A M. VENKATESH AND ORS.

v.

COMMISSIONER, BANGALORE DEVELOPMENT AUTHORITY

B (Civil Appeal No. 7944 of 2015)

SEPTEMBER 24, 2015

[T.S. THAKUR, R.K. AGRAWAL AND R. BANUMATHI, JJ.]

C *Property laws: Vacant land – Claim for settled possession – Entitlement for – Held: Not entitled – Question of establishing settled possession does not arise in relation to the properties that already stood cleared of any structures* D *by demolition of whatever stood on the same.*

Land Acquisition Act, 1894: Sale of property post issue of preliminary notification is void and non-est giving to the vendee the limited right to claim compensation and no more.

E *Adverse possession: Proof of – Held: Is proved only when possession is peaceful, open, continuous and hostile.*

Disposing of the appeals, the Court

F **HELD: 1. Once the High Court recorded a finding that the property was vacant as on the date of the filing of the suit there was no question of the plaintiffs claiming settled possession of the said property assuming the view taken in *John B. James* case was otherwise legally** G **sound since the so called settled possession of the appellants in RFA No.911 of 2002 stood vacated from the suit schedule property, no prayer for injunction as set out in the petition filed by the appellants in those appeals could help them for an injunction issues only to protect** H

what is in lawful possession of the plaintiffs. Injunction could not be claimed when plaintiffs stand dispossessed from the suit property prior to the filing of the suit. The question of establishing settled possession did not, therefore, arise in relation to the properties that already stood cleared of any structures by demolition of whatever stood on the same. The High Court was, in that view, justified in setting aside the decree passed by the Trial Court and dismissing the suit filed by the plaintiffs. [Para 12] [464-B-F]

John B. James and Ors. v. Bangalore Development Authority **(2001) 1 KarLJ 364 – approved.**

2. The respondents claim to have purchased the suit property in terms of a sale deed dated 22nd August, 1990, i.e. long after the issue of the preliminary notification published in July 1984. The sale in such cases is *void* and *non-est* in the eyes of law giving to the Vendee the limited right to claim compensation and no more. [Para 13] [464-G-H; 465-A]

U.P. Jal Nigam v. Kalra Properties Pvt. Ltd. **AIR 1996 SC 1170: 1996 (1) SCR 683;** *Ajay Kishan Singhal v. Union of India* **AIR 1996 SC 2677: 1996 (4) Suppl. SCR 319;** *Mahavir and Anr. v. Rural Institute, Amravati and Anr.* **(1995) 5 SCC 335:1995 (2) Suppl. SCR 421;** *Gian Chand v. Gopala and Ors.* **(1995) 5 SCC 528;** *Meera Sahni v. Lieutenant Governor of Delhi and Ors.* **(2008) 9 SCC 177: 2008 (10) SCR 1012;** *Tika Ram v. State of U.P.* **(2009) 10 SCC 689;** *Tamil Nadu Housing Board v. A. Viswam (dead) by Lrs.* **AIR 1996 SC 3377: 1996 (2) SCR 402;** *Larsen & Toubro Ltd.*

A *v. State of Gujarat and Ors.* **AIR 1998 SC 1608: 1998 (2) SCR 339 – relied on.**

3. The High Court has remained oblivious of the principle of adverse possession. All that the High Court B **has found in favour of the plaintiffs is that their possession is established. That, however, does not conclude the controversy. The question is not just whether the plaintiffs were in possession, but whether they had by being in adverse possession for the** C **statutory period of 12 years perfected their title. That question has neither been adverted to nor answered in the judgment impugned in this appeal. Such being the case the High Court erred in dismissing the appeal filed by the appellant-BDA. The fact that the plaintiffs had not** D **and could not possibly establish their adverse possession over the suit property should have resulted in dismissal of the suit for an unauthorised occupant had no right to claim relief that would perpetuate his illegal and unauthorised occupation of property that stood** E **vested in the BDA. [Para 19] [469-G-H; 470-A-C]**

Karnataka Board of Wakf v. Govt. of India **(2004) 10 SCC 779: 2004 (1) Suppl. SCR 255;** *Saroop Singh v. Banto* **(2005) 8 SCC 330: 2005 (4) Suppl.** F **SCR 253;** *Mohan Lal v. Mirza Abdul Gaffar* **(1996) 1 SCC 639: 1995 (6) Suppl. SCR 638;** *Annasaheb Bapusaheb Patil v. Balwant* **(1995) 2 SCC 543: 1995 (1) SCR 88 – relied on.**

G **Case Law Reference**

(2001) 1 KarLJ 364	**approved**	**Para 7**
1996 (1) SCR 683	**relied on.**	**Para 13**
1996 (4) Suppl. SCR 319	**relied on.**	**Para 14**

H

1995 (2) Suppl. SCR 421	**relied on.**	**Para 14**	A
(1995) 5 SCC 528	**relied on.**	**Para 14**	
2008 (10) SCR 1012	**relied on.**	**Para 14**	
(2009) 10 SCC 689	**relied on.**	**Para 14**	B
1996 (2) SCR 402	**relied on.**	**Para 14**	
1998 (2) SCR 339	**relied on.**	**Para 14**	
2004 (1) Suppl. SCR 255	**relied on.**	**Para 15**	
2005 (4) Suppl. SCR 253	**relied on.**	**Para 16**	C
1995 (6) Suppl. SCR 638	**relied on.**	**Para 17**	
1995 (1) SCR 88	**relied on.**	**Para 18**	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7944 of 2015 D

From the Judgment and Order dated 30.05.2012 of the High Court of Karnataka at Bangalore in RFA No. 912 of 2002

With E

C.A. Nos. 7945-47, 7948 of 2015

Rama Jois, Subramayam Jois, G.V. Chandrasekhar, N. K. Verma, Anjana Chandrashekar, S. K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni for the appearing parties. F

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted.

2. These appeals arise out of a common judgment and order dated 30th May, 2012 passed by a Single Bench of the High Court of Karnataka at Bangalore whereby the High Court has allowed RFA Nos.912, 914, 915 and 916 of 2002, set aside the judgments and orders of the courts below and G H

A dismissed the suits relevant to those appeals. The High Court has, at the same time, affirmed the decree passed in OS No.6925 of 2001 and dismissed RFA No.911 of 2002 filed by the appellant against the same. The factual backdrop in which the suits and the appeals mentioned above came to be filed
B may be summarised as under:

3. M. Venkatesh-appellant in SLP (C) No.38601 of 2012 claimed ownership over the suit schedule property by inheritance from his grandfather Munishamappa who is said
C to have purchased the same under a registered sale-deed dated 7th July, 1954. In connected SLP (C) No.12016 of 2013 Prabhaudas Patel also claimed to be the owner of suit schedule property relevant to his suit on the basis of purchase of the said property from its previous owner. The aforementioned two
D parcels of land together with a larger extent in the vicinity were acquired by the Bangalore Development Authority ('BDA' For short) for the formation of Hosur Road, Sarjapur Layout in terms of a preliminary notification dated 17th July, 1984 and a final notification dated 28th November, 1986 published on 25th
E December, 1986, after notices to the Khatedars and the persons interested, some of whom had filed their claims before the competent authority. Determination of amount of compensation payable to the landowners having been
F approved by the competent authority on 21st August, 1986, the BDA claimed that possession of the land was taken over from the landowners and handed over to the engineering section of the authority by drawing a possession mahazar on 6th November, 1987. A Notification under Section 16(2) of the
G Act was also published in the Karnataka Gazette dated 4th July, 1991 which, according to the BDA, signified that the land in question stood vested with the BDA free from all encumbrances whatsoever. The further case of BDA is that long after the land had vested in the BDA, sites were carved
H out and sold to different persons by the erstwhile owners, the

unauthorised act of the plaintiffs, however, got vacated and the possession was taken over. A

4. The case of the plaintiffs M. Venkatesh and Prabhaudas Patel on the other hand was that they were always in established possession of the suit schedule property owned and that apprehending their dispossession from the same they had approached the High Court along with several others to restrain the BDA from interfering with their peaceful occupation of the suit property. Those petitions were disposed of by the High Court reserving liberty to the writ-petitioners to approach the civil court for appropriate relief in a proper civil action. It was only after the disposal of the said petitions that OS Nos.3075 of 2000, 6925 of 2001, 5742 of 2001, 7945 of 2000 and 5791 of 2001 came to be filed by the aggrieved parties in which the plaintiffs claimed to be the owners and occupants of the suit property and prayed for an order restraining the BDA from interfering with their peaceful occupation. Plaintiffs also claimed that they had the title over the suit schedule property by prescription. B C D E

5. The suits aforementioned were contested by the defendant-BDA in which they, *inter alia*, claimed that the suit property stood duly acquired and its ownership vested in the BDA was free from all encumbrances whatsoever and that the plaintiffs had no right, title or interest in the same nor were they entitled to any declaration of title or injunction. According to the Trial Court the pleadings of the parties gave rise to the following issues which were clubbed together for a common disposal: F G

> (1) Whether the Plaintiffs prove that, they have acquired and perfected their alleged title to the suit schedule properties by virtue of the alleged law on adverse possession, as claimed? H

A (2) Whether the Plaintiffs prove their alleged lawful possession and enjoyment of the suit schedule properties, as on the date of the suit?

(3) Whether the Plaintiffs further prove the alleged illegal
B interferences and obstructions by the defendant?

(4) Whether the defendant proves that, the suit schedule properties is duly acquired by the defendant, in accordance with law and as such, the same have stood
C vested with the defendant, free from all the encumbrances?

(5) Whether the Plaintiffs are entitled to the suit relief of declaration and injunction, against the defendant?

D (6) What Order or Decree?

6. The Trial Court answered issue nos. 1 to 3 and 5 in the affirmative while issue no.4 was answered in the negative. The suits were on those findings decreed.

E

7. Aggrieved by the judgment and decree passed by the Trial Court, BDA filed RFA Nos.911, 912, 914, 915 and 916 of 2002 before the High Court of Karnataka at Bangalore. A Single Judge of the High Court, as noticed earlier, has allowed
F RFA Nos.912, 914, 915 and 916 of 2002 but dismissed RAF No.911 of 2002. The High Court took the view that respondents in RFA No.911 of 2002 who happened to be respondents in SLP No.12016 of 2013 were running a saw-mill which was in operation long prior to the filing of the suit and which continues
G to be in existence even on the date of the suit and the judgment of the High Court. The High Court held that the legal position stated by the Division Bench of that Court in ***John B. James and Ors. v. Bangalore Development Authority (2001) 1 KarLJ 364*** was clearly applicable to the said appeal entitling

H

the owner in occupation to protection against attempted eviction by the BDA. The High Court, on that basis, dismissed RFA No.911 of 2012 filed by BDA upholding the judgment and decree passed by the Trial Court and restraining the BDA from interfering with possession of the plaintiff over the suit schedule property. As regards the remaining appeals, the High Court held that the plaintiffs in those appeals were claiming settled possession of vacant pieces of land which even according to the pronouncement in ***John B. James*** case (supra) did not entitle them to any relief as no one could claim to be in established possession of a vacant piece of land. The High Court found that there was no dispute that all the structures on the suit properties relevant to those suits had been demolished and that the land was a vacant piece of land all along and at all material times including the date of the judgment. The High Court accordingly non-suited all the plaintiffs except plaintiff in RFA No.911 of 2002. In SLP (C) No.12016 of 2013 the BDA has assailed the judgment of the High Court in so far as the same has dismissed RAF No.911 of 2002 filed by it. SLP (C) No.38601 of 2012 and SLP (C) Nos.12013-15 of 2013 have been on the other hand filed by the appellants to assail the orders passed by the High Court in so far as the same have dismissed RAF Nos.912, 914, 915 and 916 of 2002.

8. We have heard Mr. Rama Jois, learned senior counsel, appearing for the appellants and Mr. S.K. Kulkarni, counsel appearing for the BDA. We may first deal with the question whether the plaintiffs in the suits relevant to RFA Nos.912, 914, 915 and 916 of 2002 could claim to be the owners of the suit property on the basis of inheritance or sale instruments in their favour and yet plead adverse possession over the very same property. The case set up by the plaintiffs in their suits was that they were the lawful owners of the suit schedule property and that they had been duly recognised as Khatedars by the village panchayat concerned. It was further alleged that property tax

A was also being assessed and levied by the competent authority from time to time and is being paid by them. It was alleged that the suit properties were being used for carrying on business in different names and style. The local authorities had also issued no objection certificates for grant of electricity supply
B connections in their favour and that they were paying electricity charges as and when demanded. The appellants claim to have set up their business which was their source of livelihood. Whatever may be the rights vested in the BDA pursuant to the notifications and the award, the BDA was not entitled to disturb
C the peaceful occupation of the landowners according to the averments in the plaint. The plaintiffs, on that basis claimed the relief of permanent injunction restraining the BDA and its officials from disturbing their possession over the suit schedule
D properties. The plaintiffs, it is noteworthy, claimed ignorance about the acquisition proceedings and alleged that they had not received any compensation and that they had continued to be in occupation as owners to the knowledge of the BDA and its officials.

E 9. In the written statement filed by the BDA it was asserted that the suit schedule properties stood acquired and vested in BDA as early as in the year 1986-87 and that the question of anyone developing or using any part of the same
F did not arise. The documents relied upon by the plaintiffs were, according to the BDA, of no value or relevance.

10. The High Court has, as noticed earlier, on an appraisal of the material on record, held that the suit schedule properties relevant to RFA No.911 of 2002 was a vacant piece of land
G from which structures stood demolished and removed before the institution of the suits. The High Court in this regard observed:

H *"But, insofar as the other respondents are concerned, whether the appellant was justified in law or not in*

carrying out the demolition, there is no dispute that all structures in the respective suit properties have been razed to the ground and it was vacant land during the pendency of the suit and as on the date of the judgment. Therefore, the trial court was clearly in error in holding that the plaintiffs continued in settled possession of what was vacant land. The law, as laid down in John B. James's case, supra clearly disentitled persons claiming to be in settled possession of vacant land. Therefore, the remedy of damages which was certainly available to the plaintiffs was unfortunately not claimed and though the plaintiffs are said to have sought to reserve their right to claim such damages, it is not shown that the court below has expressly granted any such relief."

11. There is, in our opinion, no infirmity in the above reasoning. The decision in ***John B. James*** case (supra) upon which heavy reliance was placed by the plaintiffs before the courts below itself did not permit anyone to claim that he is in settled possession of vacant land. The following passage from the said decision in this regard is apposite:

"If anyone, who has trespassed into BDA land or in unauthorised possession of BDA land, has put up a structure and completes and accomplishes the act of possession and continues in such settled possession asserting possession and ownership in himself, openly, peacefully and uninterruptedly to the knowledge of BDA for more than 12 years, then it is possible for him to contend that he has perfected his title to such property by adverse possession and consequently, the title of BDA stood extinguished. It is needless to say that such adverse possession for 12 years should be subsequent to the date of vesting of land in BDA. The person

A *claiming such title by adverse possession cannot call in aid any possession on his part or his predecessor for any period prior to date of vesting of land in BDA, to establish adverse possession, or possession during the tendency of any litigation regarding the property, cannot*
B *be considered as possession adverse to BDA."*

12.Once the High Court recorded a finding that the property was vacant as on the date of the filing of the suit there was no question of the plaintiffs claiming settled possession
C of the said property assuming the view taken in ***John B. James*** case (supra) was otherwise legally sound since the so called settled possession of the appellants in RFA No.911 of 2002 stood vacated from the suit schedule property, no prayer for injunction as set out in the petition filed by the appellants in
D those appeals could help them for an injunction issues only to protect what is in lawful possession of the plaintiffs. Injunction could not be claimed when plaintiffs stand dispossessed from the suit property prior to the filing of the suit. The question of establishing settled possession did not, therefore, arise in
E relation to the properties that already stood cleared of any structures by demolition of whatever stood on the same. The High Court was, in that view, justified in setting aside the decree passed by the Trial Court and dismissing the suit filed by the
F plaintiffs.

13. That brings us to the question whether Prabhaudas Patel and other respondents in SLP (C) No.12016 of 2013 were entitled to any relief from the Court. These respondents claim to have purchased the suit property in terms of a sale
G deed dated 22nd August, 1990, i.e. long after the issue of the preliminary notification published in July 1984. The legal position about the validity of any such sale, post issue of a preliminary notification is fairly well settled by a long line of the
H decisions of this Court. The sale in such cases is *void* and

non-est in the eyes of law giving to the Vendee the limited right to claim compensation and no more. Reference may in this regard be made to the decision of this Court in ***U.P. Jal Nigam v. Kalra Properties Pvt. Ltd. AIR 1996 SC 1170***, where this Court said :

> *"3. It is settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property. In this case, notification under Section 4(1) was published on 24-3-1973, possession of the land admittedly was taken on 5-7-1973 and pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8-7-1973. Admittedly power under Section 17(4) was exercised dispensing with the enquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken; by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the Gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published and the possession is surrendered pursuant thereto. That apart, since M/s Kalra Properties, respondent had purchased the land*

A *after the notification under Section 4(1) was published, its sale is void against the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before*
B *publication of the declaration under Section 6 was published."*

14. To the same effect are the decisions of this Court in ***Ajay Kishan Singhal v. Union of India AIR 1996 SC 2677***;
C ***Mahavir and Anr. v. Rural Institute, Amravati and Anr. (1995) 5 SCC 335***; ***Gian Chand v. Gopala and Ors. (1995) 5 SCC 528***; ***Meera Sahni v. Lieutenant Governor of Delhi and Ors. (2008) 9 SCC 177*** and ***Tika Ram v. State of U.P. (2009) 10 SCC 689***. More importantly, as on the date of the
D suit, the respondents had not completed 12 years in possession of the suit property so as to entitle them to claim adverse possession against BDA, the true owner. The argument that possession of the land was never taken also needs notice only to be rejected for it is settled that one of the
E modes of taking possession is by drawing a Panchnama which part has been done to perfection according to the evidence led by the defendant- BDA. Decisions of this Court in ***Tamil Nadu Housing Board v. A. Viswam (dead) by Lrs. AIR 1996 SC 3377*** and ***Larsen & Toubro Ltd. v. State of Gujarat***
F ***and Ors. AIR 1998 SC 1608***, sufficiently support the BDA that the mode of taking possession adopted by it was a permissible mode.

15. Coming then to the question whether the plaintiffs-
G respondents could claim adverse possession, we need to hardly mention the well known and oft quoted maxim *nec vi, nec clam, nec precario* meaning thereby that adverse possession is proved only when possession is peaceful, open, continuous and hostile. The essentials of adverse possession
H

were succinctly summed-up by this Court in ***Karnataka Board of Wakf v. Govt. of India (2004) 10 SCC 779*** in the following words:

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina (AIR 1964 SC 1254), Parsinni v. Sukhi (1993) 4 SCC 375 and D.N. Venkatarayappa v. State of Karnataka (1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish

A *his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma (1996) 8 SCC 128)."*

16. Reference may also be made to the decision of this Court in ***Saroop Singh v. Banto (2005) 8 SCC 330***, where B this Court emphasised the importance of *animus possidendi* and observed:

"29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of C *ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak (2004) 3 SCC 376).*

D *30. "Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has the requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically staies that his possession is not* E *adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Mohd. Mohd. Ali v. Jagadish Kalita (2004) 1 SCC 371, SCC para 21.)"*

F 17. Also noteworthy is the decision of this Court in ***Mohan Lal v. Mirza Abdul Gaffar (1996) 1 SCC 639***, where this Court held that claim of title to the property and adverse possession are in terms contradictory. This Court observed:

G *"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor* H *or his successor in title or interest and that the latter*

had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

18.To the same effect is the decision of this Court in ***Annasaheb Bapusaheb Patil v. Balwant (1995) 2 SCC 543***, where this Court elaborated the significance of a claim to title *viz.-a-viz.* the claim to adverse possession over the same property. The Court said:

"15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all."

19. The Courts below have not seen the plaintiff-respondent's claim from the above perspectives. The High Court has, in particular, remained oblivious of the principle enunciated in the decisions to which we have referred herein above. All that the High Court has found in favour of the plaintiffs is that their possession is established. That, however, does not conclude the controversy. The question is not just whether

A the plaintiffs were in possession, but whether they had by being in adverse possession for the statutory period of 12 years perfected their title. That question has neither been adverted to nor answered in the judgment impugned in this appeal. Such being the case the High Court, in our opinion, erred in B dismissing the appeal filed by the appellant-BDA. The fact that the plaintiffs had not and could not possibly establish their adverse possession over the suit property should have resulted in dismissal of the suit for an unauthorised occupant had no right to claim relief that would perpetuate his illegal and C unauthorised occupation of property that stood vested in the BDA. In the result:

(i) Civil Appeals arising out of SLP (C) No.38601 of 2012 and SLP (C) Nos. 12013-12015 of 2013 fail and are, D hereby, dismissed.

(ii) Civil Appeal arising out of SLP (C) No.12016 of 2013 succeeds and is, hereby, allowed. The impugned judgment of the High Court is set aside insofar as the E same dismisses BDA's RFA No.911 of 2002. Resultantly RFA No.911 of 2002 shall stand allowed and the suit filed by the plaintiff dismissed but in the circumstances without any order as to costs.

F Devika Gujral Appeals disposed of.