calling for objections and suggestions from the public were invited on 26.12.2015. After scrutinizing all objections and suggestions received within the stipulated period and making certain modifications, notified the detailed Master Plan of capital city of Amaravati on 23.02.2016 after following due procedure. Again modified L.P.S. is prepared and notified for Draft LPS by commissioner under Section55(6). According to Section56(1), draft LPS is to be notified by Commissioner in accordance with sanctioned 38 plans and in consultation with owners. Notification under Section56(2) was approved and published draft LPS in Form 9.20 for each village and invited objections/suggestions within 30 days. The Government of Andhra Pradesh issued G.O.Ms.No.207 MA & UD (APCRDA-2)

Department dated 08.08.2016, duly notifying returnable plots to the land owners as specified in the schedule, in compliance of Rule 9(6) of LPS Rules, 2015. Certain objections were considered for modification and approval of final LPS, as per Section57(1) r/w Rule 10 of LPS Rules, 2015. As per Section57(2), final LPS was published in Form 9.22 for each village between 30.09.2016 and 27.01.2017 and only on the publication of final LPS, the land vested in the authority and the Land Pooling Ownership Certificates were issued to land owners in respect of the reconstituted plots. Thus LPS scheme became part of Section38 of APCRDA Act.

231) The State also agreed to deliver certain annuity in turn, as rehabilitation for the lost livelihood of the land owners and their families, who voluntarily surrendered their lands and livelihood, a developed and reconstituted plots in terms of Section53 of APCRDA Act read with Rule 9(6)(c) of the Rules. The location of the reconstituted plots was to be indicated to the petitioners and other farmers who were surrendering their lands in the Draft LPS. Thus, the plans made under the LPS were also required to be in accordance with the Master Plan and other development plans sanctioned under the APCRDA Act, 2014, not only the size but also the location of reconstituted plots within the sanctioned Master Plan and core development plans for the capital city of Amaravati forms the substratum of the promise to do justice to the land owners who parted their large parcels of land and surrendered their livelihood of agriculture on account of

voluntary surrendering of their land within the capital region under the Land Pooling Scheme.

232) The Master Plan of Amaravati consists of several cities like Government Administrative City, Economic Hub, Justice City etc, as mentioned in the earlier paragraphs. Thus, three civic arms of the State should be located within the Capital city and the other cities will only provide employment to various persons either public or private. As most of the farmers who surrendered their land in the Land Pooling Scheme voluntarily to the developed reconstituted plots' location and the location of sectors to be retained for capital city development, other infrastructure and amenities, in accordance with the assurances in the Master Plan, that the Final LPS was notified under Section57(1) of the APCRDA Act read with Rule 10 of the LPS Rules. It was only after the Final LPS was notified between 30.09.2016 and 27.01.2017, the pooled lands vested in the APCRDA. Thus, the right to return of developed and reconstituted plots as guaranteed rehabilitation for the surrender of the petitioners' entire livelihood vested in the petitioners and it is protected under Article 21 of the Constitution of India.

233) As per Rule 12(4) of LPS Rules, as part of the promise rehabilitation of the losses of livelihood, the petitioners were entitled to physical possession of their guaranteed reconstituted plots within one year from the date of final LPS and a basic formation of roads and physical demaracation of plots in the final LPS, within the same date, as mandated under Rule 12(3) of the LPS Rules. The latest date for the completion of the basic

roads and physical demarcation of plots, and for handover of physical possession of reconstituted plots was 27.01.2018. But, till date, no steps were taken to comply with the requirement under Rule 12(3) of the LPS Rules.

234) Further, as part of promised rehabilitation for the loss of livelihood, petitioners were entitled to full development of infrastructure around their guaranteed reconstituted plots within three years from the date of final LPS, as per Rule 12(6) of LPS Rules. The latest date for the completion of the full development of infrastructure and amenities was 16.01.2020. However, not only as there has been no development of infrastructure, but also amenities, all works towards development have been stopped, abandoned and left to decay on account of the acts of the State and APCRDA, due to lame excuses of lack of funds. Therefore, failure to allot developed and reconstituted plots, providing basic roads and other infrastrcutrues by 27.01.2018 as per Rule 12(3) and Rule 12(4) of LPS Rules and failure to hand over the plots within three years from the date of final LPS in terms of Rule 12(6) by 16.01.2020 deprived the petitioners their livelihood, both on account of failure to provide developed and reconstituted plots and due to surrender of their land without claiming any compensation except foregoing major part of their surrendered land towards consideration for development activities. Therefore, the State has received the cost of development from the land owners by way of surrender of their lands, but, period of implementation for Master Plan was not extended and the State did not comply with

the obligation under the Land Pooling Scheme even after two years from the date of expiry of period. There is absolutely no development except issue of G.O.Ms.Nos.23 & 133 Municipal Administration & Urban Development Department dated 23.04.2021 as an eye-wash as no substantial progress is manifested after this also.

235) As a result of the State and APCRDA acts, the petitioners suffered an evisceration of the rehabilitation promised to them, failure to develop the capital city of Amaravati as per the Master Plan dated 23.02.2016 has left each farmer with merely a reconstituted plot in a barren and undeveloped city and not a reconstituted plot in the thriving and vibrant capital city of Amaravati as promised in the stakeholder consultations and Master Plan dated 23.02.2016. Thus, due to failure to develop Amaravati capital city, each farmer has suffered loss on account of the APCRDA and State's failure to keep up its promise and obligation, both under APCRDA Act and Land Pooling Scheme, as such, their Right to Livelihood guaranteed under Article 21 of the Constitution of India and Right to Property are infringed. But the promise to develop the Master Plan in future by issuing G.O.Ms.Nos.23 & 133 Municipal Administration & Urban Development Department dated 23.04.2021 Would not serve any purpose and even after passing G.O.Ms.Nos.23 & 133 Municipal Administration & Urban Development Department dated 23.04.2021, no development activities have taken place in pursuance of the promise made by the Principal Secretary and Additional Secretary of Municipal Administration & Urban

Development. When the State and its instrumentalities i.e. APCRDA infringed or invaded the fundamental rights of the farmers guaranteed under the Article 21 of the Constitution of India and Right to Property guaranteed under Article 300-A of the Constitution of India, the Court can issue writ of mandamus, in view of the law declared by the Hon'ble Apex Court in the judgments referred above.

236) Sri Shyam Divan, learned Senior Counsel would contend that, the State has violated the petitioners fundamental rights to equal protection of the laws, non-arbitrariness, non-retrogression of rights and good governance under Article 14 of the Constitution of India, raising several contentions on account of breach of the right to equal protection of the laws under Article 14 of the Constitution of India, as the Government is raising the following conditions:

a) *Good governance, non-wastage of government funds and continuance in decision making in the context of a representative democracy*
b) *Those who are unequal shall not be treated as equals;*
c) *The test of manifest arbitrariness;*
d) *The test of proportionality;*
e) *Non-retrogression of rights*

237) The other contentions of the learned Senior Counsel is that, unequals cannot be treated as if they are equals and relied on judgments of the Hon'ble Apex Court in ***(Bennett Coleman & Co. vs. Union of India[111], T. Shyam Bhat vs. Union of India[112], DCIT vs. Pepsico[113])***. To substantiate such contention, learned Senior Counsel has drawn attention of this

[111] (1972) 2 SCC 788
[112] (1994) Supp (3) SCC 340
[113] (2021) 7 SCC 413

Court to several steps taken in the land pooling process, more particularly, abandoning the development of the capital city of Amaravati in accordance with the Master Plan. This violates the principle that only equals ought to be treated and those falling in distinct classes ought to be treated differently. This follows from the classification principle that the classification should have a rational nexus to the object sought to be achieved.

238) Here, the farmers fall in a distinct and separate class because they have already surrendered or contributed their land. They have vested rights in respect of entitlements to reconstituted plots; built infrastructure and amenities; and assurances that the Master Plan will be implemented within a reasonable time and certain segments on a priority basis; a special right under Section41 of the APCRDA Act which ring fences the Master Plan and does not permit modification to the Master Plan unless the local body or Gram Panchayat makes a reference for modification to the authority. The project was covering 217 kms and surrendered land of 33,771 acres by the farmers. The petitioners are part of a class of citizens that are *sui generis* and are not comparable in any manner to other citizens of the State or even land owners who may in future contribute for land pooling. Thus, the respondent-State's action is unilaterally effecting a change in the Master Plan dated 23.02.2016 to treat the petitioners as if they are any ordinary set of landowners is violative of Article 14 of the Constitution of India.

239) These facts are not denied by the State. However, learned Advocate General contended that, the petitioners have no vested right in the capital city and the petitioners are not entitled to claim any development as a matter of right. But, fortunately did not deny their entitlement to claim developed and reconstituted plots in return of land pooling and treating the land pooled as a consideration for the developmental activities.

240) As discussed in the earlier paragraphs, the contract between the farmers, State and APCRDDA is a statutory contract and by virtue of such contract in the Development Agreement – cum – Irrevocable General Power of Attorney in Form – 9.14, created a statutory obligation on the State and its instrumentalities i.e. APCRDA on vesting the land, to discharge their obligations of development of infrastructure, laying of roads and return of fully developed and reconstituted plots within the specified time which expired in the year 2018 itself. On account of the Development Agreement – cum – Irrevocable General Power of Attorney in Form – 9.14, the petitioners acquired vested right to claim developed and reconstituted plots with all infrastructure including roads and basic amenities. However, the State and APCRDA did not take any action to fulfill their obligation in letter and spirit in terms of Form 9.14. Therefore, the farmers who surrendered their land in anticipation of returnable developed and reconstituted plots as per Rule 5(2) of the LPS Rules is a separate class and they cannot be treated on par with other any ordinary farmer or citizen, atleast for the purpose of implementation of Land Pooling Scheme framed

under Section52 of the APCRDA Act, only for establishment of capital in the pooled land. Therefore, farmers who surrendered their land under the Land Pooling Scheme cannot be treated as an ordinary citizen or an agriculturist in the State and such treatment infringes the right under Article 14 of the Constitution of India, in view of the law laid down by the Hon'ble Apex Court in ***Bennett Coleman & Co. vs. Union of India, T. Shyam Bhat vs. Union of India, DCIT vs. Pepsico*** (referred supra). On this ground also, the State shall comply with its obligations under the APCRDA Act and Land Pooling Scheme within the time schedule and such non-compliance would amount to infringement of right of the petitioners guaranteed under Article 14 of the Constitution of India.

241) Sri Shyam Divan, learned Senior Counsel further contended that, the act of the respondent-State is tainted by manifest arbitrariness and pointed out that, on account of failure to discharge the obligation by the State and APCRDA, the creation of a market for reconstituted plots has stopped and abandonment of development of Amaravati as per the final Master Plan destroyed the market, thereby, the market value of property has drastically reduced. Reliance was placed on judgment of the Hon'ble Apex Court in ***Shayara Bano vs. Union of India[114], Joseph Shine vs. Union of India[115]*** where the Apex Court held that the State action may be struck down if it is manifestly arbitrary. If, the principles laid down in the above two judgments are applied to the present facts of the case, there

[114] (2017) 9 SCC 1
[115] (2019) 3 SCC 39

is a little force in the argument of the learned Senior Counsel for the petitioners, but it is difficult to accept such contention that the act of the State is manifestly arbitrary on account of stoppage and abandonment of development of Amaravati as per the final master Plan, thereby resulting in drastic downfall of rates of house sites. Hike in the price of land depends upon various factors, but that by itself is not a ground to declare that the act of the respondent-State is manifestly arbitrary.

242) Sri B. Adinarayana Rao, Sri Unnam Muralidhara Rao, Sri M.S. Prasad, learned counsel appearing for the petitioners relied on the judgments of the Hon'ble Apex Court in ***The State of Bihar vs. Maharajadhiraja Kameshwar Singh of Darbhanga***[116]; ***The State of West Bengal vs. Mrs. Bela Banerjee***[117] and ***Nagpur Improvement Trust vs. Vithal Rao***[118], wherein the Hon'ble Apex Court held that, the State can make a reasonable classification for the purpose of legislation and Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right.

243) Based on the principles laid down in the above three judgments, learned counsel contended that the act of the State in abandoning certain constructions, incurring huge expenditure of more than Rs.15,000 crore and failure to discharge the obligations of the State, more particularly, development of infrastructure and handing over of developed reconstituted plots

[116] 1952 SCR 889
[117] 1954 SCR 558
[118] (1973) 10 SCC

would amount to infringement of Fundamental Right guaranteed under Article 21 of the Constitution of India, so also Article 300-A of the Constitution of India.

244) In ***Tukaram Kana Joshi vs. MIDC*** (referred above), the Hon'ble Apex Court held that, right to property is not only a constitutional right, but also a human right. The Right to the City is the right of all urban inhabitants, not just citizens, to participate in and appropriate urban space and resources. This means that all urban inhabitants should have a role in decision-making regarding urban space and be able to access, occupy and use urban space. David Harvey, who further popularized this idea, explained that the Right to the City is a "common rather than an individual right" that seeks to transform cities by the exercise of collective power "to reshape the processes of urbanization." The Right to the City has become a common framework for articulating alternative visions of the city and making a host of demands on issues related to urban equity and social justice. It has also been used for making urban governance, planning, and budgeting more participative and inclusive. Since the adoption of the World Charter on the Right to the City in 2005, the idea has also gained a lot of traction in various international forums. It became the linchpin driving the New Urban Agenda adopted in the UN Conference on Housing and Sustainable Urban Development (Habitat III) held in Quito, Ecuador in 2016. Though not initially conceptualized as legal right, the Right to the City is increasingly gaining recognition in law, especially in the global south with legislative

instruments acknowledging this idea in countries like Brazil, Ecuador and Mexico. Brazil's City Statute of 2001, for example, loosens the notion of individual ownership of property by privileging the social function of property over its commercial function and facilitates participatory forms of urban governance in which community groups play a key role in the planning and implementation of urban development projects.

245) In ***Ajay Maken vs. Union of India***[119], the Court dealt with the legality of the demolition of around 1200 jhuggies in Shakur Basti, an informal housing settlement in Delhi. In this case, the Delhi High Court held that no authority shall carry out eviction without conducting a survey and consulting the population that it seeks to evict. Further, no eviction shall be carried out without providing adequate rehabilitation for those eligible for it as per the survey. The Court observed that the concept of the "Right to the City" is relevant in this case as "an important element in the policy for rehabilitation of slum dwellers". It relied on the policy paper, *Right to the City and Cities for All*, brought out in the build up to Habitat III and cites its definition of Right to the City as the "right of all inhabitants present and future, to occupy, use and produce just, inclusive and sustainable cities, defined as a common good essential to the quality of life."

246) What makes ***Ajay Maken*** particularly relevant is that, it marks a clear departure from much of the Delhi High Court's jurisprudence on housing rights of slum dwellers. The Delhi High Court had, over the last two decades, taken a proactive role

119 W.P.(C) 11616/2015, CM APPLs.31234/15, 3033/16 & 10640/17 Dated 18.03.2019

in adjudicating on issues related to urban planning and used the narrative of 'public nuisance' to legitimise the demolition of slums and the displacement of its inhabitants. This case, along with ***Sudama Singh v. Government of Delhi***[120] that preceded it, broke away from the trend of the Court using its Public Interest Litigation jurisdiction to drive slum demolition in Delhi.Drawing from judgments of the South African Constitutional Court, the Delhi High Court in both these cases held that any person who is to be evicted should have a right to "meaningful engagement" with any relocation plans. In ***Ajay Maken***, the Court observed that a deliberative democratic practice like "meaningful engagement" enabled the Court to become "both a democratic space where such dialogue can take place and also the Constitutional authority that facilitates it." The final judgment in ***Ajay Maken*** was given only after a Draft Protocol for rehabilitation was drawn up after consultative engagements with key stakeholders including the residents of Shakur Basti. A large portion of the population in Indian cities lives in informal settlements and is engaged in informal work. Much of India's urban poor operate in the realm of informality, outside the planned vision of the city, in a complicated relationship with the law. They make claims on urban housing by first occupying a space and then incrementally build and obtain the relevant urban infrastructure and services through various informal tactics and negotiations with the state. It is

120 WP(C) Nos.8904/2009, 7735/2007,7317/2009 and 9246/2009 dated 11.02.2020

essentially through such practices, which may not be strictly legal, that the disadvantaged groups in Indian cities often make claims on the city and its resources and exercise their Right to the City.

247) The Right to the City formulates a new idea of citizenship based on inhabitance and participation in the quotidian practices and transactions in the city. It is an important idea for furthering the interests of people living in informal settlements and engaged in informal work as it goes beyond the law and recognizes the rights of all inhabitants to live, work and participate in urban life. It breaks the legal formalism associated with citizenship, occupation and housing and acknowledges that people living and working in conditions of informality have equal claims over the city. The invocation of the Right to the City in ***Ajay Maken*** opens the idea to multiple opportunities both within and outside the law. At the most basic level, it provides constitutional protection for slum dwellers against forced eviction and acknowledges the right to adequate housing. Beyond the law, the Right to the City may be exercised by urban inhabitants to legitimize their claims over housing through the process of occupying empty urban spaces, building houses, and incrementally accessing various resources connected with it. The use of pavements by street vendors also offers an example of how disadvantaged sections of the urban population negotiate and access public space for pursuing their right to livelihood. These practices, ranging from street vending on pavements, to squatting on public lands and auto-construction of informal

housing, allow urban inhabitants to make claims over the use of urban space and thereby exercise their Right to the City.

248) It is settled law that, right to property is considered to be, not only a constitutional or a statutory right, but also a human right. If, for any reason, right to property is violated, it would amount to violation of human right which is guaranteed under Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and in the light of socio-economic justice assured in our Constitution. In ***Ajay Maken vs. Union of India*** (referred above), the Delhi High Court after analyzing various judgments, while dealing with Right to the City under Article 21 of the Constitution of India and with reference to constitutional and international human rights obligations of the State.

249) In the present facts of the case, the State made a promise to construct a capital city and develop capital region providing necessary amenities to the residents and lured more than 30,000 farmers in 28 villages in the capital region and made them to surrender their livelihood i.e agricultural land for the benefit of developing capital city. But, even after few years, the dream of a city became a nightmare on account of the decision taken earlier by Act Nos. 27 & 28 of 2020 and proposed to take decision of introducing a bill after due consultation, in view of the Statement of Objects and Reasons in the Repeal Act No.11 of 2021 and the affidavit filed by the Principal Secretary and Additional Secretary of Municipal Administration and Urban Development. The Government not only violated the Right to Life guaranteed under

Article 21 of the Constitution of India, but also violation of human right which is guaranteed under Draft Principles of Human Rights and the Environment, Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and in the light of socio-economic justice assured in our Constitution. However, the petitioners to protect their right to life and human right i.e. Right to the City filed these petitions to compel the respondents to develop the capital city and capital region, while developing the infrastructure including roads, water, drainage, approach roads, seed access roads etc, in the capital region and for return of developed reconstituted plots to the farmers which is a legitimate expectation of a poor farmer from a government. Thus, the respondents – State and APCRDA violated the Right to the City and proposing to violate right to city, which is not only Human Right under Article 21 of the Constitution of India, but also a Fundamental Right guaranteed under Article 300-A of the Constitution of India.

250) On account of surrender of livelihood by the farmers i.e. agricultural land for development of capital city and capital city region, entered into Development Agreement-cum-Irrevocable General Power of Attorney in Form-9.14, a right is accrued to the petitioners to claim right in the capital city and a fundamental right, besides the general principle of legitimate expectation to the ryoths who surrendered their lands expecting developed and reconstituted returnable plots by providing all amenities for comfortable living. But, by Act Nos. 27 & 28 of 2020, the right

accrued to the farmers is taken away. However, on account of repeal of Act Nos. 27 & 28 of 2020 by Act No.11 of 2021, their accrued right is restored, but still the proposal to take away their accrued right is pending, in view of the Statement of Objects and Reasons in Act No.11 of 2021.

251) In "***State of Punjab v. Mohar Singh***[121]" wherein the Apex Court had an occasion to deal with application of principle of repeal and held that whenever there is a repeal of an enactment, the consequences laid down in Section6 of the General Clauses Act will follow unless, as the Sectionitself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. "The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them." The Court cannot therefore subscribe to the broad proposition that Section6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of

[121] (1955) CriLJ 254

the new law and the mere absence of a saving clause is by itself not material.

252) In "***Hitendra Vishnu Thakur v. State of Maharashtra***[122]**,** the Apex Court laid down certain guidelines with regard to interpretation of laws, which are as follows:

> *"(i) A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a Statute which merely affects procedure, unless such a construction is texturally impossible, is presumed to be retrospective in its application, should not be given an extended meaning, and should be strictly confined to its clearly defined limits.*
>
> *(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature.*
>
> *(iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law.*
>
> *(iv) A procedural Statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished.*
>
> *(v) A Statute which not only changes the procedure but also creates a new rights and liabilities, shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."*

253) In the recent judgment of Constitutional Bench in "***Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited***[123]" the Supreme Court held that if a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the

[122] (1994) 4 SCC 602
[123] (2015) 1 SCC 1

presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In such cases, retrospectively is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.

254) In "***L'Office Cherifien des Phosphates vs. Yamashita-Shinnih on Steamship Company Ltd***[124]" it is clarified that the legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect.

255) By applying the principles laid down in the above judgments, it is clear that, right that accrued on any person cannot be taken away. In the instant case, Right to the Capital city is accrued to the petitioners which is a Human Right and almost a fundamental right guaranteed under Article 21 and Right to Property guaranteed under Article 300-A of the Constitution of India, by passing Act Nos. 27 & 28 of 2020. But,

[124] [1994] 1 AC 486 (HL)

on account of repeal of the Act Nos. 27 & 28 of 2020 by Act No.11 of 2021, those rights are revived and still the ryoths in the capital region area are entitled to protect their rights. However, in view of the contemplated invasion of right of the farmers, this Court can issue a writ of continuous mandamus to protect the rights of the farmers.

256) Though the learned Advocate General refuted this contention, but, on account of restoration of APCRDA Act, after repeal of Act Nos. 27 & 28 of 2020, we are unable to accept the contention of the learned Advocate General, as the State and APCRDA failed to discharge their obligation under Land Pooling Scheme and APCRDA Act within the time frame, thereby, the petitioners and land owners lost their livelihood and right to property, having parted with large parcels of land.

257) In view of our foregoing discussion, the act of the State and APCRDA has not only deprived the right of life guaranteed under Article 21 of the Constitution of India, but also infringed right to property guaranteed under Article 300-A of the Constitution of India, thereby the act of the respondents - State and APCRDA is violative of Article 14 of the Constitution of India, as the farmers who surrendered their land were treated on par with any other citizen which is prohibited under Article 14. Hence, the contention of the petitioners is upheld, while rejecting the contention of the learned Advocate General for the State.

258) Sri Unnam Muralidhar Rao, learned senior counsel, contended that failure to undertake developmental activities by constructing capital within the land pooled amounts to fraud on

power since the State Government being a repository of power failed to act reasonably for development of capital city.

259) The petitioners did not produce any material, but contended that based on inaction of the respondents i.e. the State and the APCRDA, the Court can draw the inference that the State and the APCRDA did not undertake steps to complete the partly constructed works and failed to provide infrastructure, failed to complete or handover the developed returnable plots within the specified time under the APCRDA Act, such inaction on the part of the State and the APCRDA certainly be termed as fraud on power.

260) When a question came up for consideration before the Apex Court in "***P. Vajravelu Mudaliar vs. Special Deputy Collector, Madras and Others***[125]" with regard to payment of compensation, which is illusory in view of the statutory provisions, it is observed that there may be many others falling on either side of the line. It is clear that if the compensation is illusory or if the principles prescribed are irrelevant to the value of the property at or about the time of its acquisition, it can be said that the Legislature committed fraud on power and, therefore, the law is bad.

261) The concept of bad faith in relation to the exercise of statutory powers comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes

[125] AIR 1965 SC 1017

the power to have been conferred. His intention may be to promote another public interest or private interest. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. The administrative discretion means power of being administratively discreet. It implies authority to do an act or to decide a matter a discretion". The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

262) The APCRDA Act, 2014 prescribes certain duties of APCRDA. Failure to discharge those duties would also amount to 'fraud on power' as APCRDA failed to discharge its duties as prescribed under Schedule II and III of the Rules, 2015.

263) The rules prescribed certain forms in the schedules. Schedule I deals with process of the scheme. Schedule II deals with role and responsibility of the authority. Schedule III deals with role and responsibility of the Government. Schedule IV prescribes extent of the land reserved under sub-Section1 (e) and 1 (f) of Section53 of the Act. Schedule V prescribes several forms from 9.1 to 9.32 under different provisions of the Act and Rules.

264) The role of the authority i.e. APCRDA, role of the Government as mentioned in Schedule II and III is important for deciding the present issue.

Schedule II – Role and responsibility of the Authority and Schedule III – Role and responsibility of the Government are extracted hereunder for better appreciation.

SCHEDULE II

1. ***Role and responsibility of the Authority:-***

(i) ***towards land owners under the land pooling scheme:***

(a) to undertake the implementation of land pooling scheme and develop the land meant for providing reconstituted plots.

(b) to issue statutory receipt for consent application with documents.

(c) to allot reconstituted plot by lottery.

(d) to return land to the land owners near pooled land / within 5 km radius of pooled land subject to other planning requirements.

(e) to issue statutory land pooling ownership certificate [LPOC] with alienable rights within 9 months of agreement with all willing land owners.

(f) to handover physical possession of reconstituted plot within 12 months of the date of notification of final LPS.

(g) to complete the development of the scheme area within 3 years of issue of LPOC.

(h) to provide reconstituted plots in one area to a land owner having original plots in different areas as per the category of original land.

(i) to provide reconstituted plots in one area to different land owners requesting for joint allocation as per the category of original land.

(j) to issue LPOC and pay annuity to the religious institutions or charitable trusts under the purview endowment department in cases where original lands belong to them.

(ii) ***towards development of the area under LPS***:

(a) to declare areas under land pooling scheme and preparation of layout plans and sector plans based on the requirement of physical infrastructure.

(b) to superimpose revenue maps on the approved master plan.

(c) to demarcate all the roads as per layout plan and sector plan within the assembled area and give approval of layout plans/detailed plans.

(d) to develop of sector roads/internal roads/ infrastructure/services (including water supply lines, power supply, rain water harvesting, sewage treatment facilities, water treatment facilities, etc. falling in the share of the land guaranteed to the land owners.

(e) to create infrastructure facilities, roads, parks, cremation facility for all religions, community needs etc. at the city level.

(f) allot the prescribed built up space/ dwelling units for economically weaker sections.

(g) to develop identified land in time bound manner with master plan roads, provision of physical infrastructure, and traffic and transportation infrastructure inclusive of metro corridors.

(h) to complete external development in time bound manner.

(i) to complete development in time and maintain it with all the neighborhood level facilities i.e. open spaces, roads and services.

SCHEDULE- III

1.***Role and responsibility of the Government:-***

(i) ***towards land owners under LPS***:

(a) to provide registration for LPOC without payment of registration charges.

(b) to provide one time exemption from stamps and registration fee, Non- Agricultural Land Assessment and development fee.

(c) to exempt registration fee for registering the agreements with Competent Authority for Land Pooling.

(ii) ***towards others residing within the area under LPS***:

(a) to provide one time agricultural loan waiver of up to one lakh fifty thousand rupees per family to farmers as per prescribed procedure of Government.

(b) to demarcate village sites / habitations duly following procedures of revenue department.

(c) to issue possession certificates in village sites in order to enable the occupants to regularize house sites.

(d) to provide housing to houseless as well as those losing houses in the course of development.

(e) to provide interest free loan of up to 25 lakhs to all the poor families for self employment.

(iii) towards other promises made:

(a) to provide free education and medical facilities to all those residing as on 8th December, 2014.

(b) to establish old age homes.

(c) to establish NTR canteens.

(d) to enhance the limit under NREGA up to 365 days a year per family.

(e) to establish skill development institution and provide training with stipend to enhance the skills of cultivating tenants, agricultural labourers and other needy persons.

(f) to engage tractors belonging to residents for construction activity.

(g) to issue ownership and transit permission through forest department for cutting and sale teak trees in private lands duly exempting the relevant fees.

(h) to name one building after M.S.S. Koteswara Rao. (i) to allow standing crop to be harvested.

2. ***Role of the land owners***

(a) to give consent application, and facilitate survey and demarcation.

(b) to prove rights over the land.

(c) to transfer ownership rights to the Authority against a

guaranteed return of reconstituted plot in the vicinity of pooled land.

(d) not to create any encumbrances after entering into agreement with the Competent Authority for Land Pooling.

(e) to handover physical possession to the Competent Authority for Land Pooling for development.

265) When once the Government made a promise in terms of Development Agreement – cum – Irrevocable General Power of Attorney in Form 9.14, it is the obligation of the Andhra Pradesh Capital Region Development Authority to complete the land pooling scheme and development as agreed in the agreement referred above and they cannot resile from their promise under Development Agreement – cum – Irrevocable General Power of Attorney in Form 9.14 in view of the principle of promissory estoppel. Most of the petitioners developed their case based on doctrine of promissory estoppel to contend that the Government cannot resile from its promise since the State and Andhra Pradesh Capital Region Development Authority are under obligation to fulfil their obligation in view of the specific clause, which denuded the owners/farmers to approach any authority or Court to claim any compensation or any relief. Failure to discharge its duties and obligations both by State and APCRDA at their whim, stoppage of development, failure to complete the Land Pooling Scheme process is fraud on power.

266) Accordingly, point is decided in favour of the petitioners and against the respondents.

P O I N T No.5:

267) One of the major contentions raised by the learned counsel for the petitioners in most of the petitions is that when once the Government is changed either in general elections or in the mid elections, the State is bound to continue the projects undertaken by the earlier Government and mere change of the Government is not sufficient to change its policy and stop the projects undertaken by the earlier Government. More particularly, when the project is in the mid-way spent huge public money on such project, as it would cause colossal loss to the State exchequer and the State and APCRDA are not expected to squander public money for their political purposes or to meet the strategies in future, such change of policy and abandonment of projects is illegal, requested to issue a direction to the respondents.

268) Respondents filed counter refuting such contentions explaining that the project/developmental activities undertaken by the then Government are unmindful of the expenditure and to benefit the ryots of particular area even without taking into consideration of original master plan, such projects are not required to be continued at the cost of people of other regions since the amount spent on those projects is not the public money of particular region, but the public money of entire State. Apart from that the project undertaken by the earlier government i.e. construction of capital city at Amaravati is nothing but benefiting the ryots on payment of Rs.2 crore per acre by way of annuity for a period of 10 years, requested to reject the contention of the petitioners.

269) It is an undisputed fact that the then Government passed the APCRDA Act, 2014 and by exercising power under Section52 of the APCRDA Act, 2014 framed land pooling scheme to pool the land from the ryots, who are willing to voluntarily surrender their land subject to certain conditions contained in 'land pooling scheme', a unique scheme, which tempted the framers to surrender their land to an extent of Ac.33,771.00 cents with a fond hope that if the capital city is established, most of the people in the area will get employment either in the private or public sector and they may carryon their avocations to eke out their livelihood in different fields though they lost livelihood of agriculture, on account of surrender of land to the Government being partners in the development of capital area in terms of preamble of the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015. Indisputably, nearly 30,000 farmers in Amaravati, which is under the governance of the APCRDA Act, 2014 surrendered an extent of Ac.33,771.00 cents.

270) The petitioners in W.P.No.16514 of 2020 filed certain documents, which shows that the Andhra Pradesh Capital Region Development Authority issued white paper (Book-I) on Amaravati Project disclosing status by March, 2016 and disclosed various details including the land pooled, various projects and cost of projects. The Government complex is planned in approximately 900 acres near Rayapudi Village in capital city. It is proposed to develop Legislature, Secretariat, High Court, Raj Bhavan along with all Head of Departments, VIP

housing etc. The tentative budget cost was approximately Rs.6000 crores for development of Government Complex. Similarly, action plan is also mentioned in clause 6.2.4 of the said status report and the construction is to be completed by December, 2018. The said document discloses financial planning, industry and economic development, execution strategy and institutional framework etc.

271) Second edition of Amaravati Project (Book-II) was released in March, 2017 by the Andhra Pradesh Capital Region Development Authority disclosing overview of the development, land pooled, social development, planning, industry and economic development, execution strategy and institutional framework etc. LPS status at clause 10.7 of the said document discloses the extent of land pooled i.e. 38,535.94 acres and annuity paid during first year and second year. Clause 7.2 consists of sources of funding. But the present Government did not secure the funds as mentioned in clause 7.2 under chapter "financial planning" for different reasons.

272) Edition No.3 of Amaravati project (Book-III) was issued in the month of December, 2017 disclosing the details of land pooled in various villages and plot allotment after pooling, on lottery basis including the status of land pooling development schemes, status of returnable plots allotted, so also acquisition of land under different awards in villages who did not come forward for voluntary surrender of land under land pooling scheme. The buildings plans of different works, laying seed

access road spending huge amount by APCRDA is shown in edition No.3 of Amaravati Project.

273) Edition No.4 of Amaravati project (Book-IV) was issued in the month of February, 2019 disclosing the details regarding various projects including inauguration of High Court of Andhra Pradesh at Amaravati. Clause 8.3 shows the details of economic development projects allotted land through various Government Orders/Tender Process. The land was allotted to several private individuals for taking up different projects for growth of capital city and amount was also collected from the beneficiaries. Clause 6.7 disclosed implementation of trunk infrastructure including percentage of physical progress of work in Kilometres and work and other details.

274) In the month of April, 2018 the Andhra Pradesh Capital Region Development Authority issued Happy City Blueprint as part of Socio-Economic Master Plan (Book–V) disclosing various details of developmental works, financial plans etc.

275) The Andhra Pradesh Capital Region Development Authority released facts and figures (edition No.2) (Book-VI) disclosing the status as on May, 2017.

276) The farmers' land holdings that were surrendered are more particularly described in the following table:

S.No.	Individual Land Holding-Parameter (In Acres)	No. of Farmers	Total Extent	Percentage (%)

1.	< 1	20,422	10,037	29.72%
2.	1 to 2.5	6,278	9,857	29.18%
3.	2.5 to 5	2,131	7,460	22.09%
4.	5.01 to 10	765	4,405	13.04%
5.	10.01 to 15	109	1,036	3.07%
6.	>15.01	49	973	2.88%
	Total	29,754	33,771	100%

(Source: APCRDA website)

Additional details pertaining to usage of land is tabulated as:

Land surrendered under LPS	33,771 Acres
Total Farmers	29,754
Farmers holding below 2 Acres who had surrendered their lands	26,700
Central Funds released to Amaravati	2500 Crores
Amaravati Capital Bonds	2000 Crores
Tenders finalised in Amaravati works	42,170 Crores
Value of projects grounded	41,678 Crores
Completed works	5,674 Crores
Bills and Mobilisation advances paid	5,200 Crores
Bills to be paid for completed works	1850 Crores
Land allocated to Private and Govt institutions	1660 Acres
Amount paid by them	450 Crores
Land allocated to VITS University	200 Acres
Amrita University	200 Acres
SRM University	200 Acres
Indo-UK University	150 Acres
Basava Tharakam Cancer Institute	15 Acres
TTD	25 Acres
Spiritual Centres	32 Acres
Star Hotels	38 Acres
International & Pvt Schools	45 Acres
Govt Of India Institutes	175 Acres
Banks and PSU's	25 Acres
RBI	11 Acres
CAG	17 Acres
Navy	15 Acres
NID	50 Acres
AP Govt Institutes	170 Acres

Amount paid for Happy Nest Flats	72 Crores
Lease paid to Farmers last 5 yrs	800 Crores
Lease amount to pay for coming 5 yrs	1100 Crores
Pention paid for Farming labour	290 Crores
To pay for coming 5 yrs	290 Crores
People contribution for Amaravati	42 Crores
Govt Officers who were allotted plots	350 Acres
Amount paid by Officers for house plots	87.50 crores

277) From the various reports, news articles, the works which appear to have been stopped, postponed indefinitely, abandoned midway and possibly cancelled include, inter alia, the following:

a. Road network
b. Sewer network
c. Storm water network
d. Water supply network
e. Reuse water supply network
f. Footpath (removed from scope)
g. Cycle track (removed from scope)
h. Multi-Function Zone Pavers (removed from scope)
i. Street Lighting (removed from scope)
j. Power & ICT (removed from scope)
k. MLA/MLC Housing
l. NGO Housing
m. GO Type 1, 2 & Group D Housing
n. Bungalows for Ministers & Judges
o. Bungalows for Principal Secretaries & Secretaries
p. APCRDA Project Office
q. Schools
r. Judicial Complex (removed from scope)
s. Amaravati Government Complex (removed from scope)
t. High Court (removed from scope)
u. Amaravati IT Tower (removed from scope)

278) Publication of those documents showing the details is not in dispute. But the present Government took a serendipitous decision by passing Act Nos.27 and 28 of 2020, which are now repealed by the Act No.11 of 2021, to trifurcate the capital establishing judicial capital at Kurnool, legislative capital at Amaravati and executive capital at Visakhapatnam in the name of decentralisation of development for development of all regions, to avoid regional disparity in the growth. But on account of repeal of Act Nos.27 and 28 of 2021 by the Act No.11 of 2021,

the issue of trifurcation of capital needs no further examination for the present.

279) As seen from the material (books) filed in W.P.No.16514 of 2020 (referred above), more than Rs.15,000 crores were spent for the development of capital region i.e. laying seed access roads, external roads, constructed various buildings and most of the buildings are at the stage of completion particularly Ministers quarters, Judges quarters, MLA quarters, APCRDA office, but on account of facetious decision taken by the present Government, the construction activities were totally stalled, the contractors left the works in the midst of its completion. The State and APCRDA are not bothering about the amount spent, and now the area is covered by wild growth of thorny bushes and the fertile lands are turned as jungle on account of inaction of the State to implement the project undertaken by the then Government. Though the State and APCRDA are under obligation to undertake development activities and complete the development of roads and other projects within three years from the date of final notification of land pooling scheme as per Rule 12 (6) of the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 (for short “the Rules, 2015”), which is already expired, on account of such inaction of the State and APCRDA are, thousands of crores of rupees of public money is being wasted either due to completion of some constructions, laying roads, on account of payment of annuity to the ryots without any progress in the works.

280) When once the projects are taken up by the then Government, the present Government has to complete the same. Learned counsel for the petitioners relied on the judgment of the Apex Court in "***State of Tamil Nadu and others vs. Shyam Sunder and others***[126]", wherein the Apex Court held as follows:

> *"The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing." The principles of governance have to be tested on the touchstone of justice, equity, fair play and if a decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate". (Vide:* ***Onkar Lal Bajaj v. Union of India and Anr.****[127]).*

281) In "***State of Karnataka and Another vs. All India Manufacturers Organisation and Others***[128]", the Apex Court examined under what circumstances the government should revoke a decision taken by an earlier Government. The Court held that an instrumentality of the State cannot have a case to plead contrary from that of the State and the policy in respect of a particular project adopted by the State Government should not be changed with the change of the government. The Court further held as under:

> *It is trite law that when one of the contracting parties is State within the meaning of Article 12 of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the Constitutional Courts.*
>
> *(Emphasis added)*

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[126] AIR 2011 SC 3470
[127] AIR 2003 SC 2562
[128] AIR 2006 SC 1846

While deciding the said case, reliance had been placed by the Court on its earlier judgments in "***State of U.P. and Another vs. Johri Mal***[129]" "***State of Haryana v. State of Punjab and Another***[130]"**.**. In the former, the Apex Court held that the panel of District Government Counsel should not be changed only on the ground that the panel had been prepared by the earlier Government. In the latter case, while dealing with the river water-sharing dispute between two States, the Court observed thus:

> ...in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same.

282) In "***M.I. Builders Pvt. Ltd. vs. V. Radhey Shyam Sahu and Others***[131]", while dealing with a similar issue, the Apex Court held that Mahapalika being a continuing body can be estopped from changing its stand in a given case, but where, after holding enquiry, it came to the conclusion that action was not in conformity with law, there cannot be estoppel against the Mahapalika.

> Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law.

[129] AIR 2004 SC 3800
[130] AIR 2002 SC 685
[131] AIR 1999 SC 2468

283) In "***State of Karnataka and Others v. All India Manufacturers Organization and Others***[132]**"** the Apex Court held as follows:

> Considering the facts as a whole, the High Court came to the conclusion that since the Project had been implemented and Nandi had invested a large amount of money and work had been carried out for more than seven years, the State Government could not be permitted to change its stand and to contend that the land allotted for the Project was in excess of what was required. Having perused the impugned judgment of the High Court, we are satisfied that there is no need for us to interfere therewith. Thus, there is no merit in this contention, which must consequently fail.

284) While dealing with the issue of haste, the Apex Court in the case of ***"Bahadursinh Lakhubhai Gohil vs. Jagdishbhai M. Kamalia and Others[133]",*** referred to the case of ***"Dr. S.P. Kapoor vs. State of Himachal Pradesh and Others[134]"*** and held that:

> ...when a thing is done in a post-haste manner, mala fide would be presumed.

285) In ***"Zenit Mataplast Private Limited v. State of Maharashtra and Others[135]",*** the Apex Court held:

> Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law

286) Thus, in case an authority proceeds in undue haste, the Court may draw an adverse inference from such conduct.

287) In view of the principles laid down in the above judgments, it is clear that the present Government is under obligation to

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132 AIR 2006 SC 1846
133 (2004) 2 SCC 65
134 AIR 1981 SC 2181
135 (2009) 10 SCC 388

complete the projects undertaken by the then Government, unless such projects were undertaken contrary to any statute. For the reason that the project is not supposedly financially viable, they disbanded or abandoned the projects on the lame excuse, without taking care of amount already spent on the project and being spent by way of payment of annuity to the farmers, who surrendered their lands voluntarily in the Land Pooling Scheme. No specific reason is mentioned except "financial un-viability". No proof is filed of the alleged financial difficulty etc. The works were stalled immediately after the present Government came into power, by taking a decision and consequently, the Court can infer malafides.

288) The State is accountable for each and every paisa spent on the projects to the public as the State is spending public money either paid by the Central Government or incurred by the State Government. When more than Rs.15,000 crores of the tax payers money or tax rupees are spent on the project, the State shall continue to complete the projects for the benefit of the public. Otherwise, the amount spent by the State i.e. more than Rs.15,000 crores on the capital city became waste. To avoid such wastage of public money, the State and the APCRDA has to complete the project strictly adhering to the land pooling scheme. Applying the principles laid down in the judgments (referred supra), it is the obligation of the State and the APCRDA, which is a statutory authority, to complete the projects.

289) One of the reasons mentioned for non completion of projects is 'paucity of funds' as averred in the counter filed by the respondents as well as in the additional affidavits filed by the

Special Chief Secretary to the Government, Municipal Administration and Urban Development Department, Government of Andhra Pradesh and the Secretary to Government, Municipal Administration and Urban Development Department, Government of Andhra Pradesh.

290) Statement of objects and reasons for repealing the Act Nos.27 and 28 of 2020 is filed along with the affidavit filed by the Special Chief Secretary to the Government, Municipal Administration and Urban Development Department, Government of Andhra Pradesh, wherein it is specifically stated as follows:

> "And, whereas in this backdrop, the subject matter needs further study and consultations to impart further clarity to the policy of decentralization of the State and explanation to all sections of people exhaustively.
>
> And whereas the Government intends to repeal the said Acts to enable further consultations with all the stakeholders once again and to present a suitable legislation in future addressing all the concerns of all the regions of the State favouring decentralization."

291) Proposal of 1st instalment (Rs.1500 cr) to be taken up under phase 1 prioritised projects (Rs.3000 Cr Loan amount) in Amaravathi is filed along with the affidavit filed by the Secretary to Government, Municipal Administration and Urban Development Department, Government of Andhra Pradesh, which is as follows:

> "On 13.08.2020, Hon'ble Chief Minister approved the prioritised Trunk & LPS Infrastructure works of Rs.11092.88Cr. Prioritization of proposals were done with a view to provide infrastructure facilities in a phased manner in tune with the development and also approved by on. The details of the Prioritised Trunk & LPS infrastructure were as follows:

Prioritised Trunk Infrastructure: Balance works worth of Rs. 13058.84Cr were prioritized to Rs.4, 377.35Cr . (Roads & Bridges, Storm Water Drains, Sewer Network, RCC Duct, Water Supply and Vaagus works.)

Prioritised LPS Infrastructure: Balance works worth of Rs.16223.14 Cr were prioritized to Rs. 6715.53Cr (Bituminous Top & Cement Concrete Roads, Storm Water Drains, Sewer Network, Water Supply works.)

Phasing of Prioritized Trunk & LPS Infrastructure:

The prioritized Trunk & LPS infrastructure is phased into three (3) instalments for approaching the consortium of banks for borrowing the loan of Rs.10,000 Cr i.e , (Rs.3000Cr + Rs.3000Cr + Rs.4000Cr). Accordingly, Government vide GO MS No.23 of MA&UD, GOAP Dt:24.03.2021, accorded Government Guarantee for Rs. 3000Cr for developing the Initial Phase prioritized Infrastructure works in Amaravati.

Trunk Infrastructure

Roads: Identified based on regional connectivity, access to various already established institutions and activities, completed road stretches, etc., with two lane carriageways.

Storm Water: Identified network to connect the Vaagus for avoiding the inundation.

Water Supply: Identified to complete distribution to nearly 11 LPS layouts upto Single Point from AGC area.

Flood Mitigation - To create basic infrastructure to discharge the collected flood into the fore bay of the flood pumping station at Undavalli near Krishna River.

LPS Infrastructure:

Roads: Proposed to take up all LPS layout roads with 7.0mt BT surface for 25mt RoW, 6.0mt CC surface for 17mt, 15.6mt, 12mt RoW, 5.5mt CC surface for 9mt RoW in LPS Zones of Zone 1, Zone 2, Zone 3, Zone 5B, Zone 5C, Zone 5D, Zone 6, Zone 7, Zone 9, Zone 9A, Zone 10 so as to ensure all plots will have an access. Base layers for 25.0m, 17.0m, 15.6m, 12.0m, 9.0m were proposed with full widths but BT with reduced widths. The Phase I development proposal will open up the AMRDA land parcels for faster monetization of AMRDA lands and facilitates to achieve the expected/required rate of development in the city.

Power: To ensure the power connectivity for the plots with overhead lines.

1st Instalment (Rs 1484.95 Cr) of Phase I Prioritized Trunk & LPS Infrastructure:

Trunk Infrastructure-Rs 599.50 Cr

No.	Details	Estimated Costs (cr.)
1	Roads (E3-filin B the road junctions & E8,	245.85

	E9,E11,N4,N9, N11,N12,N14,N16-2 lane carriageway) Bridges (15 No. in the above roads)	
2	Strom Water Drains (77 km)	168.88
3	Water Supply (28.60 km)	18.49
4	Vaagus (14.50 km)	32.84
	Sub-Total	466.06
	Taxes	133.44
	Total	599.50

Highlights:

Roads: The prioritised Roads will create access from one end to other end of the city and will also create access to the existing IGC, AGC, ongoing housing projects, educational institutions, pedallandariki illu sites, major land parcels, etc., Also these roads are well connected with the ongoing NH Bypass so as to get regional transport connectivity.

Storm Water Drains: These will drain the storm water and rainfall runoff from the developing LPS layouts and will avoid majority of the inundation in the city.

Water Supply: This proposal will integrate with ongoing Rayapudi WTP proposal taken up under Amaravati Smart City Program and will provide a minimum one (1) water tapping point to each of the LPS zones in the city.

Vaagus: Developing the minimum proposed length in two (2) Vaagus will provide a channel to dispose the storm and sewerage generated from the city to the outfall point in the initial years.

LPS Infrastructure-Rs. 885.45 Cr:

No.	Details	Estimated Costs (cr.)
1	Roads in LPS Zone 1, 2, 3,6,7,10 <u>BT Roads</u> (7 mt carriageway in 25 mt RoW-97 Km in length) <u>CC Roads</u> (6mt carriageway in 17mtRoW - 182Km in length) (6mt carriageway in 15.6 mt RoW - 121Km in length) (6mt carriageway in 12mt RoW - 11 km in length) (5.5mt carriageway in 9mt RoW - 0.4Km in length)	752.01
	Taxes	133.44
	Total	885.45

Highlights:

Roads: These identified initial six (6) LPS layouts for development are well connected with trunk Prioritised Roads with better connectivity. These roads

proposed in the initial six (6) zones will provide access and continuous circulation to nearly 21,000 returned plots in the LPS layouts. These roads will also open up a land bank of 1500 Ac which can be used to monetise for further development of balance Infrastructure works in Amaravati. In addition to the Roads, the water infrastructure being developed through Trunk Infrastructure will also provide water facility to the LPZ Zones. On development of roads over-head power lines will be developed by AP Transco in future.

The above proposals will provide basic infrastructure amenities such as road access, water supply, storm water, power for the initial occupants in LPS Layouts and various developments in the city. These basic infrastructure proposals connecting with the existing villages will act as accelerators for the further future development in Amaravati."

292) During arguments, learned senior counsel for the Capital Region Development Authority Sri S.Niranjan Reddy would submit that unless State provide funds for such development activities, APCRDA is not in a position to complete the projects, but the State did not disclose the reason for its failure to provide funds for developmental activities in the entire argument except financial un-viability as pleaded in the main counter filed by the State Government. Exfacie, the reason disclosed by the APCRDA for its failure to complete the projects undertaken by the earlier Government is lack of funds. In fact, bulletins or white papers issued by the APCRDA disclosed about the funding of projects and strategy to secure funds by APCRDA. But no reason is disclosed by APCRDA for deviating the strategy to secure the funds as disclosed in the white paper published by APCRDA. Even otherwise, it is settled law that lack of funds is not a ground to refuse to undertake development works in the capital city.

293) When similar question came up before the Apex Court in ***Municipal Council, Ratlam vs. Vardhichand and Others***[136], the municipal corporation was prosecuted by some citizens for

[136] 1980 Cri LJ 1075

not clearing up the garbage. The corporation took up the plea that it did not have money. While rejecting the plea, the Supreme Court held that "the State will realize that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties" and held as follows

> "***A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems not pompous and attractive, but in working condition and sufficient to meet the needs of the people-cannot be evaded if the municipality is to justify its existence."***

294) In another judgment in ***M/s Royal Orchid Hotels Limited and another v. G. Jayarama Reddy and others***[137] , the Hon'ble Apex Court while dealing with similar excuse pleaded by Karnataka Tourism Corporation i.e lack of funds to complete the tourism project after acquisition of land, the Court held that, it is for the State to implement the project for which the land is acquired and cannot use the land for any other purpose.

295) The principle laid down in the above judgment is straight away applicable to the present facts of the case. Applying the principle laid down in the above judgment, we find that the reason assigned by the APCRDA i.e. lack of funds is not at all a ground for its failure to undertake the developmental works since the earlier Government worked out the sources of funding as published in the books (referred above).

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[137] (2011) 10 SCC 608

296) The State is bound to account for each and every paisa of public money spent on various developmental activities based on doctrine of public trust.

297) People have the right to question the use of natural resources and this is the reason 1500 years ago a Roman legal scholar labelled Public Trust Doctrine, stated that resources are either available to everyone or no one. This doctrine questioned the ideology of the use of natural resources for private use. This doctrine is seen as an ethics and this is the reason many philosophers, legal scholars are debating regarding the rights of the public over the usage of earth's natural resources.

298) In India, this doctrine evolved BY the courts and it also has its significance in the constitution. There are various landmark judgments through which this doctrine was evolved.

299) According to Joseph Sax, Governmental Regulations always create a public trust problem and it occurs in various types of situations. Public trust needs protection against private goals. And thus he stated that this doctrine which is a delicate mixture of procedural and substantive protection is appropriate for protection from air pollution, willing of wetlands, strip mining, allocation of resources to private use etc. (Vide: Joseph L. Sax, 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention' [1970].)

300) The Public Trust Doctrine Imposes three types of restriction on the government:

1) ***There are some resources which may not be used by the public but it should be stored by the government for the public.***

2) These resources are the gift of nature and it cannot be sold by the government.

3) The property must be maintained and its adaptation should not lead to private use. There are certain limits and No individual should be allowed to cross these limits.

301) The Public trust doctrine in India evolved through landmark judgments. The public trust doctrine first alluded in India through "***M.C.Mehta v. Kamalnath***[138]". This case is also known as SPAN Motel case. In this case, a PIL challenged the minister of environment Mr Kamalnath [respondent] who allowed SPAN Motel company to construct a hotel near the mouth of river Beas in Himachal Pradesh and also allowed the company to change the course of the river for the construction by blasting the river bed. The construction of the hotel was planned on land which was taken on a 99 years lease from the government. It was allowed by the ministry as well as the gram panchayat of that area. The supreme court held that "the public trust is more like an order for the state to use the public property for public purposes". It is the duty of the state to protect the environment, lakes and public heritage and it can be only abdicated in a rare case when it is inconsistent with the public trust. The court observed that earth's natural resources are the gift of nature; it should be protected and it also stated that the values and law must adhere to the environment. The court observed that the Public at large is beneficiary of the earth resources like water, air and wetlands and as the state is the

[138] [1997] 1 S.C.C. 388

trustee it is the obligation of the state to protect these resources and shall not give it to private ownership for the fulfilment of its own goal.

302) One of the major contentions of Sri Shyam Divan and Sri B.Adinarayana Rao, learned senior counsels is that after spending Rs.15,000 crores on the developmental activities including establishment of High Court spending huge amount, laying foundation for permanent building for High Court, same was completed up to 20%, construction of quarters for Judges, M.L.As, M.L.Cs, I.A.S., I.P.S. officers, ministers quarters, quarters for secretaries of the Government, construction of apartments for occupation of Secretariat and other staff of three wings, left those buildings unattended; those buildings and other partly constructed buildings are exposing to the sun and rain, developing rust and damaged partly, such act of the Government would cause colossal loss to the State exchequer and such act is against the principle of "good governance", "constitutional morality" and "constitutional trust".

303) Whereas, learned Advocate General representing the State did not explain the steps taken for completion of construction, who will occupy the buildings and how the Government would deal with the property, either in the counter or in the arguments advanced by him during hearing. Therefore, absolutely, there was no plausible explanation offered or a good proposal disclosed to deal with such constructions or whether the State would complete the partly constructed buildings etc, such act of the Government is against the principle "good governance".

304) Learned senior counsel placed reliance on the judgment of the Apex Court in "***A.Abdul Farook v. Municipal Council, Perambalur***[139]". In the facts of the said judgment, on or about 13.2.1998 the Government of Tamil Nadu issued a Notification bearing G.O.Ms.No.32 granting permission for installation of statutes and erection of arches. In terms thereof, requisitions, seeking for permission to put up of arches and the like, were submitted to the District Collector, who, on receipt thereof was required to get reports from the Divisional Engineer of the State Highways, District Superintendent of Police etc. On receipt of such reports and on being satisfied therewith, the District Collector could make recommendations so as to enable the Government to grant or refuse to grant the requisite permission.

305) Considering those facts, the Apex Court held that there cannot be any doubt or dispute whatsoever that the authorities in the interest of general public and pedestrians and others, in particular, may grant permission to construct such buildings even if it be permanent in character as it may seem fit or carry out such construction itself as it may seem necessary. What is, however, important is public interest in carrying out such construction and not any private interest. The doctrine of good governance, in our opinion, requires the Government to rise above their political interest and act only in public interest and for welfare of its people.

306) Similar is the situation in the present case. Since the constructions were not attended by the State and APCRDA

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[139] (2009) 15 SCC 351

though they are partly completed, that would result in huge loss of Rs.15,000 crores and who will be held responsible for such loss to the public is a question. If the principle laid down in the above judgment is applied to the present facts of the case, certainly, the State is responsible for such arbitrary acts on account of facetious decision taken by the State or APCRDA failure to attend to the developmental activities in terms of the APCRDA Act and the Land Pooling Rules, 2015.

307) Recently, the Division Bench of the High Court of Jammu and Kashmir at Jammu in "***Azra Ismail v. Union Territory of Jammu and Kashmir*** (W.P.(C) PIL No.4 of 2020 dated 05.05.2020)", the High Court of Jammu and Kashmir at Jammu held as follows:

> "It is trite that there has to be predominance of public interest in Governance and public administration. Noted the following principle laid down in "***Central Electricity Supply Utility of Odisha v. Dhobei Sahoo***[140]", it was held thus:
>
> *"22. While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on the one hand and an interest by a citizen as a relator to the Court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court.* ***The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds.****"*
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> *(Emphasis supplied)*

308) The above narration manifests that in Jammu and Kashmir, public interest has to take a back seat as the authorities get themselves ready for the Darbar Move.

[140] (2014) 1 SCC 161

309) The High Court of Jammu and Kashmir at Jammu further held as follows:

> Several public infrastructure projects in Jammu and Kashmir are languishing, not for years, but for several decades together without they being efficiently monitored. These encompass projects in road construction, public health, education as well as administrative systems. No time lines are adhered to. Public systems suffer from opacity and lack of accountability in functioning. In the litigation before us, it is a constant refrain that government systems are steeped in inefficiency and lacking in dedication and commitment. The visible delays underline an urgent need for building the capacity for meritorious, fearless, independent, fair and strong decision makers; those who would apply themselves selflessly and with dedication and commitment to the common good of the people; those who would spurn nepotism, favouritism and dishonesty.
>
> We may note that apart from the above, there are expenses for which there is no information available with us. Because of the bi-annual shifting of the Government, official accommodation has to be allotted to Government officials in both cities. As the Darbar moves, the allotted residential accommodations from the place of the Move, say when moving to Jammu, accommodations in Srinagar are completely closed down, packed up and disabled from use and habitation for six months. Harsh winters in Srinagar and vagaries of nature in both cities would be taking a heavy toll on closed houses as their inmates have been compelled to shift to the other city. As a result, before the Darbar Move extensive renovations and repairs are undertaken of these houses by maintenance staff readying them for occupation.

310) Finally, the Division Bench of the High Court of Jammu and Kashmir at Jammu held that not to hold summer secretariat at Srinagar only to avoid loss to exchequer as the State is accountable to the public since the expenses being incurred with the public money.

311) Similarly, in "***State of Haryana v. State of Punjab and Others***" (referred supra) the Apex Court held as follows:

> "Having given anxious consideration to the submissions made by Dr. Dhawan, appearing for the State of Punjab, we are of the considered opinion that those submissions are of no consequence and there could not be any fetter on the power of this Court to issue appropriate directions. We have already indicated the genesis of the construction of SYL Canal as well as the allocation of water in favour of the State of Haryana and the agreements entered into between the States in the presence of the Prime Minister of India, which ultimately led to the withdrawal of the earlier suits filed in this Court. The State Governments having entered into agreements among themselves on the intervention of the Prime Minister of the country,

resulting in withdrawal of the pending suits in the Court, cannot be permitted to take a stand contrary to the agreement arrived at between themselves. We are also of the considered opinion that it was the solemn duty of the Central Government to see that the terms of the agreement are complied with in toto. That apart, more than Rs. 700 crores of public revenue cannot be allowed to be washed down the drain, when the entire portion of the canal within the territory of Haryana has already been completed and major portion of the said canal within the territory of Punjab also has been dug, leaving only minor patches within the said territory of Punjab. If the apprehension of the State is that on account of digging of canal, the State of Haryana would draw more water than that which has been allocated in its favour, then the said apprehension also is thoroughly unfounded inasmuch as the source for drawing of water is only from the reservoir, which lies within the territory of Punjab and a drop of water will not flow within the canal unless the connecting doors are open. But the quantity of water that has already been allocated in favour of the State of Haryana, must be allowed to be drawn and that can be drawn only if the additional link canal is completed inasmuch as the existing Bhakra Main Canal has the capacity of supplying of only 1.62 MAF of water. This being the position, we unhesitatingly hold that the plaintiff-State of Haryana has made out a case for issuance of an order of injunction in the mandatory form against the State of Punjab to complete the portion of SYL Canal, which remains incomplete and in the event the State of Punjab fails to complete the same, then the Union Government-defendant No. 2 must see to its completion, so that the money that has already been spent and the money which may further be spent could at least be utilized by the countrymen. We have examined the materials from the stand point of existence of a prime facie case, balance of convenience and irreparable loss and injury and we are satisfied that the plaintiff has been able to establish each one of the aforesaid criteria and as such is entitled to the injunction sought for. This issue is accordingly answered in favour of the plaintiff and against the defendants. We, therefore, by way of a mandatory injunction, direct the defendant-State of Punjab to continue the digging of Sutlej Yamuna Link Canal, portion of which has not been completed as yet and make the canal functional within one year from today. We also direct the Government of India -- defendant No. 2 to discharge its constitutional obligation in implementation of the aforesaid direction in relation to the digging of canal and if within a period of one year the SYL Canal is not completed by the defendant-State of Punjab, then the Union Government should get it done through its own agencies as expeditiously as possible, so that the huge amount of money that has already been spent and that would yet to be spent, will not be wasted and the plaintiff-State of Haryana would be able to draw the full quantity of water that has already been allotted to its share. Needless to mention, the direction to dig SYL Canal should not be construed by the State of Haryana as a license to permit them to draw water in excess of the water that has already been allotted and in the event the tribunal, which is still considering the case of re-allotment of the water, grants any excess water to the State of Haryana, then it may also consider issuing appropriate directions as to how much of the water could be drawn through then SYL Canal."

(emphasis supplied)

312) In view of these principles, the Act of the State abandoning the constructions after incurring Rs.15,000 crores and after grounding works of Rs.32,000 crores, which are partly completed would cause economic distress to the State on account of spending public money and such loss cannot be compensated by

anyone. Thus, the action of the respondents is in violation of Article 14 of the Constitution of India and the principle of "good governance".

313) In "***A.Abdul Farook v. Municipal Council, Perambalur***" (referred supra), the Court observed that the doctrine of good governance requires the Government to rise above their political interest and act only in the public interest and for the welfare of its people.

314) In "***Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh***[141]" the Apex Court, referring to the object of the provisions relating to corrupt practices, elucidated as follows:

> Clean, efficient and benevolent administration are the essential features of good governance which in turn depends upon persons of competency and good character.

315) In "***M.J. Shivani and Others v. State of Karnataka and Others***[142]", it has been held that fair play and natural justice are part of fair public administration; non-arbitrariness and absence of discrimination are hall marks for good governance under the rule of law.

316) In "***State of Maharashtra and Others. v. Jalgaon Municipal Corporation and Others***[143]", it has been ruled that one of the principles of good governance in a democratic society is that smaller interest must always give way to larger public interest in case of conflict.

317) One of the contentions of the learned counsel for the petitioners is that when huge amount is spent on the works and

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[141] (2001) 3 SCC 594
[142] (1995) 6 SCC 289
[143] (2003) 9 SCC 731

abandoned by the Government, which came into power subsequently, still the Government is accountable for such acts to the public based on the principle "public accountability" as laid down in "***U.P. Power Corporation Limited v. Sant Steels and Alloys (P) Limited***[144]", wherein the Apex Court held as follows:

> In this 21st century, when there is global economy, the question of faith is very important. Government offers certain benefits to attract the entrepreneurs and the entrepreneurs act on those beneficial offers. Thereafter, the Government withdraws those benefits. This will seriously affect the credibility of the Government and would show the shortsightedness of the governance. Therefore, in order to keep the faith of the people, the Government or its instrumentality should abide by their commitments. In this context, the action taken by the appellant-Corporation in revoking the benefits given to the entrepreneurs in the hill areas will sadly reflect their credibility and people will not take the word of the Government. That will shake the faith of the people in the governance. Therefore, in order to keep the faith and maintain good governance it is necessary that whatever representation is made by the Government or its instrumentality which induces the other party to act, the Government should not be permitted to withdraw from that. This is a matter of faith.

318) Similarly, in "***Manoj Narula v. Union of India***[145]" the Apex Court held as follows:

> In a democracy, the citizens legitimately expect that the Government of the day would treat the public interest as primary one and any other interest secondary. The maxim Salus Populi Suprema Lex, has not only to be kept in view but also has to be revered. The faith of the people is embedded in the root of the idea of good governance which means reverence for citizenry rights, respect for Fundamental Rights and statutory rights in any governmental action, deference for unwritten constitutional values, veneration for institutional integrity, and inculcation of accountability to the collective at large. It also conveys that the decisions are taken by the decision making authority with solemn sincerity and policies are framed keeping in view the welfare of the people, and including all in a homogeneous compartment. The concept of good governance is not an Utopian conception or an

[144] 2007 (14) Scale 36
[145] (2014) 9 SCC 1

> abstraction. It has been the demand of the polity wherever democracy is nourished. The growth of democracy is dependant upon good governance in reality and the aspiration of the people basically is that the administration is carried out by people with responsibility with service orientation.

319) Strangely, the State or APCRDA did not come up with any specific proposal about the action to be taken for development of land pooled under the Rules, 2015 and did not explain what action they proposed to take for completion of constructions of partly constructed buildings and partly laid roads, drainage, water facility and to create infrastructure as mandated under Rules, 2015. Such attitude of the State or APCRDA is totally in contravention of principle of "good governance".

320) Learned counsel for the petitioner contended that the people elected the legislators. Chief Minister is the head of council of Ministers in the democratic set up. They were elected by the people of the State not by voters from a specific caste, community, religion or region. Council of Ministers are the Ministers for all the people in the State and discharge their duties being the representatives of the people for the development of each and everyone in the State. Chief Minister is the repository of Constitutional trust and any action taken by the council of Ministers and legislature must be in consonance with the people trust that reposited with the legislature by the Constitution.

321) The meaning of 'constitutional trust' was earlier considered by various Courts. But in "***Manoj Narula v. Union of India***" (referred supra), the Apex Court highlighted the principle of 'constitutional trust' while considering the duty of Prime

Minister while advising the President for appointment of council of Minister and described the Prime Minister as repository of Constitutional Trust, with reference to Article 75 (1) of the Constitution of India. The framers of the Constitution have bestowed immense trust on the Prime Minister as would be seen from the Constitutional Debates, and, therefore, the Apex Court reiterate the principle of constitutional trust and that would be a suggestive one in terms of Article 75(1) of the Constitution.

322) In the present case, the Chief Minister is the repository of Constitutional trust being the head of council of Ministers. Having stated about good governance, the Apex Court dealt with the doctrine of "constitutional trust". The issue of constitutional trust arises in the context of the debate in the Constituent Assembly that had taken place pertaining to the recommendation for appointment of a Minister to the Council of Ministers. Responding to the proposal for the amendment suggested by Prof. K.T. Shah with regard to the introduction of a disqualification of a convicted person becoming a Minister, Dr. B.R. Ambedkar had replied:

> *His last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the Legislature to see that no such infamous thing is done by either of them? I think this is a case which may eminently be left to the good-sense of the Prime Minister and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary.*
>
> *(Emphasis supplied)*

323) The Apex Court in its earlier judgment in "***Supreme Court Advocates-on-Record Association and Another v. Union of India***[146]", while discussing about constitutional functions, the Court observed that it is a constitutional requirement that the person who is appointed as Prime Minister by the President is the effective head of the Government and the other Ministers are appointed by the President on the advice of the Prime Minister and both the Prime Minister and the Ministers must continuously have the confidence of the House of the People, individually and collectively. The Court further observed that the powers of the President are exercised by him on the advice of the Prime Minister and the Council of Ministers which means that the said powers are effectively exercised by the Council of Ministers headed by the Prime Minister. All persons possessing a position of power ought to be strongly and lawfully impressed with an idea that they act in trust and are to account for their conduct in that trust to the one great Master, Author and Founder of Society.

324) The Apex Court, in ***re Article 143, Constitution of India and Delhi Laws Act***[147], opined that the doctrine of constitutional trust is applicable to our Constitution since it lays the foundation of representative democracy. The Court further ruled that accordingly, the Legislature cannot be permitted to abdicate its primary duty, viz. to determine what the law shall be. Though it was stated in the context of exercise of legislative power, yet the same has signification in the present context, for

[146] AIR 1994 SC 268
[147] AIR 1951 SC 332

in a representative democracy, the doctrine of constitutional trust has to be envisaged in every high constitutional functionary.

325) Turning to the facts of the present case, Council of Ministers and the Chief Minister are the repositories of Constitutional Trust and act in accordance with the Constitution for the benefit of public good and not for any individual or to meet larger political needs. Treating one region citizens unequally with the people of other regions giving preference to one of them is violative of constitutional trust. Therefore, the acts of Council of Ministers and legislators, who were elected by the people of the State in a democratic set up, have to be continued to gain confidence of the people and work for the people and not for meeting their political ends.

326) In the instant case, though the State has taken up projects through by the previous Government, it is the duty of the State to continue the project, unless those decisions were taken to implement those projects contrary to the constitutional or statutory provisions, as per the law laid down by the Supreme Court in the judgments referred supra. It is not the case of the respondents that those decisions were taken contrary to constitutional provisions or Statute. In the absence of such contention, State and CRADA are bound to continue developmental activities/projects i.e. construction of capital city in the land pooled. If the State and APCRDA failed to construct capital city within the pooled land, it directly violates the constitutional trust and the people will lose the confidence on their elected representatives.

327) The other principle, learned senior counsel have drawn the attention of this Court, is constitutional morality. The word 'constitutional morality' is not based on any constitutional provision, but it is based on law declared by the Apex Court in "***Manoj Narula v. Union of India***" (referred supra). The Apex Court observed that the Constitution of India is a living instrument with capabilities of enormous dynamism. It is a Constitution made for a progressive society. Working of such a Constitution depends upon the prevalent atmosphere and conditions. Dr. Ambedkar had, throughout the Debate, felt that the Constitution can live and grow on the bedrock of constitutional morality. Speaking on the same, he said:

> *Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people are yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.*

328) The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building. The traditions and conventions have to grow to sustain the value of such a morality. The democratic values survive and become successful where the people at large and the persons-in-charge of the institution are strictly guided by the constitutional parameters without paving the path of deviancy and reflecting inaction the primary concern to maintain institutional integrity and the requisite constitutional restraints. Commitment to the

Constitution is a facet of constitutional morality. In this context, the following passage would be apt to be reproduced:

> *"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."*

329) Regard being had to the aforesaid concept, it would not be out of place to state that institutional respectability and adoption of precautions for the sustenance of constitutional values would include reverence for the constitutional structure. It is always profitable to remember the famous line of Laurence H. Tribe that a Constitution is "written in blood, rather than ink."

330) Categorical observations of the Supreme Court are that the citizenry of the State and their representatives must respect the Constitution and develop constitutionalism and value the constitutional principles such as constitutional morality.

331) But, in the present case contrary to the principle of 'constitutional morality', the State and APCRDA, which is the instrumentality of the State, gave a go-bye to the promise for development of capital city having lured more than 33,000 farmers to part with their livelihood i.e. agriculture with a strong hope that the State/APCRDA will return developed reconstituted plots both residential and commercial for their future livelihood by executing agreement in form 9.14 prescribed in the land pooling scheme, which created vested right on the farmers and farmers accrued legally enforceable right and when it is infringed

or invaded by the State, the Court can exercise power of judicial review under Article 226 of the Constitution of India to issue a writ of Mandamus.

332) In the present case, the State maintained stoic silence with regard to the huge amount spent on developmental activities i.e. completed works worth Rs.15,000 crores and grounded works worth Rs.32,000 crores. Even the Advocate General or learned senior counsel appearing for the APCRDA Sri S.Niranjan Reddy did not disclose the proposal of the State for development of infrastructure in the pooled land, at least the proposal for future development strictly adhering to the land pooling rules, 2015 etc., but contended that the State is in financial crises in the additional affidavits filed by Principal Secretary and Additional Secretary of Municipal Administration & Urban Development Department.

333) Even if we accept that the State is in financial difficulties, they are still providing financial assistance to several people of the State under various schemes worth crores and crores as social welfare measure in discharge of their duty under Article 38 of the Constitution of India by borrowing lakhs of crores or spending the entire income generated, on the schemes. When the State is conscious about their obligation under Article 38 of the Constitution of India, it must also be over conscious about their duty to be discharged in pursuance of the APCRDA Act, 2014 and the Rules, 2015 and develop the capital city and capital region as per the mandatory guidelines under the Rules, 2015 in the same manner in which they are providing financial assistance to various persons subject to their eligibility. When

once the State agreed to take up particular project and made the farmers to part with their huge parcels of the land, it is the duty of the State to complete the development as it is not only constitutional obligation, but also statutory obligation. Maintaining silence by the State as to the proposals for development except filing affidavits by the Special Chief Secretary to the Government, Municipal Administration and Urban Development Department, Government of Andhra Pradesh and the Secretary to Government, Municipal Administration and Urban Development Department, Government of Andhra Pradesh is a matter of serious concern.

334) Here, in the present facts of the case, State Government already spent more than Rs.15,000/- crores and collected amount from various private individuals, who intend to establish hospitals, hotels and educational institutions by sale of the land as part of social and economic development. On account of abandonment of project by the present Government, the public are put to serious financial loss besides farmers, who voluntarily surrendered their lands under the "Land Pooling Scheme", lost their livelihood i.e. agriculture. Therefore, the State is accountable for such acts based on doctrine of public trust.

335) Accordingly, point is decided in favour of the petitioners and against the respondents.

P O I N T No.6:

336) It is an undisputed fact that 33,771 acres of land was pooled under 'land pooling scheme' by the Government, utilized part of the land for laying roads and for construction of buildings

either fully or partly completed and the remaining land is left fallow without demarcating the reconstituted plots on ground and allot to the farmers, who parted with large parcels of land under the scheme as per Section52 of the APCRDA Act, 2014.

337) As on date, land pooling is completed, the notification as required under Section52 of the APCRDA Act, 2014 is published. According to Section59 of the APCRDA Act, 2014, the Commissioner shall, duly furnishing the details of completion of the works along with the necessary infrastructure plans, publish a notice of completion of the final land pooling scheme within the period as may be prescribed; the Commissioner shall also publish the details of re-allotment of reconstituted plots/lands along with land mutation records and land pooling ownership certificates; and on verification of the details in sub-Section(1) and sub-Section(2), the Commissioner shall issue the Completion Certificate along with layout of final land pooling scheme. But this part of obligation of APCRDA is not completed by the APCRDA.

338) By exercising power under Section52 of the APCRDA Act, the Rules, 2015 were framed. According to Rule 11 of the Rules, 2015, after notification of the final LPS, all the lands for the purposes of laying of roads, drainage, lighting, water supply and other utilities mentioned in sub-sections (4) to (8) of Section44 as well as the notified area shall vest absolutely in the Authority free from all encumbrances under sub-Section(2) of Section57, and the Commissioner may summarily evict illegal occupants and enforce the scheme. Within sixty days from the date of notification of final LPS, physical marking of road pattern and

land earmarked for reconstitution of plots/land shall be done. Thereafter, within thirty days from the date of physical marking, the allotment of reconstituted plots shall be done by draw of lots in an objective and transparent manner with due publicity under video cover while ensuring the presence of not less than one third of the total number of land owners at the time of draw of lots. Thereafter, within thirty days of drawal of lots, the Competent Authority shall issue a Land Pooling Ownership Certificate [LPOC] in Form 9.24 which shall be the final proof of the holder's title to that land and thereafter cause entry of such ownership details into the records of the registration department without any cost to the land owner. The LPOC contain details of the land owner's original land and that of the reconstituted plot, including its original ownership details, along with a sketch of the reconstituted plots with schedule of boundaries to each land owner shall be given duly taking prior approval of the Commissioner. After notification of the Final LPS, the Authority shall submit the entire sanctioned LPS documents to the District Collector for updating and mutation of land records; new land records will be prepared and issued to the reconstituted plot owners and the old records shall cease to exist. The details of the LPOCs and parcels of land contributed by the land owners for LPS shall be made available on the website in Form 9.25. The copies of the documents, plans and maps relating to the Final LPS shall be sent to the Stamps and Registration department as well as Mandal Revenue Office, where such copies shall be kept and made accessible to the public. Thus, after issue of final notification, land shall vest on the APCRDA free from

encumbrances similar to Section25 of the Land Acquisition Act, 1894.

339) Rule 12 of the Rules, 2015 is also relevant for the purpose of deciding the present issue, which is as follows:

> "12. Implementation of final LPS. (1) After the notification of the Final LPS:
>
> (a) the Authority shall take over all lands reserved for the parks, play grounds and open spaces, roads, social amenities and affordable housing which are deemed to be handed over to the Authority and enter the details in Form 9.26 in separate registers pertaining to each category.
>
> (b)the Authority shall take over all lands allotted to it and shall enter the details of all such lands in Form 9.27 register.
>
> (2) The notified Final LPS is a deemed layout development permission by the Authority valid for a period of three years. The land owners may apply for the development permission and the Commissioner shall accord approval for such cases expeditiously.
>
> (3) Within one year from the date of notification of final LPS, the Authority shall complete the basic formation of roads and physical demarcation of plots in the Final LPS.
>
> (4) Within twelve months of the date of notification of final LPS, the Authority shall handover physical possession of reconstituted plots in Form 9.28 to the land owners.
>
> (5) The Commissioner shall ensure that LPOCs granted under Section51 and sub-Section(4) of Section57 of the Act are in accordance with the provisions of the Registration Act, 1908 without charging registration fee from the land owners.
>
> (6) **Within three years from the date of final LPS the Authority shall develop the infrastructure in a phased manner**.

340) As per Rule 13, within a period of thirty days from the date of completion of development of infrastructure, the Commissioner shall publish a notice of Completion of the Final LPS in Form 9.29, duly furnishing the details of completion of

the works along with the necessary infrastructure plans. The Commissioner shall also publish in Form 9.30, the details of reconstituted plots with in thirty days after mutations are carried out in land records. On verification of the above details, the Commissioner shall issue the Completion Certificate in Form 9.31 along with layout of Final LPS.

341) At the same time, Rule 14 cast obligation on the owners of the reconstituted plots and other purchasers to pay for the usage, consumption and maintenance charges levied by the agencies responsible for the common infrastructure and respective services including roads, street lighting, solid waste management, sewerage treatment facility, water supply, parks and play grounds or such other amenities. Finally, entire developmental activities shall be completed within three years from the date of final notification as per Rule 12 (6) of the Rules, 2015.

342) In the present case, the State and APCRDA did not comply with the Rules 12, 13 and 14 of the Rules, 2015 till date, but allowed wild growth in the land pooled without demarcating reconstituted plots so as to handover the same to the allottees as per the Rules, 2015 and stalled construction activity from the day when the present Government came into power. Except plantation of trees on the dividers and road side, no other activity was undertaken by the Government till date. When the land was pooled for the specific purpose of development of Capital city, naming the scheme as '***the Andhra Pradesh Capital City Land Pooling Scheme***' , it must be used for the

specific purpose of construction of the Andhra Pradesh Capital City.

343) Introductory paragraph of the Rules, 2015 disclosed the object of land pooling scheme, which runs as follows:

> *In keeping with the will of the Government to build 'people's capital', land procurement mechanism has been designed to be voluntary and based on consensual process of land pooling. Land pooling mechanism is mainly adopted for development of the capital city area wherein the land parcels owned by individuals or group of owners are legally consolidated by transfer of ownership rights to the Authority, which later transfers the ownership of a part of the land back to the land owners for undertaking of development for such areas. These rules are applicable to the capital city area for which zonal plans have been approved. The broad objective of the scheme is to do justice to the families affected by the construction of a livable and sustainable capital city for the state of Andhra Pradesh by making the land owners and local residents as partners in development.*

344) Though the large parcels of land are available, for raising the construction for temporarily accommodating High Court, partly completing residential quarters, no other activity is undertaken as part of capital city development. Mere establishment of High Court and construction of official residential quarters, which are incomplete, does not amount to utilizing the land for capital city development. Though the land is vested on APCRDA for the purpose of development in terms of Rule 11 of the Rules, 2015 free from encumbrances, still the APCRDA failed to discharge its obligations under Rules 12, 13 and 14 of the Rules, 2015 till date, such inaction is contrary to the object of the land pooling scheme. Though the land pooling scheme is identical to land acquisition, the land pooling scheme

is voluntary surrender of land, but acquisition is with or without consent.

345) When once the land is acquired or pooled for public purpose, it must be utilized for the same purpose. In "***M/s Royal Orchid Hotels Limited and another v. G. Jayarama Reddy and others***[148]**"**, the property was acquired for establishment of hotel on the requisition made by Karnataka State Tourism Development Corporation, notification was issued under Section4(1) of the Land Acquisition Act and declaration under Section6(1) that the property is required for public purpose, but by the date of issue of notification under Section 4 (1), the Corporation who requisitioned the land entered into agreement to part with substantial portion of the land. In those circumstances, the High Court held that the Corporation had made a false projection to the State Government that land was needed for execution of tourism related projects. In the meeting of officers held on 13.1.1987, i.e. after almost four years of the issue of declaration under Section6, the Managing Director of the Corporation candidly admitted that the Corporation did not have the requisite finances to pay for the acquisition of land and that Dayananda Pai, who had already entered into agreements with some of the landowners for purchase of land, was prepared to provide funds subject to certain conditions including transfer of 12 acres 34 guntas land to him for house building project. After 8 months, the Corporation passed resolution for transfer of over 12 acres land to Dayananda Pai. The Corporation also

[148] (2011) 10 SCC 608

transferred two other parcels of land in favour of Bangalore International Centre and M/s. Universal Resorts Limited. These transactions reveal the true design of the officers of the Corporation, who first succeeded in persuading the State Government to acquire huge chunk of land for a public purpose and then transferred major portion of the acquired land to private individual and corporate entities by citing poor financial health of the Corporation as the cause for doing so. The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII. The diversification of the purpose for which land was acquired under Section4(1) read with Section6 clearly amounted to a fraud on the power of eminent domain. In the appeal, the Apex Court did find no valid ground to interfere with the same, dismissed the appeal.

346) In view of the principle laid down in the above judgment, when the land is acquired for public purpose, the requisition

department or the person cannot be allowed to utilize the same for real-estate business or for profiteering.

347) In "***Uddar Gagan Properties Ltd v. Sant Singh***[149]**"** the question before the Supreme Court was whether the power of the State to acquire land for a public purpose has been used to facilitate transfer of title of the land of original owners to a private builder to advance the business interest of the said builder which is not legally permissible and whether the acquisition of land is entirely or partly for a private company without following the statutory procedure for the said purpose. Such question was dealt seriously by the Apex Court and issued certain guidelines while holding that, the "owner of land has guarantee against being deprived of his rights except under a valid law for compelling needs of the society and not otherwise. The commercial use of land can certainly be rewarding to an individual. Initiation of acquisition for public purpose may deprive the owner of valuable land but it cannot permit another person who may be able to get permission to develop colony to take over the said land. If the law allows the State to take land for housing needs, the State itself has to keep the title or dispose of land consistent with Article 14 of the Constitution after completion of acquisition. If after initiation of acquisition, process is not to be completed; land must revert back to owner on the date of Section4 notification under the Land Acquisition Act and not to anyone else directly or indirectly." It was further held that "the power to release land from acquisition has to be

[149] (2016) 11 SCC 378

exercised consistent with the doctrine of public trust and not arbitrarily."

348) In view of our foregoing discussion, the State or the APCRDA cannot abandon the partly completed projects, development and infrastructure in the capital city on the ground of financial difficulties or any other ground.

349) Accordingly, point is decided in favour of the petitioners and against the respondents.

P O I N T No.7:

350) One of the contentions of the petitioners in these petitions is that the Master Plan cannot be changed except on the reference made by the local authority or local bodies, as the authority is intending to change the Master Plan creating Zone No.R5 without any reference from the local authority.

351) Whereas the respondents filed counter denying all the allegations contending that the Master Plan can be changed as the land is already vested on the APCRDA in terms of Rule 11 of the Rules, 2015.

352) In view of this contention, it is relevant to refer to certain provisions of the APCRDA Act, 2014 to decide the competency of the State or its instrumentalities to modify any Master Plan within the capital region.

353) Section40 of the APCRDA Act obligates the Authority to prepare area development plans subject to overall conformity with the perspective plan, master plan, and infrastructure plan,

the Authority or the respective Local bodies under the guidance of the Authority, may undertake the preparation of area development plans for any of the provisions as stated in sub-Section (2) of Section38 within a time span of five to ten years. The Local body shall submit the said area development plans prepared for its jurisdiction, after calling for objections, suggestions and representations, along with the resolution of the local body to the Authority for approval. The sanction accorded by the Authority shall be notified in the Official Gazette and the plans shall come into force from the date of publication.

354) Thus, in view of Section40 of the APCRDA Act, it is the obligation of the APCRDA or any local Authority to prepare Master Plan and publish in Gazette. At the same time, Section41 of the APCRDA Act confers power on the Authority to modify the sanctioned development plan. As per Section41 of the APCRDA Act, the Authority may, on a reference from the Local body concerned, make such modifications to the sanctioned perspective plan, master plan and infrastructure plan, or area development plan as it thinks fit and which in its opinion are necessary. The Commissioner or the Chief Executive of the Local body, as the case may be, shall prepare a report together with the plan and full particulars of any such modification. Before making any modifications to the development plans, the Authority, shall publish a notice inviting objections or suggestions from the public giving a time period of fifteen days from the date of publication of the notice and shall hear all objections and suggestions. After due consideration of the

objections and suggestions received, the final modification made under the provisions of this Sectionshall be published in the Andhra Pradesh Gazette, and the final modifications shall come into operation from the date of publication of such notification. The Authority shall levy such fees and charges including development charges and conversion charges as applicable and as may be prescribed in any such modification effected to the sanctioned development plan from the land owners at whose instance the modifications are effected or who will have the advantage due to such modifications. These charges shall take into account the benefits that would accrue to the land owners from the change and shall seek to capture some share of the increased land value.

355) As per Section42 of the APCRDA Act, the plans sanctioned under Section38 under Section39 and modified, if any, under Section41 shall be binding on all the local bodies, all organizations and the residents in the capital region. The guidelines, policies, specifications and targets regarding affordable housing as proposed in the said sanctioned plans shall be implemented by the local bodies within the capital region. The Local bodies shall be responsible for the implementation of the sanctioned plans in the development area under the overall control of the Commissioner.

356) As such there is no absolute bar to modify the Master Plan prepared under Section38 approved under Section39, published under Section40 of the APCRDA Act, but such modification must be made only on the reference made by the local authority and

on making such reference by the Chief Executive Officer of the local body or Commissioner along with its report, then only the procedure prescribed under Section41 of the APCRDA Act be followed calling for objections granting 15 days time with the proposed modification.

357) Sri Shyam Divan, learned senior counsel, would contend that Section39 deals with the process of approval of plans such as the Master Plan. Section39(2) provides that a draft plan prepared under Section38 which is to be published has to contain the details mentioned therein. The proviso states that the items that have to be described in such a draft plan can be modified by the Authority. However, it does not confer the power on the Authority to modify a sanctioned Master Plan. Hence, the respondent Authority cannot modify the sanctioned Master Plan unilaterally i.e without a reference from the local bodies concerned. Therefore, the suo moto draft variation plan to the Master Plan notified vide Gazette notification No. 355, MAUD (APCRDA) Department, dated 10.03.2020 inviting objections and suggestions under Section41 of the APCRDA Act is, inter alia, illegal, arbitrary and ultra vires of Section41 of the APCRDA Act as well as the fundamental rights guaranteed to the petitioners under Articles 14 and 21 of the Constitution.

358) As seen from the Gazette notification No.355, MAUD (APCRDA) Department dated 10.03.2020, no such reference from the local body or authority is received for creation of R5 Zone. The Commissioner, APCRDA in the affidavit dated 01.02.2022

admitted that by exercising suo moto power, the master plan is amended.

359) Thus, the State Government suo moto amended the Master Plan to create R5 Zone. No suo moto power to modify master plan is conferred on the Authority, and as such exercise of suo moto power to amend Master Plan to create R5 Zone is nothing but abuse of power or fraud on power as held in "***P. Vajravelu Mudaliar vs. Special Deputy Collector, Madras and Others***" (referred supra).

360) Hence, Gazette Notification No. 355, MAUD (APCRDA) Department, dated 10.03.2020 is declared as illegal, arbitrary and the same is set aside.

361) Accordingly, point is decided in favour of the petitioners and against the respondents.

P O I N T No.8:

362) Learned senior counsel, during hearing, requested to issue a writ of continuous Mandamus directing the State and the APCRDA to discharge its obligation as governed by the Rules, 2015 to bring out the desired result.

363) Writ of continuous Mandamus can be issued in certain circumstances by the Constitutional Courts, more particularly to compel the State to discharge its obligation under the supervision of the Court.

364) A judgment, order or a decree brings about termination of judicial proceedings except in so far as appellate or other

remedies are provided for. A varied range of issues and concerns of public interest may warrant grant of appropriate remedies such as a declaration on the nature of rights or interests involved or setting aside of the infringement proceedings or issuance of direction which may at once and without anything more bring out the desired result or call upon the authorities concerned to frame schemes or guidelines as the case may be for bringing about a fruitful remedial end for the purposes of governance of issues concerned in future or issuance of directions over a period of time in order to finally bring out the desired solution. (See: ***Azad Rickshaw Pullers Union (Regd.) v. State of Punjab***[150])

365) Issuance of positive directions is the essence of the writ of mandamus. As understood historically, it is a commanding order calling for performance of public duties or towards enforcement of legal rights. It is not a creative process. However, its form and practice do not impact the expression appropriate proceedings in Article 32 or any other order in Article 226 of the Constitution of India. Courts have therefore found it duly falling within the scope of extraordinary jurisdiction conferred under the Constitution and so framed the remedial judicial process so as to ensure effective administration of justice.

366) The concept of "continuing mandamus" has evolved in the course of the experiences of dilution of judicial interventions or their efficacies, disguised indifferences to court processes or even tendencies to carve out islands of immunity from the Rule of Law

[150] 1980 (Supp) SCC 601

enforcements. (See: ***Vineet Narain v. Union of India***[151]") The lack of despatch or expedition in acting in aid of the court's processes demonstration of deficiencies in executive or statutory instruments leading to continued neglect of or non-realisation of rights/interests of classes of deprived sections of the Community, all present a case for engagement of the court over a period. (See: ***Bandhua Mukti Morcha v. Union of India***[152])

367) In view of the law laid down by the Apex Court in "***M/s Royal Orchid Hotels Limited and another v. G. Jayarama Reddy and others"*** and "***Uddar Gagan Properties Ltd v. Sant Singh"*** (referred supra), it is for the State to implement the project for which the land is acquired and cannot use the land for any other purpose. If for any reason, the Capital is shifted to any other place other than the present capital city as notified by the State, it is impossible for the State to complete the construction of the present capital city. Therefore, the State cannot shift its capital when the large parcels of land already pooled for sole purpose of construction of capital city. Apart from that the sale of land to any private individual for industrial purpose or mortgaging the land for the purpose of obtaining loan without developing the capital city in the land pooled is contrary to the land pooling scheme and such acts at the behest of farmers, who surrendered their lands voluntarily is infringement of their right as they were lured to surrender large parcels of land voluntarily, on the pretext of construction of capital city in the pooled land. Therefore, the State and the APCRDA are bound

[151] (1998) 1 SCC 226
[152] (1984) 3 SCC 161

to implement the Amaravati project as notified by the APCRDA and cannot use the land pooled for any other purpose except the purposes specified in the Rules, 2015. By applying the principles laid down in the above judgments, we find that it is appropriate to issue writ of continuous Mandamus.

368) Accordingly, point is decided in favour of the petitioners and against the respondents.

P O I N T No.9:

369) The respondents challenged the reports of various committees on various grounds. However, during hearing, petitioners in all writ petitions requested to grant liberty to challenge those reports in any proceedings in future, since Act Nos. 27 & 28 of 2020 were repealed by Act No.11 of 2021.

370) In view of the request, instead of deciding the legality of the reports, we find that it is appropriate to grant liberty to the petitioners to challenge the reports in any independent writ petition, whenever the petitioners find it necessary.

P O I N T No.10

371) One of the major contentions of the petitioners before this Court in most of the petitions is that the State legislature lacks competency to enact any law in view of Article 3 and 4 of the Constitution of India to establish capital in any other place other the notified area of Amaravati or trifurcate or bifurcate the capital.

372) The main contention of the petitioners before this Court is that the Parliament enacted the Andhra Pradesh State Reorganisation Act, 2014 in exercise of power conferred under Article 3 read with Article 4 of the Constitution of India. Under Section5(2) of the Reorganisation Act, it was mandated that "there shall be a new capital for the State of Andhra Pradesh". Article 4 of the Constitution of India provides for formation of a new state, Articles 2 and 3 will also contain such "supplemental, incidental or consequential provisions" that the Parliament may deem necessary. In support of this contention, the petitioners placed reliance on the judgment of the Apex Court in "***Mullaperiyar Environmental Protection Forum v. Union of India***[153]", where the Apex Court held that the law making power under Articles 3 and 4 is paramount and not subject to or fettered by Article 246 of Lists I and II of the Constitution of India.

373) It is also contended that the State Government does not have any legislative competence to shift the capital so formed under the powers delegated under the Re-organisation Act. Since the State legislature lacks competence under Article 246 or List II of the Seventh Schedule of the Constitution to frame any enactment, the impugned Acts are purportedly passed by the State Legislature under Entry 5, List II of the Seventh Schedule of the Constitution of India. However, the said entry only pertains to "local Government". It is also contended that the power to change the capital is vested in parliament.

[153] (2006) 3 SCC 643

374) Yet, another contention of the petitioners is that it is now unequivocally acknowledged that there are implied limitations on any power conferred under the Constitution of India and any state action in violation of these implied limitations is liable to be set aside. No power under a written constitution can be absolute or plenary. In a written constitution it is rarely that everything is said expressly. Powers and limitations are implied from necessity or the scheme of the Constitution. This is a principle of universal character and finds its origin in administrative law and extends across constitutional law. Therefore, two sets of implied limitations are invoked in the present case:

a. The first limitation implied from necessity is that the scope of power that the State Legislature – or indeed any constitutional functionary – may exercise is limited by the purpose for which that power has been granted. In the present case, the purpose of the power is the passage of legislative enactments which are meant to be general, public, *prospective*, coherent, clear, stable, and practicable.

b. The second limitation implied from the scheme of the Constitution is that the use of legislative power must not frustrate any other constitutional principle or ideal.

375) In the present case, the impugned Acts violate the constitutional principles: first, good governance under the principle of the "rule of law" requires stability, consistency and

predictability of the legal regime; second, all constitutional power must be exercised in furtherance of the democratic choice of people. Therefore, the State has no authority to enact any law for establishing capital at any other place other than the notified area and that the Court can interfere with such enactment, if any passed, by exercising power of judicial review under Article 226 of the Constitution of India. On this ground, the petitioners attacked the legislative competency to pass any such enactment.

376) The State Government in its counter relied upon, certain entries in List II and List III along with Article 38 of the Directive Principles of State Policy to justify its stand that it had the competence to legislate and to create three capitals. The following entries are relied upon (Entry 32 in List-I, Entries 5, 18, 35 and 41 of List II, Entries 11A and 20 in List III), which are as follows:

> "List-I Entry-32: Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides.
>
> List-II
>
> Entry-5: Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
>
> Entry-18: Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

Entry-35: Works, lands and buildings vested in or in the possession of the State.

Entry-41: State public services; State Public Service Commission.

LIST-III

11A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.

20. Economic and social planning"

In addition, Article 38, which is as follows, is also relied upon:

"Article 38: State to secure a social order for the promotion of welfare of the people.

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

377) Particular stress was laid on Article 38 and it is submitted that the State is attempting to eliminate regional imbalances by the decentralized / three capital system.

378) Learned senior counsel Sri Shyam Diwan appearing for the petitioners argues that both the impugned Acts are beyond the competence of the State Legislature and they violate the Andhra Pradesh Reorganization Act, 2014 (for short 'the Reorganization Act') which has been passed by the Parliament of India under

Articles 3 and 4 of the Constitution of India. Learned senior counsel argues that once the power has been exercised under Articles 3 and 4 of the Constitution of India, the State Legislature does not have the competence to pass the Decentralization Act. In particular, it is his contention that this is a plenary power that has been exercised by the Parliament and therefore, the State Legislature does not have the competence to pass the Repeal Act. Learned senior counsel submits that even if the Repeal Act has been withdrawn by L.A.Bill No.21 of 2021, as was done in this case, the issue of competence can still be decided because the statement of objects and reasons of the Repeal Act L.A.Bill.No.21 of 2021 clearly mention that the State Government is committed to decentralization and the establishment of multiple capitals. Learned senior counsel argues that the statements made by the Ministers etc., about the Government's commitment to 'three capitals' makes it very clear that the Government is intent upon pursuing the issue. He submits that the threat is imminent. It is his contention that once the Parliament has exercised its power and has specified that there shall be "a" capital for State of Andhra Pradesh, the State Legislature cannot alter or change the same. It is his contention that the power to change the State capital once formed only vests with the Parliament by virtue of residuary power under Entry 97 list I of the Seventh Schedule.

379) Learned senior counsel submits that under the provisions of the Reorganization Act, a single capital was envisaged and it was put in place. Therefore, learned counsel argues that the State Legislature does not have any further power to modify the

same. Learned senior counsel argues that the actions of the State in planning to move Government Offices out of Amaravati by naming three capitals is furnishing a continuous cause of action which will enable this Court to decide the issue. He points out that even on 22.11.2021, the Chief Minister stated on the floor of the Assembly that the State proposes to go decentralized development and for multiple capitals. He also argues that that there is no entry either in list II or list III of the Seventh Schedule which would 'enable' or even empower the State Legislature to pass the Decentralization Act or any other Act dealing with decentralization and establishing the Legislative; Judicial and Executive Capitals. According to him, Articles 2, 3 and 4 of the Constitution of India are the sole repository of power in this issue. It is his contention that Article 4 of the Constitution of India itself gives the power to the Parliament to make supplemental, incidental and consequential provisions as the Parliament may deal necessary.

380) Learned senior counsel draws the attention of this Court to the provisions of A.P Reorganization Act, 2014 and in particular to Section 5(2) of the Act, which says that after the period prescribed in Section 5(1), 'Hyderabad' shall be the capital of the State of Telangana and there shall be "a" new capital for the State of Andhra Pradesh. Similarly, he points out that under Section6 of the Act, an expert committee is to be appointed for setting up of "a" capital. Learned counsel argues that even as per Section11 of the Act, the Government of Andhra Pradesh can alter the name, area or boundaries of any District or other territorial division only. Relying upon Section 94(3) of the Act

also, the learned senior counsel argues that the Central Government shall provide special support for the creation of essential facilities in 'the' new capital of the Successor State. Therefore, he argues that a reading of the A.P. Reorganization Act, 2014 makes it very clear that there shall be a single capital for the State of Andhra Pradesh. Relying upon case law that he has cited he submits as there is deprivation of right to life and the right to live a life with dignity to the farmers/petitioners, this Court has the jurisdiction to grant the necessary orders even after the repeal. He contends that writ petition is maintainable even in case of an anticipated threat, particularly where it relates to the fundamental rights of the farmers. According to the learned counsel, the rights of the farmers of the Vijayawada, Guntur area particularly under Articles 14, 19 and 21 of the Constitution are taken away by the proposed decentralization. He states that the right to life is not a mere animal existence; it is a right to live a life with human dignity which is also being recognized as an enforceable right. Learned senior counsel contends that the action of the State Government in passing the Decentralization Act establishing the Executive capital at Visakhapatnam etc., and the stoppage of all the works in the designated capital area amount to a clear deprivation of the rights of the farmers who have given up their lands with the hope that they would get reconstituted plots from the Government of Andhra Pradesh. He argues that in view of this legal position, the writ is still not infructuous and that the prayer survives for adjudication. The learned senior counsel contends that State Legislature does not have either the legislative or the

executive power for the formation of a capital. It is his contention that neither Article 246 of the Constitution of India nor the entries in lists in the Seventh Schedule give the power to the State Legislature to once again decide an issue.

381) Sri B.Adinarayana, learned senior counsel also adopts the arguments of the learned senior counsel Sri Shyam Diwan. Apart from adopting the arguments of Mr.Shyam Diwan on the main issue with regard to the legislative competence, learned senior counsel also drew the attention of this Court to Article 246 of the Constitution of India, cited case law to argue that the boundaries mentioned in the three lists are to be followed and they cannot be overlooked. It is his contention that once the power has been exercised by the Parliament under Articles 3 and 4 of the Constitution of India and the A.P.State Reorganization Act, 2014 has come into being, the succeeding Government and or the Legislature does not have the power to alter the same or to change the capital / seat of the High Court etc.

382) Sri Prabhunath Vasireddy, learned counsel for the petitioners in PIL.No.215 of 2020 argues stating that his Public Interest Litigation is devoted essentially to the Legislative Competence of the State Legislature to enact a law after the Reorganization Act has been passed. He relies upon paras 4.33 to 4.36 of his affidavit and points out that in the two counters filed, the State has relied upon Entries 5, 18, 35, 41 of List II and Entries 11A, 20 of List III. It is his contention that none of these entries empower the State Legislature to pass the Decentralization Act, 2020. He argues that there is no connection at all between these entries and the proposal for

decentralization. He also contends that Articles 3 and 4 of the Constitution of India are the sole and exclusive sources of power for creation of a new State and for all matters incidental thereto. He argues that no power is vested in the State Assembly to change the capital which has been decided by the State of Andhra Pradesh pursuant to the Reorganization Act. It is his contention that the State Government does not have the Legislative Competence to change the State capital nor alter the seat of the High Court etc.

383) Sri P.B.Suresh Kumar, learned counsel appearing for Ms.Pranitha, also relies upon the language of sections 5(2), 94(3) and 94 (4) of the Reorganization Act and contends that these sections clearly stipulate the formation of 'a' capital/ 'the' capital for the state of Andhra Pradesh. He argues that no power is vested in the State to alter the same and create three capitals. According to him, Section11 of the Reorganization Act only gives a limited power to the State to alter the name, area and boundaries of a District. He ultimately states on this issue that the residuary entry in item 97 (List I) empowers the Parliament alone to change the capital.

384) Sri Y.Surya Prasad, learned counsel appearing in WP.No.1388 of 2020 also argues on similar lines. He also states that in view of the provisions of the Reorganization Act, there can only be one single capital which cannot be changed. The petitioner in this case is an advocate. According to him, the principal seat of the High Court has already been notified by the President of India. He also draws the attention of this Court to the order passed in ***Union of India v. T.Dhangopal and others***

(SLP.No.29890 of 2018), wherein the Supreme Court of India noted that the High Court of Andhra Pradesh would be located in Amaravati. He states that by changing the judicial capital from Amaravati to Kurnool, the fundamental right i.e. the petitioners' livelihood is being taken away. He argues that once the matter received the attention of the Hon'ble Supreme Court of India, and an affidavit was filed before the Hon'ble Supreme Court that the State was willing to construct the High Court at Amaravati and the seat of the High Court was notified by the President of India, the same cannot be changed. He points out that even the L.A.Bill.No.21 of 2021, by which the Decentralization Act was repealed clearly states in its statements of objects and reasons that the State Government is interested in a further 'decentralized' development. Therefore, learned counsel argues that the threat is imminent and the right to livelihood of the petitioners is being denied. He urges the Court to interfere.

385) Sri Unnam Muralidhar rao, learned counsel for the petitioners in number of matters also argues on similar lines on this issue and states that the objects and reasons of the Repeal Act clearly stated that the Government in power is again planning to go ahead for the decentralized development of the State of Andhra Pradesh and hence the cause survives.

386) Sri P.A.K.Kishore, learned counsel for the petitioners in WP.No.15035 of 2020 also relies upon Sections 5, 11, 94(4) of the Reorganization Act to argue that the Act contemplated the establishment of one capital alone and that since the same was notified and as the High Court was also established, the State

Government does not have the competence to pass the Decentralization Act, repeal the same or to make a new Act.

387) These are the broad submissions made by the learned counsels on the issues of Legislative Competence of the State to decide the issue.

388) In reply to this, learned Advocate General argues that in view of the passing of the Repeal Act, L.A.Bill.No.21 of 2021, there is no existing fact situation as on date for adjudication. It is his contention that the State Government has passed the Act repealing the Decentralization Act of 2020. The APCRDA Act has come back to life as the repeal Act 27 of 2020 was also repealed by L.A.Bill.No.21 of 2021. Therefore, learned Advocate General argues that in the absence of the enactment, any decision on the question of the Legislative Competence of the State would be a decision on an 'academic' issue. It is his contention that there is no cause surviving and that consequently, this Court need not decide at this stage on the Legislative Competence of the State to pass any law. He relies upon the case law to argue that the Court should not decide academic questions of law and should only decide the disputed questions.

389) Alternatively, on merits and without prejudice, the learned Advocate General submits that the interpretation placed by the learned senior counsel and others on the language of A.P. Reorganization Act is not correct. According to him, it was never specified in the said Act that there should be a "single" capital for the State of Andhra Pradesh. He points out that Section5 of the Reorganization Act states that Hyderabad shall be the capital of the State of Andhra Pradesh and Telangana for a period of 10

years. Thereafter, a new capital was directed to be constituted by taking the assistance of an expert committee which has to make appropriate recommendations. This is as per Section6 of the Reorganization Act. Therefore, learned Advocate General argues that Section5 of the Act merely provides for 10 year window within which the capital of these Successor State has to be located and put in place. He points out that for this purpose, an expert committee called Sivarama Krishnan Committee is appointed in terms of Section6 of the Reorganization Act and they have submitted a report which was overlooked by the then State Government. He also argues that this is not a 'one-time measure' as submitted and that the State is always competent to change the capital and/or establish multiple capitals. He relies upon the Union of India's counter also to support this submission.

390) Learned Advocate General relied upon compilation of case law to argue that there is ample power by virtue of the entries in lists II and III of Schedule VII of the Constitution of India to pass the impugned Act. Relying upon entries 5, 18 and 14 of the State list and 11A and 20 of the Concurrent list, learned Advocate General argues that the State Government has the competence on all issues relating to local Government, Municipal Corporation etc., alone. Similarly, he argues that rights in land etc., are matters which are eminently within the domain of the State. The administration of Justice and the organization of all Courts except Supreme Court and High Court along with economic and social planning is vested with the State. He also relies upon Article 38 of the Constitution of India which enjoins

upon the State to promote welfare of all the people in all areas by securing and protecting social order. According to the learned Advocate General, under Article 38(2) of the Constitution of India, the State has a duty to minimize the inequalities in income, status, facilities etc., amongst the people living in different areas of the State. The learned Advocate General therefore argues that the proposal by this Government to provide for decentralized development of three different areas of the State is for the purpose of achieving the above-mentioned objectives.

391) Sri S.S.Prasad, learned senior counsel appearing for respondents in WP (PIL).No.200 of 2020 also argues on similar lines. According to him, the issue of Legislative Competence is purely an academic issue now as the Decentralization Act and the Repeal Act have both been withdrawn/ repealed. Relying upon a large number of cases in his compilation of case law, learned senior counsel argues that the Court should not decide academic issues. Therefore, both the learned Advocate General and Sri S.S.Prasad argue that the issue of Legislative Competence need not and cannot be decided now. Broadly these are the factual / legal submissions for the respondents.

392) In view of the above contentions, the following questions would arise.

a) Whether the State Government is competent to legislatively decentralize the seat of power from Amaravati and to locate the Executive capital at Visakhapatnam, the Judicial capital at Kurnool and the Legislative capital at Amaravati?

b) Has the issue become academic or is it a live issue?

393) As per the original decision of the then Government, the three branches of the Government viz., the Legislature, the Executive (Secretariat etc.,) and the Judiciary (High Court) have to be located at "Amaravati" only in a single City. The successor Government wants to decentralize this and has enacted a law (Decentralization Act) for creating/establishing three capitals Visakhapatnam (Executive capital), Amaravati (Legislative Capital) and Kurnool (Judicial capital). The competence of the State Legislature to enact this law is also an issue raised in many cases including WP.No.13203 of 2020; PIL.No.215 of 2020 etc.

394) These cases have had a chequered history. The Writ Petitions were initially filed in 2020 and were heard by a Bench of Three Judges. Later for various reasons the matters were adjourned and this Bench took up the hearing of the Writ Petitions. After considerable progress was made and when arguments were being advanced the Government of Andhra Pradesh took a decision to repeal the Acts 27 and 28 of 2021. This was brought to the notice of this Court by the learned Advocate General, who also filed an affidavit on 26.11.2021 stating that it was decided to repeal the Acts 27 and 28 of 2021 by the Legislative Assembly. Thereupon the Bench directed all the learned counsels appearing for the petitioners and the respondents to inform the Court about the issues that survive for adjudication.

395) Sri Shyam Divan, learned senior counsel, who appeared for Writ Petitioner in W.P.No.13203 of 2020 filed a Memo dated 27.12.2021 setting out the prayers which survive for adjudication. Similarly, the other learned counsels also have filed their own respective memos. The State of Andhra Pradesh also filed a common Memo through the learned Advocate General setting out their version on this issue.

396) According to the learned Advocate General, the entire issue has become academic and there is no need for this Court to pronounce any order, whatsoever, on any surviving issues. According to him, even with regard to the works that are being carried out since the State has already taken action and initiated action to resume these works no further orders are necessary and continuing the matter need not be necessary.

397) The question before this Court is whether the State has the competence to pass the Decentralisation Act fixing three capitals in view of the fact that the Andhra Pradesh Reorganization Act, 2014 was passed by the Parliament and received the assent of the President of India.

398) The entire pleadings and arguments on this issue are before this Court. All the learned counsel argued at length on all the aspects including legislative competence and on the issue of the cause surviving.

399) This Court after hearing the submissions of all the learned counsels, considering the pleadings, the evidence and the law is of the opinion that this Court still has the power to decide on the legislative competence of the State Assembly to enact and to pass legislation with regard to decentralization and the three capitals

issue. Reasons for the same are set out hereunder under the respective heads when the submissions are considered.

400) The Government of Andhra Pradesh during the course of hearing has withdrawn the Decentralisation Act, by which three capitals were sought to be established instead of one capital established by the previous regime under the A.P. Reorganization Act. This *pendente lite* withdrawal was made by L.A.Bill No.21 of 2021. The statement of objects and reasons of this Act clearly sets out the intention of the State Government to still provide for multiple capitals. The purpose of withdrawal of the earlier Act, as can be seen from the statement of objects and reasons, was "further study and consultation to impart further clarity for the policy of the Decentralisation". After the study, the State is attempting to bring suitable legislation in future addressing concerns of all the regions of the State favouring decentralisation. Ultimately, the following is stated:

> "And whereas while the matters stood thus, to vividly explain all the good intentions of the Government in relation to decentralized development of all the regions including by providing multiple capitals, to improve the framework and provisions of law in this regard, to fulfil the aspirations of the people of all the regions of the State and to bring forward suitable legislations to achieve the above stated objectives of decentralized development, it has been decided to the repeal the said Enactments.
>
> Accordingly, this bill seeks to give effect to the above decisions." (Emphasis supplied)

401) Therefore, as the State is still proceeding to decide on decenstralisation and also creation of multiple capitals this

Court is of the opinion that as the decision is imminent and as the law on the subject is clear this Court can or rather it must decide this issue at this stage only. The entire pleadings / submissions are completed on all the legal / factual aspect.

402) Learned counsels' for the petitioners argued that the State of Andhra Pradesh was created pursuant to the Reorganisation Act, 2014, which was passed by the Parliament for reorganization of the existing State of Andhra Pradesh and for matters connected therein. The Preamble to the said Act is as follows:

> "An Act to provide for the reorganisation of the existing State of Andhra Pradesh and for matters connected therewith."

The enactment of this law by the Parliament is not in dispute.

403) Learned counsels for the petitioners relied heavily on Articles 3 and 4 of the Constitution of India which are as follows:

> **"Article 3 - Formation of new States and alteration of areas, boundaries or names of existing States**
>
> Parliament may by law-
>
> (a) Form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
>
> (b) increase the area of any State;
>
> (c) diminish the area of any State;
>
> (d) alter the boundaries of any State;
>
> (e) alter the name of any State;
>
> Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon

within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Article 4 - Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters

(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368."

404) According to the learned counsels, the sole / exclusive power for the formation of the State and alteration of area with boundaries etc., and for all matters connected thereto is a plenary power conferred on to Parliament alone. According to them States do not have any say in the matter of creation of States or for matters incidental, supplemental or consequential thereto. According to them since this is a plenary power, which is given to the Parliament, it is not controlled either by Article 246 or the three lists viz., Union List, State List and the Concurrent List. It is argued that once the Parliament has acted under the provisions of the Articles 3 and 4 and has passed the Reorganisation Act, which provided for setting up of "a" single capital, the new Government of Andhra Pradesh cannot enter the arena anymore and that it is an occupied field.

405) This Court also finds strength in the said submissions. Sections 5 and 6 of the Reorganisation Act are as follows:

> "5. (1) On and from the appointed day, Hyderabad in the existing State of Andhra Pradesh, shall be the common capital of the State of Telangana and the State of Andhra Pradesh for such period not exceeding ten years.
> (2) After expiry of the period referred to in sub-section(1), Hyderabad shall be the capital of the State of Telangana and **there shall be a new capital for the State of Andhra Pradesh**.
> Explanation— In this Part, the common capital includes the existing area notified as the Greater Hyderabad Municipal Corporation under the Hyderabad Municipal Corporation Act, 1955.
>
> 6. The Central Government shall constitute an expert committee to study various alternatives regarding **the new capital for the successor State of Andhra Pradesh** and make appropriate recommendations in a period not exceeding six months from the date of enactment of the Andhra Pradesh Reorganisation Act, 2014."

406) Section5 (2) of the Reorganisation Act thus clearly states that after the ten-year period mentioned in Section5 (1) is over there shall be 'a new capital' for the State of Andhra Pradesh.

407) Section6 of the Reorganisation Act states that the Central Government shall constitute an expert committee to study the alternatives regarding the "the" new capital for the successor State of Andhra Pradesh.

408) Section94 (3) and (4) of the Reorganisation Act are also relevant. They are as follows:

> "94 (3) The Central Government shall provide special financial support for the creation of essential facilities **in the new capital of the successor State of Andhra Pradesh including the Raj Bhawan, High Court, Government**

Secretariat, Legislative Assembly, Legislative Council and such other essential infrastructure.

(4) The Central Government **shall facilitate the creation of a new capital for the successor** State of Andhra Pradesh, if considered necessary, by denotifying degraded forest land."

409) Therefore, Section94 (3) and (4) of the Reorganisation Act state that the Central Government shall provide special financial support for creation of essential facilities in "the" new capital of successor State including the Raj Bhawan, High Court, Government Secretariat, Legislative Assembly etc. Section94 (4) also states that the Central Government shall facilitate the creation of a new capital for the successor State, if necessary by denotifying degraded forest land. This is as per the plain language interpretation. Even Clause (11) of the Thirteenth Schedule of the Andhra Pradesh Reorganisation Act, 2014 –

"The Central Government shall take measures to establish rapid rail and road connectivity from "the new capital" of the successor State of Andhra Pradesh to Hyderabad and other important cities of Telangana."

410) The case law cited on this issue, particularly "***Shri Ishar Alloy Steels Ltd., v Jayaswals Neco Ltd.,***[154]**"** also supports this view –

"… "The" is the word used before nouns, with a specifying or particularizing effect as opposed to the indefinite or generalizing force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote a particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank."

[154] (2001) 3 SCC 609

411) The use of "the" definite article in the opinion of this Court at more than one place in the Reorganisation Act clearly supports the view that there shall be "a" new capital for the successor State. Both the text and the context support this conclusion. Black's Law Dictionary defines "The" as follows:

> "The: An article which particularizes the subject spoken of. In construing statute, definite article "the" particularizes the subject which it precedes and is a word of limitation as opposed to indefinite or general zing force "a" or "an". [Brooks v. Zabka (168 Colo.265, 450 P.2d, 653, 656)]"

412) The Statement of objects and reasons of the Reorganisation Act also clearly states that the Act makes provisions for creation of the new capital or its new capital.

> "3(d) – it makes provisions casting responsibility on the Central Government to assist the successor State of Andhra Pradesh in identification **of its new capital and** to assist that State financially in the creation of essential facilities **in the new capital**."

413) In the light of this categorical expression used by the Parliament, this Court is of the opinion that the provisions of the Reorganisation Act will alone prevail. As the Parliament has expressed its opinion on a subject where it has plenary power, this Court holds that the State cannot once again legislate on this point. In order to ensure that there is no political vacuum the law made by Parliament merely conferred power on the State to decide on the exact location of the new capital (Article 258(2)) of the Constitution.

414) When the statute is clear, while interpreting the provisions of the statute, the Courts need not fall back on the General Clauses Act. In any view of the matter, Section13 of the General Clauses Act, 1897, deals with Gender and Number. According to it, in all Central Acts and Regulations, unless there is anything repugnant in the subject or context – (1) words importing the masculine gender shall be taken to include females; and (2) words in the singular shall include the plural, and vice versa. Similar provision is also included in Section3 (35) of the Andhra Pradesh General Clauses Act, 1897. Thus, as per The General Clauses Act, 1897, singular can be read as plural and vice-versa, unless the statute otherwise specifies. Since the statue is clear it is held that the General Clauses Act need not be referred.

415) Before deciding the real controversy with regard to legislative competency, it is necessary to advert to the law laid down by the Apex Court with reference to power to legislate based on Seventh Schedule, List I, II and III of the Constitution of India apart from independent power of the Parliament to amend the Constitution under Articles 2, 3, 4 of the Constitution of India.

416) This Court is also relying upon the judgments reported in (a) "***Mullaperiyar Environmental Protection Forum v Union of India and Others"*** (referred supra) wherein it is held as follows:

> "….The creation of new States by altering territories and boundaries of existing States is within the exclusive domain of Parliament. The law-making power under Articles 3 and 4 is paramount and is not subjected to nor fettered by Article 246 and Lists II and III of the Seventh Schedule. The

Constitution confers supreme and exclusive power on Parliament under Articles 3 and 4 so that while creating new States by reorganization, Parliament may enact provisions for dividing land, water and other resources; distribute the assets and liabilities of predecessor States amongst the new States; make provisions for contracts and other legal rights and obligations. The constitutional validity of law made under Articles 3 and 4 cannot be questioned on the ground of lack of legislative competence with reference to the Lists of the Seventh Schedule. The new State owes its very existence of the law made by Parliament."

(b) ***State of West Bengal v Union of India***[155] it was held as follows:

"……..By Article 2 of the Constitution the Parliament may admit into the Union or establish new States on such terms and conditions as it thinks fit, and by Article 3 the Parliament is by law authorised to form a new State by redistribution of the territory of a State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, increase the area of any State, diminish the area of any State, alter the boundaries of any State, and alter the name of any State. Legislation which so vitally affects the very existence of the States may be moved on the recommendation of the President which in practice means the recommendation of the Union Ministry, and if the proposal in the Bill affects the area, boundaries or name of any of the States, the President has to refer the Bill to the legislature of that State for merely expressing its views thereon. Parliament is therefore by law invested with authority to alter the boundaries of any State and to diminish its area so as even to destroy a state with all its powers and authority. That being the extent of the power of the Parliament it would be difficult to hold that the Parliament which is competent to destroy a State is on account of some assumption as to absolute sovereignty of the State incompetent effectively to acquire by legislation designed for that purpose the property owned by the State for governmental purpose."

[155] 1963 SC 1241

(Emphasis supplied)

(c) ***Nalluri Venkataraju and another v The State of Andhra Pradesh and another***[156] it was held as follows:

"23. We do not think that it can be posited that it was beyond the competence of Parliament to make such a law. A perusal of Article 3 makes it plain that this article had conferred plenary powers on Parliament to insert any provision in an enactment in order to carry out the purpose of the enactment. That power is not an ordinary legislative power. It is in the nature of a constituent power not subject to the limitations imposed by the legislative lists save those Provided by Articles 3 and 4. Article 4 confers powers of widest amplitude to make any laws which become necessary as a result of the redistribution of States or areas, as could be judged from the clause "and may also contain such supplemental, incidental and consequential provisions including provisions as to representation in Parliament and in the legislature or legislatures of the State or States affected by such law as Parliament may deem necessary."

24. Thus, the power vested by the Article in Parliament is not controlled by the legislative lists, being in the nature of a constituent power."

(d) ***Mangal Singh and Another v Union of India***[157] it was held as follows:

"……..The law referred to in Articles 2 & 3 may therefore alter or amend the First Schedule to the Constitution which sets out the names of the States and description of territories thereof and the Fourth Schedule allotting seats to the States in the Council of States in the Union Parliament. The law so made may also make supplemental, incidental and consequential provisions which would include **provisions relating to the setting up of the legislative, executive and judicial organs of the State essential to the effective State administration under the Constitution**, expenditure and distribution of revenue, apportionment of assets and

[156] AIR 1961 AP 50
[157] AIR 1967 SC 944

liabilities, provisions as to services, application and adaptation of laws, transfer of proceedings and other related matters."

417) A reading of these judgments would make it clear that it is the Parliament alone that has the power to decide the issues of formation of States etc. The Hon'ble Supreme Court of India clearly held that the Parliament even has the power to destroy a State with all its powers and authorities (***State of West Bengal vs. Union of India (referred supra)***.

418) Even the Division Bench of the Andhra Pradesh High Court also held that the Parliament has plenary powers under Article 3 of the Constitution of India to insert any provision in the enactment to carry out the purpose. It was held that Article 4 confers powers of widest amplitude on the Parliament.

419) In ***Mangal Singh vs. Union of India (referred supra)*** a further discussion on the supplemental and incidental powers was examined and the Hon'ble Supreme Court of India held that the Parliament may make a law and also include supplemental, incidental and consequential provisions which would include provisions relating to setting up of the legislative, executive and judicial organs of the State. In the opinion of this Court, it is this power that was exercised by the Parliament to denote that there should be "a" capital or by referring to "the" capital.

420) Therefore, a conjoint reading of these cases make it amply clear that the power given to the Parliament under Articles 3 and 4 of the Constitution is a plenary power of the widest amplitude which would enable the Parliament also to decide on the setting up of the legislature, executive and the judicial organs of the

State. Once this power is expressed by passing the Reorganization Act 2014, this Court is of the opinion that all the subsequent legislations (both repealed and contemplated) are contrary to law. The A.P. Reorganisation Act, 2014 unlike many of the other Reorganisation Acts passed earlier makes a provision for the capital. This also is a distinguishing feature further fortifying the view that the Parliament wanted "a" capital only for the State of Andhra Pradesh.

421) On a point of principle this Court is aware that there could arise germane reasons in the future to make a change of the capital but the State has to make a representation to the Central Government and may be the Union Parliament to amend or modify the A.P. State Reorganisation Act, 2014

422) This Court also notices that in the Decentralization Act, a proposal was made to shift the judicial capital. The seat of the High Court of Andhra Pradesh was declared to be at Amaravati. The foundation stone for the construction of the High Court complex at Amaravati was laid by the Hon'ble the Chief Justice of India on 03.02.2019. The High Court of Andhra Pradesh has started functioning from 01.01.2019 in a temporary building, which was constructed for the City Civil Court. It is continuing the function from there. The State Government in the Decentralisation Act wanted to shift the seat of the High Court to Kurnool by calling Kurnool as the Judicial Capital. One of the submissions made by the learned Advocate General is that the State has the competence to initiate steps to seek relocation of the principal seat of the High Court to Kurnool. As far as the High Court of Andhra Pradesh is concerned and for the purpose

of present adjudication Section31 of the Reorganisation Act, which is as follows is to be seen:

> "31. (1) Subject to the provisions of Section30, there shall be a separate High Court for the State of Andhra Pradesh (hereinafter referred to as the High Court of Andhra Pradesh) and the High Court of Judicature at Hyderabad shall become the High Court for the State of Telangana (hereinafter referred to as the High Court at Hyderabad).
>
> (2) The principal seat of the High Court of Andhra Pradesh shall be at such place as the President may, by notified order, appoint.
>
> (3) Notwithstanding anything contained in sub-Section(2), the Judges and division courts of the High Court of Andhra Pradesh may sit at such other place or places in the State of Andhra Pradesh other than its principal seat as the Chief Justice may, with the approval of the Governor of Andhra Pradesh, appoint."

423) A plain language interpretation of this Sectionmakes it clear that the principal seat of the High Court shall be at such a place as the President may, by notified order, appoint. Admittedly, a presidential order dated 26.12.2018 fixing the seat at Amaravati was already issued. Section31 (3) of the Reorganisation Act deals with "Judges and Division Courts" of the High Court which may sit at other places in the State of Andhra Pradesh other than its principal seat. This also can be done with the approval of the Governor of Andhra Pradesh and on the recommendation of the Chief Justice.

424) The relevant constitutional provisions for determining the real controversy are Entry 78 and Entry 97 of List-1 of Schedule VII of the Constitution of India, which is known as 'Union List' and Entry 3 and 65 of List-II of Schedule VII the 'State List' and

Entry 11-A and 46 of List III of Schedule VII ('Concurrent List'), besides Articles 214, 245 and 246 of the Constitution of India.

425) Entry 78 of List I of Schedule VII (Union List) deals with 'Constitution and Organization' of High Court and it reads as follows:

> "Entry 78: Constitution and Organization (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts."

426) At the same time, Entry 97 of List I of Schedule (Union List conferred power on the Parliament to legislate on any of the items no covered by List II or List III i.e. residuary power to legislate and it read as follows:

> "Entry 97: Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

427) It is clear from Entries 78 of List-I of Schedule VII (Union List) the Parliament alone is competent for 'Constitution and Organization' High Court and not by the State.

428) Similarly, Entry 3 of List-II of Schedule VII conferred power on the State to appoint officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

429) A little history of the litigation in the Courts regarding separation of High Court is necessary at this stage. Writ petition in the form of public interest litigation (PIL No.59 of 2015) was filed before High Court of Judicature at Hyderabad for constitution of two High Courts i.e., State of Telangana and State

of Andhra Pradesh. The Division Bench of High Court of Judicature disposed of the said writ petition recording certain findings. Aggrieved by the said order, Union of India preferred a special leave petition before the Supreme Court. The Hon'ble Supreme Court of India, in **Union of India Vs. T. Dhangopal and Ors** [SLP (Civil) No. D. 29890 of 2018] on the basis of the material available on record, made it clear that the Judges of the High Court, who would become Judges of High Court of Andhra Pradesh, are satisfied with the facilities in the said building inasmuch as Full Court of the High Court has approved the proposal after Inspection Committee of Judges submitted a report in this behalf. Learned Senior Counsel Mr. Nariman also made a statement at the Bar that the Government would be hiring villas to take care of the residential needs of the Judges at Amaravati. The Apex Court also noticed that in Amaravati a very big complex known as Justice City is under construction where the High Court and subordinate courts and even some tribunals would be accommodated and there is a provision for construction of residential complex for the Judges of the High Court and judicial officers of the subordinate courts. The aforesaid arrangement is ad-hoc arrangement till the Justice City gets completed. Therefore, there is no embargo for the Competent. Authority to issue a notification bifurcating the High Court of Judicature at Hyderabad into the High Court of Telangana and the High Court of Andhra Pradesh respectively and such a notification may be issued by the 1st day of January, 2019 so that the two High Courts start functioning separately and the High Court of Andhra Pradesh also starts functioning in

the new building at the earliest. The Hon'ble Supreme Court of India who noticed that the contract for construction of the High Court was awarded at a cost of Rs.1.685 crores. Thereupon, Hon'ble President of India, in consultation with the Supreme Court, issued Notification dated 26.12.2018 for establishment of High Court at Amaravati. In pursuance of Notification dated 26.12.2018 issued by President of India, the Principal Seat of High Court of Andhra Pradesh was established at Amaravati.

430) In "***Jamshed N. Guzdar v. State of Maharashtra***[158]**",** the Constitution Bench of the Supreme Court considered the Legislative Competency of Entry 11-A of List III; Entry 78 of List I and Entry 3 of List II and concluded that, the general jurisdiction of the High Courts is dealt with in Entry 11A under caption 'administration of justice, which has a wide meaning and includes administration of civil as well as criminal justice. The expression 'administration of justice has been used without any qualification or limitation wide enough to include the 'powers and jurisdiction of all the courts except the Supreme Court. The semicolon (;) after the words 'administration of justice' in Entry 11A has significance and meaning. The other words in the same Entry after 'administration of justice' only speak in relation to constitution and organisation of all the courts except the Supreme Court and High Courts. ***It follows that under Entry 11-A, State Legislature has no power to constitute and organize Supreme Court and High Courts***. It is an accepted principle of construction of a constitution that everything

[158] AIR2005SC862

necessary for the exercise of powers is included in the grant of power. The State Legislature being an appropriate body to legislate in respect of 'administration of justice and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters, civil and criminal, it must follow that it can invest the High Court with such general jurisdiction and powers including the territorial and pecuniary jurisdiction and also to take away such jurisdiction and powers from the High Court except those, which are specifically conferred under the Constitution on the High Courts. It is not possible to say that investing the city civil court with unlimited jurisdiction taking away the same from the High Court amounts. to dealing with 'constitution' and 'organisation of the High Court. Under Entry 11A of List III the State Legislature is empowered to constitute and organize city civil court and while constituting such court the State Legislature is also empowered to confer jurisdiction and powers upon such courts inasmuch as 'administration of justice' of all the courts including the High Court is covered by Entry 11-A of List III, so long as Parliament does not enact law in that regard under Entry 11-A. Entry 46 of the Concurrent List speaks of the special jurisdiction in respect of the matters in List III. Entry 13 in List III is '...Code of Civil Procedure at the commencement of the Constitution...'

431) Thus, from the law laid down by the Apex Court in the judgment referred above, the Parliament alone is invested with the competence to legislate / to issue notification determining the principal seat of High Court, whereas, the State Legislature is invested with the power to constitute all Courts within the

State other than the High Court. Therefore, 'Constitution and Organization' of High Court is taken away from the jurisdiction of the legislative competency of the State Legislature.

432) After 42nd amendment to Constitution of India, the power of the States to 'Constitute and Organize the High Courts' was taken away and vested on the Parliament; vide Entry 78 of List 1 (Union List) of Schedule VII, whereas, another Entry was added to List III (Concurrent List) i.e., Entry 11-A. But, Entry 11-A of List III permits the State and Parliament to make Legislation for establishment of other Courts other than Supreme Court and High Courts. Thus, as on date of Andhra Pradesh State Reorganization Act, 2014, the power to 'Constitute and Organize the High Court' is totally vested on the Parliament and the Principal Seat of High Court of Andhra Pradesh shall be at such place as the President may, by notified order, appoint. Therefore, the law that is applicable for Constitution and Organization of the High Court including establishment of Principal Seat of High Court is governed by the Andhra Pradesh State Reorganization Act, 2014 alone.

433) In the light of this background and clear usage of the language, the question is, does the State Legislature has the power to pass a further Bill for relocation of High Court. Similar issue fell for consideration before the Division Bench of the Orissa High Court in ***Bhabani Shankar Tripathy v Secretary to the Government of Orissa, Home Department and***

Another[159], which considered the Union List Entry 78 and the State List Entry 65 to come to the following conclusion:

> "22. Having regard to the meaning of the words 'constitution and organisation', namely, to establish, the Parliament alone has power to enact law as to where the High Court shall be established. A Court is not established in vacuum. It is established at a place which is its seat where Judges Assemble to discharge their function. Hence while the State Legislature has competence to enact law as to how the High Court shall function, i.e., its internal management. Jurisdiction, the Parliament alone has the legislative authority to make law as to where the High Court shall function. Any other interpretation would render the subject 'constitution and organisation' under Entry 78 of List I nugatory. We are, therefore, of the view that it is not open to the State Legislature to make any law as to where the seat of the High Court shall be, as to where the Judges shall sit to discharge their function. That field of legislation has been exclusively assigned to the Parliament."

434) This Court also notices that the Hon'ble Supreme Court of India also had an occasion to consider similar issue with relation to Section51 of the States Reorganisation Act, 1956 in ***State of Maharashtra v Narayan Shamrao Puranik and Others***[160]**.** The provisions of Section31 (2) of the Reorganisation Act are similar to Section51(1) of the States Reorganisation Act, 1956. Similarly, Section31 (3) of the Reorganisation Act is similar to Section51 (3) of the States Reorganisation Act, 1956. The argument before the Hon'ble Supreme Court of India was that a States Reorganisation Act is a transitory Act and the powers of the Hon'ble President of India or the Hon'ble Chief Justice of India are transitory in nature. In the case before the Hon'ble

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159 (1992) 73 CLT 567
160 (1982) 3 SCC 519

Supreme Court of India the constitution of the Bench at Aurangabad was under challenge. This decision was taken in 1981 i.e., 25 years after the States Reorganisation Act, 1956. An argument was advanced that the exercise of this power more than two decades later is incorrect. In ***State of Maharashtra v Narayan Shamrao Puranik and Others*** (referred supra) the Hon'ble Supreme Court of India held as follows:

> "….The reasoning of the High Court that the Act being of a transitory nature, the exercise of the power of the President under sub-Section(2) of Section51 of the Act, or of the Chief Justice under sub-Section(3) thereof, after a lapse of 26 years, would be a complete nullity, does not impress us at all. The provisions of sub-sections (2) and (3) of Section51 of the Act are supplemental or incidental to the provisions made by Parliament under Articles 3 and 4 of the Constitution. Article 3 of the Constitution enables Parliament to make a law for the formation of a new State. The Act is a law under Article 3 for the reorganisation of the States. Article 4 of the Constitution provides that the law referred to in Article 3 may contain "such supplemental, incidental and consequential provisions as Parliament may deem necessary". Under the scheme of the Act, these powers continue to exist by reason of Part V of the Act unless Parliament by law otherwise directs. The power of the President under sub-Section(2) of Section51 of the Act, and that of the Chief Justice of the High Court under sub-Section(3) thereof are intended and meant to be exercised from time to time as occasion arises, as there is no intention to the contrary manifested in the Act within the meaning of Section14 of the General Clauses Act."

435) The contention of the State is that, the Legislative intention is to relocate the Principal Seat of High Court of Andhra Pradesh at Kurnool, shifting the same from Amaravati, not for 'Constitution and Organization' of High Court. The

meaning of the words 'Constitution and Organization of the High Court' as discussed in the earlier paragraphs and as per the meaning of the word 'Constitution includes establishment. In such case, relocating High Court of Andhra Pradesh at Kurnool i.e. shifting of High Court of Andhra Pradesh from Amaravati to Kurnool amounts to contravention Article 246 of the Constitution of India Entry 78 and Entry 98 of List I; Entry 3 and Entry 65 of List II and Entry 11-A and Entry 46 of List III of Schedule VII and Section31 of Andhra Pradesh State Reorganization Act, 2014. If, such interpretation is accepted, whenever there is a change in the Government, it may relocate the High Court as per it's whim and fancy, which would cause serious damage to the institution. In addition, the burden on the State exchequer and inconvenience caused to the litigant public, who have to travel from one "corner" district to another "corner" district in the State of Andhra Pradesh i.e. from a Srikakulam to Kurnool, and vice versa covering a distance of more than 1,000 kms. Such establishment is against the principle of access to justice and it will be violative of Fundamental Right to life which is inclusive of "access to justice" guaranteed under Articles 14 and 21 of the Constitution of India, as held in ***Anita Kushwaha v. Pushap Sadan***[161]**.**

436) In addition, it is clear in the light of the authoritative pronouncements of the Court including the Hon'ble Supreme Court of India and the provisions of the Reorganisation Act, it is only the President of India who can by notification decide the

[161] (2016) 8 SCC 509

principal seat of the High Court of Andhra Pradesh. It is only the Chief Justice, with the approval of Governor of Andhra Pradesh, who can decide where the Judges and the Division Courts (Regional Benches) of the High Court may sit other than in the principal seat. All of this clearly leads to a conclusion that there shall be a principal seat and there may at best be Benches at other places, which can be established by following the due procedure. It cannot "legislate" upon this issue. The State by itself does not have the power to decide to shift the seat of the High Court to its proposed judicial capital. Lastly, the orders based upon the affidavit filed and the facts noticed in the case of ***T.Dhangopal (SLP No.29890 of 2018)*** also preclude the State from changing its stand.

437) It is, therefore, clear that the will of the Parliament was expressed in categorical language leaving absolutely no reason for the State to legislate and / or to decide that the judicial capital will be at Kurnool.

438) As far as the manner of interpretation of Lists is concerned, the law on the subject is very clear and it has been held more than once by the Hon'ble Supreme Court of India that the Entries should be given a wide and liberal interpretation so as to enable the Union or the State legislatures to enact legislations with regard to State. However, the Supreme Court of India also sounded a note of caution with regard to this method of interpretation. Same is found in paragraph 6 of the judgment

reported in ***Union of India and Others v Shah Goverdhan L. Kabra Teachers' College***[162] which is as follows:

> "The power to legislate is engrafted under Article 246 of the Constitution and the various entries for the three lists of the Seventh Schedule are the "fields of legislation". The different entries being legislative heads are all of enabling character and are designed to define and delimit the respective areas of legislative competence of the Union and the State Legislatures. They neither impose any restrictions on the legislative powers nor prescribe any duty for exercise of the legislative power in any particular manner. It has been a cardinal principle of construction that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any list it would not be reasonable to import any limitation therein. The rule of widest construction, however, would not enable the legislature to make a law relating to a matter which has no rational connection with the subject-matter of an entry. When the vires of enactment is challenged, the court primarily presumes the constitutionality of the statute by putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude and the substance of the legislation will have to be looked into. The Court sometimes is duty-bound to guard against extending the meaning of the words beyond their reasonable connotation in anxiety to preserve the power of the legislature."

439) Even the judgment in ***Bimolangshu Roy (Dead) through LRs v State of Assam and Another***[163] cited by the respondents contains the following passages:

> 34. Our endeavour is only to demonstrate that a great deal of examination of the scheme of the entire Constitution is

[162] (2002) 8 SCC 228

[163] (2018) 14 SCC 408

essential while interpreting the scope of each of the entries contained in the three lists of the Seventh Schedule and no rule which has a universal application with regard to the interpretation of all entries in the Seventh Schedule can be postulated. The statement of Chief Justice Gwyer that a broad and liberal spirit should inspire those whose duty is to interpret the Constitution and the legislative entries should not be read in a narrow or pedantic sense, cannot be understood as a *sutra* valid for all times and in all circumstances. We have already noticed that this Court on more than one occasion cautioned about the perils of placing a construction on the expressions contained in the various entries in the three lists of the Seventh Schedule as taking within their sweep, matters that have no rational connection with the subject-matter of the entry. The caution sounded in *Shah Goverdhan L. Kabra Teachers' College* [*Union of India* v. *Shah Goverdhan L. Kabra Teachers' College*, (2002) 8 SCC 228] that: (SCC p. 233, para 6)

"*6.* ... the court sometimes is duty-bound to guard against extending the meaning of the words beyond their reasonable connotation...."

is a constitutional imperative."

440) The plain language interpretation of this Article (apart from Entry 78 of List I and Entry 65 of List II and 11A of List III) makes it clear that none of these Entries empower / enable the State to legislate upon the creation of a new executive capital or setting up of a new High Court at Kurnool etc. The plain language interpretation runs contrary to submissions of the State on the subject. There is no rational nexus between any of these entries and the proposal to establish an Executive capital; a Judicial capital and a Legislative capital. Apart from this the plenary power of the Parliament as detailed in Articles 3 and 4 of the Constitution of India is not controlled by any of the Entries

in the three lists. Therefore, this Court is of the opinion that State does not have the competence to legislate on the basis of Entries relied on in the Lists.

441) Admittedly, Article 38 is in Part-4 of the Constitution of India. It does provide a laudable direction to the State to secure a just social order by eliminating inequalities in alternative in different areas. The question, however, is can this Article be used to justify the actions of the State in enacting a law after Parliament expressed its opinion. Hon'ble Supreme Court of India in ***Koluthara Exports Ltd., v State of Kerala and others***[164] held as follows:

> "18. Now adverting to the constitutional validity of the impugned provisions, it must be remembered that Part IV of the Constitution contains, as noticed above, fundamental principles in governance of the country. They indicate and determine the direction for the State but they are not legislative heads or the fields of legislation like the entries in Lists I, II and III of the Seventh Schedule of the Constitution. When any statute of a State or any provision therein is questioned on the ground of lack of legislative competence, the State cannot claim legitimacy for enacting the impugned provisions with reference to the provisions in Part IV of the Constitution; the legislative competence must be demonstrated with reference to one or more of the entries in Lists II and III of the Seventh Schedule of the Constitution."

442) In view of this clear and authoritative pronouncement of the Hon'ble Supreme Court of India, it is clear that the State cannot claim legitimacy or power to pass the legislations by referring to Article 38 in Part-IV of the Constitution of India.

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[164] (2002) 2 SCC 459

443) The last question that survives for adjudication is about the need or necessity for passing an order on the legislative competence at this stage, as the impugned Act themselves have been repealed. The learned senior counsels and the learned Advocate General appearing for the State have cited number of cases stating that this Court should not decide the "academic" issues. The law is well settled on this issue. The case law is therefore not being reproduced once again.

444) Learned Advocate General argued that at this stage it is not clear as to what the proposed legislation would be and therefore pronouncing anything on the legislative competence of the State is not called for.

445) Learned counsels for the petitioners argued that the issue is not academic that the threat is real / imminent; that the conduct of the Government in passing of the impugned Acts, the withdrawal of the same after about two years during the course of the protracted hearing on these matters and their avowed decision, of going for further decentralization makes it clear that there is impending threat. The statement of objects and reasons of the L.A.Bill No. 21 of 2021, (which is to repeal the impugned Act) which was passed by both the Houses, is clearly to the following effect:

> "And whereas while the matters stood thus, to vividly explain all the good intentions of the Government in relation to decentralized development of all the regions including by providing multiple capitals, to improve the framework and provisions of law in this regard, to fulfill the aspirations of the people of all the regions of the State and to bring forward suitable legislations to achieve the above stated objectives of

decentralized development, it has been decided to the repeal the said Enactments.

Accordingly, this bill seeks to give effect to the above decisions."

446) This is the statement of objects of a Bill introduced while this Court was hearing these matters. It is thus clear that even as on date the State still proposes to go for multiple capitals.

447) In addition, high functionaries of the Government including the Hon'ble Chief Minister have stated at more than one place and on more than one occasion that the Government is committed to decentralized development and also to the three / multiple capitals. The question is whether in such a case, this Court should act as sentinel on the qui vive or wait till the rights of the farmers and others are affected or should it take a "quia timet" action or the like in the face of a threat of violation of rights etc.

448) The case before this Court pertains to area now called Amaravati. It is located near to the cities of Vijayawada and Guntur and is a fertile area watered by the River Krishna. The farmers of this area have surrendered their lands with a hope that they would be allotted reconstituted plots in a thriving urban city called Amaravati and that their life styles would change for the better. The documents filed in this Court show that the majority of the people viz., 29,754 number of farmers have pooled in 33,771 acres of land with a hope that they would get reconstituted plots and also all other benefits. They were also promised that they would be living in a 'people's capital' which would be a sprawling metropolis generating income for them in the present and in the future. It is clear from the

surveys that the staggering majority of farmers in these cases are small and marginal farmers (93% of the cases). They are also not highly educated. The statistics show that 73.1% are merely educated upto Class XII (figures from the Social Impact Assessment report for Amaravati). The traditional / ancestral agrarian economy based upon multiple crops in fertile soil fed by the river waters has been given up with the hope that they would be living in a modern city. These issues are dealt with in detail in the other part of this order. The question is when the livelihood of farmers itself is being taken away, and their right to life and livelihood is infringed / is being infringed, should the Court be silent spectator or is the Court is empowered to act at this stage?

449) The Hon'ble Supreme Court of India in ***Bhusawal Municipal Council v Nivrutti Ramachandra Phalak and others***[165] particularly held with regard to farmers as follows:

> "17. The fundamental right of a farmer to cultivate his land is a part of right to livelihood. "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being predominantly an agricultural society, there is a "strong linkage between the land and the person's status in the social system".
>
> "*10*. ... A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens.

[165] (2015) 14 SCC 327

11. … For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic."

18. A farmer's life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmer. Unless one experiences their struggle, that headache, he will never know how it feels. The risks faced by the farming community are many: they relate to natural calamities such as drought and floods; high fluctuation in the prices of input as well as output, over which he has no control whatsoever; a credit system which never extends a helping hand to the neediest; domination by middlemen who enjoy the fruits of a farmer's hard work; spurious inputs, and the recent phenomenon of labour shortages, which can be conveniently added to his tale of woes. Of late, there have been many cases of desperate farmers ending their lives in different parts of the country. The principles of economics provide for the producer of a commodity to determine his prices but an Indian farmer perhaps is the only exception to this principle of economics, for even getting a decent price for their produce is difficult for them."

450) Apart from this in paragraphs 151 and 152 of the judgment reported in ***Lalaram and Others v Jaipur Development Authority and Another***[166] the Supreme Court also held as follows:

"151. The Constitutional Courts <u>are sentinels</u> of justice and vested with the extraordinary power of judicial review to ensure that the rights of the citizens are duly protected. That the quest for justice is a compulsion of judicial conscience, found its expression in *C. Chenga Reddy* v. *State of A.P.* [*C. Chenga Reddy* v. *State of A.P.*, (1996) 10 SCC 193 : 1996 SCC (Cri) 1205] in the following extract: (SCC p. 223, para 56)

[166] (2016) 11 SCC 31

> "*56. … A court of equity must so act, within the permissible limits so as to prevent injustice. 'Equity is not past the age of child-bearing' and an effort to do justice between the parties is a compulsion of judicial conscience*. Courts can and *should strive to evolve an appropriate remedy, in the facts and circumstances of a given case, so as to further the cause of justice, within the available range and forging new tools for the said purpose, if necessary to chisel hard edges of the law*."
>
> (emphasis supplied)

152. This underlying thought found erudite elaboration in *Manohar Lal Sharma* v. *Union of India* [*Manohar Lal Sharma* v. *Union of India*, (2014) 2 SCC 532 : (2014) 4 SCC (Cri) 1] : (SCC p. 559, para 47)

> "*47*. The Supreme Court has been conferred very wide powers for proper and effective administration of justice. *The Court has inherent power and jurisdiction for dealing with any exceptional situation in larger public interest which builds confidence in the rule of law and strengthens democracy*. The Supreme Court as the sentinel on the qui vive, has been invested with the powers which are elastic and flexible and in certain areas the rigidity in exercise of such powers is considered inappropriate."
>
> (emphasis supplied)"

451) It is clear that the livelihood of the petitioners / farmers and their right to live a life of dignity has been taken away in this case. However, as a Fundamental Right of the petitioner viz., his right to life is affected, this Court is of the opinion that it need not restrict itself to a "post violation period" or for an actual infringement to adjudicate or decide the issue. The Hon'ble Supreme Court of India in ***S.M.D.Kiran Pasha v Government of Andhra Pradesh and Others***[167] while dealing with a similar issue held as follows in paragraph 14 –

> "14……Conferring the right to life and liberty imposes a corresponding duty on the rest of the society, including the State, to observe that right, that is to say, not to act or do anything which would amount to infringement of that right,

[167] (1990) 1 SCC 328

except in accordance with the procedure prescribed by law. In other words, conferring the right on a citizen involves the compulsion on the rest of the society, including the State, not to infringe that right. The question is at what stage the right can be enforced? Does a citizen have to wait till the right is infringed? Is there no way of enforcement of the right before it is actually infringed? Can the obligation or compulsion on the part of the State to observe the right be made effective only after the right is violated or in other words can there be enforcement of a right to life and personal liberty before it is actually infringed? What remedy will be left to a person when his right to life is violated? When a right is yet to be violated, but is threatened with violation can the citizen move the court for protection of the right? The protection of the right is to be distinguished from its restoration or remedy after violation. When right to personal liberty is guaranteed and the rest of the society, including the State, is compelled or obligated not to violate that right, and if someone has threatened to violate it or its violation is imminent, and the person whose right is so threatened or its violation so imminent resorts to Article 226 of the Constitution, could not the court protect observance of his right by restraining those who threatened to violate it until the court examines the legality of the action? Resort to Article 226 after the right to personal liberty is already violated is different from the pre-violation protection. Post-violation resort to Article 226 is for remedy against violation and for restoration of the right, while pre-violation protection is by compelling observance of the obligation or compulsion under law not to infringe the right by all those who are so obligated or compelled."

452) To a similar effect is the judgment of the Supreme Court of India reported in ***D.A.V.College, Bhatinda, etc., v State of Punjab and Others***[168] in which it was held as follows:

"5. A preliminary objection has been urged on behalf of the respondents that in a petition under Article 32, only

[168] (1971) 2 SCC 261

where it is shown that there is a violation of fundamental right that the validity of the legislation or of the legislative competence can be raised and determined, but in these cases as there is no violation of Articles 14, 26, 29 and 30 of the Constitution the petitioners ought not be allowed to challenge the vires of the Act on the ground of the competence of the Legislature to enact the impugned law. This question has been dealt with fully in the batch of petitions in which we have just pronounced judgment, where we had also considered the contentions of the learned Advocate-General of Punjab and Shri Tarkunde, the learned Counsel for Respondent 2 in this behalf and hence we do not propose again to reiterate the reasons in support of the conclusion that a petition under Article 32 in which petitioners make out a prima facie case that their fundamental rights are either threatened or violated will be entertained by this Court and that it is not necessary for any person who considers himself to be aggrieved to wait till the actual threat has taken place."

453) It is thus clear that this Court need not wait till there is an "actual violation" of the Fundamental Right and that it can and must in fact provide relief / succor to a person even before there is an actual violation of his rights in certain rare cases like the present one. Every Constitutional Court is and must be a sentinel on the qui vive. This is the law since ***State of Madras v V.G.Rao***[169]***.***

454) Learned Advocate General appearing for the respondents/State brought to the notice of this Court a judgment of learned single Judge of the High Court of Andhra Pradesh at Hyderabad in "***Ramanama Sankirthana Sangham Vs. Government of Andhra Pradesh***[170]" wherein the learned Single Judge observed as follows:

[169] AIR 1957 Madras 196
[170] (2006) 1 ALD 468

"It is well settled that unless compelled to do so this Court, under Article 226 of the Constitution of India, would not, normally, adjudicate the vires of statutory provisions. A Full Bench of this Court in "***Andhra Pradesh Power Diploma Engineers' Association vs. Andhra Pradesh State Electricity Board***[171]", held that Courts would not enter into academic discussions regarding the constitutional validity of statutory provisions unless such a decision becomes necessary for the purpose of the decision in the case. In "***Government of A.P. v. Medwin Educational Society***[172]" a Full Bench of the Common High Court held:

> We remind ourselves of the settled principle of Constitutional adjudication that Constitutional issues should not be considered by the judicial branch as an academic issue. There is also a settled principle that if a lis could be decided on grounds other than constitutional issues the lis should be decided on the other issues."

455) Though the observation made by the learned single Judge is not binding on this Court, still, the two Full Bench judgments in "***Andhra Pradesh Power Diploma Engineers' Association vs. Andhra Pradesh State Electricity Board***", and "***Government of A.P. v. Medwin Educational Society***" (referred supra) are binding on this Court since these two judgments are by coordinate bench (Full Bench) of the High Court of Andhra Pradesh.

456) In "***Attorney-General of Hong Kong and Another v Rediffusion (Hong Kong) Ltd.,***[173]**",** the submissions made before the Privy Council by the appellant in jurisdiction summons are as follows:

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171 (1996)ILLJ1082AP (FB)
172 2000(6)ALD609
173 (1970) 2 W.LR. 1264 = (1970) A.C. 1136

"The Jurisdiction Summons: first, the jurisdiction of the Supreme Court is defined by reference to the jurisdiction of the High Court in England. There is no express grant or exclusion of jurisdiction to control legislative proceedings. There is no jurisdiction in England to interfere with the legislative process.

.....

.....

Sixthly, the power of the courts to exercise jurisdiction over non sovereign legislatures is the power to consider the validity of legislation when enacted, and there is no jurisdiction to intervene at any stage before enactment, because that would be an interference with the proceedings of the legislature and the proceedings and the internal affairs of the Legislative Council of Hong Kong are within the exclusive control of the council itself.

.....

Seventhly, a declaration regarding the validity of proposed legislation prior to enactment is not profitable, because it is not known in what form the bill will emerge from the legislative assembly.

Lastly, the courts do not exercise jurisdiction in hypothetical cases. The proposed legislation is a matter of controversy in which the opinion of the Government itself has wavered. It is uncertain what the comments of the Secretary of State will be on the proposed legislation. It is uncertain whether the bill mentioned in the writ will ever be introduced into the Legislative Council for enactment. It is uncertain how it will be amended before being enacted, even assuming it is introduced. **The court is asked to exercise jurisdiction to make a declaration not of something which has happened or is about to happen but of something which is subject to such uncertainties that it may well never happen**."

In reply the following was submitted:

"The Jurisdiction Summons: first, the normal time to bring an action seeking the intervention of the courts by the party

threatened by the actions of a subordinate legislature is the earliest time possible to prevent the ultra vires proposals being carried out.

.....

Fourthly, it cannot be part of the lawful process of a legislature to pass that which it is unlawful to enact: Rex v. Marais [1902] A.C. 51, 54. That courts should not interfere except after enactment is because of the character of parliamentary process and because our courts have accepted freedom of debate and freedom of discussion in the Parliaments of the Commonwealth. In applying that proposition to a subordinate non sovereign legislature of the Commonwealth it is necessary to look to the functions and powers of the legislature. The immunity from control by the courts which is enjoyed by members of a legislative assembly while exercising their deliberative functions is founded on necessity. The question of the extent of the immunity which is necessary raises a conflict of public policy between the desirability of freedom of deliberation in the legislature and the observance by its members of the rub of law of which the courts are the guardians. If there will be no remedy when the legislative process is complete and the unlawful conduct in the course of the legislative process will by then have achieved its object, the argument founded on necessity leads to the conclusion that there must be a remedy available in a court of justice before the result has been achieved which was intended to be prevented by the law from which a legislature which is not fully sovereign derives its powers.

Sixthly, the court has power to make a declaration where a future wrong is threatened and to grant an injunction to prevent that wrong happening. The respondents have not sought an advisory opinion but a ruling of the court on the violation of their rights."

The broad question that fell for consideration was answered as follows by the Privy Council:

"*The immunity from control by the courts, which is enjoyed by members of a legislative assembly while exercising their deliberative*

functions is founded on necessity. The question of the extent of the immunity which is necessary raises a conflict of public policy between the desirability of freedom of deliberation in the legislature and the observance by its members of the rule of law of which the courts are the guardians. If there will be no remedy when the legislative process is complete and the unlawful conduct in the course of the legislative process will by then have achieved its object, the argument founded on necessity in their Lordships' view leads to the conclusion that there must be a remedy available in a court of justice before the result has been achieved which was intended to be prevented by the law from which a legislature which is not fully sovereign derives its powers.

In their Lordships' view the Full Court of Hong Kong were right in holding that they had jurisdiction to enter upon the inquiry whether or not it would be unlawful for the Legislative Council of Hong Kong to pass the proposed bill, and if they found that it would be unlawful, to decide in their discretion whether or not to grant the relief by way of declaration and injunction claimed.

Their Lordships can deal very briefly with the alternative ground upon which it was contended before them that the court had no jurisdiction to entertain the action, viz., that it seeks a declaration as to hypothetical and future questions. The evidence showed a clear intention on the part of the Government of Hong Kong, which, with the aid of the Governor's casting vote, commands a majority in the Legislative Council, to seek from the Secretary of State in the United Kingdom an Order in Council in the terms of the draft order referred to in the writ and to enact an Ordinance in the terms of the draft bill. Such a bill, if enacted, would, as previously mentioned, seriously affect the plaintiffs' existing legal rights. All questions involved in quia timet proceedings are hypothetical and future. To exclude the jurisdiction of the court to inquire into them in order to decide whether to exercise its discretion to grant relief, the defendants would have to show that the questions were purely abstract questions the answers to which were incapable of affecting any existing or future legal rights of the plaintiffs. This they have not done."

457) In view of the law declared by the Privy Council and the Full Bench of the High Court of Andhra Pradesh in the judgments referred supra, this Court is competent to decide other issues including competency as the petitioners claimed

relief specifically to decide legislative competency to enact any law to shift the legislature, executive and judiciary, that means when the Court is compelled to answer such constitutional issues, the mere repeal of Act Nos.27 and 28 will not take away the power of this Court to adjudicate upon such issue touching the powers of legislature under the Constitution of India to enact any other law relating to shifting of three wings of the State. Therefore, this Court is not totally denuded from exercising power under Article 226 of the Constitution of India since the core issue in the writ petitions from the beginning was lack of legislative competency to the State legislature to enact laws to estabilsh three wings of the State at different pleas in the name of decentralisation. Apart from that, the State legislature repealed the Act Nos.27 and 28 of 2020 by repeal Act No.11 of 2021. However, in the statement of objects and reasons of Repeal Act No.11 of 2021 it is made clear that the State Legislature is intending to introduce the bill again for decentralization of administration. Thus, the cause regarding legislative competency of legislature to pass such enactment is still alive and the advocates for the petitioners referred above urged this Court to decide such issue of legislative competency to pass or enact any other law for shifting, trifurcate or bifurcate capital.

458) The Decentralisation Bill 28 of 2020 was enacted on 31.07.2020. Thereafter the judicial challenges have started. There is no change in the situation. The matter was initially held by a Bench constituted of 3 Judges from August, 2020 to August, 2021. Thereafter, the present Bench of 3 Judges has taken up the hearing of the matters from November, 2021.

Midway during the hearing, the State came up with Bill No. 21 of 2021, by which Act 28 of 2020 was repealed. Even after the said repeal the senior Members of the government continue to lay stress on the issue of Decentralisation, multiple capitals etc. The statement of reasons for withdrawing the Act 28 of 2020 also talks of the intention of the government to go for decentralized development and multiple capitals. Thereafter, it is clear that the intention of the present government is to go forward with the concept of the decentralized capitals or multiple capitals. Since this intention is clear and it is likely to manifest itself in the form of a new Act, this Court is of the opinion that it has a duty and also the jurisdiction to act now itself. The issue ultimately is about the competence of the State to enact the Bill in contra distinction to the actual contents of the Bill. As the intention of the State Government is manifest and clear, this Court is of the opinion that it need not wait till the Bill is actually passed before embarking of an enquiry and coming to the conclusion about the "competency of the legislature to enact". As mentioned earlier, the A.P. State Reorganisation Act 2014 is peculiar and different from the earlier Acts of Reorganisation in the sense that it has clear provisions with regard to the location of the capital. As this is an Act of Parliament, expressed in clear language, this Court is of the opinion that it cannot be reopened or re-legislated upon. Even the opinion of the Union of India that the location of the capital is State's prerogative is based upon the earlier Reorganisation Acts. The present Reorganisation Act is different. Lastly, the stand of the Union of India is not the conclusive

factor as this Court is the final arbiter on all issues of law / interpretation of law.

459) Sri P.B.Suresh, learned counsel for the petitioners, filed written submissions on 28.01.2022 reiterating the contentions and relied on three judgments of the Apex Court in "***J.P.Bansal v. State of Rajasthan***[174]" "***Mahendra Lal Jaini v. State of Uttar Pradesh***[175]" and "***State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga***[176]". Whereas, Sri Sri Unnam Muralidhar Rao reiterated the contentions while submitting that the repeal Act No.11 of 2021 is a conditional legislation as the State is intending to reintroduce the bill after due consultations with the stakeholders as per the statement of objects and reasons of Repeal Act and reserved its right to introduce the bill afresh to overcome the legal impediments. When such conditional legislation is passed repealing the earlier Act Nos.27 and 28 of 2020 by Act No.11 of 2021, this Court can decide such issue. Learned counsel for the petitioners relied on judgments of the Apex Court referred above. On the strength of the principles laid down in the above judgments, they contended that the Court can examine the issue of enacting any law for shifting, trifurcating, bifurcating capital though the Act Nos.27 and 28 of 2020 repealed and restored the APCRDA Act, 2014 by Act No.11 of 2021, in view of the reservation of the right by the State to introduce the bill after due consultations etc.

460) Undoubtedly, there are conflicting judgments on this issue regarding power to decide such issue of legislative competency to

[174] (2003) 5 SCC 134
[175] 1963 Supp (1) SCR 912
[176] AIR 1952 SC 252

introduce any bill proposing to shift, bifurcate, or trifurcate the capital, but in view of reservation of the right by the State to introduce the bill after due consultations in view of the law declared by the two Full Bench judgments of the High Court of Andhra Pradesh in "***Andhra Pradesh Power Diploma Engineers' Association vs. Andhra Pradesh State Electricity Board***", and "***Government of A.P. v. Medwin Educational Society***" (referred supra) including the judgment of the Privy Council in "***Attorney-General of Hong Kong and Another v Rediffusion (Hong Kong) Ltd.,"*** (referred supra), this Court is bound to decide such issue.

461) In "***Municipal Committee, Patiala v. Model Town Residents Association***[177]" the Apex Court observed that "the Constitution is filled with provisions that grant Parliament or to State legislatures specific power to legislate in certain areas. These granted powers are of course subject to constitutional limitations that they may not be exercised in a way that violates other specific provisions of the Constitution. Nothing in the text, history or structure of the Constitution remotely suggest the High Courts jurisdiction under Article 226 of the Constitution should differ in this respect - that invocation of such power should magically give High Court a free ride through the rest of Constitutional document. If such magic were available the High Court could structure, restructure legislative enactments. The possibilities are endless. The Constitution makers cannot be

[177] (2007) 8 SCC 669

charged with having left open a path to such total obliteration of Constitutional enterprise."

462) In any view of the matter, by passing the legislation, still, the State is asserting its legislative competency to take such decision. Conveniently, the State has withdrawn the Act Nos.27 and 28 of 2020 by passing repeal Act No.11 of 2021 without inviting a verdict from the Court for the reasons best known to them and made it clear in the repeal Act No.11 of 2021 that there was no sufficient consultations with the Stakeholders and they are proposing to introduce bill after consultation with all stakeholders for decentralisation of administration. Thus, the State is again asserting its legislative competency to take such decision again. Therefore, the petitioners insisted this Court to record a finding about the competency of the State legislature to make any law for shifting, bifurcating or trifurcating the capital.

463) In view of the law declared in the judgments (referred supra), we are of the considered view that it is appropriate to decide the issue of legislative competency of the State legislature to enact such laws, more particularly decentralisation of administration accepting the contention of the petitioners while rejecting the contention of the learned counsel for the respondents.

464) Indisputably, the Andhra Pradesh Reorganisation Act, 2014 was passed in exercise of powers conferred on the Parliament by Article 3 and 4 of the Constitution of India bifurcating the State of Andhra Pradesh into the State of Telengana and the State of Andhra Pradesh. Therefore, the Parliament enacted the Andhra Pradesh Reorganisation Act,

2014, which is a complete code by itself regulating the procedure of bifurcation of employees, water, power etc. Thus, the power is conferred on the Parliament to create a new State i.e. Telangana separating from Andhra Pradesh while treating Andhra Pradesh as residuary State. Article 4 of the Constitution of India conferred power on the Parliament to admit new States or alter boundaries etc., and to make all consequential changes in the Constitution, including provisions as to the representation of such States in Parliament, and in the State Legislatures, without going through the special provisions for amendment provided in Article 368 of the Constitution of India.

465) The expression 'supplemental, incidental and consequential provisions' employed in Article 4 of the Constitution of India is wide enough to include provisions relating to the setting up of the legislature, executive and judicial organs of the State, formed under Articles 2 and 3 essential to the effective administration of that State under the Constitution, expenditure and distribution of revenue, apportionment of assets and liabilities, provisions as to services, application and adaptation of laws, transfer of proceedings and other related matters. (Vide: ***Mangal Singh vs. Union of India*** *(referred supra)*) These may not necessarily be consequential to the amendment of the First or the Fourth Schedule. Of course, the power to make such supplemental provisions is not to override the constitutional scheme and would not go to the length of including a power to abolish any of the organs of the State altogether.

466) Article 246 of the Constitution of India deals with powers of Parliament and State legislature to enact laws with respect to any of the matters enumerated in List I, II and III in the seventh schedule. Therefore, source of power to make laws either by the State legislature or by the Parliament is only Article 246 read with Seventh schedule List I, List II and List III.

467) In "***Bimolangshu Roy (Dead) through L.Rs. vs. State of Assam***[178]" the Apex Court held that the authority to make law flows not only from an express grant of power by the Constitution to a legislative body but also by virtue of implications flowing from the context of the Constitution is well settled by the various decisions of the Supreme Court of America in the context of American Constitution. A principle which is too well settled in all the jurisdictions where a written Constitution exists.

468) The US Supreme Court also recognised that the Congress would have the authority to legislate with reference to certain matters because of the fact that such authority is inherent in the nature of the sovereignty. The doctrine of inherent powers was propounded by Justice Sutherland in the context of the role of the American Government in handling foreign affairs and the limitations thereon. (Vide: ***United States v. Curtiss-Wright Export Corporation***[179])

469) In substance, the power to make the legislation flows from various sources: (1) express text of the Constitution; (2) by

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[178] (2018) 14 SCC 408
[179] 81 L. Ed. 255

implication from the scheme of the Constitution; and (3) as an incident of sovereignty.

470) Unlike the American Constitution, the Apex Court chose to adopt a Constitution which regulates and structures not only the authority of the federal government but also the components of the Federation (States and now19 even the local bodies). Coming to the question of the authority of the legislatures (Federal and State), the Apex Court is of the opinion that analysis adopted by the US Supreme Court is equally good for our Constitution with appropriate modifications, because there are areas where the two Constitutions differ substantially.

471) The principle that the power to legislate under the Indian Constitution can flow from various sources is recognised by the Apex Court in "***Synthetics and Chemicals Ltd. vs. State of U.P.***[180]" that

> "... The power to legislate is given by Article 246 and other Articles of the Constitution"

The Apex Court further held that the power to legislate does not flow from a single Article of the Constitution.

472) Article 246 is one of the sources of authority to legislate under the Constitution of India. It declares that Parliament and the legislatures of the various states have the "power to make laws with respect to any of the matters enumerated" in each of the three lists contained in the Seventh Schedule. It also makes clear that the power of the Parliament is exclusive with respect to List I and that of the State Legislature with respect to List II. List

[180] (1990) 1 SCC 109

III indicates various fields over which both the Parliament as well as the State legislatures would have authority to legislate concurrently subject of course to the discipline under Article 254 of the Constitution of India.

473) Apart from declaration contained in Article 246, there are various other Articles of the Constitution which confer authority to legislate either on the Parliament or on a State legislature, as the case may be in various circumstances. For example, Article 3 authorises the Parliament to make a law either creating a new State or extinguishing an existing State. Such a power is exclusively conferred on the Parliament.

474) The entire procedure for enactment of laws by the State Legislature and Parliament is explained in the above judgment, which decides the legislative competency.

475) In "***Zameer Ahmed Latifur Rehman Sheikh vs. State of Maharashtra***[181]**"** the Apex Court held that one of the proven methods of examining the legislative competence of a legislature with regard to an enactment is by the application of the doctrine of pith and substance. This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its

[181] (2010) 5 SCC 246

scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme. This doctrine is an established principle of law in India recognized not only by this Court, but also by various High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the Court has to look to the substance of the State Act and on such analysis and examination, if it is found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on any of the matters enumerated in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the matters in the Union List.

476) The Apex Court further opined that it is common ground that the State Legislature does not have power to legislate upon any of the matters enumerated in the Union List. However, if it could be shown that the core area and the subject-matter of the legislation is covered by an entry in the State List, then any incidental encroachment upon an entry in the Union List would not be enough so as to render the State law invalid, and such an incidental encroachment will not make the legislation ultra vires the Constitution.

477) In "***Bharat Hydro Power Corporation Ltd. v. State of Assam***[182]**"** the doctrine of pith and substance came to be

[182] (2004) 2 SCC 553

considered, when after referring to a catena of decisions of the Apex Court on the doctrine it was laid down as under:

> "*It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of another legislature. This may result in a large number of statutes being declared unconstitutional because the legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged on the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the courts have evolved the doctrine of 'pith and substance' for the purpose of determining whether it is legislation with respect to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the substance of the enactment falls within the Union List then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. This doctrine came to be established in India and derives its genesis from the approach adopted by the courts including the Privy Council in dealing with controversies arising in other federations. For applying the principle of 'pith and substance' regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions. For this see "Southern Pharmaceuticals & Chemicals vs. State of Kerala[183]"; "State of Rajasthan vs. G. Chawla[184]"; "Amar Singhji v. State of Rajasthan[185]"; "Delhi Cloth and General Mills Co. Ltd. v. Union of India[186]" and "Vijay Kumar Sharma v. State of Karnataka[187]". In the last-mentioned case it was held:*
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> *'(3) Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the entries in the Central List the*

[183] (1981) 4 SCC 391
[184] AIR 1959 SC 544
[185] AIR 1955 SC 504
[186] (1983) 4 SCC 166
[187] (1990) 2 SCC 562

constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential."

478) In "***State of Gujarat vs. Shantilal Mangaldas***[188]**"** the counsel before the Apex Court urged that the object of the Town Planning Act in pith and substance is to facilitate planned development, to ensure healthy surroundings to the people living in congested localities and to provide them with sanitation and other urban facilities conducive to healthy living and on that account is an Act falling within Entry 6 of List II of the Seventh Schedule-"Public health and sanitation", and Entry 20 of List III-"Economic and social planning". But the competence of the Legislature to enact legislation on the subject matter of the Act and for the object intended to be served thereby are irrelevant in determining whether any fundamental right of a person is infringed by the impugned! Act. The doctrine of pith and substance is applicable in determining whether a statute is within the competence of the legislative body, especially in a federal set up, where there is division of legislative powers : it is wholly irrelevant in determining whether the statute infringes any fundamental right.

479) On considering the submission of learned counsel therein, the Apex Court held that it is common ground that a law for compulsory acquisition of property by a local authority for public purposes is a law for acquisition of property by the State within the meaning of that expression as defined in Article 12. The Act

[188] 1969 (1) SCC 509

was reserved for the consideration of the President and received his assent on August 1, 1955, and since it provides expressly by Section53(a) that on the coming into force of the scheme the ownership in the lands required by the local authority for public purposes shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encumbrances, the clause contemplates transfer of ownership by law from private owners to the local authority. The Act is, therefore a law for compulsory acquisition of land. The Apex Court finally concluded as follows:

> "We are also unable to agree with counsel for the State that because the object of the Act is intended to promote public health, it falls within the exception in Article 31(5)(b)(ii). The question is now settled by a recent judgment of this Court; "***Deputy Commissioner & Collector, Kamrup vs. Durga Nath Sharma***[189]". This Court in Durga Nath Sharma's case held that the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act 6 of 1955 which provided for the acquisition of land on payment of compensation in accordance with the principles in Section6 of that Act was a purely exproprietary measure, and being a law for acquisition of land, though for prevention of danger to life and property, was not protected by Article 31(5)(b)(ii). It was observed at p. 574 :
>
> A law authorising the abatement of a public menace by destroying or taking temporary possession of private properties if the peril cannot be abated in some other way can be regarded as a law for promotion of public health or prevention of danger to life or property within the purview of Clause (5)(b)(ii). But it is not possible to say that a law for permanent acquisition of property is such a law. The object of the acquisition may be the opening of a public park for the improvement of public health or the erection of an embankment to prevent danger to life or property from flood. Whatever the object of the "acquisition may be, the acquired property belongs to the State.... Clause (5)(b)(ii) was intended to be an exception to Clause (2) and must be strictly construed. Acquisition of property for the opening of a public park or for the erection of dams and embankments were always made under the Land

[189] [1968] 1 SCR 561

Acquisition Act, and it could not have been intended that such acquisition could be made under laws coming within the purview of Clause (5)(b)(ii) without payment of compensation."

480) In "***P. Vajravelu Mudaliar vs. Special Deputy Collector, Madras and Others***" (referred supra) the Apex Court while dealing with validity of land acquisition law referred the principle laid down in "***Gajapati Narayan Deo vs. The State of Orissa***[190]", wherein the Apex Court explained the doctrine thus :

"It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power."

"Such transgression may be patent, manifest or direct, but it may also be disguised, covert or indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements."

481) The Apex Court again explained the said doctrine in "***Gullapalli Nageswara Rao vs. Andhra Pradesh State Road Transport Corporation***[191]" thus :

"The legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the Constitution. The legislature cannot over-step the field of its competency, directly or indirectly. The Court will scrutinize the law to ascertain whether the legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant."

[190] [1954]1SCR1
[191] [1959] Supp.1 S.C.R. 319

482) The Apex Court further held that when a Court says that a particular legislation is a colourable one, it means that the Legislature has transgressed its legislative powers in a covert or indirect manner; it adopts a device to out step the limits of its power. Applying the doctrine to the instant case, the Legislature cannot make a law in derogation of Article 31(2) of the Constitution. It can, therefore, only make a law, of acquisition or requisition by providing for "compensation" in the manner prescribed in Article 31(2) of the Constitution. If the Legislature, though ex facie purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property without paying compensation for it, it will be exercising power which it does not possess. If the Legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all, one can easily hold that the Legislature made the law in fraud of its powers. Briefly stated the legal position is as follows : If the question pertains to the adequacy of compensation, it is not justiciable; if the compensation fixed or the principles evolved for fixing it disclose that the legislature made the law in fraud of powers in the sense we have explained, the question is within the jurisdiction of the Court.

483) Turning to the facts of the present case, the contention of the petitioners is that when the Parliament passed the Andhra Pradesh Reorganisation Act, 2014 separating Common State of Andhra Pradesh into two states i.e. Telangana State and residuary State of Andhra Pradesh, made it clear under Section5 that on and from the appointed day, Hyderabad in the existing State of Andhra Pradesh shall be the common capital of the State of Telangana and the State of Andhra Pradesh for such period not exceeding 10 years, and after the expiry of the 10 years, Hyderabad shall be the capital of the State of Telangana and there shall be a new capital for the State of Andhra Pradesh. At the same time, Section6 of the Andhra Pradesh Reorganisation Act, 2014 permits the Central Government to constitute an expert committee to study various alternatives regarding the new capital for the successor State of Andhra Pradesh and make appropriate recommendations in a period not exceeding six months from the date of enactment of the Andhra Pradesh Reorganisation Act, 2014.

484) Article 4 of the Constitution of India did not specify what are the subjects included in “supplemental, incidental or consequential provisions”. Therefore, the Constitution of India is silent on certain aspects, and in fact the Constitution of India does not deal with the capital of the State except capital of India. Thus, the Constitution of India is silent with regard to the power of the Parliament or State to fix the capital on bifurcation/separation. Therefore, such non-disclosure of subjects covered by “supplemental, incidental or consequential provisions” employed in Article 4 can be described as

'constitutional silence'. In such case, the Courts duty is to interpret Constitutional provisions to achieve the real objective of constitutional provisions by applying various methods of interpretation.

485) Achieving an idealistic perfection tends to make constitutions rigid. There will always remain some areas which are either deliberately left unaddressed or inadvertently left so. These gaps in the constitution are called constitutional silence. Constitutions are evolutionary and thus silence therein is inevitable. Thus in simple words, silences can be said to be interpreting what was omitted when a constitution was enacted, but it was not what the framers would have rejected. Silences in Constitutions have been termed by many experts as "gaps and abeyances". It is a method of adjudication.

486) Constitutional silences are bound to occur, even if constitutions are regarded as exhaustive one, like the Indian Constitution.

> *"Silence will occur even when designers, have engaged in what they believe is a careful enumeration"*

487) Silences and abeyances enable pragmatism, ensure inclusiveness for future ideas and ensure deliberations.

488) Judiciary plays a crucial role in interpreting Silences in the constitution since it is the final interpreter of constitutional provisions. It is the role of courts primarily the Supreme court of India to fill the gaps and abeyances through its interpretation. However, at the same time, it has to ensure that it does not result in judicial legislation. Although in extreme cases where

there is a legislative vacuum, the courts have cautiously resorted to lawmaking to a certain extent.

489) It is the duty of Constitutional courts to interpret the constitutional text with the normative, substantive conception of justice. Constitutional despotism reduces constitutional law to merely "*a set of ultimate commands whose only function is to resolve conflicting commands within the law*". It is against the living tree doctrine which treats the constitution as a living document which changes with time to be inclusive as much as possible.

490) The Hon'ble Apex Court used the doctrine of constitutional silence to expand the ambit of rights and to make democracy substantive. It has kept in mind the constitutional morality while dealing with silence. However, courts must keep in mind that interpreting silence must be done from an objective sense and should not be based on subjective satisfaction i.e. on the subjective understanding of the judge. This is because the purpose of courts is not to make law but to declare it.

491) Elimination of silences in the constitution depends to a great degree on what type of interpretation the courts employ, most prominent among then are purposive (what the purpose of the law was) and liberal interpretation, which is in contrast to strict textual interpretation i.e. going by what the text of the law says. Further, most of the provisions of the constitution like fundamental rights have no fixed content and are silent on many aspects. Fundamental rights have been described as empty vessels into which each generation pours its content by judicial interpretation.

492) Mr.Shyam Divan, learned senior counsel for the petitioners relied on "***Mangal Singh vs. Union of India"*** (referred supra), wherein the Apex Court dealt with Articles 2, 3 and 4 and analysed the words "supplemental, incidental or consequential provisions" and observed as follows:

> "6. By Article 2 the Parliament may by law admit into the Union or establish new States on such terms and conditions as it thinks fit; and Art. 3 provides that the Parliament may by law -
>
> (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
>
> (b) increase the area of any State;
>
> (c) diminish the area of any State;
>
> (d) alter the boundaries of any State;
>
> (e) alter the name of any State.
>
> Any law referred to in Article 2 or Article 3 shall, it is provided by Article 4(1), contain such provision for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary. By clause (2) of Article 4 it is provided:
>
> "No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Articles 368".
>
> The law referred to in Articles 2 and 3 may therefore alter or amend the First Schedule to the Constitution which sets out the names of the States and description of territories thereof and the Fourth Schedule allotting seats to the States in the Council of States in the Union Parliament. <u>The law so made may also make supplemental, incidental and consequential provisions which would include provisions relating to the setting up of the legislative, executive and judicial organs of the State essential to the effective State administration under the Constitution, expenditure and distribution of revenue, apportionment of assets and liabilities,</u>

> provisions as to services, application and adaptation of laws, transfer of proceedings and other related matters. On the plain words of Article 4, there is no warrant for the contention advanced by counsel for the appellants that the supplemental, incidental and consequential provisions, which by virtue of Article 4 the Parliament is competent to make, must be supplemental, incidental or consequential to the amendment of the First or the Fourth Schedule. The argument that if it be assumed that the Parliament is invested with this wide power it may conceivably exercise power to abolish the legislative and judicial organs of the State altogether is also without substance. We do not think that any such power is contemplated by Art. 4. Power with which the Parliament is invested by Arts. 2 and 3, is power to admit, establish, or form new States which conform to the democratic pattern envisaged by the Constitution; and the power which the Parliament may exercise by law is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the Constitution, and is not power to override the constitutional scheme. No State can therefore be formed, admitted or set up by law under Article 4 by the Parliament which has not effective legislative, executive and judicial organs."

493) It is clear from the paragraph No.6 of the judgment extracted above, the Parliament alone is competent to deal with setting up of legislature, executive and judicial organs of the State and it is implicit in the language employed in Article 4 of the Constitution of India i.e. "supplemental, incidental or consequential provisions". Therefore, it is for the Parliament to set up three organs of the State i.e. legislature, executive and Judiciary, which are essential to the State administration. Thus, it is made clear that the words "supplemental, incidental or consequential provisions" include establishment of legislature, executive and judiciary. By applying the principles laid down in the above judgment, we safely hold that the power is vested on the Parliament to set up legislature, executive and judiciary, but not the State legislature. Learned Advocate General also would draw the attention of this Court to the judgment of the Apex

Court in ***Swaran Lata vs. Union of India*** *(*referred supra), where the Apex Court while dealing with the provision relating to allotment of employees held as follows:

"While it is not disputed that the power to regulate matters relating to services under the Union of India and under the various States specified in the First Schedule to the Constitution is an exclusive function of the Union and the States under Entry 70, List I and Entry 41, List II of Seventh Schedule read with Article 309 and normally, therefore, it is the exclusive power of the Union and the States to deal with their services either in exercise of their Legislative functions or rule-making powers, or in the absence of any law or rules, in exercise of their executive power under Article 73 and Article 162 of the Constitution, which is co-extensive with their legislative powers to regulate recruitment and conditions of service, nevertheless it is strenuously urged that this power of the Union and of the States which embraces within itself the power to regulate the mode of recruitment of services must yield to the supplemental, incidental or consequential directions issued by the Central Government in relation to the setting up of services in a newly formed State under a law made by the Parliament relatable to Article 3 of the Constitution, in the context of reorganisation of States. To put it more precisely, it is argued that the newly formed State is completely divested of its power to deal with its services. In "***Union of India v. P.K. Roy***[192]" this Court touched upon the subject, but expressed no final opinion since the question did not directly arise.

After the process of integration of services is finalized in conformity with any law made by the Parliament referred to in Articles 2 or 3 of the Constitution, the supplemental, incidental and consequential provisions contained therein, which, by reason of Article 4 have the effect to divest the newly formed State of its power to deal with its services, would no longer operate. Such power is only kept under suspended animation till the process of re-organisation of services is not completed. Once the integration of services in a newly formed State is finalized, there is no reason for a transitory, consequential or incidental provision like Section84 of the Act to operate in perpetuity.

For the reasons already stated, there is no basis for the submission that the supplemental, incidental or consequential provisions which the Parliament is competent to make while enacting a law under Articles 2 or 3 have an overriding effect for all times. On the plain words of Article 4 of the

[192] (1970)ILLJ633SC

Constitution, a provision like Section84 of the Act, or the directions issued thereunder are only supplemental incidental or con-sequential to the scheme of re-organisation of services, which is consequential upon the re-organisation of a State. They cannot be given a wider effect than what is intended."

494) Learned Advocate General also relied on "***Rai Sahib Ram Jawaya Kapur vs. The State of Punjab***[193]" where the Apex Court observed that it may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of executive are limited merely to the carrying out of these laws.

[193] AIR 1955 SC 549

The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of law and order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State, and held as follows:

> "Suppose now that the Ministry or the executive Government of a State formulates a particular policy in furtherance of which they want to start trade or business. Is it necessary that there must be a specific legislation legalising such trade activities before they could be embarked upon ? We cannot say that such legislation is always necessary. If the trade or business involves expenditure of funds, it is certainly required that Parliament should authorise such expenditure either directly or under the provisions of a statute. What is generally done in such cases is, that the sums required for carrying on the business are entered in the annual financial statement which the Ministry has to lay before the House or Houses of Legislature in respect of every financial year under article 202 of the Constitution. So much of the estimates as relate to expenditure other than those charged on the consolidated fund are submitted in the form of demands for grants to the legislature and the legislature has the power to assent or refuse to assent to any such demand or

assent to a demand subject to reduction of the amount (Article 203). After the grant is sanctioned, an Appropriation Bill is introduced to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants thus made by the Assembly (article 204). As soon as the Appropriation Act is passed, the expenditure made under the heads covered by it would be deemed to be properly authorised by law under article 266(3) of the Constitution."

495) Learned Advocate General also relied on "***State of Bihar v. Bihar Distillery Limited***[194]" where the Apex Court referred to the perspective observations of Lord Denning in "Seaford Court Estates Ltd. v. Asher (1949) 2 K.B. 491", which are as follows:

Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty bf some or other ambiguity, it would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the writer word so as to give 'force and life' to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden.... Put

[194] (1997) 2 SCC 453

into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.

The above observations have been quoted with approval by this Court in a number of decisions. We felt impelled to reproduce them only because of the kind of approach adopted by the High Court in the Judgment under appeal. It helps to remind ourselves of the above observations from time to time.

496) Except the judgment of "***Mangal Singh vs. Union of India"*** (referred supra), other judgments are on different issue other than setting up of Legislature, Executive and Judiciary, which are three organs of the State.

497) In view of the language employed in Article 4 of the Constitution of India employing the words "supplemental, incidental or consequential provisions" includes setting up of legislature, executive and judiciary of the State, which are three organs governing the State is within the powers of Parliament and the State legislature is incompetent to enact any law for setting up those three wings.

498) As discussed above, Article 4 is not clear what is to be included in "supplemental, incidental or consequential provisions", but the Apex Court in "***Mangal Singh vs. Union of India"*** (referred supra) clarified it, even otherwise it is the duty of the Court to interpret such provision either by applying principles of general principles of interpretation or any other modes of interpretation like "doctrine of progressive interpretation" or "doctrine of living tree."

499) The Doctrine of Progressive Interpretation is a special incident that arises in the matter of interpretation of a Constitution, as distinguished from an ordinary statute, is that while an ordinary statute is capable of being amended easily and as often as may be necessary to meet the exigencies of the time, the Constitution is a quasi-permanent instrument which cannot be amended so easily, except where the process of amendment is the same as that for ordinary legislation.

500) When there is special provision in the Constitution of India itself i.e. Article 367, it is easy to interpret any of the clauses invoking Article 367 of the Constitution of India without touching the doctrine of progressive interpretation to meet the exigencies. However, doctrine of living tree theory can be applied to the present situation for the reason that the Constitution of India is known as living document.

501) The Living Tree Doctrine was first recognized in the case of "***Edwards v. Canada***[195]" popularly known as Persons Case where Viscount Sankey stated that the British North American Act planted a living tree in the Constitution on Canada that is capable of growing and expanding in its natural limits. And this came to be known as Doctrine of Progressive Interpretation. This rule made it possible to interpret the Constitution in a way that will reflect the changing needs of the society at large, rather interpreting it only to the extent of the intentions of the framers whose intellectualities more or less might be reflective of a

[195] (1930) A.C. 124

limited knowledge over the needs of that time when the Constitution was actually brought into force.

502) Although in India, very rare expression was given to the Doctrine of Living Tree, the framers of the Constitution of India were aware about the need of making a flexible Constitution to cater the needs of the changing times in future, for which they included Article 368 of the Constitution of India which empowers the legislatures of the land to amend the Constitution whenever needed subject to necessary conditions as specified in the said Article. At the same time, the Indian Judiciary has also given a broad interpretation and has extended the scope of the Constitution by including new concepts and suggesting new amendments to the Constitution. Since the Supreme Court of India has been entrusted with the role of being the Custodian of the Constitution, it has therefore been able to provide the widest possible interpretation to various provisions of the Constitution in deciding several cases before the Court.

503) Even by applying "doctrine of living tree", the interpretation placed on record by the learned counsel for the petitioners, in view of the law declared in "***Mangal Singh vs. Union of India"*** (referred supra) it can safely be held that the establishment of three organs of the State i.e. legislature, executive, and judiciary are part and parcel of the "supplemental, incidental or consequential provisions" employed in Article 4 of the Constitution of India and the Parliament alone is competent to undertake such exercise, but not the State legislature.

504) As discussed above, except Article 4 of the Constitution of India, no other provision in the Constitution of India, including Entries in List I, II, III of Seventh Schedule read with Article 246 and Article 38 of the Constitution of India are applicable for passing any legislation by the Parliament and thus the State has no authority to make such legislation under any of the provisions of Constitution of India.

505) One of the contentions of Sri P.B.Suresh, learned counsel for the petitioners, is that though the parliament is vested with power to make such legislation for establishment of three organs, still, such power can be exercised by the State on delegation of power under Article 258 (2) of the Constitution of India, that is how the APCRDA Act, 2014 was passed and framed the Land Pooling Rules, 2015.

506) The facts on record i.e. approval of passing of legislation i.e. APCRDA Act, 2014 and taking up the land under the Land Pooling Scheme framed under the APCRDA Act, 2014, payment of Rs.15000 crores for capital city and region development is sufficient to conclude that the parliament delegated power to State under Article 258 (2) of the Constitution of India, which is a one time delegation. Hence, the contention of the learned counsel for the petitioners is accepted while rejecting the contention of the learned Advocate General and other counsel appearing for the respondents.

507) In view of our foregoing discussion, we hold that the State Legislature lacks competence to make any legislation for shifting, bifurcating or trifurcating the capital and Heads of Departments of the three wings of the Government including the High Court to

any area other than the Capital city notified under Section3 of the Andhra Pradesh Capital Region Development Authority Act, 2014 and the land pooled under the Andhra Pradesh Capital City Land Pooling Scheme (Formation and Implementation) Rules, 2015.

508) In view of our foregoing discussion and findings on Point Nos. 1 to 10, we sum up the findings as follows:

a) The Agreement in Form-9.14 is a Development Agreement-cum-Irrevocable General Power of Attorney and it is a statutory contract, and the violation of terms and conditions by the respondents - State and APCRDA, warrants interference of this Court, while exercising power under Article 226 of the Constitution of India, to issue appropriate directions.

b) Similarly, the petitioners basing on the representation of the State and APCRDA that a capital city and capital region will be developed in the land pooled, they parted with their livelihood i.e. agricultural land which is the only source of their livelihood, voluntarily surrendered to the State and APCRDA with a hope that a capital city will be constructed within the notified area while developing capital region strictly adhering to the APCRDA Act and Land Pooling Rules, 2015, within the time limit. Thus, they altered their position. The inaction of the State and APCRDA as on the date of filing the writ petitions i.e. failure to develop the capital city and capital region as agreed in terms of Form 9.14 Development Agreement-cum-Irrevocable General Power of Attorney, is

nothing but a deviation from the promise made by the State, defeating legitimate expectation.

c) Since the petitioners have no remedy elsewhere, more particularly, before a civil court or any other authority in terms of Development Agreement-cum-Irrevocable General Power of Attorney in Form 9.14, they are entitled to approach this Court for redressal. Moreover, the reason pleaded by the respondents – State and APCRDA that public interest overrides the Principle of Estoppel and Legitimate Expectation is no more available as on date, in view of repeal of Act Nos.27 & 28 of 2020 by Act No.11 of 2021. At the same time, Propriety Estoppel is also applicable to the present case, as discussed in the earlier paragraphs.

d) When the respondents – State and APCRDA failed to keep up their promise and are acting to defeat the legitimate expectation of the petitioners, the Court can issue appropriate direction to the State and APCRDA, to comply with the terms of Development Agreement-cum-Irrevocable General Power of Attorney in Form 9.14, APCRDA Act, Land Pooling Rules, 2015 while exercising extraordinary power under Article 226 of the Constitution of India.

e) As the respondents – State and APCRDA violated the fundamental rights of the petitioners, as they surrendered their only source of livelihood i.e. agriculture under the Land Pooling Scheme, while

expecting developed reconstituted plots according to their eligibility, the State is under obligation to complete the entire process within three years and thus expired on 2018 itself. Therefore, the respondents – State and APCRDA violated the fundamental right guaranteed under Article 21 and the right to property under Article 300-A of the Constitution of India.

f) When the action of the respondents is arbitrary and violative of Articles 21 and 300-A of the Constitution of India, the Court is under an obligation to protect the right of the poor farmers by exercising power under Article 226 of the Constitution of India and issue appropriate direction(s).

g) As discussed in Point No.5, change of Government is not a ground to change the policy. But the present Government is under statutory legal obligation to complete the projects undertaken by the earlier government, unless they are contrary to any statutory or constitutional provisions. The State shall account for the amount spent on the constructions and other activities undertaken by the earlier government to the public, since Rs.15,000 crores was spent on development activities and for the grounding works worth Rs.32,000 crores. Sudden stoppage of the developmental activities due to an alleged financial crisis or otherwise is impermissible and thereby, the State and APCRDA are held responsible for the total

amount spent on the development activities as on date to the public in general under the Doctrine of Public Trust. When the State and APCRDA failed to maintain the trust and acted against good governance and violated the constitutional trust, the Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India, can issue appropriate direction to complete the development activities including infrastructure in the land pooled within the specified time.

h) At the same time, we hold that the Notified Master Plan cannot be modified suo motu.

i) We also hold that the Legislature has no legislative competence to pass any resolution/law for change of capital or bifurcating or trifurcating the capital city.

j) It is left open to the petitioners to challenge the reports of the various non-statutory committees in any separate proceedings.

In the result,

1. WP (PIL) Nos.177 OF 2020, W.P.Nos.13206, 16634 OF 2020; W.P.Nos.9154, 9528, 10700 OF 2020, are disposed of granting liberty to the petitioners to challenge the reports in any independent writ petition(s), whenever the petitioners find it necessary.
2. WP (PIL) Nos.179 of 2019, WP (PIL) Nos.8, 24, 40, 102, 213 of 2020, W.P.Nos.925, 1207, 4004, 5057 of 2020, are allowed with costs of

Rs.50,000/- (Rupees Fifty Thousands only) each, payable by the respondents to the petitioners.

3. W.P. (PIL) Nos.7, 153 of 2020, W.P.Nos.932, 933, 8472 of 2020, are allowed, while declaring that the State or APCRDA cannot exercise power suo motu to amend or vary Master Plan(s) with costs of Rs.50,000/- (Rupees Fifty Thousands only) each, payable by the respondents to the petitioners,
4. W.P. (PIL) No.121 of 2020 & W.P.No. 1388 of 2020, are allowed with costs of Rs.50,000/- (Rupees Fifty Thousands only) each, payable by the respondents to the petitioners.
5. While declaring that the A.P. State Legislature has no legislative competence to enact any law for shifting the three organs of the State, we find it appropriate to issue continuous mandamus with the following directions, while keeping the W.P.Nos.13203, 13204, 13205, 13521, 13645, 13665, 13666, 13887, 13919, 13925, 13966, 13983, 14003, 14053, 14054, 14282, 14338, 14768, 14897, 14996, 15035, 15094, 15097, 16514, 16830, 16840 OF 2020; W.P. (PIL) Nos.184, 185, 200, 201, 208, 209, 215, 217, 230, 235, 236, 239, 253, 256 OF 2020, pending for further direction(s).
6. Interim directions issued earlier in pending writ petitions shall continue to operate until further orders.

In view of the findings summed up above, we issue a continuous mandamus with following directions:

1) The State and APCRDA are directed to discharge their duties enshrined under Schedule II and III and Land Pooling Rules, 2015;

2) The State and APCRDA are directed not to alienate/mortgage or create any third party interest on the land pooled, except for the construction of capital city or development of capital region;

3) The State and APCRDA are directed to complete the process of development and infrastructure in the Amaravati Capital City and Region providing basic amenities like roads, drinking water, drainage, electricity in terms of Section58 of APCRDA Act read with Rule 12(6) of Land Pooling Rules, 2015 within one month from the date of this order.

4) The State and APCRDA are directed to complete the Town Planning Schemes as per Section 61 of APCRDA Act.

5) The State is directed to construct and develop Amaravati capital city and capital region within six months time, as agreed in the terms and conditions of Development Agreement-cum-Irrevocable General Power of Attorney in Form 9.14, provisions of APCRDA Act and Land Pooling Rules, 2015.

6) The State and APCRDA shall develop the reconstituted plots belonging to land owners in Amaravati capital region by providing approach roads, drinking water, electricity connection to each plot, drainage etc. to enable the same to be fit for habitation in the Amaravati Capital city.

7) The State and APCRDA are further directed to deliver/handover the developed reconstituted plots in Amaravati capital region, on ground, to the land holders who surrendered their land as promised by the State, within three months from the date of this order.

The State and APCRDA are directed to file separate affidavit(s) with regard to progress of development in terms of direction issued herein above.

JUSTICE PRASHANT KUMAR MISHRA

JUSTICE M. SATYANARAYANA MURTHY

JUSTICE D.V.S.S. SOMAYAJULU

Date: 03.03.2022

Note: LR copy to be marked.

B/o

KSP/KLP/SSV/SP