

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE S RACHAIAH

WRIT APPEAL NO. 522 OF 2025 (BDA)



BETWEEN:

BANGALORE DEVELOPMENT AUTHORITY,
BY ITS COMMISSIONER,
KUMARA PARK WEST,
T. CHOWDAIAH ROAD,
BANGALORE-560 020.

(APPELLANT IS REPRESENTED BY
DEPUTY DIRECTOR, TOWN PLANNING,
BDA)

...APPELLANT

(BY SRI K. KRISHNA, ADVOCATE)



AND:

1. REDDY SHELTERS PVT. LTD.,
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT,
WITH ITS REGISTERED OFFICE AT
NO.133/1, 2ND FLOOR,
THE RESIDENCY,
RESIDENCY ROAD,
BANGALORE-560 025,

REPRESENTED BY ITS
MANAGING DIRECTOR.

2. STATE OF KARNATAKA,
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,
M.S. BUILDING,
BANGALORE-560 001,
BY ITS PRINCIPAL SECRETARY.

...RESPONDENTS

(BY SRI K.G. RAGHAVAN, SENIOR ADVOCATE FOR
SRI RADHANANDAN B.S., ADVOCATE FOR R-1;
SRI SUDEV HEGDE M.N., AGA FOR R-2)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER
OF THE LEARNED SINGLE JUDGE PASSED IN
W.P.NO.35325/2015 DATED 08.11.2024 AND DISMISS THE
WRIT PETITION.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 21.02.2026, COMING ON FOR
PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE**
D K SINGH PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE S RACHAIAH

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

I BACKGROUND:

1. The present intra Court Appeal has been filed by the Bangalore Development Authority (BDA) impugning the judgment and order dated 08.11.2024 passed by the learned Single Judge in W.P.No.35325/2015 filed by the respondent No.1 herein.
2. The parties are referred to as per their ranking before the writ Court, for the sake of convenience.
3. The petitioner has filed the aforesaid writ petition praying to declare that the 'High-Tech Corridor Road', as prescribed in the Revised Master Plan-2015 (RMP-2015) insofar as the land of the petitioner was concerned, would not serve any useful purpose in view of the order dated 30.07.2008 passed by this Court in W.P.No.10800/2005

and connected matters. The petitioner had also prayed for a direction to the BDA to modify the registered Relinquishment Deed dated 12.08.2013 executed by the petitioner-builder/real estate developer in favour of the BDA insofar as the area for corridor road within the project of the petitioner and further direction to the BDA to re-transfer the extent of land reserved for the 'High-Tech Corridor Road' in the petitioner's property.

4. The writ Court, initially, in its first judgment and order dated 10.01.2019, held that the land acquisition proceedings for the Project, 'High-Tech City' was quashed vide judgment and order dated 30.07.2008 passed by this Court in W.P.No.10800/2005 and other connected matters and the relinquishment deed had been executed and registered little more than five years thereafter. The petitioner could not be allowed to fall back upon the ground that the acquisition was quashed for avoiding the contract of relinquishment. Sub-paragraphs (a) to (e) of the said order dated 10.01.2019 are extracted hereunder:

"a) The acquisition in question was quashed on 30.07.2008 by virtue of the judgment mentioned above whereas the relinquishment deed has been executed and registered a little more than five years thereafter. It is not the case of the petitioner that he was not aware of quashment of the acquisition. Therefore, he cannot bank upon the ground of acquisition for avoiding the contract i.e, the Relinquishment.

b) The Relinquishment Deed being a contract that has already been executed, the grounds available for avoiding the same cannot be the subject matter of adjudication in writ jurisdiction, since, they involve disputed questions of facts that can be determined only in a full pledged trial of suit.

c) For grant of the prayer of the kind i.e., declaratory relief, the petitioner has not made out a prima facie case more particularly he has not shown the justiciable right and its infringement by the action of the respondents herein. Therefore, the condition precedent for maintaining a writ petition being not

complied with, no relief can be granted to the petitioner.

d) Petitioner had made a similar request worded little differently in his representation which has been rejected by the City Planning Member of the respondent-BDA vide endorsement dated 06.02.2015 at Annexure-K. No quashment of this endorsement has been sought for, nor any explanation is offered for not impugning the same.

e) Lastly, petitioner having conveyed the land by virtue of the registered Relinquishment Deed in favour of the respondent BDA; his reliance on the provisions of the Karnataka Town and Country Planning Act, 1961 is not well founded and therefore, no relief can be granted for the alleged violation thereof.

In the above circumstances, these writ petitions fail and they are disposed off reserving to the petitioner to approach the Civil Court or other competent authority for the redressal of his grievance. The observations made hereinabove, being confined to the

disposal of this writ petition, nothing therein shall be construed as deciding rights of the parties on merits and therefore, all contentions shall be treated as having been kept open for adjudication in accordance with law."

5. The Division Bench, vide judgment dated 27.01.2020 passed in W.A.No.437/2019, considered the submissions of the BDA that pursuant to the relinquishment deed, an additional Floor Area Ratio (FAR) was accorded to the petitioner, and the petitioner had utilised this advantage which arose from the relinquishment deed and therefore, the said deed could not be sought to be set aside. However, the petitioner disputed the said assertion of the BDA before the Division Bench. The Division Bench, vide order dated 31.07.2019, had directed the Town Planning Department to submit a report on the issue whether the FAR in pursuance to the relinquishment deed had been consumed by the petitioner, if any and to what extent, besides issuing various other directions. The Division Bench, however, finally, without going into the merits of

the aforesaid contentions vide final judgment and order dated 27.01.2020, opined that the ends of justice would be met if the matter was remanded back to the learned Single Judge for re-consideration.

II FACTS:

6. The State Government had issued the Preliminary Notification dated 01.08.2003 and the Final Notification dated 14.02.2005 for acquisition of total 997 acres and 37 guntas of land in several villages including the land in question of the petitioner for formation of an industrial layout called "High-Tech City Layout and Road between Sarjapura Road and Hosur Road". The said acquisition notifications came to be quashed by the learned Single Judge in W.P.No.10800/2005 and connected matters vide judgment and order dated 30.07.2008 on the ground that the BDA would have no authority to form the industrial layout.

The State Government, thereafter, had approved the RMP-2015 and gazetted the same on 25.06.2007, which had nothing to do with "High-Tech City Layout".

7. In the RMP-2015, as per Section 12 of the Karnataka Town and Country Planning Act, 1961 (hereinafter referred to as 'the KTCP Act'), complete street pattern for meeting the immediate and future requirements with proposals for improvements were provided as per the Circulation Plan. The Layout Project "High-Tech City Layout and Road between Sarjapura Road and Hosur Road" and the RMP-2015 are different projects. In the RMP-2015, a proposal was made for 60 metres wide road which would connect the Hosur Road to Sarjapura Road and Outer Ring Road. This proposed Master Plan Road connecting Hosur Road to Sarjapura Road and Outer Ring Road was also named as "High-Tech City Corridor Road", but it was not part of the project "High-Tech City Layout and Road between Sarjapura Road and Hosur Road", for which the land was sought to be acquired vide Preliminary and Final Notifications dated 01.08.2003 and 14.02.2005

respectively. However, the said notifications were quashed by the writ Court vide judgment and order dated 30.07.2008 passed in W.P.No.10800/2005 and connected matters.

8. The petitioner, a real estate developer, had made applications dated 24.07.2012 and 25.08.2012 for change of land use of several parcels of lands which were subject matter of the acquisition for the 'High Tech City Layout', from Industrial (High-Tech) to Residential purpose, for which the permission was accorded on 26.08.2013 with a specific condition that the petitioner should reserve the area of 60 metres width of proposed Master Plan Road called "High-Tech City Corridor Road" and jointly develop the said land.

9. The petitioner had made an application for approval of Residential Development Plan in respect of 15 acres and 11.5 guntas (61,865.45 sq.mtrs) area on 02.03.2012 i.e., four years from the date of the judgment and order dated 30.07.2008 passed in W.P.No.10800/2005 and connected

matters, in various survey numbers of Naganathpura Village. The application of the petitioner was considered as per the prevailing Zoning Regulations of the RMP-2015. As per Chapter VII of the Zoning Regulations, 5% of the total area was to be provided for civic amenities and 10% should have been reserved for park and open spaces. Regulation 7.1.5 of the Zoning Regulations reads as under:-

"7.1.5 Roads as shown in the Revised Master Plan 2015 shall be incorporated within Plan and shall be handed over to the Authority free of cost."

10. The application of the petitioner for approval of the Residential Development Plan was placed before the BDA and the BDA, in its meeting held on 04.07.2013 in Subject No.98/2013, resolved to approve the Residential Development Plan of the petitioner with certain conditions. One of the conditions was that the petitioner would be required to develop minimum 100 metres length Revised

Master Plan Road on both side of its property and handover the same to the Planning Authority as per Regulation 7.1.5 of the Zoning Regulations mentioned above. The BDA intimated the approval of the Residential Development Plan to the petitioner with the specific condition to reserve and develop the 100 metres length proposed Master Plan Road on both sides of the petitioner's project and handover to the Planning Authority free of cost by executing the registered relinquishment deed.

11. It may be mentioned that 60 metres width Master Plan Road passes in the approved Residential Development Plan to an extent of 14,020.26 sq.mtrs area. As per the terms and conditions of the approved Development Plan, the petitioner had relinquished the said proposed Master Plan Road area to the BDA by executing the registered Relinquishment Deed dated 12.08.2013. In the relinquishment deed, the petitioner had admitted that he had agreed to all the terms and conditions imposed by the BDA for approval of the Residential Development Plan vide

Resolution No.98/2013 dated 04.07.2013. After execution of the registered relinquishment deed, the BDA had issued a Work Order dated 26.08.2013 for development of the aforesaid residential project which also mentions the said condition.

12. After two years from the date of execution of the Relinquishment Deed dated 12.08.2013 relinquishing the proposed Master Plan Road area as per the Zoning Regulations of the RMP-2015 and after implementation of the project, the petitioner had filed the aforesaid W.P.No.35325/2015 seeking re-transfer of the relinquished proposed Master Plan Road area by modifying the registered relinquishment deed. The petitioner had taken benefit of the FAR as per Regulation 7.1.3 of the Zoning Regulations including the area of proposed Master Plan Road and utilized the said FAR and constructed additional four floors in each Block-A and Block-B with total 260 additional units by using the aforesaid extra FAR. For the 14,029.26 sq.mtrs. area relinquished in respect of

the proposed Master Plan Road area, the petitioner has got FAR area of 31,517.64 sq.mtrs. (3,39,255.88 sq.ft.).

13. The said writ petition was dismissed on merits vide judgment and order dated 10.01.2019 as mentioned above. However, as mentioned above, the Division Bench, vide judgment dated 27.01.2020 passed in W.A.No.437/2019, remanded the matter back to the learned Single Judge for reconsideration afresh.

14. The petitioner's request for modification of the Relinquishment Deed dated 12.08.2013 came to be rejected by the BDA by the endorsements dated 06.02.2015 and 23.02.2015. The learned Single Judge, in the impugned judgment, has held that the BDA had failed to consider the fact that the KTCP Act is not applicable to the facts on record, and the plan sanctioned by the BDA itself was not viable and therefore, the BDA is required to modify the Relinquishment Deed dated 12.08.2013 in respect of the area earmarked for the road within the project. The BDA has been directed to re-transfer the

extent of land reserved for the formation of High-Tech Corridor.

III SUBMISSIONS ON BEHALF OF THE APPELLANT-BDA:

15. Mr. K. Krishna, the learned counsel for the appellant-BDA would submit that the Preliminary and Final Notifications dated 01.08.2003 and 14.02.2005 respectively issued for acquisition of 997 acres and 37 guntas of lands in several villages for formation of the industrial layout called "High-Tech City Layout and Road between Sarjapura Road and Hosur Road", were quashed by this Court vide judgment and order dated 30.07.2008 passed in W.P.No.10800/2005 and connected matters. In the RMP-2015, a proposal was made for 60 metres width road which connects Hosur Road to Sarjapura Road and Outer Ring Road named as "High Tech City Corridor Road", but it is not the project called "High Tech City Layout and Road between Sarjapura Road and Hosur Road". This is a part of the RMP-2015.

16. It is further submitted that after the petitioner's land use was changed for residential purposes in pursuance to the applications dated 24.07.2012 and 25.08.2012, the permission was accorded on 26.08.2013 with the specific condition that the petitioner should reserve an area of 60 metres width of the proposed Master Plan Road called "High-Tech City Corridor Road" and jointly develop the said land. The petitioner's Development Plan was sanctioned by the BDA vide Resolution dated 04.07.2013 in Subject No.98/2013 subject to several conditions *inter alia* to develop minimum 100 metres length revised Master Plan Road on both side of the petitioner's property and to hand over the same to the Planning Authority as per Regulation 7.1.5 of the Zoning Regulations to the RMP-2015. The proposed 60 metres width Master Plan Road i.e., High-Tech City Corridor Road between Sarjapura Road and Hosur Road passes on the petitioner's land to an extent of 14,020.26 sq.mtrs. area. In terms of the approved Development Plan, the petitioner had relinquished the said proposed Master Plan Road area to

the BDA by executing the registered Relinquishment Deed dated 12.08.2013 and has used the additional FAR of 31,517.64 sq.mtrs. (3,39,255.88 sq.ft.) and has constructed 260 additional units by using the aforesaid FAR, which otherwise he was not entitled to. Four years after taking advantage of the extra FAR sanctioned for 31,517.64 sq.mtrs., the petitioner filed the aforesaid writ petition seeking modification of the relinquishment deed. Such a writ petition was not maintainable. However, the petitioner has disputed the fact of using the additional FAR and therefore, the Division Bench has remanded the matter back for fresh consideration. But as per the report submitted by the Director of Town Planning Department, Government of Karnataka, it is clear that the petitioner had utilised the extra FAR granted to it of 31,517.64 sq.mtrs for relinquishing 14,029.26 sq.mtrs. area for the proposed Master Plan Road and constructed 260 additional units.

17. The learned counsel for the BDA has further submitted that the learned Single Judge has wrongly relied

on the judgments passed in W.P.No.9408/2020, W.P.No.48258/2018 and W.A.No.100266/2022 inasmuch as the aforesaid cases pertain to the demand of the Bruhat Bengaluru Mahanagara Palike ('BBMP' for short) and local bodies for handing over the area required for 'road widening' free of cost. The present case is for relinquishment of the proposed Master Plan Road area, for which the additional FAR was given. Therefore, the facts of those cases and the facts of the present case are entirely different. It is submitted that the learned Single Judge has failed to take note of the fact that in ***DR. ARUN KUMAR B.C. vs STATE OF KARNATAKA AND OTHERS ([2022] 2 KLJ 553)***, the Zoning Regulations were not applicable to the facts of the said case, but in the present case, Zoning regulations are applicable as the area is more than 20,000 sq.mtrs. Further, the contention of the petitioner that the proposed road would lapse since the Master Plan Road area was not acquired by the BDA within five years from the date of publication of the Master Plan as per Section 69(2) of the KTCP Act, would not be correct as Section

69(2) of the KTCP Act itself provides that in respect of road area, the plan would not lapse. Even otherwise, in the facts and circumstances of the case, Section 69(2) of the KTCP Act would not be applicable. It was further submitted that several persons had executed the relinquishment deeds for the proposed Master Plan Road area and therefore, the impugned judgment and order is unsustainable and liable to be set aside.

IV SUBMISSIONS ON BEHALF OF THE RESPONDENT

NO.1:

18. On the other hand, Mr. K.G. Raghavan, the learned Senior Counsel assisted by Mr. B.S. Radhanandan, the learned counsel for the respondent No.1 has submitted that the acquisition proceedings for formation of "High-Tech City Layout and Road between Sarjapura Road and Hosur Road" came to be quashed vide judgment and order dated 30.07.2008 passed in W.P.No.10800/2005 and connected matters. The change in land use was obtained with respect to the disputed road i.e., High-Tech City

Corridor Road. It is further submitted that there is no existence of the said 60 metres High-Tech Corridor area since the change of land use was obtained for the entire land including the said 60 metres High-Tech Corridor area after quashing the Final Notification on 30.07.2008.

19. It is submitted that Regulation 7.1.5 of the Zonal Regulations of the RMP-2015 has no application to the said disputed relinquishment deed since the change of land use was obtained with respect to the said disputed 60 metres High-Tech Corridor area also measuring around 3 acres and 18 1/2 guntas, but the relinquishment deed was executed by mistake at the instance of the Officer of the BDA. In sum and substance, the submission is that when the land acquisition proceedings in respect of High-Tech City Layout and Road between Sarjapura Road and Hosur Road was quashed and the change of land use was obtained for the entire land, the relinquishment deed executed by the petitioner was a mistake and therefore, the petitioner sought to rectify the said mistake by

requesting the BDA to allow it to modify the relinquishment deed.

20. It is further submitted that the Residential Development Plan was sanctioned by the BDA on 04.07.2013 vide Resolution No.98/2013 and in the said resolution, with respect to the relinquishment deed of the disputed 60 metres High-Tech Corridor area, the BDA included the condition without any authority and hence, the relinquishment deed obtained as a pre-condition was illegal and the same having been incorporated in the work order was also illegal. The condition for relinquishment was not imposed in the Resolution No.98/2013, but the Executive included the said condition while intimating the approval of the Resolution No.98/2013 and therefore, the relinquishment deed obtained should have been modified. Mere inclusion of a condition by the Executive without any rule or statute or the decision of the Board would be unsustainable under the law. The relinquishment deed got executed by the BDA without having any authority vested in it and therefore, petitioner was entitled to get the same

modified. It is further submitted that there is no requirement of law or rules or regulations to execute the registered relinquishment deed as a prerequisite for sanction of single plot development under Chapter VII of the Zonal Regulations of the RMP-2015 and the same would be a requirement for sub-division of plots only in Chapter VI of the RMP-2015. Even otherwise, Section 32 of the BDA Act recognizes such relinquishment deed of internal roads only in case of sub-division of plots and not otherwise. Therefore, insisting for such a condition would be illegal and is in violation of Article 300A of the Constitution of India.

V ISSUES:

21. The issues which arise for consideration in this appeal are:

(i) Whether the petitioner having got the plan approved and having taken the benefit of additional FAR of 31,517.64 sq.mtrs. (3,39,255.88 sq.ft.) for relinquishment of 14,029.26 sq.mtrs. for the proposed Master Plan Road

area and having constructed 260 additional units by using the FAR is entitled to ask for modification in the Relinquishment Deed dated 12.08.2013?

(ii) Whether the petitioner having accepted the sanction plan along with all its conditions as also the terms and conditions of the Work Order dated 26.08.2013 is entitled to challenge the same on any ground or estopped in challenging the same?

VI ANALYSIS & CONCLUSION:

22. The facts as stated are not in dispute. The Note appended to the Resolution dated 04.07.2013 bearing No.98/2013 passed by the BDA would suggest that as per the approved RMP-2015, the land of the petitioner was classified as Industrial (High-Tech) and 60 metres width High-Tech City Corridor Road was proposed in the land. The lake was existing on the western side. The Development Plan submitted by the petitioner was for two Blocks to be constructed i.e., Block-A with Basement+Ground Floor+14 Upper Floors of 45 metres

height and Block-B with Basement+Ground Floor+14 Upper Floors of 45 metres height. The total plan proposed was for 1090 residential units. Besides reserved area for road alignment of the proposed High-Tech Corridor Road of RMP-2015, 10% for park and open space; and 5% for civic amenity purposes. The Residential Development Plan submitted by the petitioner was within the Zoning Regulation limit. It was approved on the condition of implementing the same as per the approved Development Plan and no change would be effected without the prior permission of the Authority.

23. The petitioner was issued the Commencement Certificate dated 26.10.2012, which would specifically provide the reserve area for 60 metres width High-Tech City Corridor Road of RMP-2015 and for jointly developing the said land. The petitioner was also required to reserve 30 metres wide area for No Development Buffer from the edge of the lake, water spread area, 60 metres width High-Tech City Corridor Road of RMP-2015 and leave buffer to H.T. Line and develop the said land jointly.

24. The Work Order issued on 26.08.2013 for the petitioner's land would suggest that the petitioner had submitted the Notarized Affidavit dated 17.08.2013. The petitioner had executed the Relinquishment Deed dated 12.08.2013 about handing over the reserved park, open space, road, extension area and 60 metres width RMP-2015 High-Tech City Corridor Road area to the authority as per the draft Residential Development Plan and the Development Plan was subject to development of minimum 100 metres length Revised Master Plan Road on both side of the petitioner's property at the cost of the petitioner and other common conditions as mentioned in the Work Order.

25. It may be mentioned that the petitioner never challenged these conditions and made use of the extra FAR sanctioned to it and thereby constructed 260 units more than the initial 1090 units proposed. After taking advantage of the extra FAR sanctioned for relinquishing the area for the proposed High-Tech Corridor Road of 60

metres width on both side of its property, the petitioner cannot challenge the said relinquishment deed four years after sanctioning of the plan upon relinquishment of 14,029.26 sq.mtrs. area.

26. It can be stated that the Zoning Regulations are framed under the provisions of Section 12 of KTCP Act. Regulation 7.1.5 of the Zoning Regulations provides that the roads as shown in the RMP-2015 shall be incorporated within the plan and shall be handed over to the authority free of cost. These Zoning Regulations are not under challenge and therefore, the prayer made in the writ petition was not maintainable that too, four years after execution of the registered relinquishment deed. The law does not permit a person to both approbate and reprobate. When the petitioner did not challenge any of the conditions of the Development Plan sanctioned to it or of the Work Order or the Commencement Certificate, the writ petition seeking modification of the relinquishment deed after having taken the benefit of extra FAR was not maintainable.

27. The Supreme Court in **R.N. GOSAIN vs YASHPAL DHIR ([1992) 4 SCC 683** in paragraphs 10 and 13 has held as under:

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See : Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd. [(1921) 2 KB 608, 612 (CA)] , Scrutton, L.J.] According to Halsbury's Laws of England, 4th Edn., Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508)

13. *We are, therefore, of the opinion that the petitioner, having given an undertaking in pursuance to the directions given by the High Court in the judgment dated March 6, 1992, and having availed the protection from eviction on the basis of the said undertaking, cannot be permitted to invoke the jurisdiction of this Court under Article 136 of the Constitution and assail the said judgment of the High Court. In that view of the matter, we do not consider it necessary to deal with the submissions urged by Dr Singhvi that the respondent, being an employee of the University at the time of his retirement, was not a 'specified landlord' under Section 2(hh) of the Act."*

28. Similarly, in the case of **UNION OF INDIA AND OTHERS vs N. MURUGESAN AND OTHERS ([2022] 2 SCC 25)**, the Supreme Court, in paragraphs 25 and 26, has held as under.

"25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a

passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.

Approbate and Reprobate

26. These phrases are borrowed from the Scott's law. They would only mean that no party can be allowed to accept and

reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."

29. If the Government gives the benefit of development of land concerned with permission to sub-divide the same and uses it for commercial purpose and it, in turn, requires the land owners to handover part of the land free of cost for public utility purposes, such a clause cannot be held to be illegal. The requirement of relinquishing the area for the road is under the Zoning Regulation 7.1.5 as stated above and when the Zoning Regulations are not under challenge, which are framed under Section 12 of the KTCP Act, the petitioner cannot challenge the requirement of surrender of the land that too, after execution of the relinquishment deed and having taken advantage of the extra FAR.

30. Paragraph 35 of the judgment in the case of **SHIRDI NAGAR PANCHAYAT vs KISHOR SHARAD BORAWAKE AND OTHERS ([2024] 17 SCC 418)** would be appellants to take note of, which reads as under:-

"35. It can be noticed that this Court in Narayanrao Jagobaji Gowande

Public Trust v. State of Maharashtra has held that if a Government gives the benefit of development of land concerned with permission to subdivide the same and uses it for commercial purpose and it, in turn, requires the landowner to handover part of land free of cost for public utility purpose, such a clause cannot be held to be illegal. As such, we find that the High Court has grossly erred in allowing the writ petitions."

31. The judgments relied on by the learned Single Judge are not applicable to the facts of the present case inasmuch as those judgments were in respect of widening of road, for which the authority sought surrender of land. The relinquishment deed was a condition precedent to the sanctioning of the plan. We are, therefore, of the view that the impugned judgment and order is unsustainable on facts and law and therefore, the same is set aside.

32. Accordingly, the writ appeal stands allowed.

33. In view of disposal of the appeal, pending IAs, if any, do not survive for consideration and accordingly, they stand disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(S RACHAIAH)
JUDGE**

BKV
CT:SN