

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1215 OF 2011

(Arising out of Special Leave Petition (C) No.26391/10)

M. Nagabhushana

...Appellant (s)

- Versus -

State of Karnataka & Others

...Respondent (s)

J U D G M E N T

GANGULY, J.

1. Leave granted.
2. This appeal is directed against the judgment and order dated 23rd July 2010 passed by Division Bench of the High Court of Karnataka whereby the learned Judges dismissed the W.A. No.1192 of 2007 which was filed impugning an acquisition proceeding to the State of Karnataka. It

definition of infrastructural facilities as incorporated under Section 2 (8a) of the Act. The proposed acquisition is in respect of the alleged contract between the State and M/s. NICE Ltd. which is stated to be based on agreement dated 3.4.1997."

"It amounts to colorable exercise of power and fraud on power and in such an event, the entire acquisition proceedings are to have been quashed by the learned Single Judge."

"On reading of para 23(2) of the impugned order, it is clear that the proposed acquisition of land as notified under Section 28(1) of the Act is different from the alleged purpose, which are quite different and from the same, it is clear that the acquisition initiated is not bonafide, but the same is as a result of colorable exercise of power coupled with exercise of fraud on power and on this count also, the notification issued under Section 28(1) also ought to have been quashed."

"The Government did not apply its mind to the acquisition proceedings and there is total non application of mind by the government to the relevant facts in initiating the acquisition proceedings under the KIADB Act."

"There was a total change in the stand of the opponents with regard to the 'public purpose' which was stated in the preliminary notification vis-à-vis their statement of objection filed before the Court and moreover the conduct of M/s. NICE Company in allotting certain extent of lands to the Association of India Machine Tool Manufacturers (AIMTM) to put

22. A Constitution Bench of this Court in **Devilal Modi Vs. Sales Tax Officer, Ratlam & Ors.** - AIR 1965 SC 1150, has explained this principle in very clear terms:

"But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Art. [226](#), cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice, vide : Daryao Vs. State of U.P., 1962-1 SCR 575; (AIR 1961 SC 1457)."

23. This Court in **All India Manufacturers Organisation** (supra) explained in clear terms that principle behind the doctrine of

find no substance in the aforesaid contentions.

34. If we compare the provisions of Sections 28(4) and 28(5) of KIAD Act with the provisions of Sections 4 and 6 of the said Act, we discern a substantial difference between the two.

35. In order to appreciate the purport of both Sections 28(4) and 28(5) of the KIAD Act, they are to be read together and are set out below:

"28. Acquisition of land-

xxx xxx

- (4) After orders are passed under sub-Section (3), where the State Government is satisfied that any land should be acquired for the purpose specified in the notification issued under sub-section(1), a declaration shall, by notification in the official Gazette, be made to that effect.
- (5) On the publication in the official Gazette of the