BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

APPLICATION NO.10 OF 2021

BETWEEN

PHINTO P.A. & ANOTHER	:	APPLICANTS
Vs.		
UNION OF INDIA AND OTHERS	:	RESPONDENTS

WRITTEN SUBMISSION

T. H. Abdul Azeez (A-3) K/149/70

&

Mohammed Sadique T. A. (M-635) K/171/2002

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Counsel for the 6th Respondent

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The 6th Respondent herein is the Managing Partner of Edathadan Granites and Quarry Eathadan House, Aloor P. O., Thrissur district, Kerala – 680 683. The Respondent is conducting a granite and quarry crusher unit since 2015 in the impugned site. The 6th Respondent is conducting the quarry with all the requisite licenses, clearances and a working lease from the Government of Kerala. The said documents have been filed annexure – R6 – 1 to R6 – 6. Till date no authority that has issued the licenses have disputed the legality of the licenses or clearances granted. The Respondent, the current Managing Partner is a 26 years old who has taken over the management of the impugned quarry after the death of his father in January, 2019. ***It is pertinent to note that no litigation was ever instituted against the said quarry until the death of Respondent's father in 2019.Though the quarry was functioning from 2015 onwards not even a whisper of illegal quarrying was ever raised by any one.*** The present Managing Partner of the impugned quarry was a student who had to rush back from his studies abroad to take care of his mother and younger sister after the untimely death of his father. The 6th Respondent was forced to take up quarry business due to financial constraints. The Applicants therefore seized the opportunity and started filing frivolous and false petition against the Respondent. Writ Petition No.24806/2019 was filed before the Hon'ble High Court by members of 'Kunjalipara Samrakshana Samithi' to which the present applicant in OA No.10/2021 also belongs to. The said samithy through its members have filed WP 24806 of 2019 before Hon'ble High Court of Kerala. The issues raised regarding the EC conditions violation were also raised therein. The issue whether Forest Conservation Act, 1980 was violated was also elaborately dealt with by the learned single judge. The said judgement is placed as Annexure R6/11 at page 196. The 6th respondent filed a WA 1145 of 2020 and by a detailed order the judgement of the single judge was stayed. The said order is produced as Annexure R6/13.

LIST OF DATES IN CHRONOLOGICAL ORDER

12.02.1980: Patta No. LA (P) 1786/Kdy granted to the predecessor in interest of the project proponent with respect to land in Sy. Nos. 1270/8 and 1271/3 of Kodassery village in Chalakkudy Taluk under the Kerala Land Assignment Rules, 1964. (Annexure – R6 /16 at page 435)

07.01.1980: Patta No. LA (P) 1789/Kdy granted to the predecessor in interest of the project proponent with respect to land in Sy. Nos. 1269/4, 1270/1 and 1270/7 of Kodassery village in Chalakkudy Taluk under the Kerala Land Assignment Rules, 1964. (Annexure – R6/17 at page 438)

25.01.1980: Patta No. LA (P) 1895/Kdy granted to the predecessor in interest of the project proponent with respect to land in Sy. Nos. 1270/4, 1270/5, 1271/4 and 1271/5 of Kodassery village in Chalakkudy Taluk under the Kerala Land Assignment Rules, 1964. (Annexure R6/ 18 at page 441)

15.02.1980: Patta No. LA (P) 1921/Kdy granted to the predecessor in interest of the project proponent with respect to land in Sy. Nos. 1271/2 of Kodassery village in Chalakkudy Taluk under the Kerala Land Assignment Rules, 1964. (Annexure R6/19 at pages 444)

25.01.1980: Patta No. LA (P) 1829/Kdy granted to the predecessor in interest of the project proponent with respect to land in Sy. Nos. 1273/1 of Kodassery village in Chalakkudy Taluk under the Kerala Land Assignment Rules, 1964. (Annexure R6/20 at pages 447)

06.03.1980: Patta No. LA (P) 1832/Kdy granted to the predecessor in interest of the project proponent with respect to land in Sy. Nos. 1273/25 of Kodassery village in Chalakkudy Taluk under the Kerala Land Assignment Rules, 1964. (Annexure R6/21 at pages 450)

18.01.1980: Patta No. LA (P) 1840/Kdy granted to the predecessor in interest of the project proponent with respect to land in Sy. Nos. 1272/1 of Kodassery village in Chalakkudy Taluk under the Kerala Land Assignment Rules, 1964. (Annexure R6/22 at pages 453)

25.10.1980: Forest (Conservation) Act, 1980 comes into force

12.03.2015: Environmental Clearance Granted by MoEF & CC (Tenure of SEIAA, Kerala had expired at the relevant time and hence the project, which falls under Category B was examined by the MoEF & CC) (Annexure R6/2 at 12-21)

24.03.2015: Certificate issued by the Village Officer, Kodassery to the effect that the subject lands are not assigned for any special purpose and also that the subject lands do not fall under the ambit of reserve forest.

07.05.2015: Order issued by the Director of Mining and Geology, Government of Kerala granting quarrying lease to the project proponent wherein the survey numbers are given and identified as private lands. (Annexure – 10 @ Pages 42 - 43)

20.05.2015: Quarrying lease executed between the Governor of Kerala and the project proponent for a period starting 20.05.2015 till 19.05.2027 with a clear identification of the land involved. Statutory Stamp duty fixed was remitted by the project proponent. (Annexure R6/4 at page 29)

06.01.2019: Former Managing Director Sri. E. N. Shajan and father of the present Managing Director Sri. Ananthakrishnan Shajan, passed away untimely. The present Managing Director Sri. Ananthakrishnan Shajan who is the only son of Late Sri. E. N. Shajan took over the management thereupon leaving his studies incomplete at a very early age of 24 years. (Annexure R6/5 at page 43)

18.09.2019: Writ Petition (C) 24806 of 2019 filed by certain people residing near to the quarry project seeking various reliefs against the 6th Respondent herein including those reliefs identical to the ones raised by the Applicants in the present Original Application before the hon'ble National Green Tribunal. It is to be noted that the Writ Petitioners were closely associated with the first applicant in the present Original Application 10/2021 and the petitioners therein places reliance on a representation made by the 1st Applicant Sri.

Phinto P. A. along with various others to the Member Secretary, Kerala Disaster Management Authority, a copy of which was marked also to the Chairman of Disaster Management Authority - Thrissur, Tahasildar - Chalakkudy, RDO – Thrissur and Village Officer – Mattathur. The said document was marked as P-13 in W. P. (C) 24806 of 2019. (Annexure R6/10 at pages 58)

30.09.2019: Enquiry report submitted by the Deputy Director of Mining and Geology, Government of Kerala based on an enquiry pursuant to the complaint filed by the Kunjalippara Samrakshana Samithy, Mattathoor – an organisation in which allegedly the Applicants in O. A. 10/201 are part of.

29.10.2019: The Divisional Forest Officer, Chalakkudy Division, issued a Stop Memo (Ref. No. C.A2-5978/19) to the 6th respondent (project proponent) herein citing the reason that no NOC was obtained by the project proponent from the Forest Department. (Annexure R6/ 14 at pages 420)

09.01.2020: W. P. (C) 641 of 2020 was filed by the project proponent (6th respondent herein) against the stop memo issued by the Divisional Forest Officer, Chalakkudy seeking for quashing of the stop memo.

27.01.2020: The Divisional Forest Officer, Chalakkudy, 4th respondent in W. P. (C) 641 of 2020, filed a detailed Counter Affidavit. The pleadings raised by the Applicants in Original Application 10/2021 before the hon'ble National Green Tribunal are identical to the averments made in the Counter Affidavit filed by the Divisional Forest Officer, Chalakkudy in W. P. (C) 641 of 2020

06.02.2020: The learned Single Judge of hon'ble High Court of Kerala, after considering the pleadings of all parties, quashed the Stop Memo issued by the Divisional Forest Officer, Chalakkudy. This Order is still not challenged and has become final. Further, the Hon'ble single judge has quashed the stop memo on the conclusion that DFO does not have any power to issue the stop memo which is on the conclusion that the said area is not forest land. This order has

reached finality as no appeal has been filed against this judgement. (Annexure R6/ 15 pages 422).

08.03.2020: The Hon'ble District Collector, Thrissur conducted a Site Inspection and submitted a detailed interim report to the Hon'ble High Court of Kerala on 12.03.2020 pursuant to the directions of the Hon'ble High Court dated 18.02.2020 in W. P. (C) 24806 of 2019.

06.08.2020: W. P. (C) 24806 of 2019 was disposed off by the learned Single Judge of the Kerala High Court by a detailed Order. Annexure R6/ 11 at page 196

17.08.2020: Writ Appeal 1145 of 2020 preferred by the 6th Respondent herein (project Proponent) against the Order dated 06.08.2020 in W. P. (C) 24806 of 2019.

26.08.2020: The Division Bench of Kerala High Court comprising of Hon'ble the Chief Justice Mr. S. Manikumar and Hon'ble Mr. Justice Shaji P. Chaly admitted the Writ Appeal 1145 of 2020 and granted an interim stay of operation of the Judgement in W. P. (C) 24806 of 2019. The pleadings raised by the Applicants in the present Original Application 10/2021 before the Hon'ble National Green Tribunal is taken note of by the learned Division Bench while admitting the Writ Appeal 1145 of 2020. It is to be noted that in this interim Order, the Hon'ble Court takes specific notice of the Judgement in W. P. (C) 641 of 2020 and observes that "No appeal has been filed by the State or the other respondents therein, questioning the correctness of the judgement quashing the stop memo". The learned Division Bench also takes note of various other identical/similar Writ Petitions including those referred to the larger benches on the issue under consideration. Those issues under consideration are the very same issues raised by the Applicants in the instant Original Application 10/201 before the hon'ble National Green Tribunal. (Annexure R6/13 at page 412)

05.01.2021: Present OA 10 of 2021 filed before this Hon'ble Tribunal by a member of the Kunjalipara Samrakshana Samithy, Shri Phinto.

POINTS RAISED AS OBJECTIONS TO THE OA

Resjudicata

i. In public interest litigation which are *in rem* the principles of *in personam* proceedings are to be distinguished and proceeded with accordingly. Instantly the petitioners before the High Court of Kerala and this Hon'ble Tribunal are different but they belong to the same group of agitating persons under the umbrella of "*kunjalipara samrakshana samithy"* who are agitating against the same impugned quarry. That they are all one and the same are proven by the photographs produced as Annexure R6-25 , that the Petitioner before this Hon'ble Tribunal was represented before the Joint committee by the Petitioner in the Writ Petition (W.P.(C) No.24806/2019) before the High Court. Reliance is placed on the following judgements in favour of the proposition that *res judicata* principles are applicable in cases like the instant one:

0 V. Subramanian v. Union of India, (2004) 4 MLJ 380, wherein the Hon'ble Court held that in public interest litigation proceedings, res judicata is applicable even though the parties in the subsequent petition are not the same

Gujarat Navodaya Mandal v. State Of Gujarat, AIR 1998 Guj 14, In this case the Supreme Court had issued directions for environmental prevention and environment protection in setting up oil refinery in a previous public interest litigation. The court held that the rule of constructive res judicata is attracted on the new writ petition connecting similar subject matter as agitated before, even though the petitioner was not party in previous public interest litigation.

State of Karnataka v. All India Manufacturer Organisation, (2006) 4 SCC 683.

The Hon'ble Supreme Court in this case held that if the issue in the previous public interest litigation was in the interest of public in large and litigated bona fide, it is presumed to be judgement in rem. Subsequent litigation filed involving same issue as were in the previous litigation would be barred by the rules of res judicata.

ii. In Writ Appeal No.1145/2020 an interim order allowing the impugned quarry to function is given by the division bench headed by the Hon'ble Chief Justice of the Kerala High Court. The issues whether the impugned site of the quarry

continues to be a forest land even after Pattayams were granted before the Forest Conservation Act, 1980 came into being under the Land Assignment Rules made under Kerala Land Assignment Act, 1960 are under consideration. In fact the interim order which is detailed refers to several other Writ Appeals pending before the Bench on the same subject matter.

iii. The Respondent filed WP 641/2020 challenging the stop memo issued by the DFO,Chalakudy against the 6th Respondent from conducting the quarry without getting clearance from the Forest Department. The same was quashed on the ground that the DFO did not have any powers to issue such orders as it was outside his jurisdiction. The revenue department also filed an affidavit to the effect that the said land on which the quarry was being conducted was not forest land. The said judgement is attached as Annexure 15. No appeal has been filed by the Forest Department against this order.

iv. The Hon'ble High Court has already issued an interim order in Writ Appeal No.1145/2020 allowing the impugned quarry to function. An order given by a constitutional court cannot be usurped by this Hon'ble Tribunal.

v. There are at least 40 cases Writ Petitions & Writ Appeals pending on the same questions of quarrying activity being allowed on assigned lands. Being so the National Green Tribunal following the principle of the propriety and the principles laid down in Raj Narain case by the Hon'ble Supreme Court, 1975 AIR 1590 should be prudent and not interfere in the subject matter.

vi. Close scrutiny of the documents produced by the petitioner in the Writ Petition filed before the Hon'ble High Court of Kerala will show that several documents produced in favour of his case also have the signature of the applicant before the National Green Tribunal namely Phinto.P.A. Further the time of the Joint Committee hearing the second petitioner Rijoy was represented by one Mr.Sajin who is the petitioner in the Writ Petition. The photographs produced by this Respondent shows that the petitioners are hand in hand and working together with each other. Therefore it is clear as crystal that the applicant came before this Tribunal by willfully suppressing the pendency of the Writ Appeal and the interim order given by the High Court therein. They are plainly indulging in forum shopping by rushing to National Green Tribunal when they were hit by an interim order from the High Court. The photograph attached by Annexure – R6 – 25 clearly demonstrates

that these applicant have no genuine case against the Respondent 6 but they are only trying to close down the said quarry due to some vested interest. Merry making and celebrating birthdays etc. seem to be the main activity inside the 'Smarapanthal'.

Kerala Land Assignment Act 1960, and the Rules framed therein are not part of Schedule 1 of the NGT Act, 2010

i. Schedule -1 of the National Green Tribunal Act specifies the legislations on which National Green Tribunal has jurisdictional powers. Kerala Land Assignment Act and the Rules made thereunder are not specified therein.

ii. Even though the grounds and prayers in the OA are pertaining to various issues including the violation of EC conditions the Petitioner conceded that they are not pressing on the same as they realise that those prayers will not stand and hence they limit their case to the finding of the joint committee that the impugned area on which the quarry is functioning is forest land. ***Therefore, the core question herein is whether the impugned site is a forest land or not.*** The right forum to agitate this is not before a statutory tribunal who has powers only to look at an environmental issue. In this particular case the joint committee consisting of officials from various departments were entrusted to gather factual data regarding the impugned site. Therein the committee goes beyond its call of duty and concludes that the site is forest land based on a hyper technical ground that the lands belonging to the Komban reserve forest have not been de-reserved by any notification even though the land had been handed over to the revenue department around 60 years back. This finding is dissented to by the committee member from the revenue department and made note off. Therefore, there is a dispute between two government departments regarding the title and nature of the impugned site. It is to be noted that no affidavit has been filed by the revenue department till date and only the forest department reiterating its claim has been filed. The Hon'ble Tribunal can seize jurisdiction in the case only if it proceeds on the assumption that it is forest land. Since such a presumption cannot be made due to the different stand taken by the government departments and also because the revenue department has not been made a party to this litigation it is clear that the Hon'ble Tribunal should take its hand away from looking into the said issue as otherwise it will lead to grave injustice.

iii. The question of whether assigned land can be used in any other purpose has been answered for the Hon'ble High Court in Jomon Joseph Vs. Commissioner of Land Revenue in Writ Petition (C) No.15220/2013 and in Writ Petition (C) No.18438/2013 Therefore the question of permitting the quarrying on assigned land should be addressed before the appropriate forum which is before the land revenue commissioner and not before National Green Tribunal.

iv. All the Pattayams given to the purcusor of the 6th respondent are well before Forest Conservation Act came into force in October, 1980 hence section 2 of the Act is in applicable in the said case.

v. In Wyanad Prakrithi Samrakshana Samithy V State of Kerala, OA No.577/2018 this Hon'ble Tribunal was seized with a similar issue where a dispute arose regarding the land on which non forest activities had already commenced. Here also the forest and revenue departments of the State of Kerala differed with each other on the nature and title of the land. The forest department had taken a similar view that the land handed over to the revenue department had not been notified as de-reserved by the MoEF. This Hon'ble Tribunal therefore thought it best not to interfere in the matter and disposed it off .The judgment was pronounced by a four member bench of this Hon'ble Tribunal.

WITHOUT PREJUDICE THE QUARRYING CONDUCTED BY THE 6TH RESPONDENT IS LEGAL

i. The 6th respondent has all the requisite licenses and valid consents issued by the various statutory authorities to conduct the quarry. The lease is entered into by the State of Kerala and the project proponent 6th respondent.

ii. The issue of whether quarry can be conducted on assigned lands have been looked into by the Hon'ble High Court of Kerala way back in 2013 in WP(C).No. 15220 of 2013, Joemon Joseph V Commissioner of Land Revenue. Any dispute to the same should be agitated before the Commissioner of Land Revenue who has the powers under the Kerala Land Assignment Act and Rules to adjudicate on the same.

iii. The said land does not require any clearance from the forest department as is held by the Hon'ble Hight Court in WP 641/2020. Further, the forest boundary is marked more than 250 meters away from the impugned site. The land was assigned for non-forest activities much before the FC Act, 1980 came into force. The nature of the land has been changed for more than 50 odd years.

Mohammed Sadique T. A.

Counsel for the 6th Respondent

1975 KHC 562
Supreme Court
***V. R. Krishna Iyer, J.**

Smt. Indira Nehru Gandhi v. Raj Narain and Another
Parallel citation(s): 1975 KHC 562 : 1975 (2) SCC 159 : AIR 1975 SC 1590

Representation of the People Act, 1951 -- S.116B(2) -- Election -- Stay application -- Pronouncement on merits of appeal -- Is justified where the judgment contained grotesque errors, absurd conclusions or grossly erroneous propositions of law

Important Para(s):7

Advocates:

JUDGMENT
V. R. Krishna Iyer, J.

1. Right at the beginning, I must record appreciation of the valuable assistance given by counsel on both sides to the Court in clarifying the twilt aspects and unravelling the latent facets of what, viewed in typically isolated legal perspective, untuned to the national wave length and unclouded by the dust storms of politics is a humdrum case. Having regard to the obstreperous environs and mounting tensions surrounding the events following upon the judgment of the Allahabad High Court, it must be stated to the credit of Shri Palkhivala and Shri Shanti Bhushan that in their suave submissions they have shown how sound and fury only help thwart the thought ways of law and extra legal tumults can be walled off from the Court hall. The arguments have been largely legal and their merits have to be weighed in judicial scales. What, perhaps in a certain view, are not strictly pertinent to the stay proceedings have, however, been adverted to at the bar, inevitably and understandably, but within marginal limits, if I may say so, because the proceedings in the Halls of Justice must be informed, to some extent, by the great verity that the broad sweep of human history is guided by sociological forces beyond the ken of the noisy hour or the quirk of legal nicety. Life is larger than Law. Now I proceed to discuss the merits of the matter.

2. The appellant has moved this Court challenging the 'unseating' verdict against her by the High Court. She has also sought 'absolute stay' of the judgment and order under appeal. Entering a caveat, the respondent has also appeared through counsel and opposed the grant of stay,

3. While the right to appeal is statutory, the power to stay is discretionary. But judicial discretion indeed, even executive discretion cannot run riot. The former, though plenary, is governed in its exercise by sound guidelines, and courts look for light, inter alia, from practice and precedent, without however being hide bound mechanically by the past alone. After all, judicial power is dynamic, forward looking and socially luscent and aware. I mention this dimension of 'judge power' because the industry and ingenuity of both lawyers have unearthed prior instances zigzagging now and then but substantially striking the same note, A few orders from the debris of old records have been brought up which seem to suggest variations in the type of stay granted by the higher courts. I shall have occasion to dilate on them a little later, Suffice it to note that the power of the court must rise to the occasion, if justice, in its larger connotation, is the goal and it is.

4. Having regard to the historic power stakes involved in this election appeal and stay proceeding, vigorous arguments, marked by strokes of heat and flashes of light, have been heard in this application for stay and the time consumed at the bar has been considerably more than,when like matters have been routinely dealt with by this Court. Let it be plainly understood that the Court decides forensic questions without getting embroiled in non legal disputes working as it does in a sound proof system of sorts. Moreover, notwithstanding the unusual, though natural, excitement and importance surrounding the case, the Court is the quiet of the storm center and views, with an equal eye, the claims on each side, taking judicial note of the high issues and balance of convenience in the wider context. Arguments about public sentiment, political propriety and moral compulsion though touched upon at the bar and relevant at other levels, fall beyond the conventional judicial orbit and have to be discriminatingly sifted. Nevertheless, Shri Palkhivala has pressed before me the propriety and urgency of the Court taking into consideration the national situation even while exercising its discretionary power. As a counter weight to this submission, Shri Shanti Bhushan has claimed that no republic can surrender its democratic destiny to a single soul without being guilty of overpowering the parliamentary process by a personality

cult, This brings to the fore an activist interrogation about the cognisibility of such considerations by a court. Do the judicial process and its traditional methodology sometimes make the Judicature look archaic, with eyes open on law and closed on society, forgetting the integral yoga of law and society? If national crises and democratic considerations, and not mere balance of convenience and interests of 'justice', were to be major inputs in the Judge's exercise of discretion, systemic changes and shifts in judicial attitudes may perhaps be needed. Sitting in time honoured forensic surroundings I am constrained to judge the issues before me by the canons sanctified by the usage of this Court.

5. Now to the points urged before me. More or less by way of preliminanry objection, Shri Shanti Bhushan asserted that the petitioner, having come with unclean hands, was not entitled to seek the equitable relief of stay. How were her hands unclean? Because, the argument runs, her advocate induced the High Court into granting a stay by misrepresenting that if the judgment came into immediate effect, the national government would be paralysed for want of a Prime Minister and so time was needed for the ruling Party to elect a new leader to head the Government. Taken in by this alleged critical need of the democratic process, the learned Judge granted 20 days stay. This spell, ingeniously secured, was perverted to consolidate her leadership, not to find a successor. If the version of the respondent were veracious, the petitioner's conduct were dubious and this Court would not condone such 'solemn mockery.' But Shri Shanti Bhushan's submission loses its sting if Shri Palkhiwala were to be heeded. For, according to the latter, all in a hurry a stay was moved by the Allahabad advocate praying for stay stating both the need to elect a leader (not, another leader) and to enable filing of an appeal, The Congress Parliamentary Party was since convoked but there was a thunderously unanimous vote reaffirming faith in the petitioner as leader and Prime Minister. If her Party so full boldly plumped in favour of her remaining in office as Prime Minister and guiding the Party as its one and only leader, the petitioner could not be faulted as having prayed false to the Court. She could only call a meeting of the Party but not coerce the members to elect anyone other than the one they had set their hearts upon. Whether that Party's leadership resources were too inadequate to secure an alternative chief may be an interesting a question but the Court does not peep into that penumbral area Moreover, the stay order .does not state that it was to enable the election of a different leader that time was granted I have no good reason to reject the petitioner's plea that the choice of an alternative leader was left to her party that

she did what she could in the spirit of the representation to Court and did not what she could not viz., to force her partymen to push her aside for the nonce for the Court's satisfaction. In these matters one has to go by Prima facie materials and probabilities. I overrule the unclean hands' objection.

6. Shri Palkhivala, for the petitioner, contended that an unconditional stay was appropriate and essential because (a) it was sanctioned by some precedent: (b) there were momentous consequences disastrous to the country if anything less than the total suspension of the order under appeal were made; (c) the adverse holding of the High Court on two counts hardly exceeded, even on its face, technical violations unworthy of being visited with an interim embargo on Parliament Membership during the pendency of the appeal apart from being palpably perverse and (d) the nation was solidly behind the petitioner as Prime Minister. Minimal justice, public interest and balance of convenience concurred in his favouir. Shri Shanti Bhushan, on the contrary. joined issue on these pleas and asserted that (a) the appellant must be treated like any other party: (b) that an absolute stay was unprecedented; (c) that the democratic process would take care of itself even if the petitioner stepped aside for a while; (d) the corrupt practices were corrupt in law and fact, fully proved and could not be glossed over by a court of law as technical and (e) the alleged solid support by party minion meant little since similar phenomena could be organized by any strategist in top office and the rule of law cannot be drowned by the drums and shouts of numbers. In his submission, public interest and balance of convenience as also justice to the High Court judgment demanded that an illegally elected Member did not continue longer as Prime Minister under the umbrella of a stay order from this Court, without jeopardizing the credibility of the country abroad.

7. Shri Palkhivala assailed, in his opening submissions, the two findings recorded against the appellant holding her guilty of corrupt practice. Indeed, he was at pains to convince me that his client had e strong prima facie case on the merits, in the sense that the judgment, on its face, was perverse and legally untenable. Although I listened at some length to these arguments and, to an extent, to the counter submissions made, by Shri Shanti Bhushan in his endeavour to establish that the holdings were sound. I made it fairly clear in the course of the hearing that at this stage when I was considering whether a stay should be granted or not, it was premature and perhaps unwise to pronounce on the merits of the appeal itself except where the judgment contained grotesque errors, absurd

conclusions or grossly erroneous propositions of law. Having considered the submissions on this basis. I do not think I should express any opinion one way or the other on the merits of the findings. Nor do I regard it just for counsel for the respondent to say that every discrepancy in the petitioner's evidence or other incorrectness in testimony can be called false. Not to accept a witness's evidence may be due to many grounds of probability not always because of unveracity or unreliability. These aspects will surely be examined at the hearing of the appeal, not now.

8. Counsel for the petitioner, after dealing with the ex facie untenability of the Judgment under appeal which I have just disposed of, moved on to what he called justice between the parties. This is not an ordinary list, where even after stepping down from office, the petitioner can, if and after she wins the appeal, step back into office. In politics, 'red in tooth and claw', power lost is not necessarily followed, after legal victory, by power regained. The Court cannot, in that sense, restore the parties to their original position as in ordinary cases. Moreover, the respondent suffers no prejudice by the continuance of the petitioner as Parliament Member and Prime Minister. To cap it all, there is hardly a run of a little over half a year for two full term of this Parliament to expire. So, he pressed for continuance of the status quo which had gone on for a few years now during the pendency of the Election Petition.

9. The respondent's counsel retorted that the question of justice between two private persons was alien to election litigation and cited a ruling to emphasize what is obvious. In an election. case, the whole constituency is, in an invisible but real sense, before the court and justice to the electoral system which is the paramount consideration is best done by safeguarding the purity of the polls regardless of the little rights of individual combatants.

10. At the first flush I was disposed to prolong the 'absolute stay' granted by the High Court, moved not only by what Shri Palkhivala had urged but by another weighty time factor that the appeal itself, in the light of the directions I have already given yesterday, may well be decided in two or three months. But on fuller reflection I have hesitated to take that course. After all, the High Court's finding, until upset, holds good, however weak it may ultimately prove. The nature of the invalidatory grounds upheld by the High Court, I agree, does not involve the petitioner in any of the graver electoral vices set out in S.123 of the Act.

Maybe they are only venial deviations but the law, as it stands, visits a returned candidate with the same consequence of invalidation. Supposing a candidate has transported one voter contrary to the legal prohibition and even though he has won by a huge plurality of votes his election is set aside. Draconian laws do not cease to be law in court but must alert a wakeful and quick acting legislature. So it follows that I cannot, at this preliminary stage, lightly dismiss the illegality of the election as field by the High Court. But more importantly. I am disinclined to set store by Shri Palkhivala's 'private Justice' submission (to borrow his own phrase) because the ultimate order I propose to make, if I may even here anticipate, substantially preserves the position of the petitioner as Member of Parliament and does not adversely affect her legal status as Prime Minister.

11. In another facet of the same argument Shri Palkhivala urged that, after all, the petitioner had been held 'technically' guilty of 'corrupt practice' and that the grounds set out by the learned Judge were too flimsy to stand scrutiny at the appellate level. Therefore, the 'justice' of the case demanded continuance of the 'absolute stay' granted by the trial Judge himself. Shri Shanti Bhushan, on the other side, refuted this submission as specious. His argument is this. 'Corrupt practice' could not be dismissed as 'technical' if one had any respect for the law of the land as laid down by Parliament. Once the law has defined 'corrupt practice', commission' thereof cannot be condoned as 'technical'. That is defiance of the law and challenge to the wisdom of Parliament. It is one thing to amend the law, but it is another to disregard it on a ground unknown to law that it is only a nominal deviance, I am afraid it is premature and presumptuous for me, at this stage, to pronounce upon the relative worth of the findings of the High Court. The offence may be light or grave. But that is for the Bench which hears the appeal in extenso to hold, one way or the other. Before me are findings of contravention of the election law and I cannot take the prima facie view that the justice of the case justifies indifference to those findings. In short, I am not influenced by this aspect of Shri Palkhivala's argument.

12. Leaving aside the injury to private rights as of lesser consequence in election disputes, let me look at the customary factors courts are prone to probe in stay matters where the discretion vests court.

13. What has been the prior practice of this Court in such cases ? What, if any are the special circumstances compelling departure in favour of the petitioner?

What is the balance of convenience? What does the public justice of the case dictate? Which way does public interest lie? These are the socio legal considerations which are relevant to the grant or refusal of stay and the terms to be imposed on the petitioner in the event of grant. Stay pending appeal has been usually granted but hemmed in by conditions. The respondent himself has filed a sheaf of orders of conditional stay granted by this Court, suggesting by implication that those conditions should be attached to any stay the Court may be inclined to issue. The terms in which such limited stay orders have been couched, the legal implications thereof, the right surviving under them and the impact thereof on the office of Prime Minister of the petitioner will be scanned more closely later in this order. Suffice it to say for the present that for around two decades there has rarely been what Shri Palkhivala calls an 'absolute stay' issued by this Court in election cases where a Member as been unseated by the High Court for corrupt practice.

14. There was reference at the bar to political compulsions like the swell of the tidal wave in favour of the petitioner which, even if true (though controverted by the other side), cannot breach the legal dykes to force a stay where precedentially it has not been granted. Nor can the national crisis, conjured up by counsel for the petitioner, in the event of her exit from office, be a valid legal consideration, even it may perhaps have weight in other spheres. Shri Shanti Bhushan urges that moreover one cannot readily accept that the nation will come to a grinding halt if one person is not available to fill the office of Prime Minister, I make no comment on these rival presentations for it is difficult for the Judge to guage with his traditional court room apparatus the reality and extent of the circumstances of national magnitude the parties have dwelt upon.

15. So we come to the next criterion which is common place, in this jurisdiction viz.: the balance of convenience. Here, counsel for the petitioner has addressed an attractive argument (repeating in some measure what, under a different head, he had urged) that if the appeal itself were disposed of early, the continuance of the status quo would go a long way to preserve and promote administrative stability and policy continuity having regard to the fact that the petitioner in this case was more than a Member of Parliament but was the Prime Minister and leader of the ruling Party. In a democracy. the Prime Minister is the central figure who decides crucial internal and international policy, directs measures of great economic moment and is responsible and accountable to the Parliament and the

nation for the performance of the Administration. Of course, collective Cabinet responsibility is of the essence of the democratic process, but the Council of Ministers is virtually chosen by the President in accordance with the wishes of the Prime Minister. The broad guidance of the Party in power notwithstanding, the personality of a Prime Minister has a telling effect on democratic government. If, therefore, the appeal itself will be disposed of in some months, as it is likely to be, the balance of convenience will be in favour of continuance of the same team which is animated by the presence of the key personality within the Council of Ministers. Again, the short spell of the pendency of the appeal a case of this climactic pitch deserves to be disposed of with quick dispatch and I have already given some directions to facilitate it is a strong factor for non disturbance of the petitioner's position, having regard to the traumatic effect on and grievous consequences to the petitioner. Of course, these are components of a wider concept of balance of convenience and not altogether forbidden ground in dealing with discretionary exercise. May be there is some force in the plea that there should be a stay of operation of the judgment and order in such manner that upsetting the Ministry in office should be obviated. Ordinarily, even with the same Party ruling, when a Prime Minister resigns, the whole team is ushered out leaving it free for the new leader to choose his new set.

16. Shri Shanti Bhushan has countered this argument by reliance on the practice in the parliamentary system where within the ruling Party a leader is changed or ceases to be available and a new leader is elected, so that the democratic process finds smooth expression. This, he said, has happened in India, as elsewhere and no plea of balance of convenience can be built on what in fact is a desire to remain in office. The judicial approach as already pointed out by me, is to shy away from political thickets and view problems with institutionalised blinkers on, so long as the court methodology remains what it is. So no comments again. But the balance of convenience, widely or limitedly connoted, is reasonably taken care of in the shape of the conditional stay granted at the conclusion of this judgment.

17. Shri Palkhivala drew my attention to a few vintage instances of what he calls absolute stay having been granted in election matters by higher Courts. These are cases of long ago and the argument based on them stems from an insufficient comprehension about the anatomy of the pre 1956 Representation of the People Act, 1951 (Act XLIII of 1951). The Court speaks for today, based on

current practice and present law.

18. In this context it is necessary to remember that in the Act as it originally stood, Election Tribunals tried election disputes and S.107 provided:
"107. Orders to take effect only on publication An order of the Tribunal under S.98 or S.99 shall not take effect until it is, published in the Gazette of India under S.106."
Indeed, there was no right of appeal provided in the Act,and the aggrieved parties had to approach the High Court or the Supreme Court under the provisions of the Constitution. The higher Courts in such situations merely stayed the publication in the Gazette, the consequence being that the order of the Tribunal did not come into effect at all. The question, therefore, of an absolute stay or a qualified stay of the unseating verdict did not and could not arise. To rely upon orders passed under the then law merely staying publication of the order of the Tribunal in the Gazette as tantamount to absolute stay of an order which took effect would be untenable.

19. In 1956 a major change in the law was made whereby the order of the Election Tribunal appointed under S.86 shall take effect as soon as it is pronounced by the Tribunal (vide S.107, as amended by Act XXVII of 1956) By the same amending Act, an appeal was provided from orders of Election Tribunals to the High Court of the State and S.116-A (4) clothed the High Courts with power to stay operation of the order appealed from and if stay was granted the order shall be deemed never to have taken effect'. Of course, against appellate orders of the High Court the disappointed party could come to this Court under the provisions of the Constitution (Art. 133 or 136).

20. Still later, by amending Act No. LXVII of 1966, the High Court was conferred original jurisdiction to try election petitions and it was provided in S.107 that the order of the High Court shall take effect as soon as it is pronounced.....'. While a limited power to stay operation of the order of the High Court' was conferred by S.116 B (1) on the High Court itself, the statutory right of appeal to the Supreme Court was provided for by S.116A. However, by virtue of S.116B (2) it was enacted :
"l16B (2). Where an appeal has been preferred against an order made under S.98 or S.99, the Supreme Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order

appealed from."
Thus, for the first time, it was in 1966 that a statutory right of appeal to this Court was created, and a plenary power to grant stay, conditional or otherwise, was vested in this Court, independently of constitutional remedies.

21. This narration of the historical background regarding the pre 1966 statutory position is sufficient to distinguish old examples of the pattern of stay granted by this Court. Today there is no case of prohibition of publication in the Gazette. Above all, the type design, if I may use such an expression, of stay orders made by this Court under the present law has, with marginal variations, acquired a standardized form. Naturally, this cursus curiae is mere persuasive for adoption, unless exceptional legal or other grounds for deviation are made out for grant of absolute stay.

22. Even on the basis of the post 1966 law, Shri Palkhivala has argued that taking legitimate cognizance of the peerless position of the appellant as Prime Minister of the country, judicial discretion must least disturb not merely her seat in Parliament but her office in Government.

23. I proceed to take a close up of the 'sample orders' made by this Court during the last many years, dissect them in the background of the judgments under appeal where such orders were passed and mould my order deriving support therefrom. So I turn the focus on the implications and effect of the stay orders in the cases covered by Annexure A filed by the respondent which are in consonance with the usual orders passed by this Court in election appeals.

24. It is evident on its face that the orders are dichotomous in character. The two limbs stand out clearly and they are (a) that 'the operation of the Judgment and Order of the High Court be and is hereby stayed' and (b) the petitioner shall abide by certain enumerated terms viz., (i) he will be entitled to attend the Sessions of the Legislature and sign the Register: (ii) he shall not take part in the proceedings of the House or vote or draw any remuneration as such Member. In the instances I have examined, the appeals are against orders 'unseating the returned candidate on the ground of corrupt practice and disqualifying him for the statutory six year period prescribed in S.8A. If corrupt practice is found, disqualification follows, although sometimes the Trial Court expressly writes it into the order itself, as in the present case, If the finding of corrupt practice does not come into effect, the sequel of disqualification also does not come into effect. If the biopsy of the

stay order inevitably shows that the finding of corrupt practice is suspended and is not operative, the electoral disqualification automatically stands eclipsed. S.8A being the necessary follow up of the judgment under S.100, what is the legal effect of an order by this Court suspending the operation of the judgment and order of the High Court? By sheer force of the first limb of this Court's stay order, the judgment and order of the High Court is nullified for the nonce i.e., till the appeal is disposed of. Consequentially the disqualification also ipso jure remains in abeyance.

25. What then is the import of the conditions imposed in the stay order? They inhibit the elected member, who otherwise by virtue of the stay of the judgment, will be entitled to exercise all his rights and privileges as Member, from doing certain things expressly tabooed, viz., (a) participating in the proceedings; (b) voting or drawing remuneration. For all other purposes, the voiding judgment being suspended, he continues as Member. Indeed, the very direction that he attend the House and sign in the Register as Member to avoid disqualification under Art. 101 of the Constitution postulates that he is a Member and is not disqualified under S.8A of the Act, For, if the disqualification under S.8A operates and he ceases to be a Member, there is no need to veto his drawing remuneration, voting or participating in the proceedings. It would be a curious contradiction to say that a person is disqualified to be chosen as or being a Member and yet be allowed to sign the Register as Member. Can the Court, without stultifying itself and usurping power, permit a non Member to sit in the House instead of or even in the Visitor's gallery, unless it necessarily reads into the order of stay of judgment a suspension of the disqualification also? There are a number of other privileges for a Member of Parliament which are left untouched by this Court's prior stay orders. Moreover, the specific direction suspending the judgment and order under appeal, read in its plenitude, also suspends the finding of corrupt practice. So much so the disqualification also shares the fate I have no doubt that the reasonable effect of a stay order is that there is a plenary eclipse of the High Court's judgment and order during the pendency of the appeal, subject to the few restraints clamped down on an appellant. Those restraints are the second limb of the stay order and are explicit enough.

26. The essential point to note is that by necessary implication the disqualification imposed on every appellant also,stands suspended in all cases of conditional stay. The stay is complete, but carved out of it are but three limitations. For all

other purposes, the appellant, in all such cases, continues a Member. For instance, if he is prevented from entering the Legislature, a breach of,privilege arises. I have gone at length into these ramifications to remove recondite doubts. The typical stay restores to the appellant, during its operation, the full status of a Member of a Legislature minus the right to participate in debates, including voting and drawing of remuneration as a legislator.

27. For these reasons I propose to direct a stay, substantially on the same lines as have been made in earlier similar cases, modified by the compulsive necessities of this case.

28. What would be the legal impact of an order of this type on the Prime Ministership of the petitioner? The question canvassed about the office of the Prime Minister and its involvement in the present case has exercised counsel on both sides and it is but proper to dissolve the mists of possible misunderstanding by an explicit statement. This appeal, it is plain, relates solely to the Lok Sabha Membership of the appellant and the subject matter of her office qua Prime Minister is not directly before this Court in this litigation. Indeed, that office and its functions are regulated carefully by a separate fasciculus of Articles in the Constitution. There is some link between Membership of one of the two Houses of Parliament and Ministership (Art.75) but once the stay order is made, as has been indicated above, the disqualification regarding Membership is in suspended animation and does not operate. Likewise, the appellant's Membership of the Lok Sabha remains in force so long as the stay lasts. However, there will be a limitation regarding the appellant's participation in the proceedings of the Lok Sabha in her capacity as Member thereof, but, independently of the Membership, a Minister and, a fortiori, the Prime Minister, has the right to address both Houses of Parliament (without right to vote, though) and has other functions to fulfil (Arts. 74, 75, 78 and 88 are illustrative). In short, the restrictions set out in the usual stay order cannot and will detract from the appellant being entitled to exercise such rights as she has, including addressing Parliament and drawing salary, in her capacity as Prime Minister. There will thus, be no legal embargo on her holding the office of Prime Minister. However, this legal sequitur of the situation arising from the stay of the judgment and order of the High Court, including the suspension of the disqualification under S.8A, has nothing to do with extra legal considerations. Legality is within the Court's province to pronounce upon, but canons of political propriety and democratic dharma are polemical issues on

which judicial silence is the golden rule.

29. It is true that between an absolute stay as sought and the stay as granted there is practically little difference when the petitioner is a Minister. Moreover when the House is not in session, as now, even the restrictions set out in sub para. III of para. 31 of this order hardly have any operation. In this view, the dispute between the parties one asking for an absolute stay (as if it were a magic formula) and the other citing heaps of orders of conditional stay for adoption (as if much difference would be made in practical effect) appears to be shadow boxing, as pointed out by me even during the arguments.

30. May be, brevity which is usual in this Court in orders of stay of this sort might well have sufficed here also but, the over all desirability to dispel possible ambiguity warrants a hopefully longer speaking order.

31. Let me sum up the terms of the operative order I hereby pass :
I Subject to para. III below, there will be a stay of the operation of the judgment and order of the High Court under appeal.
II. Consequentially, the disqualification imposed upon the appellant as a statutory sequel under S.8A of the Act and as forming part of the judgment and order impugned will also stand suspended. That is to say, the petitioner will remain a Member of the Lok Sabha for all purposes except to the extent restricted by Para. III so long as the stay order lasts.
III. The appellant petitioner, qua Lok Sabha Member, will be entitled to sign the Register kept in the House for that purpose and attend the Sessions of the Lok Sabha, but she will neither participate in the proceedings in the Lok Sabha nor vote nor draw remuneration in her capacity as Member of the Lok Sabha.
IV. Independently of the restrictions under para. III on her Membership of the Lok Sabha, her rights as Prime Minister or Minister, so long as she fills that office, to speak in and otherwise to take part in the proceedings of either House of Parliament or a joint sitting of the Houses (without right to vote) and to discharge other functions such as are laid down in Art.74, 75, 78, 88 etc., or under any other law, and to draw her salary as Prime Minister, shall not be affected or detracted from on account of the conditions contained in this stay order.

32. This order, by me sitting single as Vacation Judge, is being delivered with a sense of hurry, although after careful consideration of arguments heard till last evening. Now the Parliament is not in session and the veto on the right to vote is

currently academic. Situations may develop, circumstances may change and this order itself, like any interlocutory order, is provisional. If new events like the convening of Parliament take place or fresh considerations crop up warranting the review of the restrictions in this stay order, the petitioner appellant will be at liberty to move a Division Bench of this Court again to modify the restrictions or pray for an unconditional stay. Likewise, the respondent may also if justifying considerations appear a new, move for variation of the conditions in this stay order.

2006 KHC 628
Supreme Court
Ruma Pal; *B. N. Srikrishna; Dalveer Bhandari, JJ.

State of Karnataka and Another v. All India Manufacturers Organisation and Others

Parallel citation(s) : 2006 KHC 628 : 2006 (4) SCC 683 : AIR 2006 SC 1846 : JT 2006 (11) SC 337 : 2006 (2) KLT SN 110

CaseNo : C. A. No. 3492, 3493, 3494 of 2005 with No. 3497, 3842, 3843, 3844, 3848-84, 3889- 4366,4575, 4576, 5092, 5093, 5399, 5400, 5401, 5402, 5746, 5747, 5759, 5797, 5798, 5799, 6098, 6099, 7024-40, 7591, 7592 of 2005, 61, 73, 74, 75, 76 of 2006, 2141 of 2006

Date : 20/04/2006

Constitution of India -- Art.226, Art.32 -- Principle of res judicata -- Public interest litigation -- Applicability -- Previous litigation was in respect of a right in public interest and was bonafide -- In such circumstances, it would be a judgment in rem and would bar a subsequent public interest litigation raising same issues as were raised in the previous litigation or connected issues by persons interested in such right -- Civil Procedure Code, 1908 S.11 Explanation.3, S.11 Explanation.4

Important Para(s):32, 34, 35, 36, 38, 39, 41, 48, 50

Land Acquisition -- Requisition -- Karnataka Industrial Areas Development Act, 1966 S.28(1) -- Notification stating that lands were being acquired for the purpose of industrial development -- Purpose indicated in the notifications is sufficiently precise and is not affected by the vice of vagueness as alleged

Important Para(s):74, 75

Constitution of India -- Art.226, Art.32, Art.136, Art.14, Art.12 -- Constitutional Courts have jurisdiction to interfere if State or its instrumentality acts with extreme arbitrariness and malafides

Important Para(s):59, 61, 62

Referred: State of U.P. v. Johri Mal, 2004 (4) SCC 714; State of Haryana v. State of Punjab, 2002 (2) SCC 507; Biman Krishna Bose v. United India Insurance Co. Ltd., 2001 (6) SCC 477; H. T. Somashekar Reddy v. Govt. of Karnataka, 1999 (1) KLD 500; Shrilekha Vidyarthi v. State of U.P., 1991 (1) SCC 212; Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, 1990 (2) SCC 715 : 1990 SCC (L&S) 339; Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, 1989 (3) SCC 293; Forward Construction Co. v. Prabhat Mandal (Regd.), 1986 (1) SCC 100; Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd., 1983 (3) SCC 379; State of U.P. v. Nawab Hussain, 1977 (2) SCC 806; Aflatoon v. Lt. Governor of Delhi, 1975 (4) SCC 285; Greenhalgh v. Mallard, 1947 (2) All ER 255 (CA); Kalipada De v. Dwijapada Das, AIR 1930 PC 22; Henderson v. Henderson, 1843 (3) Hare 100 : 67 ER 313; Referred to

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The Judgment of the Court was delivered by B. N. Srikrishna, J. --

1. Leave granted in Special Leave Petitions (C) Nos. 1562-63 of 2006.

2. Since this matter consists of two sets of distinct but related appeals, for the sake of convenience, they may be considered under the two heads of: (i) the Main Matters, and (ii) the Land Acquisition Matters.

3. The Main Matters
(Civil Appeals Nos. 3492-94, 3497 and 3842-44 of 2005)
The background
These appeals are directed against a common judgment of the High Court of Karnataka (dated 3-5-2005) by which three public interest litigations being Writ Petitions Nos. 45334 of 2004 (All India Manufacturers Organisation v. State of Karnataka), 45386 of 2004 (J.C. Madhuswamy v. State of Karnataka) and 48981 of 2004 (Dakshinamurthy v. State of Karnataka) were disposed of resulting in dismissal of Mr J.C. Madhuswamy's writ petition and a direction to the State of Karnataka to continue to implement a certain project known as the "Bangalore - Mysore Infrastructure Corridor Project" (hereinafter "the Project").

4. A brief statement regarding the Project: Bangalore is the capital of the State of Karnataka and a rapidly developing city, which is projected to be the IT boom town in the country. As a result of the pressures of urbanisation and industrialisation, the infrastructure in and around Bangalore was found to be inadequate. The traffic situation in Bangalore and on the roads leading into and out of the city was found to be chaotic and hardly conducive to the important role that the city is expected to play in the near future. The Government of Karnataka, realising the importance of rapidly developing the city of Bangalore, and also for developing its transport and communication systems, conceived of the Project. The Project had twin objectives: firstly, to provide for an express highway linking Bangalore with Mysore, the former capital of the erstwhile State of Mysore, which is now coming up as an industrial town, and for developing infrastructure along the corridor and in and around Bangalore city. The Project is a massive undertaking, which requires design, construction, maintenance and operation of an express highway between Bangalore and Mysore. Equally, the Project is to also develop infrastructure around the periphery of Bangalore and all along the Bangalore - Mysore Express Highway, which is about hundred years old and has become incapable of handling the heavy volume of vehicular traffic.

5. On 28-9-1988, the State of Karnataka invited tenders for implementation of such an express highway. There was no satisfactory response to the tenders called for. There was only one tenderer and the tenderer insisted on certain conditions which were not acceptable to the Government of Karnataka. Thus, the bid of the tenderer was not accepted. A survey was conducted by Asian Development Bank and its report pointed out that the projected population of the

Bangalore city would be about 8.2 million by the year 2011 and, therefore, there was an urgent need for improvement of the Bangalore - Mysore Corridor. It was also suggested that the State Government bear 20% of the project cost, along with the cost of land acquisition, if such a project was to be implemented. The State Government did not have sufficient means and had to look for other alternative ways for implementing this project. The State Government then decided to take up the Project on a Build Own Operate Transfer (hereinafter "BOOT") basis with any consortium. The consortium was to carry out the development of the Project from its own resources and recoup its investment by collection of tolls along the Express Highway.

6. On 20-2-1995, a memorandum of understanding (hereinafter "MoU") was entered into between the State Government and the consortium of Vanasse Hangen Brustlin Inc., USA (hereinafter "VHB"), Kalyani Group of Companies (hereinafter "Kalyani") and SAB Engineering and Construction Inc., USA (hereinafter "SAB"). The Governor of the State of Massachusetts, USA, Mr William Weld, and Mr H. D. Deve Gowda, the then Chief Minister of the State of Karnataka were present and appended their signatures thereto. It was agreed that the State Government would extend support for the development of the Bangalore - Mysore Expressway, provided commercial viability, competitiveness and feasibility of the project was established to the satisfaction of the State Government. The consortium submitted a project report for review by the State Government.

7. On 5-6-1995, a "High Level Committee" (hereinafter "the HLC") was formed under the chairmanship of the Minister for Public Works. The HLC consisted of the Principal Secretary, Commerce and Industries Department; Principal Secretary, Housing and Urban Development; Secretary, Public Works Department; Chief Engineers C and B (South Zone, Bangalore). The Chairman and Managing Director, Karnataka State Industrial Investment Development Corporation, were official members and the Chairman, Technical Advisory Committee (Irrigation) -- one K. C. Reddy -- was a non official member. The HLC met from time to time and reviewed the progress made in the implementation of the Project. On 26-8-1995, the consortium presented the details of the Project to the HLC. After detailed consideration of the Project, on 12-10-1995 the HLC submitted its report to the Government. The Project was considered in detail by the State Cabinet Sub Committee, which recommended that the matter be placed

before the Cabinet for consideration. The report of the HLC and the project report made by the consortium was accepted by the Cabinet, subject to the modification that instead of seven townships as proposed in the project report, only five townships were to be developed.

8. A government order (No. PWD 32 CSR 95, Bangalore, dated 20-11-1995) ensued, which in terms pointed out that the implementation of the Project was to be done by a private consortium. The preamble to the government order recited that the project work was to be completed by the consortium with their own resources and that the consortium would keep the Project going for thirty years, so as to get a return of the expenditure, profit, etc. through collection of tolls. It is important to note that the land acquisition expenditure was also to be borne by the consortium. To make the Project economically viable, the consortium had proposed development of seven townships, which as already stated, was reduced to five by the Cabinet. It is also important to note that the government order specifically permitted the development of five townships along with the construction of the Express Highway. As already stated, the consortium was to recoup its expenditure and obtain profits through tolls -- the first system of its kind in Karnataka. Consequently, it was felt that the modification of the existing laws might become necessary. The necessary legal changes were to be examined by the administrative departments concerned, which would take "... necessary action and also extend cooperation for implementation of the Project".

9. The three members of the consortium -- VHB, Kalyani and SAB -- entered into a "Consent and Acknowledgement Agreement" (hereinafter "the CAA") dated 9-9-1996, specially assigning their respective rights under the government order (dated 20-11-1995) and the MoU with regard to the Project, in favour of Nandi Infrastructure Corridor Enterprises Ltd. (hereinafter "Nandi"). Nandi had been registered on 16-1-1996 as a company under the Companies Act, 1956, to serve as a corporate vehicle for the development and implementation of the Project. On 21-12-1996, the CAA was forwarded to the State Government for necessary action. The State Government was advised by its Law Department (through Opinion No. 182 OPN II/97 dated 3/4-3-1997) that since the Government was finalising a separate agreement with Nandi, there was no need to specifically consent to the CAA. Consequently, the State Government took no further action except noting it.

10. In February 1997, Nandi submitted a draft of the Framework Agreement (hereinafter "the FWA") to be executed between it and the State Government. This draft FWA was considered by the Core Committee, which had been set up to negotiate the terms with Nandi. It was also referred to the Cabinet Sub Committee, which suggested certain modifications to the FWA. After due incorporation of such modifications, the Government of Karnataka approved the FWA on 17-3-1997 and the same was signed between Nandi and the State Government on 3-4-1997.

11. Under Clause.4.1.1 of the FWA, the State Government set up an "Empowered Committee" headed by the Chief Secretary of the State to oversee the Project and its implementation keeping in mind the importance of timely completion. The Empowered Committee included technical experts and held about ten meetings from time to time, the last one being on 24-7-2004. The main task of the Empowered Committee was to remove administrative bottlenecks and to ensure the smooth execution of the Project. The Empowered Committee was the State's agent of coordination and carried out the State Government's obligations under the FWA.

12. One of the key obligations of the State Government under the FWA was to make available approximately 20,193 acres of land. As set out in Schedule I to the FWA, 6956 acres was government land and the remaining 13,237 acres was private land, which was to be acquired by the State Government. There was also an undertaking by the State Government under the FWA to carry out appropriate amendments to its laws, rules and regulations so that the massive Project could be implemented fully and within a time bound schedule. Accordingly, the provisions of the Karnataka Industrial Areas Development Act, 1966 ("the KIAD Act") were amended by Act 11 of 1997 so that the land required for the Project could be acquired expeditiously. The Karnataka Industrial Areas Development Board ("the KIAD Board") set up under the KIAD Act, entered into an agreement with Nandi on 14-10-1998 for acquisition of private land. Notifications were issued from time to time for acquiring lands for the Project.

13. The litigation in Somashekar Reddy

While all these frenetic activities were going on for the successful and timely implementation of the Project, the FWA was challenged in a Public Interest Writ Petition No. 29221 of 1997 in November 1997 (H. T. Somashekar Reddy v. Govt.

of Karnataka (1999 (1) KLD 500)) by one H. T. Somashekar Reddy, a retired Chief Engineer. The State Government and Nandi were the two respondents thereto. The FWA was challenged on all conceivable grounds and the writ petition was vigorously opposed by the State Government and also by Nandi. Both the State Government and Nandi contended that the FWA was valid and that it had been entered into in larger public interest. It was also successfully pleaded on the part of the State Government that it had agreed to provide the "minimum extent of land" for the Project, which was 20,193 acres of land and that no excess land was being acquired.

14. The Division Bench of the Karnataka High Court hearing the said writ petition formulated for its consideration the following questions:
"(a) Whether the Government has acted arbitrarily in entering into the agreement with Respondent 2?
(b) Whether agreement is illegal as being opposed to public policy?
(c) Whether the agreement contravenes any constitutional provisions or other existing enactments?
(d) Whether the agreement is vitiated by mala fides?
(e) Whether the rights of any individual or groups of individuals is being illegally affected by the execution of the agreement?
(f) Scope and extent of judicial review in matters of State Policy."
(Kant LJ pp. 241-42, para 30)

15. For the purpose of the present litigation, it is important to note that one of the main grounds of challenge to the FWA in Somashekar Reddy was that land was being acquired far in excess of what was required for the Project. In fact, it was specifically stated in the writ petition that Art.7 of the FWA (that provides for construction of townships) was the "most damaging provision detrimental to the owners of land". Further, it was stated in the writ petition that the land requirement in Schedule I of the FWA was "highly exaggerated" and would illegally create "huge profits" for Nandi. It was prayed that the FWA be quashed and further, since the FWA was purportedly the result of "offences of breach of trust", for institution of a Central Bureau of Investigation (hereinafter "CBI") enquiry into the whole project.

16. Each of the questions was answered in favour of the respondents i.e. the State of Karnataka and Nandi. It was held that the FWA was not arbitrarily

entered into by the State Government; that it was not opposed to public policy; that it was not unconstitutional or illegal; that it was not vitiated by mala fides; that no rights of any individual or individuals had been illegally affected by the execution of the agreement. Finally, the Court found that it could not exercise its power of judicial review to interfere with the FWA which was in reality a policy choice of the Government.

17. Further, as we shall discuss subsequently, the argument of excess land being acquired, was not acceded to by the High Court which found that the Project envisaged, in addition to the construction of an expressway between Bangalore and Mysore, other connected developmental activities, such as: (Kant LJ p. 241, para 29)
"(i) Development of area between Bangalore - Mysore.
(ii) Divergence of traffic from Mysore - Chennai; Chennai - Bombay.
(iii) Construction of elevated road from Sirsi Circle up to 9.4 km.
(iv) Construction of 2 truck terminals.
(v) Development of five identified local areas into townships with all infrastructure for habitation and economic activities.
(vi) Utilisation of sewage water being put to no productive use by BWSSB.
(vii) Development of tourism to augment the State's revenues."1

18. Thus, through an exhaustive consideration of all the background material and documents presented to it, the High Court dismissed the writ petition by holding against the petitioner on all the contentions urged. The judgment in Somashekar Reddy was challenged before this Court [in SLP (Civil) No. ... CC No. 1423 of 1999] but was dismissed in limine on 26-3-1999. The judgment in Somashekar Reddy thus reached finality.

19. The present litigation
Although the writ petition in Somashekar Reddy was dismissed by the High Court by its judgment dated 21-9-1998, it is of relevance to notice that between November 1997, when this writ petition was filed, and when the petition was dismissed, the work of implementing the Project was going on in view of the stand of the State Government and Nandi. Accordingly, a number of notifications were issued for acquisition of the land required under the FWA. Many landowners challenged the acquisition of their lands before the High Court. Although the issue of the landowners will be dealt with in the second part of our judgment, it

will be useful to note that the Government supported the stand of Nandi before the Single Judge, who partially allowed the landowners' petitions. It was during the writ appeal stage that the Government reversed its stance and opposed Nandi.

20. Even while the said writ appeals filed in the Land Acquisition Matters were pending before the High Court, a second round of writ petitions challenging the Project itself was filed before the High Court. Despite the High Court's go ahead for the Project in 1997, and after seven years of implementation, suddenly in the year 2004, these petitions were filed against it in the so called "public interest" by two Members of the Legislative Assembly (hereinafter "MLAs") and a "social worker" (i.e. Mr J.C. Madhuswamy and others). This petition prayed for a CBI enquiry and to restrain the State Government from continuing with the Project or acquiring any further land thereunder. Perhaps inspired by Mr J.C. Madhuswamy and others, and also in the so called "public interest", All India Manufacturers' Organisation, as well as two ex - Mayors of Mysore (Mr Dakshinamurthy and another), moved the High Court for a direction to the State Government to implement the Project according to the FWA.

21. The High Court in the impugned judgment (vide para 18) raised the following two questions for consideration in the three writ petitions:
"(1) Whether the FWA entered into between the Government of Karnataka and Nandi was a result of any fraud or misrepresentation as alleged by J.C. Madhuswamy and others and the State Government?
(2) Whether any excess land than what is required for the Project had been acquired by the State Government and whether it is open to it to raise such a plea?"

22. The Division Bench disposed of all the writ petitions by a common judgment by which it dismissed Writ Petition No. 45386 of 2004 filed by Mr J.C. Madhuswamy and others with costs. Writ Petitions Nos. 45334 and 48981 of 2004 were allowed by the Division Bench directing the State of Karnataka and all its instrumentalities, including the KIAD Board, to execute the Project as conceived originally and to implement the FWA in "letter and spirit". The High Court also directed the prosecution of K.K. Misra, Chief Secretary of the Government of Karnataka and M. Shivalingaswamy, Undersecretary, Department of Industries and Commerce, as envisaged by S.340 of the Code of Criminal

Procedure, 1973, for certain offences which came to its notice as a result of the affidavits filed by them. K.K. Misra and M. Shivalingaswamy have filed separate appeals with regard to the direction of their prosecution with which we are not concerned at present.

23. The contentions of the appellants

The main arguments in the present Civil Appeals Nos. 3492-94 of 2005 were addressed on behalf of the State of Karnataka by Mr Anil B. Divan, learned Senior Counsel, whose main contentions are as under:

1. That the dispute between the State of Karnataka and Nandi is not barred by the principle of res judicata, constructive res judicata or estoppel arising from the judgment and proceedings in Somashekar Reddy.

2. That the principle of res judicata cannot be inflexibly applied to public interest litigations, especially when a reexamination of decided issues might be in public interest.

3. To the bar of res judicata, it would be a successful answer that fraud and misrepresentation had vitiated the entire transaction. Hence, there would be no question of res judicata since the fraud was discovered subsequent to the judgment in Somashekar Reddy.

4. That the High Court erred in brushing aside the report of the Expert Committee headed by K. C. Reddy, which clearly demonstrated that there was excess land, which in terms showed that the FWA was not a bona fide agreement and, therefore, was against public interest.

5. The High Court could not have granted the final relief in the impugned judgment. The High Court's order amounted to a mandamus to specifically perform the FWA, which is an extremely complex contract, and hence the order is incorrect.

We will examine the third contention first -- namely, of fraud, misrepresentation and mala fides vitiating the entire project.

24. Fraud and misrepresentation

The main ground on which the matter was argued by the learned counsel for the State of Karnataka before the Division Bench of the High Court was that there was fraud and misrepresentation on the part of Nandi, which vitiated the entire transaction. It was contended before the High Court by the State Government that this fraud came to be noticed subsequent to the judgment in Somashekar Reddy. It is pertinent to note that this point was put on record through the

affidavits of K.K. Misra, Chief Secretary of the Government of Karnataka, M. Shivalingaswamy, Under Secretary, Department of Industries and Commerce, which suggested that public interest was being affected as a result of the execution of the FWA. It appears that the main contention of the writ petitioners Mr J.C. Madhuswamy and others before the High Court was that the FWA was vitiated as a result of fraud and / or misrepresentation. Presumably, this contention was urged in order to get over the bar of res judicata arising from the judgment in Somashekar Reddy. When the matter was argued before us, although Mr Divan addressed some arguments on fraud, he quickly abandoned them and expressly gave it up. Considering that this was the main thrust of the State's argument before the High Court and has been expressly given up before us, we could have dismissed the appeals on this narrow point alone. Nonetheless, since Mr Divan argued the question of res judicata with some persistence, we will deal with it subsequently.

25. On the merits of the argument of fraud/misrepresentation, the High Court has gone into it at great length and has demonstrated the hollowness of this contention. We are in complete agreement with the views expressed therein on this issue but we wish to highlight the following aspects to illustrate how the argument of mala fides is actually the boot on the other foot.

26. The High Court has come to the categorical conclusion that the flip flop on the part of the State Government occurred only because of politicians, that the mala fides, if any, appear to be on the part of the State Government for political reasons. The High Court has pointed out that the FWA did not materialise out of the blue. The FWA was negotiated over several months; it came to be drafted by considering several points that the Cabinet Sub Committee had raised. As we have already highlighted, it was only thereafter, when detailed deliberations had taken place at the highest levels of the State Government, that the MoU was signed and the project report accepted. A government order (dated 20-11-1995) was issued requiring the Public Works Department to enter into a memorandum of understanding with the consortium of three companies, VHB, SAB and Kalyani. On 9-9-1996, through the CAA, the three members of the consortium agreed to "... unconditionally and irrevocably transfer and assign, jointly and severally ...." to Nandi " ... all rights, interest and title granted to them ... with respect to the Infrastructure Corridor by GOK under the government order and the memorandum of understanding". The CAA came to be signed by the three

members of the consortium on the one hand and Nandi on the other; the Governor of Karnataka, on behalf of the Government of Karnataka, was shown as the "consenting party". A copy of this agreement was forwarded to the State Government along with a forwarding letter dated 21-12-1996 requesting that the Government approve of the same and advise of its approval so that the original agreement could be given to the State Government for its consent. This letter was forwarded by the Public Works Department to the Law Department through a letter dated 22-1-1997 (No. PWD 155 CRM 96) seeking an opinion on the issue. The State Government was advised by its Law Department (through Opinion No. 182 OPN II/97 dated 3/4-3-1997) that since the Government was finalising a separate agreement with Nandi, there was no need to specifically consent to the CAA. Thus, it would appear that the State Government had specifically been made aware of the CAA and the fact that the members of the consortium had transferred their rights to Nandi. The argument made before the High Court that the Government was unaware of the CAA and was defrauded to execute the FWA is, therefore, utterly dishonest. We concur with the decision of the High Court on this issue that the plea was lacking any bona fides and that there was neither fraud nor misrepresentation on the part of Nandi or any member of the consortium.

27. Subsequently, as we have already discussed, Nandi as the assignee of the consortium, submitted a draft of the FWA to the State Government which was considered by the Core Committee that had been set up to negotiate the terms with Nandi. The Core Committee referred the draft FWA to the Cabinet Sub Committee which suggested various modifications to it, which were incorporated in the FWA. Finally, the FWA was approved by the State Government and came to be signed on 3-4-1997. Thus, it appears that the plea of fraud and misrepresentation was clearly an afterthought and it was conveniently raised by the State Government through the petitioners in Writ Petition No. 45386 of 2004, who were rightly described by the High Court as the State Government's "mouthpiece" (vide para 22).

28. The High Court has also totally disbelieved the affidavits of the Chief Secretary K.K. Misra, and the Under Secretary M. Shivalingaswamy on this issue. We have refrained from commenting on the merits of their affidavits since their appeals against prosecution for perjury are pending separately. We may, however, point out that both the affidavits of the two senior bureaucrats are on

the issue that certain facts which had been suppressed from the Government had come to light after the judgment in Somashekar Reddy and that these indicated fraud and misrepresentation on the part of Nandi. Indeed, this was the central argument put forward for impugning the FWA.

29. The FWA was executed on 3-4-1997 and implemented by the parties for at least seven years. Several obligations under the FWA were carried out by the State Government and its instrumentalities and also by Nandi, which had invested a large amount of money in the Project. These included monies for payment of compensation to landowners whose lands were being acquired for the Project. Soon after the FWA was entered into, some interested parties had raised the issue in "public interest" that the FWA was a fraud and was nothing but a charade for a lucrative real estate business on the part of Nandi. The Government through the then Minister for Public Works vigilantly defended the Project against all these allegations both inside and outside the legislature.

30. It would appear that the change of mind on the part of the State Government came about -- coincidentally or otherwise -- with a change of Government in Karnataka in 2004. In the year 2004, while the State Government's writ appeal was still pending before the Division Bench, a statement was made by Mr H. D. Deve Gowda, the former Prime Minister, making serious allegations with regard to the Project stating that it was nothing but a charade by which Nandi had converted it into a real estate business. It was at this stage that a note (No. PWD/E/375/2004 dated 6-7-2004) was written by the new Minister, Public Works Department, Mr H. D. Revanna, who is none other than the son of Mr Deve Gowda, to the Principal Secretary, Public Works Department. The note in terms states that land acquisition by the State Government for the Project was to cease till the allegation that Nandi was carrying out a real estate business was enquired into. With this, the State Government suddenly halted/slowed all ongoing activities for smooth implementation of the Project. Indeed, it is strange that the State Government woke up after seven long years, and even more strangely after a change in the State's political leadership, to the fact that there was fraud/misrepresentation by Nandi or anyone else.

31. Pursuant to this, the Minister of the Public Works Department set up the "Expert Committee" (headed by K. C. Reddy) to go into the allegations of excess land acquired by the Government for implementation of the Project. After

accepting the interim report of the Expert Committee, the Government withdrew its appeal filed before the High Court and the reasons for the same are mentioned in a government order (PWD 155 CRM 95 BMICP Expert Committee/2004/Bangalore dated 7-1-2005). As we shall see later in the judgment, the constitution and functioning of this Committee also illustrates the mala fides with which the State Government has approached the Project. Thus, the utter irresponsibility with which the theory of fraud/ misrepresentation was put forward is thoroughly exposed by the High Court in its impugned judgment.

32. Resjudicata

Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim nemo debet bis vexari pro una et eadem causa (no one ought to be twice vexed for one and the same cause (P. Ramanatha Aiyer: Advanced Law Lexicon)) and second, public policy that there ought to be an end to the same litigation (Mulla: Code of Civil Procedure). It is well settled that S.11 of the Civil Procedure Code, 1908 (hereinafter "CPC") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the section is not to be considered exhaustive of the general principle of law (See Kalipada De v. Dwijapada Das, (1929-1930) 57 IA 24). The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to reagitate the matter again and again. S.11 CPC recognises this principle and forbids a court from trying any suit or issue, which is res judicata, recognising both "cause of action estoppel" and "issue estoppel". There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of principle, can be applied to public interest litigations and second, whether the issues and findings in Somashekar Reddy constitute res judicata for the present litigation.

33. Explanation VI to S.11 states:

"Explanation VI. -- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

34. Explanation VI came up for consideration before this Court in Forward Construction Co. v. Prabhat Mandal (Regd.) (1986 (1) SCC 100) (hereinafter "Forward Construction Co."). This Court held that in view of Explanation VI, it

could not be disputed that S.11 applies to public interest litigation, as long as it is shown that the previous litigation was in public interest and not by way of private grievance (1986 (1) SCC 100). Further, the previous litigation has to be a bona fide litigation in respect of a right which is common and is agitated in common with others (1986 (1) SCC 100).

35. As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in a previous public interest litigation would be a judgment in rent. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised should have been raised on an earlier occasion by way of a public interest litigation. It cannot be doubted that the petitioner in Somashekar Reddy was acting bona fide. Further, we may note that, as a retired Chief Engineer, Somashekar Reddy had the special technical expertise to impugn the Project on the grounds that he did and so, he cannot be dismissed as a busybody. Thus, we are satisfied in principle that Somashekar Reddy, as a public interest litigation, could bar the present litigation.

36. We will presently consider whether the issues and findings in Somashekar Reddy actually constitute res judicata for the present litigation. S.11 CPC undoubtedly provides that only those matters that were "directly and substantially in issue" in the previous proceeding will constitute res judicata in the subsequent proceeding. Explanation III to S.11 provides that for an issue to be res judicata it should have been raised by one party and expressly denied by the other:
"Explanation III. -- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other."

37. Further, Explanation IV to S.11, states:
"Explanation IV. -- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

38. The spirit behind Explanation IV is brought out in the pithy words of Wigram, V. C. in Henderson v. Henderson ((1843-60) All ER Rep 378 : 1843 (3) Hare 100) as follows: (All ER pp. 381 I-382 A)
"The plea of res judicata applies, except in special case (sic), not only to points

upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

39. In Greenhalgh v. Mallard (1947 (2) All ER 255 (CA)) (hereinafter "Greenhalgh"), Somervell, L. J. observed thus:
"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."

40. The judgment in Greenhalgh was approvingly referred to by this Court in State of U.P. v. Nawab Hussain (1977 (2) SCC 806). Combining all these principles, a Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra (1990 (2) SCC 715) expounded on the principle laid down in Forward Construction Co. by holding that:
"[A]n adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had (sic) decided as incidental to or essentially connected with (sic) subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of S.11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

41. With these legal principles in mind, the question, therefore, arises as to what exactly was sought in Somashekar Reddy, how it was decided by the High Court in the first round of litigation, and what has been sought in the present litigation arising at the instance of Mr J. C. Madhuswamy and others. In order to show that the issue of excess land was "directly and substantially in issue" in Somashekar Reddy we will first examine the prayers of the parties, the cause of action, the averments of parties and the findings of the High Court in Somashekar Reddy.

42. First, learned counsel for the respondents has pointedly drawn our attention to the identity of the prayers made in the previous public interest litigation by

Somashekar Reddy as compared to the prayers made in the present case of Mr Madhuswamy and others. The prayers in Somashekar Reddy's petition were: (a) for quashing the FWA, and (b) for directing an inquiry by the CBI in the matter and to prosecute the offenders. In Mr Madhuswamy's petition, the prayers were: (a) to direct the CBI to conduct inquiries to various acts as enumerated by Items 1 to 16 (specifically the issue of excess land), and (b) for quashing the various agreements, and acts done in pursuance of the Project and consequently, to denotify the land of all farmers situated away from the peripheral road and link road. We are therefore, satisfied that the prayers made in Somashekar Reddy and in Mr Madhuswamy's writ petitions are substantially the same.

43. Second, the cause of action in both Somashekar Reddy and the present cases is the FWA, which includes the provisions for acquiring 20,193 acres of land for the Project (comprising 13,237 acres of private land and 6956 acres of government land). Indeed, it was stated in Somashekar Reddy's writ petition that the land requirement in Schedule I of the FWA was "highly exaggerated" and would illegally create "huge profits" for Nandi. Somashekar Reddy thus prayed that the FWA be quashed -- this prayer was, however, specifically rejected. The very same FWA that was upheld earlier has now been impugned in the present case.

44. Third, in both Somashekar Reddy and Madhuswamy's petitions, the averment was that excess land than required for the implementation of the Project was being acquired by the State Government at the behest of Nandi and that the Project was nothing but a camouflage to carry out a real estate business by Nandi. The High Court records the following contention of Somashekar Reddy's counsel: (Kant LJ p. 254, para 47)

"47. The next submission of the counsel for the petitioner is that Government of Karnataka though ostensible (sic ostensibly) purported to form an Express Highway has in reality allowed the 2nd respondent to develop the townships as a developer by conferring a huge largess (sic largesse) by way of giving 20,000 acres of land .... According to petitioner, the land required for the construction of four lane highway is only 2775 acres, whereas the remaining land would be utilised for the purpose of development of the towns thereby permitting Respondent 2 to develop townships as a developer and earn huge profits."

45. The averment of Somashekar Reddy regarding excess land came to be

considered by the High Court which records some of the opposing contentions of the respondent State, in the following terms:

"As a mega project like the Expressway involves considerable extent of land, answering respondent [the State] has agreed to provide the minimum extent of land required for the Project partly out of the land owned by the State and by acquiring the balance. The second respondent will not only construct the proposed Expressway but also link roads, peripheral road, interchanges, service roads, toll plazas and maintenance area, etc. in addition to the townships." (Kant LJ p. 235, para 15)

"It is stated that the project by its very nature requires considerable extent of land and that is why the respondent has agreed to provide the land to the extent available with it and acquire the balance and make available the same to the replying respondent. There are mutual obligations on both the parties under the impugned agreement and Respondent 1 is only facilitating the acquisition of land for which the replying respondent has to pay at the existing market rates." (Kant LJ p. 240, para 25)

46. Crucially, two very striking findings have been made by the High Court in Somashekar Reddy as follows:

"So out of 20,193 acres land required for the Expressway would be 6999 acres leaving 13,000 acres for development of townships. Government of Karnataka in its written statement has said that it has agreed to provide minimum extent of land for the Project partly out of the land owned by the Government and by acquiring the balance. Permission has been given to develop the five townships instead of 7, proposed by Respondent 2 to make the project viable." (Kant LJ p. 256, para 52)

"46. The submission that the contract was entered in a clandestine manner also cannot be accepted .... Respondents in their statement of objections have admitted that this point was raised on the floor of the House and the respondent made detailed presentation on this subject in the House .... Every minute detail was explained including the scientific method adopted by the respondent for identification of the land for the project." (Kant LJ p. 254, para 46)

47. All of these unequivocally show that the issue of excess land (and connected issues) was specifically raised by the petitioner in Somashekar Reddy and was also forcefully denied by the State. In fact, the decision in Somashekar Reddy, went further with the High Court according its imprimatur to the land requirements

under the FWA amounting to 20,193 acres, which in no small measure, resulted from the State's successful defence that it had provided the "bare minimum of land" for the Project calculated by a "scientific method". The judgment also contains copious references to the issue of land (including the acreage), the types of land to be acquired, the land requirement for different aspects of the Project, the scientific techniques involved in identifying the land and road alignment, etc. In these circumstances, it cannot be doubted that Explanation III to S.11 squarely applies. It is clear that the issue of excess land under the FWA was "directly and substantially in issue" in Somashekar Reddy and hence, the findings recorded therein having reached finality, cannot be reopened in this case.

48. The principle and philosophy behind Explanation IV, namely, to prevent "the abuse of the process of the court" (as stated in Greenhalgh) through reagitation of settled issues, provides yet another ground to reject the appellants' contentions. For instance, the High Court specifically records {vide para 29) of the impugned judgment that:
"It is common case of the parties that the validity of the FWA had earlier been challenged in Somashekar Reddy case on all conceivable grounds including the one that land in excess of what is required for the Project had been acquired by the State Government."

49. In the face of such a finding by the High Court, Explanation IV to S.11 squarely applies as, admittedly, the litigation in Somashekar Reddy1 exhausted all possible challenges to the validity of the FWA, including the issue of excess land. Merely because the present petitioners draw semantic distinctions and claim that the excess land not having been identified at the stage of the litigation in Somashekar Reddy1, the Project should be reviewed, the issue does not cease to be res judicata or covered by principles analogous thereto. If we were to reexamine the issues that had been raised/ought to have been raised in Somashekar Reddy it would simply be an abuse of the process of the court, which we cannot allow.

50. As we have pointed out, the cause of action, the issues raised, the prayers made, the relief sought in Somashekar Reddy's petition and the findings in Somashekar Reddy1 and the claims and arguments in the present petitions were substantially the same. Therefore, it is not possible to accept the contention of

the appellants before us that the judgment in Somashekar Reddy does not operate as res judicata for the questions raised in the present petitions.

51. Excess land and the Expert Committee

There was considerable time taken by the learned counsel for the appellants in trying to persuade us that excess land had actually been delivered to Nandi under the FWA. A subsidiary argument was that even though the actual area of land delivered might not have been in excess, since land in prime areas had improperly been acquired for Nandi's benefit, the issue needed to be reexamined. In our view, this argument too is not open to be agitated at this point. As we have already pointed out, the writ petition in Somashekar Reddy was the culmination of all such allegations which had been successfully refuted even on the floor of the legislature. Finally, having failed on the floor of the legislature, a public interest litigation was filed on the ground that there was something wrong with the FWA and that it was virtually a sell out to Nandi. The Division Bench of the High Court considered every argument very carefully and recorded findings on all the issues against Mr J.C. Madhuswamy and others. In our view, permitting the argument on excess land to be heard again to scuttle a project of this magnitude for public benefit would encourage dishonest politically motivated litigation and permit the judicial process to be abused for political ends. The High Court, therefore, has refused to answer the first part of the second question framed for consideration on the ground that it was already answered in Somashekar Reddy and as it was res judicata, it could not be reagitated. Further, that since this argument involved details of contractual disputes, the High Court would not examine it in its writ jurisdiction. We are not satisfied that the High Court was wrong in so holding.

52. The High Court's finding on this issue only gains strength if we were to examine the factual matrix in which the State took its stand that excess land had been acquired for the Project. As we have previously stated, pursuant to the objections raised to the Project by the new Minister for Public Works, an "Expert Committee" was set up in 2004 to review the Project. The Expert Committee was conveniently headed by K. C. Reddy, who was the Advisor to the Public Works Minister. This K. C. Reddy was the same gentleman, who as a member of the previous HLC, had scrutinised the Project threadbare and had given it the green signal. Surprisingly however, at this stage, he appeared to be all willing to find faults and flaws in the Project and the FWA, despite the fact that there was an Empowered Committee that was required to monitor the implementation of the

Project. The High Court rightly pointed out that the Expert Committee was constituted virtually in supersession of Clause.4.1.1 of the FWA.

53. The Expert Committee suddenly woke up to the alleged fact that excess land was being acquired. Like the State Government, the Expert Committee also made flip flops and came out with a report saying that there was acquisition of excess land. Crucially, it left the actual identification of the excess lands to the KIAD Board. Surprisingly, the State Cabinet in its meeting dated 26-10-2004 accepted the report but reaffirmed its support to the Project and expressed some reservations on the acquisition of more lands than what was necessary for the Project. In this regard, the High Court critically comments (vide para 26) that:
"By constituting this Committee the State Government has ensured that the Project gets stalled. It is interesting to note that Shri K. C. Reddy who is the Chairman of the Expert Committee was also a member of the HLC which had approved the Project and was associated with it till the signing of the FWA which provides for 20,193 acres of land to be made available. Shri K. C. Reddy did not record his dissent in those proceedings and at no stage did he ever point out that the land that was sought to be provided for the Project was in excess of what was required but now as the Chairman of the Expert Committee he has, without. identifying the excess lands which he has left for the Board to identify, opined that excess land has been acquired for the Project. We cannot appreciate such a conduct."

54. We too cannot appreciate the conduct on the part of K. C. Reddy or the State Government. The inference drawn by the High Court is that the plea of fraud and misrepresentation sought to be raised was not only an afterthought but also false to the knowledge of the State Government. The High Court, therefore, observed (vide para 27): "It is unfortunate that the petitioners and the State Government have chosen to raise this bogie (sic bogey) to defeat the public project subserving public interest."

55. Interestingly, neither the interim report nor the final report of the Expert Committee identified the excess land but in fact, left it for the KIAD Board. The counsel for the KIAD Board handed over a set of documents, which purportedly identified the specific excess lands. It was the grievance of the KIAD Board that they had not been given the opportunity for placing these documents before the High Court. Since the date of documents showed that they were drawn

subsequent to the date on which the High Court had delivered its judgment, the learned Senior Counsel for the KIAD Board Mr K.K. Venugopal candidly admitted that this exercise was carried out after the impugned judgment had been delivered. It is a moot point whether the person, who swore this affidavit on behalf of the KIAD Board stating that no opportunity had been given to the KIAD Board to place these documents on the record of the High Court, needs to be considered for prosecution under S.340 read with S.195 of the Code of Criminal Procedure, 1973. We strongly deprecate such misleading or false affidavits on the part of the KIAD Board.

56. According to Mr Venugopal, Art.300A of the Constitution, as well as the KIAD Act, would be violated if the KIAD Board were to directly acquire or acquiesce in the acquisition of land in excess of what is required for the Project. In our view, this is nothing but a repetition of the arguments made by the State of Karnataka. As we have elaborately discussed, that the land was not in excess has been held by the Division Bench of the High Court on two occasions and we agree with it. Thus, there was no question of the land being acquired for a purpose other than a public purpose or there being any contravention of Art.300A. In fact, we are somewhat surprised that this type of argument must come from the KIAD Board, which was intimately involved, from the very beginning, with the process of acquiring land. Further, the State and its instrumentalities (including the KIAD Board) were enjoined by Clause.5.1.1.1 of the FWA, to make "best efforts" to acquire the land required for the Project. Indeed, till the State itself changed its stand with regard to the Project, nothing was heard from the KIAD Board about lands being acquired in excess of the public purpose. Further, as an instrumentality of the State, the KIAD Board cannot have a case to plead different from that of the State of Karnataka. Thus, we are unable to countenance the arguments of Mr Venugopal on behalf of the KIAD Board.

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

58. The relief granted by the High Court

One final argument was made by Mr Divan as regards the relief granted by the High Court. To appreciate the argument, it is necessary to look at the relief granted in terms of para 42.2, which is as follows:

"Writ Petitions Nos. 45334 and 48981 of 2004 are allowed directing the State of Karnataka and all its instrumentalities including the Board to forthwith execute the Project as conceived originally and upheld by this Court in Somashekar Reddy case1 and implement the FWA in letter and spirit. Consequently, government orders dated 4-11-2004 and 17-12-2004 constituting the Review Committee and Expert Committee are quashed. The report submitted by these committees in pursuance to these orders and all subsequent actions taken incidental thereto are also quashed. Nandi is also directed to implement the Project as expeditiously as possible. Parties will bear their own costs in these two cases."

59. Mr Divan strongly urged that the relief granted was wholly beyond the jurisdiction of the High Court under Art.226 of the Constitution, as it would amount to granting a decree for specific performance in writ jurisdiction. A reading of the relief granted by the High Court does not persuade us that it is so. The High Court merely directed that the Project and the FWA, as conceived originally and upheld by the High Court in Somashekar Reddy, should be implemented "in letter and spirit". In other words, the High Court said that there is no scope for raising frivolous and mala fide objections for ulterior purposes. This, the High Court was fully entitled to do. It is trite law that when one of the contracting parties is "State" within the meaning of Art.12 of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the constitutional courts in this country. We may refer to Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd. (1983 (3) SCC 379) in which a statutory corporation (the Gujarat State Financial Corporation) arbitrarily refused to grant the sanction of loans to entrepreneurs who had already acted on the basis of the sanction and had incurred expenditure and liabilities. The argument that the transaction was purely a contractual arrangement between the parties and, therefore, not amenable to writ jurisdiction, was categorically rejected by the following observations:

"13. Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory

corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Art.226 of the Constitution would certainly lie to direct performance of a statutory duty by 'other authority' as envisaged by Art.12."

60. Shrilekha Vidyarthi v. State of U.P. (1991 (1) SCC 212) is another authority for the proposition that the State Government has to act reasonably and without arbitrariness even with regard to the exercise of its contractual rights. In Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay (1989 (3) SCC 293) the situation was one in which a lease between the Bombay Port Trust and certain parties was terminated in exercise of contractual rights and the lease rent was abnormally increased. It was held that there was always an obligation on the part of public authorities in their acts of omission and commission to be reasonable. In Biman Krishna Bose v. United India Insurance Co. Ltd. (2001 (6) SCC 477) the question was whether an insurance company could arbitrarily and unreasonably refuse the renewal of a policy. Considering that the insurance company, as a result of State monopoly in the insurance sector, had become "State" under Art.12 of the Constitution, this Court held that:
" ... it [the insurance company] requires (sic) to satisfy the requirement of reasonableness and fairness while dealing with the customers. Even in an area of contractual relations, the State and its instrumentalities are enjoined with the obligations to act with fairness and in doing so, can take into consideration only the relevant materials. They must not take any irrelevant and extraneous consideration while arriving at a decision. Arbitrariness should not appear in their actions or decisions."

61. Thus, it appears that no exception could be taken to relief granted in the judgment of the High Court impugned before us. All that the High Court has done is to reaffirm and require the State Government and its instrumentalities, as "State" under the Constitution, to act without arbitrariness and mala fides, especially in the matter of land acquisition. It is pertinent to note that the State had agreed (vide Clause.5.1.1.1 of the FWA) in respect of the lands required under the FWA, that:
"GOK shall use its best efforts and cause its governmental instrumentalities to use their best efforts, to exercise its and their legal right of eminent domain (or

other right of similar nature) under the laws of India to acquire the acquired land. Prior to acquiring any acquired land, GOK will obtain from the Company written confirmation of its willingness to purchase such acquired land from GOK at the purchase price (whether in the form of cash or comparable land) required under the laws of India (the 'acquired land compensation'). GOK shall offer to the expropriated owners of the land the rehabilitation package specifically worked out for this Infrastructure Corridor Project with mutual consultation of the consortium and the Revenue Authorities in accordance with the applicable rules."

62. In these circumstances, we find no reason to interfere with the said directions of the High Court. In the future also, we make it clear that while the State Government and its instrumentalities are entitled to exercise their contractual rights under the FWA, they must do so fairly, reasonably and without mala fides; in the event that they do not do so, the Court will be entitled to interfere with the same.

63. The High Court also found, justifiably in our view, that the writ petitioners had been sponsored by the State Government to put forward its changed stand in the garb of a public interest litigation. In the opinion of the High Court {vide para 29):
"The Court cannot allow its process to be abused by politicians and others to delay the implementation of a public project which is in larger public interest nor can the Court allow anyone to gain a political objective. These legislators who have not been successful in achieving their objective on the floor of the Assembly have now chosen this forum to achieve their political objective which cannot be allowed."

64. Although this should have really put an end to the writ petitions filed by Mr Madhuswamy and others, the High Court had to consider the petitions filed by Mr Dakshinamurthy and the All India Manufacturers Organisation, who were also before the Court by way of public interest litigation and sought a mandamus of the continuation of the Project. A grievance was made before the High Court that these were persons put up by Nandi and that they were virtually projecting the viewpoint of Nandi. The High Court having taken note of the same has said that despite this, larger public interest required the implementation of the Project. We see no reason to differ with the High Court on this point.

65. Writ Petition No. 45386 of 2004 (Mr J.C. Madhuswamy and others) was rightly dismissed as raising the very same issues which had been concluded by

the decision in Somashekar Reddy. Writ Petitions Nos. 45334 of 2004 and 48981 of 2004 were rightly allowed and the order to implement the Project in its letter and spirit had been made in exercise of the writ jurisdiction of the High Court. We refrain from dealing with the third relief granted, namely, directing the prosecution of K.K. Misra and M. Shivalingaswamy, as their appeals shall be independently dealt with by this Court.

66. Taking an overall view of the matter, it appears that there could hardly be a dispute that the Project is a mega project which is in the larger public interest of the State of Karnataka and merely because there was a change in the Government, there was no necessity for reviewing all decisions taken by the previous Government, which is what appears to have happened. That such an action cannot be taken every time there is a change of Government has been clearly laid down in State of U.P. v. Johri Mal (2004 (4) SCC 714) and in State of Haryana v. State of Punjab (2002 (2) SCC 507) where this Court observed thus:
"[I]n the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty bound to continue and carry on the unfinished job rather than putting a stop to the same."
The Land Acquisition matters
(Civil Appeals Nos. 3848-84, 3889-4127, 4128-366, 4575-76, 5399-401, 5402, 5746-47, 5759, 5797-99, 6098, 6099, 5092-93, 7024-40, 7591-92 of 2005, 61, 73-76 of 2006 and SLP No. 1562-63 of 2006)

67. The background
In all these appeals, another attempt by a side wind, was made to scuttle the Project. The attempt, this time, was primarily on the part of the landowners, whose lands were acquired for implementation of the Project and who challenged the same before the High Court of Karnataka. A learned Single Judge of the Karnataka High Court, through judgment dated 18-12-2003, disposed of these petitions. The learned Judge took the view that acquisition of 60% of the land by the State Government, insofar as it related to the formation of roads and infrastructure development was valid, while the acquisition of the remaining 40% meant for the development of townships and convention centres was invalid and to that extent the acquisition was quashed. The landowners, the State Government, the KIAD Board and also Nandi were aggrieved by the judgment of

the learned Single Judge and filed separate writ appeals challenging the judgment. The stand of the State Government in its writ appeal was that the learned Single Judge was wrong in quashing 40% of the acquisition of land. This was also the stand of the KIAD Board. Nandi also challenged the said part of the order. Thus, it would appear that the State Government, the KIAD Board and Nandi were ad idem in their writ appeals that the learned Single Judge had erred in interfering and quashing 40% of the land as not being in public interest.

68. Sometime in August 2004, when the writ appeals came up for hearing before the Division Bench of the High Court, the State Government and the KIAD Board withdrew their appeals, because by then, as we have already discussed, the State Government appeared to have second thoughts about the Project and felt that the land acquisitions were far in excess of the Project's requirements. Even though they were also the respondents under the writ appeal filed by Nandi, they did not contest the claim and addressed no arguments before the Division Bench of the High Court. Those appeals were disposed of by an order dated 28-2-2005. The appeals filed by Nandi and the Indian Machine Tools Manufacturers Association (hereinafter "the IMTMA") were allowed, whereas those filed by the landowners were dismissed, and the order of the learned Single Judge was set aside and the entire acquisition was upheld.

69. Various connected appeals against the order of the learned Single Judge came to be disposed of by orders of the High Court dated 29-6-2005 and 18-11-2005, in terms of the detailed judgment and order of a Division Bench of the High Court dated 28-2-2005 (hereinafter in the Land Acquisition matters "the impugned judgment").

70. The contentions of the appellants
Though there are a number of appellants before us, the contentions raised before the High Court and us were principally as under: first, that no notice was served on the landowners under S.28(1) of the KIAD Act; secondly, that the notice of acquisition was vague and consequently prejudiced any effective objection being raised by the landowners whose lands were sought to be acquired and finally, that the land acquisition was not for a public purpose, or for a purpose as specified in the KIAD Act, and was also in excess of the Project's requirement.

71. Although other contentions have also been raised, we will not deal with them here as they have already been dealt with in the first part of our judgment.

72. Non service of notice

The argument that no notice was served on the landowners under S.28(1) of the KIAD Act, appears to be factually incorrect. Even the learned Single Judge who partially allowed the writ petition came to the conclusion (vide para 22) in his judgment (dated 18-12-2003) that the "... petitioners in all these cases have filed objections on several grounds". Even in the appeal before the Division Bench, the High Court observed (vide para 30) that it was "... not in dispute that the landowners were served with notices and the objections filed by them have been considered". Even before us when these appeals were argued, no attempt was made by any of the learned counsel to satisfy us that the appellants had not actually been served notice of the acquisition. Neither the finding of the learned Single Judge nor of the Division Bench was impugned on this point. We are, therefore, unable to accept the contention that notices were not served on the appellants as required under S.28(1) of the KIAD Act.

73. Vagueness of notice of acquisition

The next contention is that the notice of acquisition was vague and consequently prejudiced any effective objection being made by the landowners whose lands were sought to be acquired. The vagueness of the notification, it is contended, has vitiated the notice itself, according to the learned counsel for some of the landowners.

74. The notification in the instant case states that the lands were being acquired for the purposes of "industrial development" i.e. establishing and developing industrial areas by the KIAD Board. In our opinion, the purpose indicated in the notifications is sufficiently precise and is not affected by the vice of vagueness as alleged. Our attention was drawn to the judgment of this Court in Aflatoon v. Lt. Governor of Delhi (1975 (4) SCC 285) where this Court pointed out as follows:

"6 . ... the question whether the purpose specified in a notification under S.4 is sufficient to enable an objection to be filed under S.5A would depend upon the facts and circumstances of each case.

* * *

8. In the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed.

"16

75. It is difficult to accept that the landowners were not aware of the purpose of the acquisition nor can it be accepted that they were unable to file their objections on this ground. As a matter of fact, as the High Court has concurrently found, they did file their objections before the competent authorities. We do not see any prejudice caused to them as a result of the wordings of the notification of acquisition. The authority concerned also heard them on the objections filed after affording them an opportunity to file such objections under S.28(2) of the KIAD Act. Thus, there is no substance in the contention of the appellants that the notification was vague and hence that the State did not comply with the principles of natural justice.

76. Purpose of acquisition

The next contention urged on behalf of the landowners is that the lands were not being acquired for a public purpose. The counsel who have argued for the landowners have expatiated in their contention by urging that land in excess of what was required under the FWA had been acquired; land far away from the actual alignment of the road and periphery had been acquired; consequently, it is urged that even if the implementation of the highway project is assumed to be for a public purpose, acquisition of land far away therefrom would not amount to a public purpose nor would it be covered by the provisions of the KIAD Act.

77. In our view, this was an entirely misconceived argument. As we have pointed out in the earlier part of our judgment, the Project is an integrated infrastructure development project and not merely a highway project. The Project as it has been styled, conceived and implemented was the Bangalore - Mysore Infrastructure Corridor Project, which conceived of the development of roads between Bangalore and Mysore, for which there were several interchanges in and around the periphery of the city of Bangalore, together with numerous developmental infrastructure activities along with the highway at several points. As an integrated project, it may require the acquisition and transfer of lands even away from the main alignment of the road.

78. The various changes brought about to the KIAD Act, also reflect the intention of the State Legislature to provide for land acquisition for the Project. The expressions "industrial area" and "industrial infrastructural facilities" as defined under the KIAD Act, definitely include within their ambit establishment of facilities

that contribute to the development of industries. We cannot forget that, as originally enacted, the KIAD Act had a different, narrower definition of "industrial area" in S.2(6). In 1997, the definition was broadened to also include "industrial infrastructural facilities and amenities". Further, S.2(7a) was added to define "industrial infrastructural facilities" in a manner broad enough to take into its sweep the land acquisition for the Project.

79. The learned Single Judge erred in assuming that the lands acquired from places away from the main alignment of the road were not a part of the Project and that is the reason he was persuaded to hold that only 60% of the land acquisition was justified because it pertained to the land acquired for the main alignment of the highway. This, in the view of the Division Bench, and in our view, was entirely erroneous. The Division Bench was right in taking the view that the Project was an integrated project intended for public purpose and, irrespective of where the land was situated, so long as it arose from the terms of the FWA, there was no question of characterising it as unconnected with a public purpose. We are, therefore, in agreement with the finding of the High Court on this issue.

80. Civil Appeals Nos. 7024-25 of 2005
As regards these appeals, the impugned judgment of the High Court (vide para 32) specifically records that the appellants did not have any right or interest in the land in question on the date that they filed the writ petitions before the High Court. The counsel too admitted the same before the High Court. The High Court accordingly found that the writ petitions were not maintainable. Since the writ petition proceeded on this footing, we cannot permit the appellants to take a different stand before us, contrary to what had been stated before the High Court. Since we have not been convinced otherwise, the writ petitions were not maintainable and the High Court was justified in the view that it took.

81. In summary, having perused the well considered judgment of the Division Bench which is under appeal in the light of the contentions advanced at the Bar, we are not satisfied that the acquisitions were, in any way, liable to be interfered with by the High Court, even to the extent as held by the learned Single Judge. We agree with the decision of the Division Bench that the acquisition of the entire land for the Project was carried out in consonance with the provisions of the KIAD Act for a public project of great importance for the development of the State of Karnataka. We do not think a that a project of this magnitude and urgency can be

held up by individuals raising frivolous and untenable objections thereto. The powers under the KIAD Act represent the powers of eminent domain vested in the State, which may need to be exercised even to the detriment of individuals' property rights so long as it achieves a larger public purpose. Looking at the case as a whole, we are satisfied that the Project is intended to represent the larger public interest of the State and that is why it was entered into and implemented all along.

82. The final orders

In the result, we find that the judgment of the High Court (dated 3-5-2005) impugned before us in the Main Matters, is not liable to be interfered with. There is no merit in the appeals and they are hereby dismissed. Considering the frivolous arguments and the mala fides with which the State of Karnataka and its instrumentalities have conducted this litigation before the High Court and us, it shall pay Nandi costs quantified at rupees five lakhs, within four weeks of this order.

83. The appellants in CA No. 3497 of 2005 (J.C. Madhuswamy and . others), in addition to the costs already ordered by the High Court, shall pay to the Supreme Court Legal Services Authority costs quantified at rupees fifty thousand within four weeks of this order. A copy of this order be sent to the Member Secretary of the Supreme Court Legal Services Authority for his/her information.

84. In the Land Acquisition matters, the appeals challenging the judgments of the High Court dated 28-2-2005, 29-6-2005 and 18-11 -2005 are dismissed as without substance. However, in the circumstances, there shall be no order as to costs.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 6TH DAY OF NOVEMBER 2014/15TH KARTHIKA, 1936

WP(C).No. 15220 of 2013 (B)

PETITIONER(S):

1. **JOEMON JOSEPH, S/O. JOSEPH,**
   EDATHALA HOUSE, NEELEESWARAM P.O.,
   KALADY, ERNAKULAM DISTRICT.

2. **T.P.SABU, S/O. V.I.POULOSE,**
   THALIYATH HOUSE, NEELEESWARAM P.O.,
   KALADY, ERNAKULAM DISTRICT.

3. **PAUL WILSON, S/O. V.I.POULOSE,**
   THALIYATH HOUSE, NEELEESWARAM P.O.,
   KALADY, ERNAKULAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU
SRI.P.A.RAJESH
SRI.K.RAKESH
SRI.R.RANJITH (K/489/2011)

RESPONDENT(S):

1. **THE COMMISSIONER OF LAND REVENUE,**
   THIRUVANANTHAPURAM, PIN-695001.

2. **THE DISTRICT COLLECTOR,**
   ERNAKULAM, PIN-682030.

3. **THE TAHSILDAR, ALUVA TALUK,**
   ERNAKULAM DISTRICT, PIN-683101.

4. **THE GEOLOGIST,**
   DEPARTMENT OF MINING AND GEOLOGY,
   CIVIL STATION, KAKKANAD,
   ERNAKULAM DISTRICT, PIN-682030.

BY SENIOR GOVT. PLEADER SRI.ABDUL SALAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-11-2014 ALONG WITH WPC. 15746/2013 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 15220 of 2013 (B)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1- TRUE COPY OF THE PATTA DATED 25-5-1970 AS ALSO THE FORM OF ORDER OF ASSIGNMENT ACCOMPANYING THE SAME.

EXHIBIT P2- TRUE COPY OF THE QUARRYING LEASE GRANTED TO THE FIRST PETITIONER BY THE 4TH RESPONDENT DATED , 27-3-2008.

EXHIBIT P3- TRUE COPY OF THE JUDGMENT DATED 7-4-2010 IN WPC NO. 10589/2010 OF THIS HON'BLE COURT.

EXHIBIT P4- TRUE COPY OF THE JUDGMENT DATED 1-12-2010 IN W.A.NO. 1164/2010 OF THIS HON'BLE COURT.

EXHIBIT P5- TRUE COPY OF THE ORDER DATED 9-12-2011 IN C.C.NO. 20120/2011 IN S.L.P.(C).../2011 OF THE HON'BLE SUPREME COURT OF INDIA.

EXHIBIT P6- TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED TO THE FIRST PETITIONER DATED 10-8-2009 BY THE 3RD RESPONDENT.

EXHIBIT P7- TRUE COPY OF THE ORDER IN A.R.NO. 43/2010 AND CONNECTED CASES DATED 25-3-2011 OF THIS HON'BLE COURT.

EXHIBIT P8- TRUE COPY OF THE PROCEEDINGS IN S.L.P.NO. 696, 701 AND 703 OF 2012 DATED 9-1-2012 OF THE HON'BLE SUPREME COURT OF INDIA.

EXHIBIT P9- TRUE COPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT DATED, 9-5-2013 AS NO. LR A2-18309/13.

EXHIBIT P10- TRUE COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT, DATED 11-06-2013 AS NO. DOE/3080/13.

EXHIBIT P11- TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONERS BEFORE THE RESPONDENTS 1,2 AND 4 DATED, 12-6-2013 WITHOUT ANNEXURES.

RESPONDENT(S)' EXHIBITS:

EXT R1(A) : PHOTOCOPY OF THE G.O.(MS)NO.150/2013/REV. DEPT. DATED 23.4.2013.

EXT R1(B) : PHOTOCOPY OF THE JUDGMENT IN W.P(C)NO.9605/2008 DATED 13.8.2009.

EXT R1(C) : PHOTOCOPY OF THE JUDGMENT IN APPEAL WA.NO.1908/2009 DATED 25.8.2009.

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

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W.P.(C).Nos.

15220/2013	**20668/2013**
15746/2013	**21101/2013**
16054/2013	**21395/2013**
16932/2013	**21948/2013**
17503/2013	**22525/2013**
17825/2013	**27523/2013**
19155/2013	**&**
19755/2013	**27934/2013**

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Dated this the 6th day of November, 2014

J U D G M E N T

These batch of writ petitions are filed by holders of lands, assigned under the Kerala Government Land Assignment Act, 1960 (for short, the "LA Act") and the Kerala Land Assignment Rules, 1964 (for short, the "LA Rules"). They have approached this Court challenging order of cancellation of quarrying permits granted by the Geologist based on the directions of the Land Revenue Commissioner. In some of the cases, stop memos were issued by the Geologist for stopping the

activities of quarrying on the ground that operation of quarrying is in violation of LA Act and LA Rules.

2. The reason for taking action against the petitioners for cancellation of quarrying permits are on the ground that the lands were assigned for the specific purpose like agriculture activities and also on the ground that without obtaining any permission from the competent authority, the lands are being used for quarrying purposes.

3. The LA Act is an Act enacted to provide for the assignment of Government lands. The Government lands may be assigned by the Government or the competent authority either absolutely or subject to such restrictions, limitations and conditions as may be prescribed. When government lands are assigned absolutely, the lands belong to the assignees absolutely without any fetter or burden. When lands are given for certain purposes as enumerated in Rule 4 of the LA Rules framed under the LA Act, the order of assignment of such land is to use it for specific

purposes. Rule 8 of LA Rules prescribe conditions of assignment of land on registry. These conditions provide the manner in which the lands have to be used when those were assigned on specific purposes as contemplated under Rule 4 of the LA Rules. The violation of conditions, also calls for cancellation of registry. Appendix I under the Rules is the "form of order of assignment on registry". The orders of assignment also prescribe the conditions for assignment. Appendix II under the Rules is the "form of *patta*". This also enumerates conditions.

4. Thus, the holders of lands unless these are assigned to them absolutely, are bound by the terms and conditions of assignment as enumerated in the *patta* or in the order of assignment. The petitioners were granted quarrying permits by the Geologist as though the petitioners have no impediment in carrying out the quarrying operation in the land held by them by virtue of the *patta* issued under the Land Assignment Rules. These licences are now called upon to cancel on the

premise that the activities therein are in violation of the conditions in the LA Rules.

5. The Geologist or any other Authority cannot interfere with the legal right enured to the petitioners by virtue of land assignment. If the petitioners have violated conditions of *patta*, the competent authority is having sufficient power to proceed against the petitioners, to cancel/revoke the *patta.* This has to be done by independent proceedings by an authority, which is competent under the LA Rules. In collateral proceedings related to quarrying such decision cannot be taken by the Geologist or any other authorities. No doubt, when *patta* is revoked or cancelled, the Geologist is free to cancel such licence based on such decision. The petitioners are entitled to defend cancellation of assignment in terms of LA Act and LA Rules. The proceedings have to be initiated under the LA Act and LA Rules to cancel the *patta.* Whether the petitioners have violated conditions of *patta* or not will have to be determined in such

proceedings. Thus, I am of the view that cancellation of the quarrying permits by the Geologist on the ground that petitioners have violated conditions of *patta* issued under LA Act and LA Rules is illegal and unsustainable.

6. In the result:-

i. The writ petitions are allowed and the impugned orders are quashed.

ii. The petitioners are free to use the land in their possession in accordance with law.

iii. The Geologist is free to take action against the petitioners for cancellation of the quarrying permits, based on any decision taken by the competent authority under the LA Rules.

iv. The petitioners are also entitled for renewal of quarrying licence in accordance with law subject to initiation of proceedings against petitioners in accordance with LA Act and LA Rules. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ms

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY, THE 02ND DAY OF NOVEMBER 2020 / 11TH KARTHIKA, 1942

WP(C).No.18438 OF 2013(D)

PETITIONER:

M/S. POABS GRANITES PRODUCTS PRIVATE LIMITED, CHULLY P.O.-683 581, ANGAMALY, ERNAKULAM DISTRICT, REPRESENTED BY ITS DIRECTOR, SHRI. BINU K.MATHEW, RESIDING AT THIRUVALLA.

BY ADV. SRI.N.JAMES KOSHY

RESPONDENTS:

1 **STATE OF KERALA REPRESENTED BY THE SECRETARY, DEPARTMENT OF MINING, GOVERNMENT SECRETARIAT, THIRUANANTHAPURAM-695 001.**

2 **THE COMMISSIONER OF LAND REVENUE, COMMISSIONERATE OF LAND REVENUE, THIRUVANANTHAPURAM-695 001.**

3 **DISTRICT COLLECTOR,ERNAKULAM DISTRICT, COLLECTORATE, ERNAKULAM, KOCHI-682 030.**

4 **THE GEOLOGIST,DEPARTMENT OF MINING AND GEOLOGY, DISTRICT OFFICE, ERNAKULAM, KOCHI-682 013.**

5 **THE DIRECTOR OF MINING AND GEOLOGY, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695 001.**

GOVERNMENT PLEADER SMT. RASHMI K.M.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 2nd day of November, 2020

The petitioner is before this Court challenging Exts.P8 and P9 orders whereby the petitioner has been directed not to conduct quarrying operations on the ground that the land had been assigned for agricultural purpose.

2. According to the petitioner, as per Exts.P1, P1(a) and P1(b), quarrying leases and orders of the Director of Mining and Geology were issued and the petitioner was permitted to conduct quarrying operation in 15.4654 Hectares of of land in Ayyampuzha Village, Aluva Taluk. The petitioner has been conducting quarrying operations and a crusher unit within the permitted area. Such operations were being conducted since the year 2006.

3. The petitioner further states that the Tahsildar, Aluva had conducted an enquiry and issued 'No Objection Certificate' and recommendations to the Director General of

Mining and Geology, before executing the lease deed, certifying that the quarrying operations in the area is permissible. No such conditions were made in the deeds of assignment restricting quarrying operations.

4. The petitioner further submits that *patta* was issued to the predecessors-in-interest in respect of the land in question and such *patta* did not contain any restriction on the use of land. However now the respondents have taken a stand that the *patta* was issued assigning land for agricultural purposes only. The petitioner further states that Exts.P8, P9 and similar orders have been issued in respect of quarries situated in Ernakulam District alone.

5. The petitioner argued that respondents 2 and 4 have no authority to cancel the lease deed issued by the State Government. If pursuant to Exts.P8 and P9, the work is stopped, it will seriously affect the construction work in the Kochi Corporation and nearby areas since the petitioner is the supplier of M-Sand to a number of Government

Institutions, Railway, Vallarpadom Container Terminal, Kochi Metro etc.

6. The learned Government Pleader opposed the writ petition and stated that action was taken against the petitioner in the light of the directions from the Land Revenue Commissioner and the District Collector. The authorities required to stop all quarrying operations in the lands assigned for agricultural purposes. The lease deed in favour of the petitioner does not show that the land in question is exempted category. In the circumstances, Exts.P8 and P9 cannot be held to be illegal.

7. Heard the learned counsel for the petitioner Sri. N. James Koshi and the learned Government Pleader Smt. K.M. Rashmi representing respondents 1 to 5.

8. The learned counsel on either side submitted that a batch of writ petitions were filed by holders of lands assigned under the Kerala Government Land Assignment Act, 1960 and the Kerala Land Assignment Rules,1964

challenging order of cancellation of quarrying permits by the Geologist based on the directions of the Land Revenue Commissioner. In some of the cases, stop memos were issued by the Geologist for stopping the activities of quarrying on the ground that operation of quarrying is in violation of the Land Acquisition Act and Rules thereunder.

9. The learned single Judge considered the issue in WP(C) No.15220/2013 and connected writ petitions. The learned single Judge held that Government lands may be assigned by the Government or the competent authority either absolutely or subject to such restrictions, limitations and conditions as may be prescribed. When Government lands are assigned absolutely, the lands belong to the assignees absolutely without any fetter or burden. The holders of land unless the land is assigned to them absolutely, are bound by the terms and conditions enumerated in the *patta*.

10. The learned single Judge found that the

petitioners in the said writ petitions were granted quarrying permits by the Geologist as though the petitioners have no impediment in carrying out the quarrying operation in the land held by them by virtue of the *patta* issued under the Land Assignment Rules. The learned single Judge further held that the Geologist or any other Authority cannot interfere with the legal right enured to the petitioner by virtue of land assignment.

11. If the petitioners have violated the conditions of *patta*, the competent authority is having sufficient power to proceed against the petitioners to cancel/revoke the *patta* and stop the steps will have to be taken by independent proceedings by an authority. The Geologist will be then free to cancel such licence granted, if the *patta* is revoked, or cancelled, in accordance with law. In the said writ petitions, the learned single Judge found that cancellation of the quarrying permits by the Geologist on the ground that the petitioners have violated the conditions of *patta* issued

under Land Acquisition Act and Rules is illegal and unsustainable.

12. The counsel on either side submitted that the facts involved in this writ petition are similar to the facts in WP(C) No.15220/2013 and connected cases, disposed of by the learned single Judge on 06.11.2014. In the circumstances, the petitioner herein is also entitled to similar reliefs.

In the result:

i. The writ petition is allowed and the impugned orders are quashed.

ii. The petitioner is free to use the land in his possession in accordance with law.

iii. The Geologist is free to take action against the petitioner for cancellation of the quarrying permits, based on any decision taken by the competent authority under the Land Acquisition Rules.

iv. The petitioner is also entitled for renewal of quarrying licence in accordance with law subject to initiation of proceedings against the petitioner in accordance with Land Acquisition Act and Rules. No costs.

Sd/-

N. NAGARESH
JUDGE

ncd

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE ORDER NO.604/2009-2010/1576/ M3/2010 DATED 24/02/2010 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY, THIRUVANANTHAPURAM ALONG WITH QUARRYING LEASE DATED 10/03/2010 EXECUTED BETWEEN THE GOVERNOR OF KERALA AND PETITIONER - COMPANY**
EXHIBIT P1(a)	**TRUE COPY OF THE ORDER NO.704/2007-08/M3/2007 DATED 27/12/2007 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY, THIRUVANANTHAPURAM ALONG WITH QUARRYING LEASE DATED 02/01/2008 EXECUTED BETWEEN THE GOVERNOR OF KERALA AND PETITIONER-COMPANY.**
EXHIBIT P91(b)	**EXT.P1(B): TRUE COPY OF THE ORDER NO.114/2006-07/4237/M3/2006 DATED 30/05/2006 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY, THIRUVANANTHAPURAM ALONG WITH QUARRYING LEASE DATED 19/06/2006 EXECUTED BETWEEN THE GOVERNOR OF KERALA AND PETITIONER-COMPANY.**
EXHIBIT P2	**TRUE COPY OF THE LICENCE NO.A3-23/09-10 DATED 03/04/2009 ISSUED BY SECRETARY, AYYAMPUZHA GRAMA PANCHAYAT TO THE PETITIONER-COMPANY.**
EXHIBIT P3	**TRUE COPY OF HE LICENCE IN FORM-4 DATED 1/12/2012 ISSUED BY JOINT DIRECTOR OF FACTORIES AND BOILERS ERNAKULAM FOR A PERIOD UPTO 31/12/2013 TO THE PETITIONER-COMPANY.**
EXHIBIT P4	**TRUE COPY OF THE INTEGRATED CONSENT TO OPERATE THE CRUSHER NO.PCB/HO/EKM/ICO/03/2013 DATED 30/01/2013 WHICH IS VALID UPTO 30/06/2015 ISSUED IN FAVOUR OF THE**

	PETITIONER -COMPANY OF KERALA STATE POLLUTION CONTROL BOARD, THIRUVANANTHAPURAM.
EXHIBIT P5	**TRUE COPY OF THE CONSENT TO OPERATE/AUTHORISATION/REGISTRATION (RENEWAL) OF THE QUARRY NO.PCB/ EKM/DO-1/ ICO-R-QR-44/2013 DATED 18/03/2013 ISSUED BY THE ISSUING AUTHORITY OF KERALA STATE POLLUTION CONTROL BOARD, COCHIN - 682 020.**
EXHIBIT P6	**TRUE COPY OF THE ORDER NO.2200/M3/2013 DATED 12/03/2013 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY TO THE PETITIONER-COMPANY.**
EXHIBIT P7	**TRUE COPY OF THE EXPLOSIVE LICENCE NO.E/SC/KL/22/ 368(E11870) DATED 12/12/2002 ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVE, SOUTH CIRCLE, CHENNAI TO THE PETITIONER-COMPANY.**
EXHIBIT P8	**TRUE COPY OF THE SHOW CAUSE NOTICE NO.DEO DATED 20/06/2013 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER ON 19/07/2013**
EXHIBIT P9	**TRUE COPY OF THE LETTER NO.LR A2-18309/13 DATED 09/05/2013 OF 2ND RESPONDNT TO 3RD RESPONDENT SERVED ON THE PETITIONER BY THE 4TH RESPONDENT.**
EXHIBIT P10	**TRUE COPY OF THE REPLY DATED 20/7/2013 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.**
EXHIBIT P11	**TRUE COPY OF THE SALE DEED NO.3436/2009 EXECUTED IN FAVOUR OF THE PETITIONER ON 28/10/1998 FROM ONE POULOSE AND HIS WIFE ANNA.**
EXHIBIT P12	**TRUE COPY OF THE PATTAS IN RESPECT OF THE SAID PROPERTY NO.PF 290/1976 AND PF 90/77 ISSUED UNDER RULE 9(2) OF THE KERALA LAND ASSIGNMENT RULES.**

EXHIBIT P13	**TRUE COPY OF THE JUDGMENT DATED 07/04/2010 IN WPC NO.10589/2010 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.**
EXHIBIT P14	**TRUE COPY OF THE JUDGMENT DATED 1/12/2011 IN W.A NO.1164 OF 2010 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.**
EXHIBIT P15	**TRUE COPY OF THE JUDGMENT DATED 09/12/2011 IN CC NO.20120/2011 OF THE HON'BLE SUPEREME COURT OF INDIA.**
EXHIBIT P16	**TRUE COPY OF THE INTERIM ORDER DATED 21/06/2012 IN WPC NO.15746/2013 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.**