IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 19TH DAY OF APRIL, 2021

PRESENT

THE HON'BLE MR.JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR.JUSTICE E.S.INDIRESH

WRIT APPEAL NO.100029/2021 (ULC) C/W
WRIT APPEAL NO.100038/2021 (ULC)

IN W.A.NO.100029/2021

BETWEEN:

1. Secretary to Government,
   Department of Urban Development
   (Municipal And Urban Development Authorities),
   Vikasa Soudha, Bengaluru – 560 001.

2. The Deputy Commissioner,
   Dharwad, Dharwad-580 001.

3. The State of Karnataka,
   Represented by Chief Secretary,
   Vidhana Soudha, Bengaluru-1.

… Appellants

(By Sri Shivaprabhu S Hiremath, AGA)

AND:

Smt. Ningavva W/o Gadigappa
Since deceased by her LRs.

1. Thippanna S/o Gadigappa Narayanpur,
   Aged 64 years, R/o Ashwamedha Nagar,

Near Hubballi Dharwad Commissioner's Office,
Hubballi Taluka, Hubballi – 580 025.

2. Kallappa S/o Gadigappa Narayanpur,
Aged 54 years, R/o Ashwamedha Nagar,
Near Hubballi Dharwad Commissioner's Office,
Hubballi Taluka, Hubballi – 580 025.

3. Shivanand S/o Gadigappa Narayanpur,
Aged 52 years, R/o Ashwamedha Nagar,
Near Hubballi Dharwad Commissioner's Office,
Hubballi Taluka, Hubballi – 580 025.

4. Channappa S/o Kallappa Narayanpur,
Aged 92 years, R/o Ashwamedha Nagar,
Near Hubballi Dharwad Commissioner's Office,
Hubballi Taluka, Hubballi – 580 025
Since dead by his LRs
Already on record in the appeal

5. Hubballi Dharwad Municipal Corporation
Hubballi – 580 020 Rep. by Commissioner

… Respondents

(By Sri Anant Hegde, Advocate for R1 to R3;
Sri G.I.Gachchinamath, Advocate for R5)

This writ appeal is filed under Section 4 of the Karnataka High Court Act, 1961, challenging order passed by the learned single Judge in Writ Petition No.106148-106152/2018 (ULC) dated 28.09.2020 & etc.

IN W.A.NO.100038/2021

BETWEEN:

Hubballi Dharwad Municipal Corporation,
Hubballi – 580 020 Represented
by its Commissioner.

… Appellant

(By Sri G.I.Gachchinamath, Advocate)

AND:

1. Secretary to Government,
   Department of Urban Development
   (Municipal And Urban Development Authorities),
   Vikasa Soudha, Bengaluru – 560 001.

2. The Deputy Commissioner,
   Dharwad, Dharwad-580 001.

3. The State of Karnataka
   Represented by Chief Secretary,
   Vidhana Soudha, Bengaluru-1.

4. Smt. Ningavva W/o Gadigappa,
   Since deceased by her LRs.

5. Thippanna S/o Gadigappa Narayanpur,
   Aged 63 years, R/o Ashwamedha Nagar,
   Near Hubballi Dharwad Commissioner's Office,
   Hubballi Taluka, Hubballi – 580 025.

6. Kallappa S/o Gadigappa Narayanpur,
   Aged 54 years, R/o Ashwamedha Nagar,
   Near Hubballi Dharwad Commissioner's Office,
   Hubballi Taluka, Hubballi – 580 025.

7. Shivanand S/o Gadigappa Narayanpur,
   Aged 51 years, R/o Ashwamedha Nagar,
   Near Hubballi Dharwad Commissioner's Office,
   Hubballi Taluka, Hubballi – 580 025.

8. Channappa S/o Kallappa Narayanpur,
   Aged 91 years, R/o Ashwamedha Nagar,
   Near Hubballi Dharwad Commissioner's Office,
   Hubballi Taluka, Hubballi – 580 025. Since dead
   by his LRs R4 to R7 already on record

… Respondents

(By Sri Shivaprabhu S Hiremath, AGA for R1 to R3;
Sri Anant Hegde, Advocate for R5 to R7;
R8 dead, R5 to R7 are LRs of deceased R8)

This writ appeal is filed under Section 4 of the Karnataka High Court Act, 1961, challenging the order passed by the learned single judge dated 28.09.2020 in writ petition No.106148-152/2018 (ULC) & etc.

These writ appeals having been heard and reserved for judgment coming on for pronouncement of judgment, this day, **Sreenivas Harish Kumar J.,** delivered the following:

JUDGMENT

These two writ appeals are filed impugning the order dated 28.09.2020 in writ petition Nos.106148-106152/2018. Writ appeal 100029/2021 is filed by the State of Karnataka and writ appeal 100028/2021 is filed by Hubballi Dharwad Municipal Corporation.

2. Briefly stated, the facts are as follows:

2.1 Gadigappa Kallappa Narayanpur and Channappa Kallappa Narayanpur, the two brothers were the owners of 5 acres 26 guntas of land in block No.339/1 of Gamanagatti village, Hubballi Taluk. The Special Deputy Commissioner initiated proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (herein after referred to as

'ULC Act' for short) in respect of the land belonging to them. One of the brothers, namely, Gadigappa Kallappa Narayanpur filed statement of objections under Section 6 of the ULC Act. Over-ruling the objections, the Special Deputy Commissioner declared that the land to an extent of 22818.2369 square meters in block no.339/1 was the excess land possessed by the said two brothers. It was alleged that records were built up to show that the Special Deputy Commissioner took over possession of the excess land and then handed over the same to Hubballi-Dharwad Municipal Corporation on 10.12.1982.

2.2 The legal heirs of Gadigappa Kallappa Narayanpur, as aiso Channappa Kallappa Narayanpur, contending that the land in block no.339/1 was an agricultural land and it still continued to be under their possession and cultivation, sought to restore their names in the

revenue records. Infact, Tippanna, one of the sons of Gadigeppa Kallappa Narayanpur and Channappa Kallappa Narayanpur filed WP No.41446/1999 questioning the validity of notification dated 21.11.1979 after ULC Act was repealed. They sought to take benefit under Section 3 of the repealing Act. The writ petition was dismissed giving liberty to them to seek redressal of their grievance before the competent authority in terms of the repealing Act. After dismissal of the said writ petition, Gadigappa Kallappa Narayanpur made a representation to the Deputy Commissioner, Dharwad, who was the competent authority under the ULC Act, stating that the said land was under his possession and cultivation; and in view of the ULC Act being repealed, he was entitled to retain the property and that he was ready to redeposit the compensation received by him. His representation was not considered. He made two more representations on

15.03.2013 and 18.12.2013. When they were not considered, writ petitions, Nos.75209-75212/2013 came to be filed seeking a direction for consideration of the representations. The said writ petitions were allowed and direction was issued to consider the representations within three months. On 30.04.2015, the Government of Karnataka passed an order stating that the possession of the land had already been taken and handed over to Hubballi-Dharwad Municipal Corporation. Aggrieved by the same, the legal representatives of Gadigappa Kallappa Narayanpur filed writ petitions, No.105519-105522/2015 and Channappa Kallappa Narayanpur filed writ petition No.106458/2015.

2.3 In the above writ petitions, it was held that 5 acres 26 guntas in block no.339/1 was still an agricultural land and therefore the competent authority under the ULC Act had no jurisdiction to declare that land as excess vacant land situate

within the urban agglomeration limits. It was also held that the Revenue Inspector was not the competent authority to take possession of the land and thereby there was no actual delivery of possession. Having given findings like this, the writ Court remanded the matter to the Government for reconsidering the contentions taken by the petitioners afresh.

2.4 Questioning the order of remand, the writ petitioners filed Writ Appeals No.100673-676/2016 and 100672/2016. The Government too filed writ appeals No.100001/2017, 100002/2017 and 100253-255/2017. But these writ appeals were not entertained by the Co-ordinate Bench of this Court. Thereafter the Principal Secretary to the Department of Urban Development, Government of Karnataka, as per the order passed by this Court in the writ petitions and the writ appeals, considered the representation of the writ petitioners and rejected it

giving the reason that the land measuring to an extent of 22818.2369 square meters had already been handed over to the Hubballi-Dharwad Municipal Corporation and therefore it was not possible to restore the names of the writ petitioners in the land records. Aggrieved by this Order, once again the writ petitioners approached this Court by filing writ petitions No.106148-106152/2018 which, by the order impugned in these writ appeals, were allowed.

3. The learned single Judge has recorded findings that in WP No.105519/2015, this Court has already held that the subject land is an agricultural land to which the provisions of ULC Act do not apply, that the authorities under the ULC Act were neither entitled nor empowered to take possession of the land from the writ petitioners and that the authorities did not actually take over actual physical possession of the land. Having come to this conclusion, it has been further observed by the

learned single Judge that the Division Bench of this Court in writ appeal Nos.100673-676/2016 and connected matters did not set aside the findings of the learned single Judge in W.P. No. 105519/2015 and connected matters. Merely because the learned single Judge, while deciding the said writ petitions thought it fit to remand the matter to the authority for fresh disposal, it cannot be said that all the findings of the learned single Judge on the question actually under consideration in the writ petition would stand set-aside, rather those findings would amount to res-judicata and therefore the order of the Secretary to Government as per Annexure-A would deserve to be quashed as the findings in the writ petition would come in the way of the Secretary to take a contrary decision.

4. The learned single Judge also referred to photographs to hold that the land was still an agricultural land and has been possessed by the writ

petitioners. Observing so, with regard to conclusion of the Secretary to Government that the possession has been hand over to Hubballi Dharwad Municipal Corporation, it is held by the learned single Judge that the Secretary has incorrectly placed reliance on Section 6 of the General Clauses Act in order to hold that the proceedings under the ULC Act are saved despite its repeal in the year 1999 and the said Act being not applicable to the land in question. With these findings the learned single Judge allowed the writ petition and directed the respondents therein for entering the name of the writ petitioners in respect of the said land in the revenue records.

5. We have heard the arguments of Sri Shivaprabhu S Hiremath, learned Additional Government Advocate appearing for the appellants in WA No.100029/2021 and Sri G.I.Gachchinamath, learned counsel for the appellant in WA

No.100038/2021 and Sri Anant Hegde, learned counsel for the respondents in both the writ appeals.

6. The learned Government Advocate Sri Shivaprabhu S Hiremath raised several contentions while arguing and also submitted a synopsis of his arguments with some authorities in support of his arguments which we will refer to contextually. He highlighted the points that the land in question was a Pada or a barren land for a number of years. On 04.09.1964, the Government of Mysuru issued a notification for extending the municipal limits of the Hubballi Dharwad Municipality and thereby the village Gamanagatti was included in the municipal limits. For this reason the land in block no.339/1 belonging to Gadigappa Kallappa Narayanpur and his brother Channappa Kallappa Narayanpur came under the limits of urban agglomeration. Since the brothers held the land in excess of ceiling limits within the meaning of ULC Act, they made a

declaration that they would agree for giving up the excess land in favour of the Government by retaining the land to an extent of 1500 square meters. Accordingly the government completed the proceedings under the ULC Act and paid the compensation to the owners. On 18.01.1980 the government took over possession and in the revenue records, the name of the government came to be recorded. Therefore there was vesting of land with the government and thereafter on 10.12.1982, the government granted the said land to Hubballi Dharwad Municipal Corporation. After these proceedings were over, Gadigappa Kallappa Narayanpur and his brother Channappa Kallappa Narayanpur should have preferred an appeal under Section 33 of the ULC Act. Having kept quite for 20 years, the matter was raised by filing writ petitions.

The learned Government Advocate further argued that the writ petitioners' contention that the

land is still being used for agriculture is false and that they filed the writ petitions on a false ground. The revenue records clearly show that the cultivation had been abandoned and therefore in the revenue records, it was shown as Pada. According to Section 2(o) of the ULC Act, any land situated within the limits of urban agglomeration and referred to in the master plan, is an urban land. If there is no master plan, in accordance with the judgment of the Supreme Court in the case of **UOI V. VALLURI BASAVAIAH CHOWDHARY (AIR 1979 SC 1415)** any land situated within the area of municipality and not used for agriculture can be treated as urban land. For this reason the petitioners' earlier writ petition No.41446/1999 was dismissed. This being the position, the writ petitioners cannot contend that the land is still being used for agriculture purpose and that they possess the same.

It was his further argument that compensation amount was paid before taking possession; having received compensation, they cannot claim to be in possession contending that there was no vesting of land within the meaning of ULC Act. The records clearly indicate that the land vested in the government lawfully, it is also quite clear from the declaration made by Gadigappa Kallappa Narayanpur and his brother Channappa Kallappa Narayanpur. The observations made in the writ petition No.105519/2015 and connected matters that the land was being used for agriculture purpose are incorrect. Although in the said writ petitions a finding to that effect was recorded, the matter was remanded to the government for re-consideration. Writ appeals came to be filed challenging the said finding not only by the Government but also by the writ petitioners. Though in the writ appeals this Court did not interfere with the order passed in the

said writ petitions, all contentions were kept open and this would indicate that the findings recorded by the learned single Judge about the agricultural nature of the land were set-aside and therefore question of res-judicata as has been observed by the learned single Judge in the order impugned in these writ appeals is erroneous. According to learned Government Advocate res-judicata would not apply at all.

Referring to the judgment of Full Bench of this Court in writ petition No.10709/2009 (LA-BDA) the learned Government Advocate submitted that whenever possession is to be taken by a Deputy Commissioner, it is not necessary that Deputy Commissioner himself should go to spot to take the possession. Any officer including Revenue Inspector or the Surveyor can go to spot and take possession and such taking over of possession cannot be considered as delegation of power in strict sense.

Therefore in this case also, if the revenue officer duly authorized by the Deputy Commissioner took over possession from the erstwhile land owners by drawing up a mahazar, it cannot be said at all that there was no handing over of possession of the land and thereby the writ petitioners cannot contend to be in possession of the land still. It is submitted that Section 16 of the Land Acquisition Act is analogous to Section 10(5) of the ULC Act. With these main contentions, the learned Government Advocate argued for allowing the writ appeal.

7. Sri G.I.Gachchinamath learned counsel for the appellant in WA No.100028/2021 argued that the land in block no.339/1 that was handed over to the Hubballi Dharwad Municipal Corporation, was situated within urban agglomeration. Referring to Section 2(o) of the ULC Act, he argued that any land would include the agriculture land also, but the only condition required was that it should not have been

mainly used for agricultural purpose. Here the land was Pada for quite a long time and even the erstwhile owners i.e., Gadigappa Kallappa Narayanpur and his brother Channappa Kallappa Narayanpur did not dispute it. They gave up their claim over the land by receiving compensation. There is no dispute that they possessed excess urban land and this was the reason for initiation of proceedings under the ULC Act. In the order passed by the Secretary to Government which was impugned in the writ petition No.106148/2018 and connected matters, there is a reference to order dated 10.12.1982 according to which the Government handed over the possession of the land to Hubballi Dharwad Municipal Corporation. This order has not been challenged by the writ petitioners. Without challenging this order, they cannot contend that they are still in possession of the land. He further submitted that once this Court, while deciding the

writ petition No.105519/2015 and other connected cases, remanded the matter to the Government for re-consideration, the findings given in those writ petitions lost its significance, moreso when in the writ appeal it was made clear that the parties could urge all the contentions once again before the Government. The implication of this is that the question whether the land was still an agricultural land or not was kept open. The Secretary came to conclusion that it was not an agricultural land and the possession had been handed over to the Hubballi Dharwad Municipal Corporation. Learned counsel submitted that the observations made by the learned single Judge about applicability of res-judicata in the light of the findings recorded in the earlier writ petitions do not stand to any reason and thereby this writ appeal deserves to be allowed.

8. Sri Anant Hegde, learned counsel for the respondents raised several contentions. The first

point of argument is that the decision in Writ Petition No.105519/2015 and connected writ petitions will operate as res-judicata and estoppes the State by judgment. On this point he elaborated that while deciding the said writ petition, this Court considered the actual pleadings, the documents and the law applicable. It is the clear finding that the land in block no.339/1 is an agriculturai land and that its possession was not validly taken over by the State. Having given these findings the writ Court remanded the matter to the Government for re-adjudication, the operative portion of the order in the writ petition was a surplusage and this was the reason for the respondents preferring writ appeal before this Court. In the writ appeal, there is a clear observation that the findings given in the writ petition need not be interfered with. The State also preferred writ appeal, but all the writ appeals were dismissed. The findings given in the writ petition

were not disturbed and therefore the net effect is that the findings that the land is agricultural and its possession was not validly taken became final. This aspect cannot be agitated again. In fact in the impugned order, there is a clear observation that the findings given in the earlier writ petition operate as res-judicata. The order of remand in Writ Petition No.105519/2015 was not an open remand, it was a restricted or qualified remand, for this reason the authority to whom the matter was remanded was bound by the findings of fact arrived at by the learned single Judge. In this writ appeal, all the points that learned Government Advocate and Sri G.I.Gachchinamath argued cannot be considered again as they are already decided and barred by resjudicata.

9. So far as taking over of possession of the land in question, he further argued that it is not in dispute that it was the revenue inspector who took

over possession. He was not the competent officer according to Section 10 (6) of the ULC Act. There is nothing on record to show that the competent officer, i.e., the Special Deputy Commissioner took over possession. There is no document or a Gazette notification indicating that the Special Deputy Commissioner could delegate his powers to the Revenue Inspector. When the law mandates that the possession is to be taken over by a competent authority, that officer alone should take the possession or otherwise, the proceedings under the ULC Act would abate according to Repeal Act of the year 1999.

10. Meeting the argument of the Government Advocate with reference to judgment of Division Bench of this Court in S.M.Kannaiah (WP No.10709/2009), Sri Anant Hegde argued that in the said writ petition, the question involved was interpretation of Section 16 of the Land Acquisition

Act. Section 10 of the ULC Act and Section 16 of the Land Acquisition Act operate in different fields and different contexts. Therefore the said judgment has no application. It is argued by him that interpretation of a 'provision' or an 'expression' found in one enactment cannot be made applicable to interpret similar 'provision' or 'expression' in another enactment and therefore the decision in Writ Petition No.10709/2009 cannot be made applicable to the case on hand.

11. Regarding delay in approaching the Court for the first time in the year 1999, Sri Anant Hegde argued that question of delay and latches would not arise because the action was initiated in 1999, immediately after repeal of 1976 Act in March, 1999. Moreover the land in question being an agricultural land, does not come within the purview of ULC Act and all the actions initiated in the year 1976 were void. There was no vesting of land at all with the

State. Referring to Article 300-A of the Constitution of India, he argued that the ULC Act did not provide for acquisition of agricultural land and the contention of the State that the land vested with it in accordance with Section 10(3) of the ULC Act is against Article 300-A. The entire case of the respondents is to be considered in the light of Article 300-A. Therefore it is his argument that the writ appeals are devoid of merits and liable to be dismissed. He has placed reliance on some decisions which we will refer to in the course of discussion.

12. In the light of the points of arguments of the learned counsel, the questions to be decided in these writ appeals are:

i) *As the order in writ appeals No.100673-676/2016 states that the matter is open for both the sides to raise their respective contentions before the respondent No.1, i.e., the Principal Secretary who may arrive at findings of fact and law, can it be said that the*

findings in WP No.105519/2015 and other matters regarding nature of the land and taking over of its possession, operate as res-judicata?

ii) Was there no taking over possession by the competent authority?

DISCUSSION:

13. In the writ petition Nos.105519/2015 and connected matters, the learned single Judge, has given a finding that the revenue records disclose that the land in question is an agricultural land. Though there is an entry in the revenue records that it was a Pada land, it continued to be an agricultural land. With regard to taking over of possession, it is held that the revenue inspector was not a competent authority according to Sections 10(5) and 10(6) of the ULC Act. Having given these findings, the learned single Judge remanded the matter to the first respondent i.e., State of Karnataka, i.e., the Principal Secretary, Urban Development Department.

As has been argued by Sri Anant Hegde and held by the Supreme Court in the case of ***THAKUR SOBHAG SINGH (DEAD) BY HIS LEGAL REPRESENTATIVES V. THAKUR JAISINGH AND OTHERS, {(1968)2 SCR 848},*** that kind of order is a surplusage. When this order was taken in appeals both by the State and the respondents herein, the co-ordinate Bench of this Court did not interfere with the order of remand: We find it expedient to extract the operative portion of the order in **Writ Appeals No.100673-676/2016** and connected matters.

> *"5. Having heard the learned counsels, we are satisfied that no interference is called for, since the matter is open for both the sides to raise their respective contentions before the Respondent No.1, the Principal Secretary, Urban Development Department, Bengaluru in terms of the orders passed by the learned Single Judge who may arrive at findings of facts and law and therefore, we are not interfering with the findings on the present writ appeals and both the parties are*

directed to appear before the said Authority in the first instance on 08.05.2017 i.e., on Monday and the said authority is expected to pass speaking orders after giving an opportunity to the parties concerned within a period of three months thereof."

14. Before delving on the point as to the effect of remand, we would like to refer to some authorities cited by Sri Anant Hegde on the aspect of res-judicata. The Supreme Court in the case of **SATYENDRA KUMAR AND OTHERS V. RAJ NATH DUBEY AND OTHERS [(2016)14 SCC 49]** held that:

"15. The distinction drawn by the High Court in the impugned judgment that an erroneous determination of a pure question of law in a previous judgment will not operate as res judicata in the subsequent proceeding for different property, though between the same parties, is clearly in accord with Section 11 of the CPC. Strictly speaking, when the cause of action as well as the subject matter i.e, the property in issue in the subsequent suit are

entirely different, res judicata is not attracted and the competent Court is therefore not debarred from trying the subsequent suit which may arise between the same parties in respect of other properties and upon a different cause of action. In such a situation, since the Court is not debarred, all issues including those of facts remain open for adjudication by the competent Court and the principle which is attracted against the party which has lost on an important issue of fact in the earlier suit is the principle of estoppel, more particularly "issue estoppel" which flows from principles of evidence such as from Sections 115, 116 and 117 of the Indian Evidence Act, 1872 and from principles of equity. As a principle of evidence, estoppel is treated to be an admission or in the eyes of law something equivalent to an admission of such quality and nature that the maker is not allowed to contradict it. In other words it works as an impediment or bar to a right of action due to affected person's conduct or action. "Estoppel by judgment" finds reference in the case of Ahsan Hussain Abdul Ali Bohari, Proprietor Abidi Shop v. Maina W/o Nathu Telanga[11]. It is taken as a bar

which precludes the parties after final judgment to reagitate and relitigate the same cause of action or ground of defence or any fact determined by the judgment. If the determination was by a Court of competent jurisdiction, the bar will remain operative even if the judgment is perceived to be erroneous. If the parties fail to get rid of an erroneous judgment, they as well as persons claiming through them must remain bound by it."

In the case of ***M.NAGABHUSHANA V. STATE OF KARNATAKA AND OTHERS, (2011)3 SCC 408,*** it is held that:

"17. It may be noted in this context that while applying the principles of Res Judicata the Court should not be hampered by any technical rules of interpretation. It has been very categorically opined by Sir Lawrence Jenkins that

"……the application of the rule by Courts in India should be influenced by no technical considerations of form but by matter of substance within the limits allowed by law". [See Sheoparsan Singh Vs. Rammanandan Singh, IA at P99: ILR at P.706]

15. Sri Anant Hegde has relied on the judgment of the Supreme Court in ***Satyendra Kumar (supra)*** to emphasis that the order of remand made by the writ Court in WP No.105519/2015, though a surplusage, yet the findings given there on facts operate as res-judicata and act as estoppel by judgment against the appellants herein. The judgment in ***M.Nagabhushana (supra)*** has been referred to refute the arguments of the learned Government Advocate that the order in the writ appeals confirming the remand did not preclude the State from reagitating the factual aspects. According to Sri Anant Hegde, technical interpretation of the order in the writ appeal is not permitted.

16. We do agree that the concept of res-judicata has its own significance and importance. Section 11 of C.P.C. deals with res-judicata and if it is found that a matter which has already been decided in a former suit or proceeding is sought to be agitated

once again in a subsequent proceeding, the courts must take notice of it and stop the same matter being agitated once again. The plea of resjudicata is not a technical doctrine, it is fundamental to ensure finality in litigation. It also prevents double vexation for the same cause of action. But the question here stands on a slightly different footing. No doubt in the writ petition No.105519/2015, there has been a finding that the land in question is an agricultural land and that its possession was not taken by the competent authority. Having given these findings, if the writ petitions had been allowed, the matter would have been different; rather the matter was remanded to the government for adjudication once again. When this order was questioned in the writ appeals both by the government as also the respondents herein, the co-ordinate bench of this court did not interfere with the order passed in the writ petition, rather it was

further clarified that all the contentions were kept open. Therefore in view of this remand, the question arises whether the principle of res-judicata can be applied or not.

17. Sri Anant Hegde's argument was that the order of remand passed in the writ petition which was later on confirmed in the writ appeal was a limited or restricted remand, and not a open remand. Since it was restricted, the finding given by the writ court with regard to nature of the land and taking over its possession operate as res-judicata. But we are not persuaded by this argument. Indeed in writ petition No.105519/2015 and connected matters, there is a finding that the land in block no.339/1 of Gamanagatti village is an agricultural land and that its possession was not taken by the competent authority. But in the operative portion of the order, what is found is that the order dated 30.04.2015 was set aside and the matter was remanded to the 1st

respondent therein i.e. the Principal Secretary to the Department of Urban Development for reconsideration of the matter afresh in the light of the judgments referred in the course of argument. The order in writ appeal has already been extracted above. While confirming the order of remand, it was made further clear that the matter was open for both sides to raise their respective contentions before the Principal Secretary so that he can give his findings on facts and law. Though it is stated by the Division Bench that it did not like to interfere with the findings given by the learned single judge in the writ petitions, reading the entire operative portion of the order in the writ appeals makes it amply clear that the parties could raise their respective contentions before the Principal Secretary both on facts and law. The order also shows very clearly that the Principal Secretary could give his findings on facts and law raised before him by the parties. That means, the

findings given in the writ petitions merged with the order in the writ appeals, all the findings recorded in the writ petitions were kept open once again for adjudication by the Principal Secretary and thereby those findings did not attain finality. In a context like this, Doctrine of Merger is very much applicable. We may usefully refer to judgment of the Hon'ble Supreme Court in the case of ***KUNHAYAMMED AND OTHERS V/S STATE OF KERALA AND ANOTHER, (2000) 6 SCC 359.*** In Para 12, it is held as below:

> **"12.** The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or

> the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."
>
> (emphasis supplied)

18. Following the judgment in Kunhayammed, the Hon'ble Supreme Court in another case between ***Commissioner of Central Excise, Delhi and Pearl Drinks Limited, (2010) 11 SCC 153*** has held as below:

> **"13.** The doctrine of merger has its origin in common law. It has its application not only in the realm of judicial orders but also in the realm of estates. In its application to orders passed by the judicial and the quasi-judicial courts and authorities it implies that the order passed by a lower authority would lose its finality and efficacy in favour of an order passed by a higher authority before whom correctness of such an order may have been assailed in appeal or revision. The doctrine applies regardless of whether the higher court or authority affirms or modifies the order passed by the lower court or authority."

19. In the case before us, as has been already said, though the co-ordinate bench of this court did not

interfere with the order of remand passed in Writ Petition No.105519/2015 and connected writ petitions, having allowed the parties to raise their respective contentions on facts and law, paved way for the factual aspects being decided again. Res-judicata is applicable only when there is finding on an issue or a matter which has attained finality, this is not the case here.

20. Moreover, whenever there is an order of remand, actually the lis does not come to an end. What actually is the effect of remand is very well explained by the Hon'ble Supreme Court in the case of ***Jasraj Indersingh V/s Hemraj Multanchand, AIR 1977 SCC 1011.*** In para 14 of the said judgment, it is observed thus:

> "14. Be that as it may, in an appeal against the High Court's finding, the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a subordinate court is bound by the direction of the High Court. It is equally true that the same High Court,

hearing the matter on a second occasion or any other court of co-ordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher Court when it comes up in appeal before it. This is the correct view of the law, although Shri Phadke controverted it, without reliance on any authority. Nor did Shri S.T. Desai, who asserted this proposition, which we regard as correct, cite any precedent of this Court in support. However, it transpires that in Lonankutty v. Thomman this proposition has been affirmed. Viewed simplistically, the remand order by the High Court is a finding in an intermediate stage of the same litigation. When it came to the trial Court and escalated to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject-matter is available for adjudication before us. If, on any other principle of finality statutorily conferred or on account of res judicata attracted by a decision in an allied litigation the matter is concluded, we too are bound in the Supreme Court. Otherwise, the whole lis for the first time comes to this Court and the High Court's finding at an intermediate stage does not prevent examination of the position of law by this Court. Intermediate stages of the litigation and orders passed at those stages have a provisional finality. After discussing various aspects of the matter,

> Chandrachud J., speaking for the Court in Lonankutty observed : "The circumstance that the remanding judgment of the High Court was not appealed against, assuming that an appeal lay therefrom, cannot preclude the appellant from challenging the correctness of the view taken by the High Court in that judgment." The contention barred before the High Court is still available to be canvassed before this Court when it seeks to pronounce finally on the entirety of the suit."
>
> (emphasis supplied)

21. If we examine the case on hand in the background of the observations made by the Hon'ble Supreme Court as extracted above, we notice that the actual lis between the parties started first with filing of writ petitions; the order in them were challenged in the writ appeals; then remand to the Principal Secretary to the Government of Karnataka; again a writ petition challenging the order of Principal Secretary and the appeal before us questioning the correctness of the order in the writ petition; there is a continuity of litigation. In the

writ appeals before us, we therefore find it difficult to notice any decision on facts having attained finality to agree with finding recorded by learned single judge in the writ petition and the argument of Sri Anant Hegde about applicability of res-judicata. In simple words we state that the findings given in W.P. No. 105519/2015 and connected writ petitions do not operate as res-judicata. The order passed in the Writ Appeals No. 100673-676/2016 shows very well that it was an open remand, not a restricted remand. If it is a restricted remand, the finding on an issue in respect of which there is no remand certainly operates as resjudicata, but in case of an open remand, since all the questions relating to facts would be kept open, any finding given in a former proceeding does not operate as resjudicata.

22. Harking back to the actual contentions with regard to nature of the land and its taking over possession, the Principal Secretary should have

actually decided the case by giving a clear finding whether the land in question was agricultural land situate within the urban agglomeration and whether the government did take the possession of land in accordance with law or not, the two main contentions that the contesting respondents in these appeals raised at the inception. In fact Sri Ananth Hegde, while arguing, commented that the Principal Secretary has not passed a speaking order. The Principal Secretary rather appears to have perfunctorily disposed of the matter by applying Section 6 of the General Clauses Act on the ground that possession of the land had already been handed over to Hubli-Dharwad Municipal Corporation. For this reason we may remand the matter once again, but we do not want to remand because of the reason that the respondents knocked at the doors of this court for the first time in the year 2013 by filing W.P.No.75209-75212/2013. The remand will result

only in perpetuation of the litigation by one or the other unsuccessful party. Since what is involved is interpretation of applicability of Sections 2 and 10 of the ULC Act and its Repeal Act of the year 1999, we now deal with these aspects.

23. Before dealing with these points, we may refer to one point of argument canvassed by Sri Anant Hegde that though the limits of Hubballi-Dharwad Municipality was extended by issuing a Government Notification and Gamanagatti village of Hubballi Taluk was included within the municipal limits, since the land in block no. 339/1 of that village was not converted for non agricultural purposes in accordance with the provisions of the Land Revenue Act, the said land did not loose its agricultural character. We are unable to subscribe to his view. Once municipal corporation limits are extended by virtue of a Gazette Notification issued by the State Government u/s 4 of the Karnataka Municipal

Corporation Act to include adjacent areas, all the lands thus brought within the limits of the municipal corporation become urban land. Sec. 4(4) of the Karnataka Municipal Corporation Act is very relevant to be referred to here. It reads thus:

> *"(4) When a local area is included in the larger urban area, the provisions of this Act and all taxes, notifications, rules, bye-laws, orders, directions and powers, levied, issued, made or conferred under this Act or any other law applicable to the larger urban area, shall apply to the said area from the date of inclusion of such area within the larger urban area."*

24. We also find it useful to refer to two judgments of this Court, i.e., (1) ***J.M. Narayana and Others vs Corporation of the City of Bangalore, by its Commissioner Office, Bangalore and others (ILR 2005 Karnataka 60)*** AND (2) ***Smt. Vijayalakshmi V. Smt. Ugama Bai and another (2015 (3) Kar.L.J. 24)***. In the case of J.M.Narayana (supra), the Division Bench of this Court has held as below:

"5. We have given our anxious consideration to the submissions made at the Bar. It is not disputed that the suit property stands included within the Corporation limits in terms of a notification issued much earlier to the filing of the suit. As a result of such inclusion, the taxes applicable within the Corporation limits would by operation of law and in particular Section 4 sub-section 4 of the Municipal Corporation Act become applicable to the extended area also. Even assuming that the land in question was agricultural land before its inclusion in the Corporation limits, the same would not necessarily mean that it either continued to pay land revenue nor would such land be exempted from payment of property tax under the said Act. As rightly pointed out by Mrs.Patil, Section 110 of the Karnataka Municipal Corporation Act, 1976, exempts the payment of property tax qua only such lands as are registered to be agricultural lands in revenue records of Government and as are actually used for cultivation of crops. Stated conversely just because certain land included in the Corporation limits is registered or used for cultivation purposes would not imply that the said land continues to pay land revenue under the Land Revenue Act. On the contrary, Land Revenue Act would cease to be applicable no sooner the land is brought within the Corporation limits."

Following the judgment of the Division Bench, very recently, the learned Single Judge of this Court has held in the case of Vijayalakshmi (supra) that:

> *"15. In view of the said ruling it is clear that, Karnataka Land Revenue Act ceases to apply where the agricultural lands are included in the extended Corporation limits, irrespective of the fact that agricultural lands are converted into non-agricultural purposes or not."*

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25. Though the above two decisions have been rendered in the context of Karnataka Court Fees & Suits Valuation Act, in these judgments it has been held very clearly that the moment municipal limits are extended, the provisions of Karnataka Land Revenue Act cease to apply for such kind of lands and they are governed by **The Municipalities Act or the Municipal Corporation Act,** as the case may be. Obtaining of conversion under Section 95 of the Karnataka Land Revenue Act is not necessary. The

conversion is necessary for those lands to which Land Revenue Act is applicable. But, for further development of such lands included in the municipal limits, law like Town and Country Planning Act will apply.

26. Sri Anant Hegde referred to Sec. 2(o) of the Urban Land Ceiling & Regulation Act. It reads as below:

> *(o) "urban land" means,—*
>
> *(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or*
>
> *(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.*
> *Explanation .— For the purpose of this clause and clause (q),—*
>
> *(A) "agriculture" includes horticulture, but does not include—*
> *(i) raising of grass,*
> *(ii) dairy farming,*

(iii) poultry farming,
(iv) breeding of live-stock, and
(v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house, then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) Notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;

(p) "urbanisable land" means land, situated within an urban agglomeration, but not being urban land;

(q) "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include—

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate

authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause.

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27. According to him the master plan of the Hubballi-Dharwad Municipal Corporation does not refer to land in block no. 339/1 even after it was brought within its limits in the year 1964. Therefore, Sec. 2(o)(ii) is applicable as the respondents are still cultivating these lands. This argument of Anant Hegde is seriously disputed by the appellants' counsel, they referred to the RTC extracts of the said land to argue that it is not being

used for agriculture and for many years; it has remained PADA.

28. In this regard we may state that the RTC extracts clearly show that the land has for several years never been used for agriculture and it is shown a PADA land. The entries in the revenue records have a presumptive value. Just for the sake of gaining a cause of action, if the respondents ventured to raise crops (as has been argued by Anant Hegde), we cannot consider it. Though it can be made out from Sec. 2(o)(ii) that if the master plan does not refer to any land as an urban land, the other requirement is the land must be mainly used for the purpose of agriculture. The word 'mainly' refers to active agricultural operation continuously and not a stray incident of raising crops as has been in the case of the respondents, probably with a deliberate intention of staking claim over the land having noticed astronomical increase in the land

value. Therefore we are of the considered opinion that the land in block no. 339/1 of Gamanagatti which was included within Hubballi-Dharwad Municipal Corporation ceased to be an agricultural land and it is not an agricultural land at all.

29. With regard to taking possession, Sri Anant Hegde's argument was that the competent authority did not take possession, it was the Revenue Inspector who went to the spot and took possession. He argued that the competent authority under the Urban Land Ceiling Act could not have delegated its power to a subordinate Officer. He submitted that even if the land was notified as excess urban land under the provisions of ULC Act, since there was no actual handing over of possession in accordance with law, the proceedings would abate according to Sec. 3(a) of the Repeal Act and thereby the possession of the land remained with the respondents. In support of his argument, he placed reliance on the judgment

of this Court in ***Mangalore Urban Development Authority Vs. Leelavathi & others (ILR 2008 KAR 5059) and Ramchandra Gundu Patil Vs. State of Karnataka (W.P. No. 63674/2011 [ULC]).*** By referring to these two decisions, Sri Anant Hegde argued that the lands comprised in these two cases were also sought to be treated as excess urban land and since the competent authority did not take possession, it was held that there was no actual taking over of possession.

30. Sri Shivaprabhu Hiremath, learned Government Advocate argued that the Deputy Commissioner who is the competent authority under the ULC Act is not expected to go to every place for taking over possession of the land. If his subordinate officer takes possession, it is nothing but due compliance of Sec.10(6) of the ULC Act. In support of his argument, he has placed reliance on the judgment of the Full bench of this Court in the case of

S.M.Kannaiah Vs. State of Karnataka & others (W.P. No. 10709/2009) and a judgment of the co-ordinate Bench of this Court in the case of ***Gavadu Siddappa Patil since deceased by his LR Vs. State of Karnataka & Others (W.A. No. 100102/2019)***.

31. Sri Anant Hegde replied that the decision of the Full bench is not applicable because it was a case pertaining to taking over possession according to Sec. 16 of the Land Acquisition Act, 1894.

32. The Government Advocate produced some documents while arguing. Of course these documents appear to have not been produced in the writ Court in connection with W.P. 105519-105522/2015. In fact Sri Anant Hegde also referred to these documents to garner support for his argument that there was no taking over of possession by the competent authority. Therefore if we look at these documents, what appears is that on

20.12.1979, the Special Deputy Commissioner issued a notice to Gadigeppa Kallappa Narayanpur requiring him to surrender possession of his excess urban land in accordance with Section 10 (5) of the ULC Act. Thereafter he authorized the Tahasildar of Hubballi to initiate action under Sec. 10(6) of the ULC Act if there was no voluntary surrender of the land by the land owner. There is another document dated 18.01.1980 which indicates that the erstwhile land owner, namely, Gadigeppa Gollappa Narayanpur surrendered the possession of 22818.2369 sq.mtrs of land to the Revenue Inspector. The Revenue Inspector drew up a panchanama in this regard. These are all undisputed facts. The only point of controversy is that the competent authority, i.e., the Special Deputy Commissioner, since did not take possession of the land himself being present at the spot, it was not taking possession in accordance with law. Of course, in the two judgments that Sri Anant

Hegde has referred to, it has been held that unless the competent authority himself takes over the possession there is no actual taking of possession. But the Full Bench of this Court in the case of ***S.M.Kannaiah (supra)***, has held as below:

> *"12. We see no reason to differ from the view taken by the Division Bench in the case of **M/s Hunnikeri Brothers** since we are of the opinion that taking over possession is one of the functions in the sequence of the different proceedings in the acquisition process and is consequential and a function which is not in the nature of performing a quasi-judicial function or an action calling for exercise of discretion since by such time all such acts which require deeper application of mind will already be completed and a decision to acquire the land available to the Deputy Commissioner/ Assistant Commissioner in charge of a sub-division of a district/ any Officer specially appointed by the appropriate Government under Section 16(1) of the LA Act cannot be construed to mean that such power should be exercised by his personal presence at the spot or location where the acquired property is situate. It is sufficient if the said power under Section 16(1) of LA Act is exercised by the said*

persons by initiating the process for taking possession by requiring the sub-ordinate officers including the Revenue Inspector or Surveyor to visit the spot and take possession. If such subordinate Officer completes the process of taking possession as per procedure laid down, it cannot be considered as delegation of power in strict sense so as to attack the same as impermissible. Instead, it is an authorization or a direction of the superior Officer to enable the completion of the process by utilizing the services of the sub-ordinate Officers who also have sufficient knowledge of the land revenue process. However, on taking possession, the Officer empowered under Section 16(1) would have to accept the report of taking possession."

(emphasis supplied)

33. It is true that this opinion was expressed by the Full Bench while dealing with a matter pertaining to taking possession in accordance with Sec.16 of the Land Acquisition Act. Sec. 16 of the Land Acquisition Act states that the Deputy Commissioner has to take possession. Sec. 10(6) of the ULC Act also states that the competent authority has to take possession. The competent authority under the ULC Act is any

person authorized by the State Government, and in the case on hand as can be made out from the documents, it was the Special Deputy Commissioner of the District who was notified to be a competent authority. Given a literal interpretation to these Sections, it may be stated that the competent authority should personally go to the spot to take possession from the land owner. But it is to be stated that such an interpretation defeats the very purpose of the Act. The meaning that can be ascribed is that the possession must be taken under the supervision of the competent authority, not that he should personally go to spot and draw up a mahazar testifying the fact of taking possession. In this context we may refer to the judgment of the Co-ordinate Bench of this Court in ***Gawadu Siddappa Patil (***supra) where the facts are akin to the facts before us. Delving upon a situation like this it is held:

"18. A plain reading of Section 10(5) of the Act would indicate that where any vacant land is vested in the State Government under sub Section (3), the ***competent authority*** *may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State in this behalf within 30 days of service of notice. The expression* ***"competent authority"*** *as defined under Section 2(d) of the Act would mean any person or authority authorized by the State Government, by notification in the official gazette, to perform the functions of the competent authority under the Act for such areas as may be specified in the notification and different persons or authorities may be authorized to perform different functions. Petitioner is not disputing that no notice was issued prior to taking possession. However, the attack is with regard to the competent authority having not taking possession of land. In this context, if Section 10(6) of the Act is perused, the expression used would indicate that competent authority may take possession of the vacant land or* ***cause it to be given to the concerned State Government or to any person duly authorized by such State Government in this behalf.*** *In this background, if the mahazar Annexure-C is perused, it would clearly indicate that possession of the land has*

been taken by the Revenue Inspector by virtue of the order passed by the Deputy Commissioner directing him to take possession of the excess land belonging to the declarant vide G.O. No. NBG/1286- dated 08.07.1992."

(emphasis supplied)

Therefore, this judgment makes it very clear that even if a Revenue Inspector takes over possession pursuant to authorization given by the competent authority, it is valid and legal. In this context we have extracted the actual receipt executed by Gadigeppa Kallappa Narayanpur on 18.01.1980, for having surrendered the possession. The same is extracted below:

"ಜಮೀನು ಕಬಜಾ ಕೊಟ್ಟ ಪಾವತಿ ಬೆಸ್ತಿ ಗದಿಗೆಪ್ಪ ಕಲ್ಲಪ್ಪ ನಾರಾಯಣಪೂರ ಸಾ:ಅಮರಗೋಳ ನೀವು ಇವತ್ತಿನ ದಿವ್ಸ ಮೆ: ಸ್ಪೆಷಲ್ ಡೆಪ್ಯುಟಿ ಕಮಿಷನರ್ ಸಾ: ಜಿಲ್ಲಾ ಧಾರವಾಡ ಇವರ ಹು.ನಂ.L.W.C.R./21-11-1 ನೇದ್ದರ ಪ್ರಕಾರ ಹುಬ್ಬಳ್ಳಿ ತಾಲ್ಲು ಸೈಕಿ ಗಾಮನಗಟ್ಟಿ ಗ್ರಾಮದ ಬ್ಲಾ.ನಂ.339/1 ರಲ್ಲಿ ಪಿ.ಟಿ. ಸೀಟನಲ್ಲಿರಿಸಿದ ನಕಾಲೆಯ ಪ್ರಕಾರ ಕ್ಷೇತ್ರ 22818.2369 ಚೌ. ಕ್ಷೇತ್ರವನ್ನು ಕಬಜಾ ತೆಗೆದುಕೊಂಡಿದ್ದಕ್ಕೆ ನನ್ನದು ಸಂಪೂರ್ಣ ಒಪ್ಪಿಗೆ ಇರುತ್ತದೆ. ನನ್ನದು ತಕರಾರ ಏನೂ ಇರುವುದಿಲ್ಲ ಅಂತಾ ಆತ್ಮ ಸಂತೋಷದಿಂದ ಬರಕೊಟ್ಟ ಕಬಜಾ ಪಾವತಿ ಸಹಿ ತಾರೀಖು 18–1–1980."

ಗ.ಕ.ನಾರಾಯಣಪೂರ

34. The reading of the receipt makes it very clear that he handed over possession voluntarily to the Revenue Inspector pursuant to notice issued by the Special Deputy Commissioner. This being the factual position, we do not find any merit in the argument of Sri Anant Hegde.

35. We may also point out that actually Sec.10(6) of the ULC Act is not applicable to the case on hand. Sec.10(6) comes into picture when there is no voluntary surrender of the land in accordance with Sec. 10(5) of the ULC Act. Sec. 10(6) speaks about taking over possession by the competent authority. If there is voluntary surrender in accordance with Sec. 10(5), Sec. 10(6) is not applicable. Here is a case of voluntary surrender as discussed above. Therefore, it is our conclusion that there was no infirmity of any kind in the surrender of the excess land by Gadigeppa Kallappa Narayanpur and Sec.3 of the of the Urban Land (Ceiling & Regulation) Repeal

Act, 1999 did not apply so as to say that the proceedings under the ULC Act abated.

36. Therefore, from the above discussion we come to conclusion that the learned single Judge should not have allowed the writ petition. These two appeals deserve to be allowed. Hence, the following order.

ORDER

Writ appeals are allowed. The order dated 28.09.2020 in W.P. Nos. 106148-106152/2018 (ULC) is set aside.

SD
JUDGE

SD
JUDGE

KMV, Clk & bvv