State Of Karnataka & Anr vs All India Manufacturers Organization & ... on 20 April, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1846, 2006 AIR SCW 2234, 2006 (3) AIR KANT HCR 544, 2006 (4) SCALE 398, 2006 (4) SCC 683, 2006 ALL CJ 3 2229, 2006 (6) SRJ 67, (2006) 4 KANT LJ 369, (2006) 5 SCJ 770, (2006) 5 SUPREME 819, (2006) 4 SCALE 398, (2006) 2 WLC(SC)CVL 410, (2006) 2 RECCIVR 596, MANU/SC/2206/2006

Bench: Ruma Pal, B. N. Srikrishna, Dalveer Bhandari

CASE NO.:
Appeal (civil) 3492-3494 of 2005

PETITIONER:
State of Karnataka & Anr.

RESPONDENT:
All India Manufacturers Organization & Ors.

DATE OF JUDGMENT: 20/04/2006

BENCH:
Ruma Pal, B. N. Srikrishna & Dalveer Bhandari

JUDGMENT:

J U D G M E N T with Civil Appeal Nos. 3497/05, 3842-3844/05, 3848-3884/05, 3889-4127/05, 4128-4366/05, 4575-4576/05, 5399-5401/05, 5402/05, 5746- 5747/05, 5759/05, 5797-5799/05, 6098/05, 6099/05, 5092-5093/05, 7024- 7040/05, 7591/05, 7592/05, 61/06, 73/06, 74-76/06 and Civil Appeal Nos. /06 @ SLP Nos. 1562-63/06.

SRIKRISHNA, J.

Leave granted in Special Leave Petition (C) Nos. 1562-63/06.

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.

The Main Matters (Civil Appeal Nos. 3492-3494/2005, 3497/2005, 3842-3844/2005) 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 Petition Nos. 45334/04 (All India Manufacturers Organisation v. State of Karnataka and Ors.), 45386/04 (J.C. Madhuswamy

and Ors. v. State of Karnataka and Ors.) and 48981/04 (Dakshinamurthy and Anr. v. State of Karnataka and Ors.) 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").

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.

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 the Asian Development Bank and its report pointed out that the projected population of 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.

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, U.S.A., 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.

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 Engineer 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.

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 concerned administrative departments, who would take " necessary action and also extend co-operation for implementation of the Project."

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.

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.

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.

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, 6,956 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 No. 11 of 1997 so that the land required for the Project could be acquired expeditiously. The Karnataka Industrial Areas Development Board ("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.

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. 29221/97 in November 1997 (reported as H.T. Somashekar Reddy v. Government of Karnataka and Anr.) 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.

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 No. 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."

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 (supra) 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 Article 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.

Each of the questions was answered in favour of the respondents i.e. 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.

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:

"(i) Development of area between Bangalore-Mysore.

(ii) Divergence of traffic from Mysore-Chennai; Chennai- Bombay.

(iii) Construction of elected road from Sirsi Circle upto 9.4 Kms.

(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."

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 (supra) was challenged before this Court (in SLP (Civil) CC 1423/99) but was dismissed in limine on 26.3.1999. The judgment in Somashekar Reddy (supra) thus reached finality.

The Present Litigation Although the writ petition in Somashekar Reddy (supra) 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 land owners' petitions. It was during the writ appeal stage that the Government reversed its stance and opposed Nandi.

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 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 Manufacturer's 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.

The High Court in the impugned judgment (vide Paragraph 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?"

The Division Bench disposed of all the writ petitions by a common judgment by which it dismissed Writ Petition No. 45386/04 filed by Mr. J.C. Madhuswamy and others with costs. Writ Petition Nos. 45334/04 and 48981/04 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, Under Secretary, Department of Industries and Commerce, as envisaged by Section 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.

The Contentions of the Appellants The main arguments in the present Civil Appeal Nos. 3492-3494 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 (supra).
>
> 2. That the principle of res judicata cannot be inflexibly applied to Public Interest Litigations, especially when a re-examination 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 (supra).
>
> 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.

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 (supra). 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 (supra). 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.

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.

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, appears 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, 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.

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. 45386/04, who were rightly described by the High Court as the State Government's "mouth piece" (vide Paragraph 22).

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 (supra) and that these indicated fraud and misrepresentation on the part of Nandi. Indeed, this was the central argument put forward for impugning the FWA.

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.

It would appear that the change of mind on the part of the State Government came about co-incidentally 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, 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.

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.

Res Judicata 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") and second, public policy that there ought to be an end to the same litigation . It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "the 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. 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 re- agitate the matter again and again. Section 11 of the 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 (supra) constitute res judicata for the present litigation.

Explanation VI to Section 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."

Explanation VI came up for consideration before this Court in Forward Construction Co. and Ors. v. Prabhat Mandal and Ors. (hereinafter "Forward Construction Co."). This Court held that in view of Explanation VI, it could not be disputed that Section 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. 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.

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 rem. 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 (supra) 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 (supra), as a Public Interest Litigation, could bar the present litigation.

We will presently consider whether the issues and findings in Somashekar Reddy (supra) actually constitute res judicata for the present litigation. Section 11 of the 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 Section 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."

Further, Explanation IV to Section 11, states:

> "Explanation IV. Any matter which might and ought to have been made ground defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

The spirit behind Explanation IV is brought out in the pithy words of Wigram, V.C. in Henderson v. Henderson as follows:

> "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."

In Greenhalgh v. Mallard (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."

The judgment in Greenhalgh (supra) was approvingly referred to by this Court in State of U.P. v. Nawab Hussain . Combining all these principles, a Constitution Bench of this Court in Direct Recruit, Class II Engineering Officers' Association v. State of Maharashtra expounded on the principle laid down in Forward Construction Co. (supra) by holding that:

> " an 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 Section 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."

With these legal principles in mind, the question, therefore, arises as to what exactly was sought in Somashekar Reddy (supra), 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 (supra) we will first examine the prayers of the parties, the cause of action, the averments of parties and the finding of the High Court in Somashekar Reddy (supra).

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 (supra) and in Mr. Madhuswamy's writ petitions are substantially the same.

Second, the cause of action in both Somashekar Reddy (supra) 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 6,956 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.

Third, in both Somashekar Reddy and Mr. 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:

> "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 utilized for the purpose of development of the towns thereby permitting respondent No. 2 to develop townships as a developer and on huge profits."

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. 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."
>
> "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-No. 1 is only facilitating the acquisition of land for which the replying respondent has to pay at the existing market rates."

Crucially, two very striking findings have been made by the High Court in Somashekar Reddy (supra) 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 township instead of 7, proposed by respondent No. 2 to make the Project viable."
>
> "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."

All of these unequivocally show that the issue of excess land (and connected issues) was specifically raised by the petitioner in Somashekar Reddy (supra) and was also forcefully denied by the State. In fact, the decision in Somashekar Reddy (supra), 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 Section 11 squarely applies. It is clear that the issue of excess land under the FWA was "directly and substantially in issue" in Somashekar Reddy (supra) and hence, the findings recorded therein having reached finality, cannot be reopened in this case.

The principle and philosophy behind Explanation IV, namely to prevent "the abuse of the process of the court" (as stated in Greenhalgh (supra)) through re-agitation of settled issues, provides yet another ground to reject the appellants' contentions. For instance, the High Court specifically records (vide Paragraph 29) of the impugned judgment that:

> "It is common case of the parties that the validity of FWA had earlier been challenged in Somashekar Reddy's case (supra) 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".

In the face of such a finding by the High Court, Explanation IV to Section 11 squarely applies as, admittedly, the litigation in Somashekar Reddy (supra) 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 Reddy (supra), the Project should be reviewed, the issue does not cease to be res judicata or covered by principles analogous thereto. If we were to re-examine the issues that had been raised/ought to have been raised in Somashekar Reddy (supra) it would simply be an abuse of the process of the court, which we cannot allow.

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 Reddy (supra), 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 (supra) does not operate as res judicata for the questions raised in the present petitions.

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 re-examined. 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 (supra) 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 (supra) and as it was res judicata, it could not be re-agitated. 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.

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 setup 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.

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 Paragraph 26) that:

> "By constituting this Committee the State Government has ensured that the Project gets stalled. It is interesting to note that Sri 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. Sri 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."

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 Paragraph 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."

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 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 Section 340 read with Section 195 of the Code of Criminal Procedure, 1973. We strongly deprecate such misleading or false affidavits on the part of the KIAD Board.

According to Mr. Venugopal, Article 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 Article 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.

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.

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 Paragraph 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's case (supra) and implement 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."

Mr. Divan strongly urged that the relief granted was wholly beyond the jurisdiction of the High Court under Article 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 (supra), 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 Article 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 Corporation v. M/s Lotus Hotels Pvt. Ltd., 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:

> "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 Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by 'other authority' as envisaged by Article
>
> 12."

Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors. 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 M/s Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay 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. and Anr. 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 Article 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."

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 ex-propriated 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".

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.

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 Paragraph 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."

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 Manufacturer's 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.

Writ Petition No. 45386/04 (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 (supra). Writ Petition Nos. 45334/04 and 48981/04 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.

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. and Anr. v. Johri Mal and in State of Haryana v. State of Punjab and Anr. where this court observed thus:

> " in 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 Appeal Nos. 3848-3884/2005, 3889-4127/2005, 4128-4366/2005, 4575-4576/2005, 5399-5401/2005, 5402/2005, 5746-5747/2005, 5759/2005, 5797-5799/2005, 6098/2005, 6099/2005, 5092-5093/2005, 7024-7040/2005, 7591/2005, 7592/2005, 61/2006, 73/2006, 74-76/2006, SLP 1562-63/2006).

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, 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.

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 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.

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").

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 Section 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.

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.

Non-Service of Notice The argument that no notice was served on the landowners under Section 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 Paragraph 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 Paragraph 30) that it was " not in dispute that the land owners 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 was the finding of the learned Single Judge or the Division Bench impugned on this point. We are, therefore, unable to accept the contention that notices were not served on the

appellants as required under Section 28(1) of the KIAD Act.

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.

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 where this Court pointed out as follows:

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

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 concerned authority also heard them on the objections filed after affording them an opportunity to file such objections under Section 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.

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.

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.

The various changes brought about to the KIAD Act, also reflect the intention of the State's 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 Section 2(6). In 1997, the definition was broadened to also include "industrial infrastructural facilities and amenities". Further, Section 2(7-a) was added to define "Industrial Infrastructural facilities" in a manner broad enough to take into its sweep the land acquisition for the Project.

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.

Civil Appeal No. 7024-25/05 As regards these appeals, the impugned judgment of the High Court (vide Paragraph 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.

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 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.

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 Matter, 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.

Appellants in C.A. No. 3497/2005 (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.

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.