

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27<sup>TH</sup> DAY OF SEPTEMBER, 2023

PRESENT

THE HON'BLE MR.PRASANNA B.VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE M.G.S.KAMAL

WRIT APPEAL No.890 OF 2022 (LA-KIADB)

C/W

WRIT APPEAL No.892 OF 2022 (LA-KIADB)

AND

WRIT APPEAL No.1070 OF 2022 (LA-KIADB)

WRIT APPEAL No.890 OF 2022

**BETWEEN:**

BANGALORE METRO RAIL  
CORPORATION LIMITED,  
3<sup>RD</sup> FLOOR, BMTc COMPLEX,  
K.H. ROAD, SHANTHINAGAR,  
BANGALORE-560 027  
REP. BY (HENNAPPA GOUDER M.S.,  
GENERAL MANAGER.

... APPELLANT

(BY SRI. DHANANJAY V. JOSHI SENIOR ADVOCATE FOR  
SRI. VACHAN H.U., ADVOCATE)

**AND:**

1 . M/S SRI. BALAJI CORPORATE SERVICES  
A PARTNERSHIP FIRM  
HAVING ITS OFFICE AT  
PLOT NO.12,  
EOIZ INDUSTRIAL AREA,  
WHITEFIELD MAIN ROAD,  
BENGALURU-560 066  
REPRESENTED BY ITS PARTNER,

SRI. K. KUPPUSWAMY,  
AGED ABOUT 64 YEARS.

- 2 . NCC URBAN INFRASTRUCTURE LIMITED  
A SUBSIDIARY OF NCC LIMITED,  
FORMERLY KNOWN AS  
NAGARJUNA CONSTRUCTION CO LTD.,  
HAVING REGIONAL OFFICE AT  
NCC URBAN WINDSOR,  
3<sup>RD</sup> FLOOR,  
OPPOSITE JAKKUR AERODROME,  
NEW AIRPORT ROAD,  
BENGALURU-560 064  
REPRESENTED BY ITS DIRECTOR,  
MR. J.S.R RAJU.
- 3 . UNION OF INDIA MINISTRY OF FINANCE,  
DEPARTMENT OF REVENUE 146-C,  
NORTH BLOCK,  
NEW DELHI-110 001  
REPRESENTED BY  
ITS SECRETARY (REVENUE).
- 4 . CENTRAL BOARD FOR DIRECT TAXES  
GOVERNMENT OF INDIA,  
MINISTRY OF FINANCE,  
DEPARTMENT OF REVENUE,  
ITA-II DIVISION,  
NORTH BLOCK,  
NEW DELHI-110 001.
- 5 . PRINCIPAL CHIEF COMMISSIONER  
OF INCOME TAX  
CENTRAL REVENUE BUILDING,  
QUEENS ROAD,  
BENGALURU-560 032.
- 6 . THE CHIEF COMMISSIONER  
OF INCOME TAX (TDS)  
NO.56, HMT BHAVAN,  
4<sup>TH</sup> FLOOR, BELLARY ROAD,  
GANGANAGAR,  
BENGALURU-560 032.
- 7 . STATE OF KARNATAKA  
REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY/  
PRINCIPAL SECRETARY,

COMMERCE AND INDUSTRIES  
DEPARTMENT AND CHAIRMAN KIADB,  
VIKASA SOUDHA,  
BENGALURU-560 032.

- 8 . KARNATAKA INDUSTRIAL  
AREAS DEVELOPMENT BOARD  
IV AND V FLOORS,  
KHANIJA BHAVAN,  
NO.49, RACE COURSE ROAD,  
BENGALURU-560 001  
REPRESENTED BY ITS  
CHIEF EXECUTIVE OFFICER AND  
EXECUTIVE MEMBER.
- 9 . THE SPECIAL LAND ACQUISITION OFFICER  
(METRO PROJECT)  
KARNATAKA INDUSTRIAL AREAS  
DEVELOPMENT BOARD,  
MAHARSHI ARVIND BHAVAN,  
1ST FLOOR, NRUPATHUNGA ROAD,  
BENGALURU-560 001.

... RESPONDENTS

(BY SRI. BASAVARAJ V. SABARAD, SENIOR COUNSEL FOR  
SRI. P.N. RAJESHWARA, ADVOCATE FOR C/R1 & R2;  
V/O DATED:17.11.2022  
SRI. H. SHANTHI BHUSHAN DSGI FOR R3;  
SRI. E.I. SANMATHI, ADVOCATE FOR R4 TO R6;  
SRI. S.S. MAHENDRA, AGA FOR R7;  
SRI. ASHOK N. NAYAK, ADVOCATE FOR R8 & R9)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT, 1961, PRAYING TO a)ALLOW THE  
PRESENT APPEAL AND SET ASIDE THE SAID IMPUGNED  
JUDGEMENT, DATED:21/04/2022 PASSED BY THE HON'BLE WRIT  
COURT IN WP NO.43206/2018 AND ETC.

**IN WRIT APPEAL No.892 OF 2022**

**BETWEEN:**

BANGALORE METRO RAIL  
CORPORATION LTD.,  
3<sup>RD</sup> FLOOR, BMTc COMPLEX,  
K H ROAD,  
SHANTHINAGAR,

BANGALORE-560 027.

REP. BY ITS GENERAL MANAGER  
SRI. CHANNAPPAGOWDER.

... APPELLANT

(BY SRI. DHANANJAY V. JOSHI SENIOR ADVOCATE FOR  
SRI. VACHAN H.U., ADVOCATE)

**AND:**

1 . L. VENKATARAMANA RAJU  
S/O LATE R.K. RAJU,  
AGED ABOUT 76 YEARS,

2 . SMT V. JAYASHREE  
W/O. L. VENKATARAMANA RAJU,  
AGED ABOUT 67 YEARS,

3 . V. RAMACHANDRA RAJU  
S/O.L VENKTARAMANA RAJU,  
AGED ABOUT 50 YEARS,

4 . V. BADARINARAYANA  
S/O. L. VENKATARAMANA RAJU,  
AGED ABOUT 50 YEARS,

RESPONDENT Nos. 1 TO 4 ARE  
RESIDING AT NO.76,  
RANGA RAO ROAD,  
SHANKRAPURAM,  
BANGALORE.

5 . V. GEETHA  
D/O.L VENKATARAMANA RAJU,  
AGED ABOUT 47 YEARS,  
W/O. M S CHANDRASHEKARA RAJU,  
RESIDING AT FLAT NO.2A,  
KARANJI APARTMENTS,  
WEST ANJANEYA TEMPLE STREET,  
BASAVANAGUDI,  
BENGALURU-560 004.

6 . UNION OF INDIA  
MINISTRY OF FINANCE,  
DEPARTMENT OF REVENUE,

146-C, NORTH BLOCK,  
NEW DELHI - 110 001,  
REPRESENTED BY ITS  
SECRETARY (REVENUE).

- 7 . CENTRAL BOARD FOR DIRECT TAXES  
GOVERNMENT OF INDIA,  
MINISTRY OF FINANCE,  
DEPARTMENT OF REVENUE,  
ITA-II DIVISION, NORTH BLOCK,  
NEW DELHI - 110 001.
- 8 . THE CHIEF COMMISSIONER OF  
INCOME TAX (TDS)  
NO. 56, HMT BHAVAN,  
4<sup>TH</sup> FLOOR, BELLARY ROAD,  
GANGANAGAR,  
BENGALURU 560 032.
- 9 . INCOME TAX OFFICER WARD V (2)(3)  
BANGALORE CIRCLE,  
UNITY BUILDING ANNEXE,  
MISSION ROAD,  
BANGALORE-560 002.
- 10 . STATE OF KARNATAKA  
REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY  
COMMERCE AND INDUSTRIES DEPARTMENT  
VIKASA SOUDHA,  
BENGALURU- 560 032.
- 11 . KARNATAKA INDUSTRIAL AREAS  
DEVELOPMENT BOARD  
4<sup>TH</sup> AND 5<sup>TH</sup> FLOORS, EAST WING  
KHANIJA BHAVAN,  
NO. 49, RACE COURSE ROAD,  
BENGALURU - 560 001.  
REPRESENTED BY ITS CHIEF EXECUTIVE  
OFFICER AND EXECUTIVE MEMBER.
- 12 . THE SPECIAL DEPUTY COMMISSIONER  
KARNATAKA INDUSTRIAL AREAS  
DEVELOPMENT BOARD  
(METRO RAIL PROJECT),  
MAHARSHI ARVIND BHAVAN,  
1<sup>ST</sup> FLOOR, NRUPATHUNGA ROAD,  
BENGALURU - 560 001.

- 13 . THE SPECIAL LAND ACQUISITION OFFICER  
KARNATAKA INDUSTRIAL AREAS  
DEVELOPMENT BOARD  
(METRO RAIL PROJECT),  
MAHARSHI ARVIND BHAVAN,  
1<sup>ST</sup> FLOOR, NRUPATHUNGA ROAD,  
BENGALURU – 560 001.

... RESPONDENTS

- (BY SRI. G.S. PRASANNA KUMAR, ADVOCATE FOR R1 TO 5;  
SRI. MADANAN PILLAI R. CGC FOR R6;  
SRI. S.S. MAHENDRA, AGA FOR R10;  
SRI. ASHOK N. NAYAK, ADVOCATE FOR R11 & R12  
R-13 IS SERVED)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT, 1961, PRAYING TO ALLOW THE  
PRESENT APPEAL AND SET ASIDE THE SAID IMPUGNED  
JUDGMENT DATED:21.04.2022 PASSED BY THE HON'BLE WRIT  
COURT IN WP No.53718/2017 AND ETC.

**IN WRIT APPEAL No.1070 OF 2022**

**BETWEEN:**

- 1 . CENTRAL BOARD OF DIRECT TAXES  
GOVERNMENT OF INDIA,  
MINISTRY OF INDIA,  
DEPARTMENT OF REVENUE,  
ITA-II DIVISION, NORTH BLOCK,  
NEW DELHI – 110 001.
- 2 . UNION OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
146-C, NORTH BLOCK,  
NEW DELHI – 110 001.  
(REPRESENTED BY ITS SECRETARY (REVENUE)).
- 3 . THE PRINCIPLE CHIEF COMMISSIONER  
OF INCOME TAX  
CENTRAL REVENUE BUILDING  
QUEENS ROAD  
BENGALURU – 560 032.

- 4 . THE CHIEF COMMISSIONER  
OF INCOME TAX (TDS)  
NO. 56, HMT BHAVAN,  
4<sup>TH</sup> FLOOR, BELLARY ROAD,  
GANGANAGAR,  
BENGALURU – 560 001.

... APPELLANTS

(BY SRI. SANMATHI E.I., ADVOCATE)

**AND:**

- 1 . M/S SRI. BALAJI CORPORATE SERVICES  
A PARTNERSHIP FIRM,  
HAVING ITS OFFICE AT: PLOT NO. 12,  
EOIZ INDUSTRIAL AREA,  
WHITEFIELD, MAIN ROAD,  
BENGALURU - 560 066.  
(REPRESENTED BY ITS PARTNER  
SRI. K. KUPPUSWAMY,  
AGED ABOUT 68 YEARS
- 2 . M/S. NCC URBAN INFRASTRUCTURE LIMITED  
FORMERLY KNOW AS NAGARJUNA  
CONSTRUCTION CO. LTD.,  
HAVING ITS REGISTERED OFFICE AT:  
NCC URBAN WINDSOR,  
3<sup>RD</sup> FLOOR,  
OPPOSITE JAKKUR AERODROME,  
NEW AIRPORT ROAD,  
BENGALURU – 560 064.  
REPRESENTED BY ITS DIRECTOR,  
MR. J.S.R. RAJU.
- 3 . THE STATE OF KARNATAKA  
REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY  
COMMERCE AND INDUSTRIES DEPARTMENT AND  
CHAIRMAN KIADB,  
VIKAS SOUDHA,  
BENGALURU – 560 001.
- 4 . KARNATAKA INDUSTRIAL AREAS  
DEVELOPMENT BOARD,  
4<sup>TH</sup> AND 5<sup>TH</sup> FLOOR,  
EAST WING, KHANIJA BHAVAN,  
NO. 49, RACE COURSE ROAD,  
BENGALURU – 560 001.

REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER AND EXECUTIVE MEMBER.

- 5 . THE SPECIAL LAND ACQUISITION OFFICER  
(METRO PROJECT),  
KARNATAKA INDUSTRIAL AREAS  
DEVELOPMENT BOARD,  
(METRO RAIL PROJECT)  
MAHARSHI ARVIND BHAVAN,  
1<sup>ST</sup> FLOOR, NRUPATHUNGA ROAD,  
BENGALURU – 560 001.
  
- 6 . BANGALORE METRO RAIL CORPORATION LIMITED  
HAVING ITS OFFICE AT 3<sup>RD</sup> FLOOR,  
BMTc COMPLEX, KH ROAD,  
SHANTINAGAR,  
BANGALORE – 560 027.  
(REPRESENTED BY ITS  
MANAGING DIRECTOR).

... RESPONDENTS

(BY SRI. S.S. MAHENDRA, AGA FOR R3;  
SRI. ASHOK N. NAYAK, ADVOCATE FOR R4 & R5)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER DATED:21.04.2022 IN WRIT PETITION NO.43206/2018 PASSED BY THE HON'BLE LEARNED SINGLE JUDGE AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, **M.G.S.KAMAL J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

These writ appeals arise out of a common order dated 21.04.2022 passed in W.P.No.43206/2018 c/w W.P.No.53718/2017 (LA-KIADB) by which, while allowing

the said writ petitions learned Single Judge granted the following reliefs;

- (a) quashed the award at Annexure-AC dated 25.10.2018 and at Annexure-AD dated 25.10.2018.
- (b) quashed the endorsement at Annexure-S dated 19.09.2018 subject matter of W.P.No.43206/2018.
- (c) quashed Official Memorandum produced at Annexure-A dated 06.10.2017 subject matter of W.P.No.53718/2017 and further directed the respondents to refund the tax deducted at source together with applicable interest from the date of deposit till the date of refund.
- (d) Declared that the respondents are entitled to the compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- (e) Declared that the compensation payable thereof is exempt from payment of income tax and from deduction of tax at source under the Income Tax Act, 1961.
- (f) The appellants and respondent-authorities herein are consequently directed to pass fresh/modified awards and to do all deeds and things as required under the Act, 2013 by granting exemption from tax under Income Tax Act, 1961 within a period of three months from the date of receipt of the copy of the order.
- (g) The appellant and respondent-authorities are also directed to disburse/pay the compensation already deposited by them as per the earlier award and the amount deposited by the appellants before the court was also directed to be released in favour of the respondents.

2. Contempt petition in CCC No.1047/2022 has been filed by the respondents complaining disobedience of the aforesaid order of the learned Single Judge.

3. Since these appeals are filed against the common order involving common facts and issues they are heard together and taken up for common disposal.

4. Brief facts leading to filing of these appeals are that Respondents 1 and 2 in W.A.No.890/2022 claiming to be owners of properties bearing identification No.R1E-235 and No.R1E-235A situated at Sadaramangala Village, Whitefield Main Road, Bengaluru filed writ petition in W.P.No.43206/2018 contending interalia that; the property bearing No.R1E-235 was notified by respondent No.8-Karnataka Industrial Areas Development Board (hereinafter referred to as `KIABD' for short) for acquisition for the purpose of Bangalore Metro Rail Project- Phase-II; that in terms of Preliminary Notification dated 22.09.2015 and the Final Notification dated 04.04.2016 issued under Sections 28(1) and 28(4) of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as `KIAD Act' for short) respectively and that the award dated

25.10.2018 was passed as per Annexure-AC. While property bearing No.R1E-235A was notified in terms of Preliminary notification dated:16.12.2017 and Final Notification dated:25.05.2018; that the General Award in respect of their property was passed on 25.10.2018 as per Annexure-AC & AD respectively.

5. Writ Petition No.53718/2017 filed by respondents 1 and 2 in W.A.No.892/2022 claiming to be owners of property bearing Nos.R1-171 and R1E-171 situated at Hoodi Village, K.R.Puram, Bangalore East Taluk, Bangalore Urban District. That the property No.R1-171 was notified by KIADB for acquisition for the purpose of Bangalore Metro Rail Project –Phase II in terms of Preliminary Notification dated 27.04.2015 and Final Notification dated 29.12.2015. While property No.R1E-171 was acquired vide Preliminary Notification dated 03.07.2017 and Final Notification dated 25.05.2017. That no award has been passed. That however, the KIADB had issued a Official Memorandum dated 06.07.2017 directing payment of compensation under the Land Acquisition Act, 1894 (hereinafter referred to as 'Act, 1894' for short).

6. The main grievance of the respondent Nos.1 and 2/petitioners in these writ appeals relate to quantum of compensation and deduction of income tax at source on the said compensation without granting any exemption from payment of income tax.

7. It was contended by the respondents 1 and 2/petitioners that they are entitled for the compensation under the provisions of Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 (hereinafter referred to as 'Act 2013' for short) which came into force with effect from 01.01.2014. That the act of the appellants granting compensation under Act, 1894 and not paying compensation under Act, 2013 is illegal, arbitrary and discriminatory. That since the payment of Income tax on the compensation is exempted under Section 95 of Act 2013, the deduction of tax at source was illegal, discriminatory and arbitrary and contrary to the provisions of Act, 2013 as well as Income Tax Act, 1961 and the Circular dated 25.10.2016 issued by Central Board for Direct Taxes.

8. The said writ petitions were resisted by the respondent authorities questioning the very maintainability

in view of availability of alternate remedy of seeking enhancement of compensation before the Reference Court. It was contended that the compensation was required to be awarded under Act, 1894 and not under Act, 2013 as the same is not applicable in respect to the acquisition made by KIADB. That the deduction of tax at source was in accordance with provisions of law as no exemption is provided from payment of income tax on the compensation.

9. Considering the rival contentions, learned Single Judge framed following points for his consideration;

*(i) Whether the writ petitions are maintainable in view of the remedy of seeking enhancement of compensation before the reference court being available to the petitioners, who have already sought for such reference?*

*(ii) Whether the petitioners are entitled to compensation under the Land Acquisition Act, 1894 or under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act ,2013, in respect of lands acquired pursuant to preliminary notification issued after 01.01.2014 under Section 28(1) of the Karnataka Industrial Area Development Act, 1966?*

*(iii) Whether the compensation payable in favour of the petitioners is exempted from payment of tax deduction at source and also from payment of income tax in view of Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act ,2013 and Section 194-LA of the Income Tax Act, amended vide Finance Act 67 of 2017 w.e.f 01.04.2017 as well as the CBDP Circular dated 25.10.2016?*

10. Learned Single Judge answered the above points in favour of the respondents/petitioners holding that all awards passed and compensation payable/paid in favour of land losers pursuant to the Notifications issued subsequent to 01.01.2014 would have to be under Act ,2013 and not under Act, 1894. That all awards passed and compensation payable/paid either under award or by way of agreement subsequent to 01.01.2014 in respect of KIADB acquisitions would be exempted from payment of income tax and from deduction of tax at source. Having held thus learned Single Judge allowed the writ petitions by granting the reliefs as noted hereinabove.

11. Being aggrieved by the same, the present appeals in W.A.No.890/2012 and W.A.No.892/2012 are filed by the Bangalore Metro Rail Corporation Limited which was arrayed as respondent Nos.8 in W.P.No.43206/2018 and respondent No.9 in W.P.No.53718/2017 respectively and W.A.No.1070/2022 has been filed by the Central Board of Direct Taxes who has been arrayed as respondent No.2 in the above said writ petitions.

12. Though several grounds have been raised by the appellants in W.A.No.890/2022 and W.A.No.892/2022,

particularly with regard to the effect of amendment to Section 30 of the KIAD Act, in view of the fact that learned Single Judge in the impugned order at paragraph 11.7 having observed that *"the question as to whether amendment to Section 30 of KIAD Act is prospective or retrospective has not been gone into in the present writ petition and the same is left open to be decided in the appropriate case"*, Sri.Dhananjay Joshi, learned Senior counsel appearing for appellants restricted the grounds of appeal to the following propositions by filing a memo dated 03.07.2023.

1. *Whether the appellant is entitled to challenge the determination of compensation by the respondent No.8 -KIADB?*
2. *Whether the impugned Judgment dated 21.04.2022 is contrary to the law laid down by the Hon'ble Supreme Court in Anasuya Bai and followed by this Hon'ble Court in Sri.Ananthaswamy?*
3. *Whether the Hon'ble Writ Court's reliance on Jalaja is sustainable?*
4. *Is the Hon'ble Supreme Court's decision in Nagpur Improvement Trust of any assistance to the Respondent No.1?*
5. *Whether the decisions of this Hon'ble Court in Mahesh and in Jemcy Ponnappa of any assistance to the Respondent No.1?*

13. Adverting to above said propositions, learned Senior Counsel Sri.Dhananjay Joshi submitted that:

13.1 The appellant has *locus standi* to maintain the writ appeal as it is not an allottee of land by the KIADB. That on the other hand, the appellant is a party to the Memorandum of Understanding dated 24.02.2017. That, appellant is a joint Venture Company, incorporated for the purpose of implementing Bangalore Metro Rail Project in Bangalore in which the Central Government and the Karnataka State Government are having equal share holding. That the cost of the project including payment of compensation for the acquired land is to be met by the appellant and that the KIADB is merely a facilitating agency for the purpose of acquiring the land required by the appellant. Thus, he submitted the appellant would be directly affected by any adverse determination of compensation payable for the land acquired for the purpose of the project and is therefore entitled to challenge the same.

13.2 Learned Senior counsel further submitted that in the case of **SLAO, KIADB, Mysore and anr., Vs Anasuya Bai By Lrs and others** reported in **(2017)3 SCC 313** the Hon'ble Apex Court while dealing with the question as to whether the provisions of Act, 2013 are applicable to the acquisition of land made under KIAD Act, 1966 has held that KIAD Act, 1966 is a self contained code and that the provisions of Act, 2013 were not applicable to the acquisition of land under KIAD Act, 1966. That the said law has been followed by a Division Bench of this Court in the case of **Ananthaswamy Vs State of Karnataka and others** in W.A.No.1451/2018 decided on 02.03.2021. Thus he submitted that the conclusion arrived at by learned Single Judge in the impugned order to the effect that the compensation for acquisition of land under KIAD Act, 1966 ought to be determined under the provisions of Act, 2013 is unsustainable.

13.2 Referring to the Judgment of this Court in the case of **Smt.S.Jalaja and others Vs Union of**

**India and others in W.P.Nos.11209-11212/2019**, learned Senior counsel for the appellant submitted that the same has been passed placing reliance on a resolution passed by KIADB deciding to compensate for acquisition of land in terms of the provisions of the Act, 2013 even in respect of those lands acquired under KIAD Act, 1966 after 01.01.2014, the date on which Act, 2013 was brought into effect. He submitted that there is no determination of the question as to whether KIADB, in fact had power and authority to pass such a resolution determining the compensation for acquisition of land under the KIAD Act, 1966. Referring to Sections 5, 13 and 14 of the Act, 1966 learned Senior counsel submitted that there is no power vested with the KIADB to determine the compensation of acquisition of land under the KIAD Act, 1966 and that it is only the State Government under Section 29 of the KIAD Act, 1966 is vested with the power to determine the compensation payable for acquired land. That since the KIADB is only a creature of statute it cannot exercise any power or authority beyond

what is granted thereunder. As such, he submitted that the resolution passed by the Board referred to and relied upon in the case of Jalaja was one without authority of law.

13.3 He also submitted that the decision of the Apex Court in the case of ***Nagpur Improvement Trust Vs Vithal Rao and others*** reported in ***(1973)1 SCC 500*** is of no avail to the case of respondents as the Apex Court at paragraph 28 of the said Judgment as held that when the object of acquisition is the same, there cannot be discrimination in determination of compensation. Referring to the Judgment of the Apex Court in the case of ***Girnar Traders Vs State of Maharashtra reported in (2011)3 SCC 1***, he submitted that the Apex Court has declared that MRTP Act, 1966 is a self contained code and there is no conflict with the Land Acquisition Act, 1894 as the object of said two legislations are different. He also submitted that the Apex Court relying upon the analysis made in the case of Girinar Traders has held in the case of *Anasuya Bai (supra)* that the object of KIAD Act,

1966 is different from Land Acquisition Act, 1894 and there is no conflict between the two legislations. As such, he submitted the decision of Apex Court in the case of *Nagpur Improvement Trust* is of no assistance.

13.4 Adverting to reliance placed on the Judgments of this Court in the case of ***K.V.Mahesh Vs Special Land Acquisition Officer in W.P.No.29636/2019*** decided on 22.07.2019 and in the case of ***Jemcy Ponnappa Vs State of Karnataka in W.P.No.33053/2019*** decided on 16.12.2019, he submitted that in the said decisions there is no discussion of the applicable law or any adjudication on the issue of applicability of provisions of Act, 2013 to the acquisition made under KIAD Act, 1966. Thus, learned Senior counsel submitted that the impugned order passed on the basis of Judgments rendered in the case of *Jalaja, Mahesh* and *Jemcy Ponnappa* are of no consequences. Hence, he seeks for allowing of the appeals by setting aside the impugned order.

14. Sri.Basavaraj Sabarad, learned Senior counsel appearing on behalf of Sri.Rajeswara P.N., learned counsel for respondents 1 and 2 justifying the impugned order submitted that:

14.1 That the appellant has no *locus standi* to question the impugned order as the appellant is not the beneficiary of the notification. That even in the notification it is stated that "the properties mentioned in the following schedule are required by the State Government for the purpose of development of Bangalore Metro Rail Project Phase-II by Karnataka Industrial Areas Development Board." Reliance is placed on the judgment of the Apex Court in the case of **PEERAPPA HANMANTHA HARIJAN AND OTHERS VS. STATE OF KARNATAKA AND ANOTHER** reported in **(2015) 10 SCC 469**.

14.2 That though there is a separate legislation namely the Metro Railways (Construction of Works) Act, 1978 which is a Central Legislation meant for the purpose of construction works relating to the rail projects in the metropolitan

cities, the appellant instead of acquiring the lands under the said Act opted to have recourse through KIAD Act, 1966. Therefore, the compensation to the respondents shall become payable under the provisions of Act, 2013. That since the notifications for acquisition of land in the present case has been issued after 01.01.2014 the date on which Act, 2013 came into force, acquiring authorities cannot be permitted to apply provisions of repealed Land Acquisition Act, 1894 as the same would run contrary to Article 14 of the Constitution of India. Reliance is placed on paragraph 30 of the Judgment of the Apex Court in the case of **NAGPUR IMPROVEMENT TRUST** (*supra*) wherein the Apex Court has held that *if the existence of two acts enables the State to give one owner different treatment from another equally situated, the owner who is discriminated against can claim protection of Article 14. That it is immaterial under which Act and for what purpose the land is acquired as far as land losers are concerned the differential standard of compensation cannot be applied.* He also relied

upon the Judgment of the Apex Court in the case of ***Girnar Traders*** (*supra*) to contend that where the statutes are considered as self contained code, the legislation by incorporation or by reference has no relevance. Consequently the Government had effectuated the enhancement made in LA (Amendment) Act, 1984 to KIAD Act, 1966 without considering legislation by incorporation.

14.3 That since there is no challenge to the impugned order by the state authorities, the same amounts to acceptance of the impugned order. He further submitted that it has been the consistent stand of the authorities that the compensation payable in respect of all acquisitions initiated after 01.01.2014 shall be under Act, 2013 as it had been brought into effect as on that date.

14.4 That the Board being a statutory authority under the KIAD Act, 1966 is fully competent and accordingly it passed the resolution in its 343<sup>rd</sup> meeting held on 27.08.2016

produced at Annexure-AE taking into consideration the position of law as laid down by the Apex Court and the proposed intention of the legislation to give compensation under the Act, 2013. He further submitted that the said resolution has been produced/extracted in the statement of objections filed by KIADB in the case of *Jalaja (supra)* which has been reiterated in the case of ***Smt.Puttalakshamma Vs Union of India and others in W.P.Nos.48824-40/2015.*** He submitted that the said position of the KIADB having been accepted in the proceedings in W.A.No.1105/2019 and connected matters the issue with regard to payment of compensation under Act, 2013 even in the case of land is acquired under KIAD Act, 1966 does not require any further scrutiny. He further submits that pursuant to the orders passed in the case of ***K.V.Mahesh*** and ***Jemcy Ponnappa*** which were passed following the decision in the case of *Jalaja* which in turn had been passed based on the 343<sup>rd</sup> resolution of the Board, compensation has been paid to the claimants thereunder in terms of Act,

2013. He also submitted that in fact contempt proceedings were also initiated and same was dropped as there was compliance in the nature of payment of compensation under Act, 2013.

14.5 Drawing attention of this Court to the contents of Preliminary Notifications dated 15.10.2015 and 15.02.2018 issued under Section 28(1) of the KIAD Act, 1966 he submitted that even the said notifications make it unequivocally clear that the compensation to the land losers would be paid as per provisions contained under Act, 2013.

14.6 Referring to the clause 12 of the MOU learned Senior counsel submitted that it is the obligation of the State Government to bear the entire cost of Land Acquisition and as such appellant has no obligation in this regard and it is therefore not a beneficiary of the acquisition.

14.7 He further submitted that MOU produced by the appellant cannot be considered to be a contract in the eye of law, as the same is not expressed to be made by the President or the

Governor of the State and is not in accordance with Article 299 of the Constitution of India.

14.8 That the appellant has not made out any grounds as to how it is aggrieved by passing of the award by applying the provisions of Act, 2013 and payment of compensation would not come in the way of implementation of the Metro Rail Project. Besides, claim for compensation is a statutory right of the land losers. Hence, he seeks for dismissal of the appeal.

**W.A.No.1070/2022**

15. Sri. E.I.Sanmathi, learned counsel appearing for Central Board of Direct Taxes and another for the appellants in W.A.No.1070/2022 reiterating the grounds urged in the memorandum of appeal submitted;

15.1 that the respondent had never taken a plea before passing of an award that they are entitled for compensation under Act, 2013 and not under the Act, 1894. As such the reliance placed on Circular dated 25.10.2016 issued by CBDT is incorrect as the said circular is applicable

with respect to the awards passed under Act, 2013 only and the same is stipulated under clause 3 of the said circular.

15.2 Referring to proviso to Section 194-LA of the Income Tax Act, 1961 he submitted the same is applicable to Act, 2013 and not under the Act, 1894. He submitted that a conjoint reading of Section 96 of the Act, 2013 and CBDT circular dated 25.10.2016, provisions of Section 194-LA and Section 10(37) of the Income Tax Act, 1961 makes it clear that the compensation payable is only in respect of the award passed subsequent to 01.01.2014 when the Act, 2013 was brought into force as the same would provide for exemption from deduction of Tax.

15.3 That the condition in exemption provision, that is, Section 10(37) has to be strictly construed and no liberal interpretation can be given. He submits that since the award was passed under the old Act, provisions of the Section 96 of the new Act has no application.

15.4 Thus, he submitted the conclusion arrived at by the learned Single Judge providing exemption from payment of income tax and from deduction of tax at source is contrary to Section 96 of the new Act and Section 10(37) of the Income Tax Act and Circular dated 25.10.2016. Hence, seeks for allowing of the appeal.

16. Per contra, Sri. Rajeshwara P.N., learned counsel appearing for the respondent Nos. 1 and 2 justifying the impugned order providing for exemption from payment of tax and deduction of tax at source submitted that the notifications for acquisition of land in the instant case were issued subsequent to 01.01.2014 that is after coming into force of Act, 2013 and in view of specific provision contained under Section 96 of Act, 2013 there cannot be any question of levying tax on the compensation. He further submits that the CBDT Circular dated 25.10.2016 and amendment to the Income Tax Act, 1961 by inserting Section 194-LA are of no consequences since the compensation payable to the petitioner is under the provisions of Act, 2013 which came into effect on and from 01.01.2014.

17. Sri. Ashok Nayak, learned counsel appearing for respondents –KIADB submitted that since the purpose of acquisition of the property is for the formation of Metro Rail Project, the compensation cannot be paid under the New Act. He submitted that the 343<sup>rd</sup> Resolution of the Board was made applicable in the cases of *Jalaja, Mahesh and Jemcy Ponnappa (supra)* as the purpose of acquisition of land under those cases was different than the one in the instant case. Hence, he submitted that the claim of the respondent Nos.1 and 2 for payment of compensation under Act, 2013 on par with the compensation paid in the cases of Mahesh, Jalaja, Jemcy Ponnappa is unjustifiable.

18. Sri. S.S.Mahendra, learned Additional Government Advocate appearing for the State submitted that under the provisions of KIAD Act, 1966 it is the State which is vested with powers to determine and award compensation and no such power is provided to be exercised by the Board. As such, 343<sup>rd</sup> Resolution passed by the Board is without authority. He submitted that the amendment to the KIAD Act namely, Section 30 was brought in only in the year 2022 and the same cannot be

given retrospective effect as in the instant case, the acquisitions were made prior to the said Amendment. Thus he submitted the order impugned is unsustainable.

19. Heard and perused the records.

20. The principal reliefs sought for in the writ petitions is on the premise that in respect of all acquisitions made on and after 01.01.2014 under the KIAD Act, 1966 the compensation and benefits shall be awarded in terms of provisions of Act, 2013 and for the benefit of exemption from payment of income tax on the said compensation amount, as provided under Section 96 of Act, 2013.

21. The basis on which the aforesaid reliefs are claimed by the petitioners is the resolution of KIADB passed in its 343<sup>rd</sup> meeting held on 27.08.2016 to the effect that in respect of acquisition of lands made under KIAD Act, 1966 where preliminary notification is issued on and after 01.01.2014 the compensation shall be paid as per the Act, 2013. That the resolution of the KIADB is nothing but a decision of appropriate Government and is binding on the State Government. That the aforesaid resolution has been taken note of and indeed has been given effect to by this

Court in its decisions in the cases of **Smt.Puttalakshamma, Smt.Jalaja** and followed by the decisions in the cases of **Mahesh** and **Jemcy Ponnappa**. Thus, it is the case of the respondents/petitioners that in view of finality attached to the aforesaid resolution passed by KIADB and which has been given effect to by the KIADB in the cases aforementioned, on the principles of parity respondents/petitioners are entitled for payment of compensation under the Act, 2013.

22. It is relevant to refer to the statement of objections filed by respondent Nos.5, 6 and 8 namely State of Karnataka, KIADB and the Special Land Acquisition Officer of KIADB. In that as regards the claim for payment of compensation under the Act, 2013 the only contention put forth is that the consideration of payment of compensation in the cases referred to by the respondents/petitioners is that the acquisition of the lands in the said cases was not for BMRCL project and that in the instant case BMRCL itself had given a package with 100% solatium as per the Act, 2013, which has been rejected by the petitioners insisting for passing of the General Award.

23. Respondent No.8, which is the appellant in these appeals in its statement of objections contended that it calculated the total package compensation payable in respect of the acquired land including compensation for building and forwarded the same to the respondent No.7 on 12.09.2018 and 08.09.2018 respectively and that said package compensation was prepared to enable passing of consent award under Section 29(2) of KIAD Act, 1966. That in view of Circular No.36/2016 dated 25.10.2016 issued by the Central Board of Direct Taxes, Government of India and as per Section 96 of the Act, 2013 the appellant/respondent No.8 did not deduct the tax at source in the compensation amount calculated as per package compensation. That it is further stated that the calculation of package compensation is only for the purpose of consent award and if the land owner did not accept the said package compensation then the respondent No.7 could pass the general award under the provisions of KIAD Act, 1966.

24. As noted above, the claim of the petitioners is for grant of compensation under the Act, 2013. Though respondent authorities and the appellant herein do not seriously dispute grant of compensation under the Act,

2013, except stating that the package compensation offered by the appellant herein applying provisions of Act, 2013 is only for the limited purpose of passing consent award and if it was not accepted the compensation would be awarded in accordance provisions of KIAD Act, 1966, it is necessary at this juncture to refer to the very notification dated 15.10.2015 issued under Section 28(1) of the KIAD Act, 1966 seeking to acquire the subject property in that it is stated that compensation for acquisition would be paid in terms of Act, 2013. When a representation to pay the compensation is under Act, 2013 is made in the very notification, respondent-authorities cannot be allowed to contend the contrary.

25. In that view of the matter the contention of the respondent-authorities that grant of compensation in the cases referred to and relied upon by the respondents/ writ petitioners was on the basis of the fact the land acquired was not for BMRCL and the contention of the appellant herein that the calculation of package compensation that was made under Act, 2013 is only for the limited purpose of passing consent award cannot be countenanced.

26. It is also necessary to note that no appeal has been filed by the respondents 5, 6, 7 and 8 on the question of validity or otherwise of the resolution of the KIADB passed in its 343<sup>rd</sup> meeting dated 27.08.2016 which is heavily relied upon by the respondents/petitioners and accepted by learned Single Judge.

27. The relevant portion of the said resolution reads as under:

*"26.10 Matter was considered in detail and after detailed deliberations, it was resolved that affidavits to the effect that determination of compensation shall be as per schedule 'I' of LARR Act for the purpose of Section 29(3) of KIAD Act, 1966 be filed in the Hon'ble High Court of Karnataka in cases wherein notifications under Section 3(1) and 28(1) of KIAD Act, 1966 have been issued on & after 01.01.2014.*

28. The aforesaid resolution has been referred to and relied upon by the KIADB in its statement of objections filed in the cases of **Smt.Puttalakshamma** and **Smt.Jalaja** based on which it was held that the petitioners/land losers in the said cases were entitled for compensation under Act, 2013. The said orders were carried in appeal in W.A.No.1105/2019 and connected matters wherein taking note of the submissions made on behalf of the State by the

then Advocate General that the land losers would be entitled for compensation under Act, 2013, the said writ appeals were dismissed by the Division Bench of this Court. The said order passed in W.A.No.1105/2019 and connected matters has been challenged before the Apex Court in SLP(C) No.20912/2021 and connected matters. However, there has been no challenge with regard to entitlement of the land losers for compensation under Act, 2013.

29. In furtherance to the aforesaid orders passed in **Jalaja** and other land losers the State has awarded compensation to them as per the award dated 14.06.2019 as per Annexure-AL and similarly **Mahesh** and other land losers have been granted compensation in terms of the award dated 30.01.2020 as per Annexure-AN under the provisions of Act, 2013. It is also relevant to note that the State Government by its letter dated 08.08.2019 bearing No.CI 176 SPA 2019 had reiterated and reaffirmed the resolution of the KIADB to pay the compensation under the Act, 2013.

30. The contention of the appellant that KIADB under the scheme of Act, 1966 is not having any power or authority in the matter of determination and payment of

compensation which power and authority is vested exclusively in the State Government though appears to be tenable, however, in view of the fact that the resolution of the KIADB passed in its 343<sup>rd</sup> meeting referred to hereinabove has apart from being given effect to has been accepted and reiterated by the State Government in its communication referred to above, the said contention pales into insignificance. That apart KIADB in the aforesaid proceedings namely **Puttalakshmma** and **Jalaja** has relied upon said resolution enabling this Court to accept the contentions of the land losers of their entitlement for compensation under Act, 2013. As already noted above, there has been no challenge to the validity or otherwise of the said resolution of KIADB by the State Government and the same has attained finality.

31. Learned Single Judge in the impugned order at paragraph 10.6 to 10.14 has extensively dealt with on this aspect of the matter and in our considered view, has come to the just conclusion that the respondents/petitioners cannot be discriminated merely because the acquisition of land is for BMRCL which does not stand for any reason or logic.

32. As regards the contentions of the appellant that it being a joint venture entity consisting of Central Government and State Government as their share holders and being liable to pay the compensation is entitled to maintain the challenge to the impugned order, and though referring to the certain clauses of the memorandum of understanding in terms of which the Appellate entity has been brought into existence, submission was made on behalf of the appellant that since payment of compensation, repayment of debt is the responsibility of the appellant-BMRCL it has *locus standi* to question the payment of compensation under Act, 2013, even before the amendment brought in to Section 30 of KIAD Act, 1966, it is necessary to refer to Annexure-H a communication dated 21.10.2016 addressed by BMRCL to the Special Land Acquisition Officer- respondent No.7 with respect to providing package compensation. In that taking into consideration of the Notification dated 21.10.2016 and the value of land, solatium of 100% and the interest at 12% as provided under Section Act, 2013 has been calculated. Based on the said compensation package notices under Section 29(2) of KIADB Act, 1966 has been issued by

KIADB and in furtherance thereof, general award as per Annexure-H1 has been passed by KIADB on 29.05.2018 though rejected by the petitioners.

33. That the aforesaid documents at Annexure-H and H1 would indicate that appellant –BMRCL has calculated the package compensation taking into consideration of the provisions of Act, 2013 even as on 21.10.2016. Therefore, though a submission is sought to be made on behalf of the appellant that the appellant is burdened with the liability of meeting the project expenses including payment of compensation is aggrieved by the impugned order directing payment of compensation to the respondents/ writ petitioners under Act, 2013 , in view of Annexure-H dated 21.10.2016 issued by the appellant as noted above, the appellant cannot be heard to contend otherwise. This is notwithstanding the acceptance and giving effect of the resolution dated 27.10.2016 passed by the KIADB in its 343<sup>rd</sup> meeting in the earlier cases referred to above.

34. For the aforesaid reasons and analysis though the appellant has made out a case for maintainability of the writ appeal, cannot be heard to say that the

respondents/petitioners are not entitled to payment of compensation under Act, 2013.

35. Similarly, though no appeal is preferred by the State and the KIADB, a feeble attempt is made by them to contend that the payment of compensation under Act, 2013 was made in the cases of **Puttalakshamma, Jalaja, Mahesh and Jemcy Ponnappa** as the said cases were not concerned with the acquisition of land of BMRCL, the said submissions cannot be countenanced in view of the law laid down by the Apex Court in the case of **Nagpur Improvement Trust** (supra), wherein the Apex Court has held that *if the existence of two acts enables the State to give one owner different treatment from another equally situated, the owner who is discriminated against can claim protection of Article 14. That it is immaterial under which Act and for what purpose the land is acquired as far as land looses or concerned the differential standard of compensation cannot be applied.*

36. The other contention of the impugned order being contrary to the law laid down by the Hon'ble Apex Court in the case of **Anusuay Bai** and others followed by this Court in the case of **Anantha Swamy** is concerned, as

rightly contended by learned Senior counsel Sri. Basavaraj V. Sabarad the issue involved in the said cases was regarding lapsing of acquisition as per Section 11A of 1894 Act and applicability of provisions of Section 24(2) of the Act 2013 in respect of land acquired under KIAD Act, 1966 and not with regard to payment of compensation, as in the case at hand. Therefore, reliance placed by the appellant on the said cases is of no avail. As regards the extent of applicability of amended provisions of Act, 1894, introduced by Central Act 68 of 1984, to acquisition of land, payment of compensation and recourse to legal remedies provided thereunder into acquisition controlled by the provisions of Act like, Maharashtra Town Planning Act and Bangalore Development Act have been clarified by the Apex Court in the case of ***M/S. GIRNAR TRADERS VS. STATE OF MAHARASHTRA & ORS*** reported in ***(2011) 3 SCC 1*** and ***OFFSHORE HOLDINGS PRIVATE LIMITED VS. BANGALORE DEVELOPMENT AUTHORITY***, reported in ***(2011) 3 SCC 139***.

37. Thus, under the above facts and situation of the matter and on principles of parity the respondents/petitioners, as rightly held and declared by

learned Single Judge, are entitled for the compensation under Act, 2013.

**W.A.No.1070/2022**

38. As regards the relief sought for by the appellant for exemption of Tax and exemption of payment of deduction of tax at source, Section 96 of the Act, 2013 reads as under;

***"96. Exemption from income tax, stamp duty and fee.-No Income Tax or stamp duty can be levied on any award or agreement under Section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same".***

39. A Circular dated 25.10.2016 came to be issued by Central Board of Direct Taxes clarifying that the compensation received in respect of award or agreement which has been exempted from levy of income tax, under Section 96 of the Act, 2013 shall not be taxable under the provisions of Income Tax Act, 1961 even if there is no provision under the Income Tax Act. In the light of the above position, learned counsel for the appellant in W.A.No.1047/2022 submitted that in view of subsequent amendment to the Income Tax Act, inserting Section 194 – LA into Income Tax Act vide Finance Act, 2017 with effect from 01.04.2017 and by inserting second proviso after the amendment, a distinction has been made that the

exemption from payment of income tax and from deduction of tax at source can be provided only in respect of acquisition made under Act, 2013 and not under KIADB Act, 1966. Therefore, he submits the benefit of exemption cannot be extended. He also refers to provisions of Section 10(37) of the Income Tax Act, 1961.

40. As rightly taken note of by the learned Single Judge that in the background of upholding the contention of the respondents/writ petitioners of their entitlement of compensation under the provisions of Act, 2013, the entire benefit including the benefit under Section 96 of the said Act, 2013 has to be extended in its entirety. More so, as already noted even BMRCL, which is the appellant in the connected matter challenging the relief granted in favour of respondent/writ petitioners for determination of their claim for compensation under Act, 2013, itself has issued package compensation as per Annexure-H and General Compensation has been awarded as per Annexure-H1 taking into consideration the provisions of Act, 2013. Therefore, contention of appellant cannot be accepted, to say that since the exemption of payment of Income Tax Act and deduction of income tax at source on the compensation

payable against the acquisition of land only if it is made under Act, 2013 and not under KIADB Act, 1966.

41. Learned Single Judge in his discussion on point No.3 has taken into consideration the provisions of law, the Circular and also the exemption granted from payment of income tax and deduction of tax at source in the awards at Annexure-AL dated 14.06.2019 and award at Annexure-AN dated 30.01.2020 and also the precedence in the nature of judgments passed in the case of **Viswanathan M. vs The Chief Commissioner and Others** reported in **2020(2) KLJ. 309** by the High Court of Kerala and Division Bench of Andhra Pradesh High Court in the case **C.Nanda Kumar Vs Union of India and Others- 2017 SCC Online HYD 55** wherein it has been held that compensation payable to the land losers would be exempt from payment of income tax, we do not see any reasons to deviate and hold contrary to the said view more particularly, for the reason of respondent/writ petitioners having held to be entitled for determination of their claim for compensation under Act, 2013. Since the only contention raised by the appellant in W.A.No.1070/2022 that the exemption is provided under the new Act, 2013 and that having been held in favour of

the respondents/writ petitioners, no grounds are made out warranting interference with the impugned order.

42. In the result, no grounds are made out in the writ appeals warranting interference with the order passed by the learned Single Judge granting the relief as noted above. Accordingly, writ appeals are dismissed.

Registry is directed to delink CCC No.1047/2022 to be tried and adjudicated separately.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

SBN/RU