

(2011) 06 KAR CK 0088

In the Karnataka High Court

Case No : Writ Petition No. 19579 of 2004

Base Corporation Ltd.

APPELLANT

Vs

The Karnataka Industrial Areas Development Board and
Others

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 11, 28 (1), 3, 3 (1), 4
Land Acquisition Act, 1894 — Section 48, 48 (1)

Citation : (2011) 06 KAR CK 0088

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Madhusudan R. Naik, for the Appellant; P.V. Chandrashekar, for Respondent 1, K.S. Mallikarjunaiah, HCGP for Respondent 2, Kamal, Banu for Respondent 3, Anant Mandgi, for Respondent 4a(L-3) and B, K. Shashikiran Shetty, for Respondent 5, Sreevatsa, for Respondent 6, C.K. Venkatesh, for Respondent 7 and Krishna S. Dixit, for Respondent 4(B), for the Respondent

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—In this writ petition, the Petitioner has sought the following reliefs:

- a. Issue a writ of certiorari, or any other appropriate writ, order or direction, quashing the Gazette Notification CPMG/KA/BG-GPO/13/2003-05 dated 5.5.2004 issued by the 2nd Respondent vide Annexure-N to the present writ petition;
- b. Issue a writ of mandamus, or any other writ or direction directing the 1st Respondent, to continue and complete the acquisition proceedings in respect of the lands covered under Sy. Nos. 28/1, 28/2 and 29/2 at Kariyamma Aghara, Varthur Hobli, Bangalore South Taluk pursuant to the extraordinary Gazette Notification dated 5.5.2004 baring No. issued by the 1st Respondent vide Annexure-N.

2. The Petitioner is a public limited company based in the State of Karnataka

incorporated under the provisions of the Indian Companies Act, 1956. The Petitioner is said to be engaged in the business of manufacturing and trading in batteries of all kinds used in various applications and such other electronic and electro-mechanical items. In order to expand its business operations, it appears the Petitioner has entered into a joint venture agreement with M/s. Matsushita Panasonic, Japan which was keen to set up an industry, to assemble power back-up banks in Bangalore. Power backup banks are said to be essential equipment for all commercial and industrial units. The power back-up banks is said to consist of sealed, maintenance-free batteries which are totally sealed and do not cause any sort of pollution. These batteries are assembled in an. MS Rack (steel rack) and connected with UPS systems which are usually used in the computer room. It appears that the Petitioner-company was keen on establishing a unit in the IT corridor area in Bangalore for the purpose of servicing the IT industry efficiently. That it had entered into various agreements with the owners of land bearing Sy. No. 29/2 measuring 1 acre 17 guntas on Kariammana Agrahara, Varthur Hobli. Bangalore South Taluk. However, since the said owners had failed to perform their obligations under the agreement, the Petitioner has filed a suit for specific performance which is pending consideration before the 28th Addl. City Civil Judge, Mayo hall, Bangalore. According to the Petitioner, it had also entered into oral agreement of sale of 4 acres of land in Sy. Nos. 28/1 and 28/2 of the same village.

3. When the matter stood thus, the State Government intended to form an industrial area in various survey numbers including the aforementioned survey number and accordingly, issued preliminary notification dated 10.12.2001 u/s 3(1) of the Karnataka Industrial Development Act, 1966 (hereinafter referred to as the "Act"). Simultaneously, notification was also issued u/s 28(1) of the said Act, a copy of which is produced as Annexure-A to the writ petition. It appears that there was a challenge made to the acquisition proceedings and public interest litigation was filed before this Court. In the meanwhile, the Karnataka Industrial Areas Development Board (hereinafter referred to as the "KIADB") had examined the request of the Petitioner for acquisition of land at its 245th meeting and had resolved that the land to an extent of about 5 acres be acquired in favour of the Petitioner as a single unit acquisition and a resolution dated 31.7.2002 to that effect was passed which is produced as Annexure-Subsequently, the KIADB addressed a letter dated 19.8.2002 to the Petitioner asking the Petitioner to secure the consent of M/s. Royal Fragrances Ltd., so that the Petitioner could have a composite extent of land for the purpose of industrial unit. Accordingly, the Petitioner obtained consent letter from M/s. Royal Fragrances Ltd., on 2.8.2002. Whereupon, the KIADB issued a letter dated 5.9.2002 to the Petitioner asking it to remit 40% of the amount totaling to Rs. 22,50,000/- to the KIADB and accordingly, the Petitioner has deposited the said amount on 13.9.2002. Thereafter, the Petitioner addressed a letter on 17.9.2003 to the KIADB requesting for speeding up of the acquisition proceedings.

4. According to the Petitioner, when the matter stood thus, it appears that the

daughter of the third Respondent had entered into agreements for the purpose of the lands sought to be acquired by the Petitioner and hence, sought the acquisition proceedings be dropped. In that context, a letter dated 22.8.2003 was addressed by the third Respondent to the Hon"ble Chief Minister stating that her daughter Nooraine Fazal (6th Respondent herein) intends to start a business school in Kariammana Agrahara Village and that she had paid advance amount to the land owners of Sy. Nos. 28/1, 28/2 and 29/2 and that it had come to her knowledge that the State Government had issued preliminary notification u/s 28(1) of the Act in the year 2001 and therefore, it sought for dropping of acquisition proceedings. A copy of the said letter dated 22.8.2003 is produced as Annexure-G. The Petitioner has averred that on account of the initiative taken by the third Respondent, communication was addressed to the Pollution Control Board (hereinafter referred to as the "Board") by the Special Deputy Commissioner on 29.11.2003 seeking its opinion with regard to the viability of establishing a power backup system industrial unit in the lands in question and as to whether it would cause any toxic pollution. The Petitioner was also asked to give its views on the communication from the Board and a detailed representation was made stating that the apprehension that the industrial unit sought to be set up by the Petitioner would cause pollution was wholly unwarranted and that no such activity for the manufacture of batteries was to be taken up. The communications in this regard are all collectively produced as Annexure-H. Thereafter, on 9.2.2004 KIADB sought to know from the Petitioner as to whether it was agreeable for allotment of different lands in case Sy. Nos. 28 and 29/2 were deleted from acquisition proceedings. To this the Petitioner replied on 11.2.2004 stating that since the allotment in favour of the Petitioner had been confirmed and the initial deposit had been made, the question of allotting an alternative land did not arise. Thereafter, the Petitioner was served with a letter dated 21.2.2004 issued by the second Respondent stating that the project proposed to be set up by the Petitioner in the lands in question was not suitable and hence, the acquisition in favour of the Petitioner would not be continued. On receipt of the letter dated 21.2.2004, it appears, Petitioner had approached the then Chief Minister stating that he had himself earlier recommended that the land be allotted in favour of the Petitioner. According to the Petitioner, on account of the attempts made by Respondent Nos. 3 and 6, the lands which were allotted to the Petitioner were denitrified and the catalyst for the said denotification order is letter dated 1.5.2004 addressed by the third Respondent's daughter, i.e., the 6th Respondent to the then Chief Minister pointing out that she was in the process of buying the land directly from the farmers and had paid substantial advances with regard to the said lands. A copy of the said letter is annexed as Annexure-M to the writ petition. That within four days thereafter, denotification of the lands allotted to the Petitioner has been made by issuance of a notification on 1.5.2004 which is produced as Annexure-N.

5. The Petitioner has averred that the dropping of the proceedings insofar as the Petitioner's allotment is concerned is illegal, arbitrary and a malafide act on the

part of the Respondent-authorities. The same is also challenged on the ground that the requirements for dropping of acquisition have not been complied with in the instant case and it is only on the interjection of the third and the sixth Respondent to whose wishes the authorities yielded and passed such an order denitrifying the lands in question. The Petitioner has also stated that by virtue of promise made by the Respondent-authorities, he has altered his position to his detriment and therefore, the principles of promissory estoppel and legitimate expectation would apply in the instant case. It is also stated in the writ petition that there is no report which has been given by the Board and the Respondents" view that the Petitioner-industry would be toxic producing industry and it would cause pollution is wholly incorrect. That the entire exercise of denotification in the instant case is arbitrary and therefore, notification impugned at Annexure-N in this writ petition has to be quashed. As a consequent prayer, the Petitioner has sought a direction to the first Respondent to complete the acquisition proceedings in respect of the lands covered in Sy. Nos. 28/1, 28/2 and 29/2 which are at Kariammana Agrahara (hereinafter referred to as "lands in question").

6. Respondent No. 1 has filed statement of objections admitting the issuance of the notifications for acquisition under the Act, but has denied that the denotification order is illegal or is on account of malafide act of the authorities. It is stated that there was no legal impediment for excluding the lands from acquisition proceedings. That the Petitioner has no vested right to demand any particular land to be allotted to it. That the doctrine of promissory estoppel or legitimate expectations are not attracted to the facts of the case. That the action of the Respondent-authorities is reasonable and fair in view of the fact that dropping of the acquisition proceedings is at the instance of the Pollution Control Board and KIADB has offered alternative land and therefore the relief sought by the Petitioner cannot be granted in this writ petition.

7. Respondent No. 2 has also filed objections contending that the State Government had issued notification for acquisition of lands in question, but on account of report submitted by the Pollution Control Board stating that the project proposed by the Petitioner involves use of lead which is a toxic heavy metal in the establishment of power back-up systems, it was found that the industrial unit was not suitable for the area as Kariammana Agrahara as Belandur tank is located in close vicinity. Considering the opinion expressed by the Pollution Control Board the State Government took a decision exercising the power u/s 4 of the Act. That there is no illegality or arbitrariness in the issuance of the denotification order and that an alternative land was offered to the Petitioner for the proposed project.

8. Respondent No. 3 has also filed statement of objections admitting that her daughter Respondent No. 6 had made preparations for purchase of lands in question for establishing a business school and therefore, a request was made to the then Chief Minister, Government of Karnataka to consider the dropping of the

acquisition. However, she has contended that she has not made use of her official position in making the request. That the communication was sent to the then Chief Minister in the capacity of a parent and other than making a request as per letter dated 22.8.2003, she did not make any attempt with regard to the denotification of the lands in question. She has also denied that her husband and her daughter are in real estate business. Therefore, she has sought for dismissal of the writ petition. Respondent No. 3 has also filed additional statement of objections contending that she had no role to play either with the KIADB passing denotification order or with the opinion given by the Karnataka State Pollution Control Board-Respondent No. 7 herein and that the allegations made by the Petitioner against her are fabricated and without any substance.

9. Respondent Nos. 4(b) and 5 have also filed objections contending that the Petitioner has been pressurizing these Respondents to sell the lands situated in Sy. No. 28/1 and 28/2, but they did not agree to sell the same and under those circumstances, the Petitioner approached the Board for the purpose of getting the very same lands acquired. That pursuant to the notifications issued by the State Government on 10.12.2001, these Respondents filed detailed objections requesting for dropping of the acquisition of their lands and a representation was also made by Respondent No. 4(b) stating that he had entered into a partnership firm in the name of M/s. KCP Electronics to setup a software park in the lands bearing Sy. Nos. 28/1 and 28/2 and enclosing a project report in that regard. These Respondents have also denied that the denotification has taken place at the instance of the third Respondent, but they have admitted that the 6th Respondent, Petitioner and several other persons had evinced interest in purchasing their lands which had been declared as an industrial area. It is also contended that by depositing certain monies with the KIADB the Petitioner has not acquired any right and the KIADB was willing to provide an alternative land to the Petitioner and the same should have been accepted. It is also averred that the acquisition proceedings in the instant case have been dropped on the basis of the objections filed by these Respondents and on the basis of the report of the Pollution Control Board. Hence, these Respondents have also sought for dismissal of the writ petition. Respondent No. 4(b) has also filed additional statement of objections. It is also stated that the Petitioner cannot compel the State Government to acquire the land for its benefit and hence, has sought for dismissal of the writ petition.

10. It is, however, relevant to note that the statement of objections do not anywhere whisper with regard to the allegations of malafides insofar as the role played by Respondent Nos. 3 and 6 in the issuance of denotification is concerned.

11. Respondent No. 6 has also filed statement of objections denying that there has been any malafides in the issuance of identifications or that her mother has played any role in dropping of the acquisition of the lands in question. She has also admitted that agreements for sale have been entered into by her with the owners of the lands in Sy. No. 28 and has denied the averments made by the

Petitioner. She has also contended that she has credentials to establish a business school since she had graduated from the Boston University, United Kingdom with a Masters of Science in Management and has varied experience abroad. That she had already established an elementary school on the Varthur Road in Sarjapur by name "Inventure Academy" with the collaboration of Managing Director of the Prestige Group. She has also stated that the letter written by her mother and herself to he Chief Minister have been distorted and misinterpreted by the Petitioner and that she has no role to play in the denotification issued by the State Government. Therefore, she had sought for dismissal of the writ petition.

12. Respondent No. 7 has also filed statement of objections contending that a reference was made by a letter dated 13.10.2003 to it with regard to the suitability of the lands in question for the setting up of a power backup unit and initially an opinion was expressed that the lands were not suitable for such an unit. Thereafter on 1.12.2003, the Managing Director of the Petitioners-corporation had addressed a letter to the Respondent explaining about the proposed project stating that the project was for the assembling of power backup system for software and hardware industries and did not involve in any manufacturing activity. That also the KIADB had written on 28.11.2003 to the 7th Respondent stating that they wanted specific and detailed opinion based on technical consideration from the Pollution Control Board on the possible pollution by the proposed unit before taking further action in the matter. In response, a letter was addressed on 29.1.2004 stating that the opinion given to the KIADB on 29.1.2003 was general in nature and if a specific opinion was required in respect of the proposed industrial unit of the Petitioner, then complete information had to be provided regarding the manufacturing process and possible pollution impact that would be caused and the proposed pollution control measures that could be taken up and thereafter a suitable reply would be given. According to the 7th Respondent, since the KIADB did not further communicate with the 7th Respondent, no further opinion was expressed by the 7th Respondent. A copy of the inspection report of the 7th Respondent is dated 20.11.2003 is produced as Annexure-R4. 7TH Respondent has also stated that it has no knowledge that the correspondence initiated with it was at the instance of the third Respondent. 7th Respondent has also admitted that its Chairman is a member of he State Level Single Window Clearance Committee for clearance of projects involving investment between Rs. 5.00 crore and 50.00 crore and that the 7TH Respondent has also to give clearance for any proposed industrial activity. While denying the other averments, the 7th Respondent has sought dismissal of the writ petition.

13. In response the Petitioner has filed a rejoinder denying various averments and contentions raised by the Respondents.

14. I have heard the learned Senior Counsel for the Petitioner and other learned Counsel for the Respondents and learned Government Pleader for Respondent

No. 2.

15. Learned Senior Counsel appearing for the Petitioner contended that the notification at Annexure-M dated 5.5.2004 is issued u/s 4 of the Act, whereby Sy. No. 27, measuring 4 acres 18 guntas; Sy. No. 28/1, measuring 3 acres 4 guntas and Sy. No. 28/2, measuring 38 guntas have been denitrified from acquisition and that the said notification is an instance of malafide exercise of power. He has submitted that when the State Government on being satisfied with the proposed project of the Petitioner had cleared the same in the proceedings held by State Level Single Window Clearance Committee and also on being satisfied about the extent of land required for the Petitioner's project had also resolved to acquire the said land for the benefit of the Petitioner, subsequently, at the instant of Respondent Nos. 3 and 4. the acquisition of land in favour of the Petitioner has been dropped. Therefore, the denotification dated 5.5.2004 is a clear case of colorable exercise of power and being arbitrary and illegal not in accordance with law has to be quashed. He has also drawn my attention to the various documents which have been produced by him to contend that, but for the intervention and role played by Respondent Nos. 3 to 6, the State Government would not have denitrified the lands in question which were sought to be acquired for the Petitioner. He therefore, submitted that the exercise of power in the instant case being totally contrary to law, the said notification has to be quashed. In support of his submission with regard to the fraudulent exercise of power in the instant case, he has referred to certain decisions which would be adverted to later.

16. He has also submitted that pursuant to the resolution passed by the KIADB on 31.3.2002 at the 245th meeting (Annexure-B) as per the direction of the KIADB, the Petitioner entered into an agreement with M/s. Royal Fragrance Pvt. Ltd., so that an extent of 5 acres of land in Kariammana Agrahara Village could be provided for the Petitioner company as a Single unit for the purpose of the project. He further submits that pursuant to the directions of the KIADB, the Petitioner has paid 40% of the acquisition charges i.e., Rs. 22,50,000/- out of Rs. 56,25,000/- on 5.9.2002 which is evidenced by Annexure-D and E and subsequently, when the Petitioner was expecting the acquisition proceedings to be completed and possession of the lands in question to be handed over to the Petitioner, at that stage at the instance of Respondent Nos. 3 that the lands proposed to be acquired for the Petitioner were dropped from acquisition. He submits that the doctrine of promissory estoppel and legitimate expectation would apply in the instant case and therefore, the second prayer made by the Petitioner herein to issue a direction to the Respondent-authorities to complete the acquisition on the quashing of denotification is in order.

17. He has also drawn my attention to the various communication between KIADB and the 7th Respondent namely the Pollution Control Board and has stated that there has been no report submitted by the Pollution Control Board with regard to the environmental impact by the proposed unit of the Petitioner and that the Respondent authorities had made use of a tentative report which

has been expressed by the Board for the purpose of denitrifying the lands. That the real reason was on account of the wishes of 3rd and 6th Respondents for denitrifying the said land due to their vested interest, since they have entered into agreements with the land owners not for an industrial purpose but for real estate business. He therefore contended that the prayer made by the Petitioner in this writ petition ought to be granted.

18. The documents as well as the citations referred to by the learned Senior Counsel for the Petitioner during the course of his submission shall be adverted to at the relevant stages of this order.

19. Per contra, counsel for the first Respondent -KIADB has stated that no doubt on 10.12.2001 the State Government has issued notification u/s 3(1), 1(3) and Section 28 of the Act, proposing to acquire the lands in question and there had been correspondence between the Petitioner and KIADB, with regard to allotment of land for Petitioner's purpose. However, it is possible for the Government to exclude the lands from industrial area u/s 4 of the Act and KIADB has no role to play in that regard. Further, he submits that the Petitioner has not acquired any kind of right to establish the project and the clearance by the high level committee or the single window agency would not create any right for the establishment of the industry by the Petitioner. He has also relied upon certain decision of this Court as well as the Apex Court to contend that the Petitioner has no right to challenge the denotification since the exercise of power in the existing case is u/s 4 of the Act. Learned Counsel has also stated that the decision to denotify the lands in question has been taken by the State Government and no oblique motive can be attributed in this regard. He has also submitted that the notification of acquisition was for the benefit of the KIADB for the establishment of an industrial area and the acquisition in the instant case was not exclusively for the Petitioner and therefore the Petitioner cannot insist any particular piece of land being allotted to it under the notification. He therefore, submitted that the writ petition has to be dismissed.

20. Learned Government Pleader, representing the State has stated that the exclusion of the land in question from acquisition by virtue of issuance of the denotification dated 05.05.2004 cannot be questioned in this writ petition, inasmuch as the State Government has exercised its power in terms of Section 4 of the Act that the said denotification is not on account of any intervention or influence by either the 3rd Respondent or the 6th Respondent with the decision to denotify, which has been taken on merits and therefore, the order of the State Government is in accordance with law and it cannot be interfered with by this Court. Learned Government Pleader has also submitted the records leading up to the denotification order dated 05.05.2004.

21. Learned Counsel appearing for the Respondent No. 3 has stated that the Petitioner has made a two-fold prayer namely for quashing of the denotification at Annexure -"N" and a direction to the Respondent authority to continue the acquisition proceedings, that prayer No. 2 cannot be granted by this Court, since

the State Government cannot be directed to continue with any acquisition proceedings as it is left to the wisdom of the State Government to either initiate, continue or it is continued acquisition proceedings that even after this Court would come to a conclusion that denotification is not in accordance with law on benefit can be extended to the Petitioner and therefore the writ petition has to be dismissed in limine. He therefore stated that the second prayer cannot be granted by this Court. Also the Petitioner has no locus standi to file this writ petition inasmuch as the acquisition of land is for the sake of establishment of an industrial area and not for the specific purpose of the Petitioner. That the allegations made against Respondent No. 3 are cryptic as the pleadings are not specifically against Respondent No. 3 and therefore the array of Respondent No. 3 in this writ petition itself is wholly improper. Relying on certain decisions, learned Counsel for Respondent No. 3 stated that the writ petition has to be dismissed.

22. Learned Counsel for Respondent No. 4b vehemently contended that when the State Government could exercise the power of eminent domain, it has an equal power to denotify lands and therefore the dropping of the acquisition cannot be challenged by any land owner or a beneficiary. There is no nexus between the representation made by the 3rd Respondent Minister with the dropping of the acquisition proceedings. That with regard to the denotification, it is also to be borne in mind that Sy. No. 29/2 is not a subject matter of denotification. Therefore the Petitioner cannot contend that there is a malafide exercise of power. He has also drawn my attention to Annexure - "L" and has stated that the decision taken by the State Government on 21.02.2004 and as communicated to the Chief Executive Officer of the KIADB would reflect the reasons as to why the decision was taken for dropping of the acquisition in the present case and on a reading of the said document it does not reflect that the said decision of the State Government was on account of any influence by any external agency. He therefore submitted that the dropping of the acquisition proceedings in the instant case is in accordance with law.

23. He infact further contended that the State Government has taken into consideration the objections filed by the land owners namely owners of land bearing SY. No. 28/1 and 2 and it is on the basis of their objections and the need for the said land for the purpose of establishing a software park that the State Government decided to drop the acquisition of the lands in question. He has also said that the principle of promissory estoppel is not applicable since the Petitioner is not an aggrieved person and no prejudice is caused to the Petitioner. Infact the Respondent authorities offered to return the money deposited by the Petitioner and also offered an alternative land to the Petitioner but the Petitioner has not accepted the said offer and instead, has filed this writ petition at their own risk.

24. Learned Counsel also submitted that impugned notification dated 5.5.2004 is issued at a stage after hearing the objections of the land owners and before

passing of an order u/s 28(4) of the Act. After hearing the objections of the land owners the State Government has decided not to continue with the acquisition. However, while issuing the denotification, inadvertently Section 4 of the Act has also been invoked and the entire area thereby excluded the lands in question from the industrial area, that even without the invocation of Section 4, the lands could have been excluded from acquisition, since Annexure "L" which is the decision of the KIADB does not refer to the exclusion of lands in question from the industrial area in terms of Section 4 of the Act.

25. Learned Senior Counsel appearing for the Respondent No. 6 while referring to his statement of objections had contended that Respondent No. 6 is a qualified person who intended to set up a business school in the land in question and had entered into an agreement with the land owners even prior to the earliest of notification but the denotification has not been made in the instant case either on the letter written by her mother Respondent No. 3 or on the basis of the communication sent to the then Chief Minister by her, though the said communications are admitted by them. Under the circumstances, learned Senior Counsel stated that the writ petition has to be dismissed.

26. Karnataka State Pollution Control Board represented by learned Counsel has drawn my attention to the various correspondences which have taken place between the 2nd and the 7th Respondents with regard to the viability of the Petitioners industrial unit in the context of the impact on pollution. He has stated that pursuant to the request made by the KIADB initial report was given by the Pollution Control Board since there was no further request made by KIADB with regard to the Petitioners project on the lands in question no final opinion has been given in the matter.

27. Drawing my attention to the initial report submitted by the Pollution Control Board, he has stated that land owners were also heard in the matter during the inspection of the lands in question and thereafter, the said report was issued. He submits that possibly on account of the denotification of the lands in question there was no further request made to the 7th Respondent with regard to giving any final opinion in the matter. He has also stated that the 7th Respondent had infact issued a letter to the KIADB to give details of the Petitioners industrial unit before a final opinion could be given by the 7th Respondent with regard to any possible pollution impact that could be caused by the said industry.

28. In reply, learned Senior Counsel appearing for the Petitioners has stated that the prayers made by the Petitioners in this writ petition are in order, that prayer No. 2 is only a consequential prayer to a main prayer. Since the denotification at Annexure "L" has been challenged in the instant case, this Court in exercise of its power of judicial review while adjudication on the validity of the denotification can also grant the consequential prayer in the event of this Court coming to a conclusion that the said notification is illegal. He therefore submitted that the prayers sought in this writ petition would have to be granted having regard to the material produced by the Petitioner with regard to the events leading up to

the denotification. He has also stated that the materials on record would amply demonstrate that the denotification is vitiated on account of extraneous considerations and the exercise of discretion is wholly arbitrary and illegal in the instant case.

29. Distinguishing the order passed by the learned single judge of this Court in Writ Petition No. 11727/2006 and connected matters dated 30.04.2010 he stated that the factual matrix of the said case is different from the present case inasmuch as the present case malafides has to be considered having regard to the material placed by the Petitioner. He has also rebutted the report filed by the 7th Respondent with regard to the nature of activity of the Petitioner by contending that the industrial unit to be set up by the Petitioner was not for the manufacture of the batteries but for the purpose of supplying alternative power to the surrounding industries. Therefore the initial report of the Pollution Control Board is also incorrect. He has also stated that the said report is only an excuse for issuing the denotification whereas it was an account of favoritism shown to Respondent Nos. 3 and 6, that the denotification has been ordered in the present case and therefore a tentative report of the Pollution Control Board can have no bearing with regard to the nature of industrial activity of the Petitioner company. He has also stated that the land owners were provoked to ask for dropping the acquisition proceedings at the behest of Respondent Nos. 3 and 6. He has also stated that the initial report of the Pollution Control Board has also taken opinion of the land owners with regard to the possible impact of pollution which is a wholly meaningless exercise. He has also drawn my attention to certain agreements entered into by Respondent No. 6 as a partner to M/s. Hitech properties, subsequent to the denotification order dated 5.5.2004 in respect of Sy. No. 27. That a notification u/s 28(4) of the Act has been issued insofar as Sy. No. 29/2 is concerned. However that is the subject matter of challenge by the land owner in W.P. No. 30983/2004. Therefore, the notification impugned in this writ petition has to be quashed and the consequential prayer sought by the Petitioner has to be granted.

30. Before dwelling on the controversy in this case the undisputed facts may be stated. That by a preliminary notification dated 10.10.2001 the State Government had sought to acquire inter alia, lands bearing Sy. No. 27, 28 and 29/2. Simultaneous notifications were issued u/s 3(1), 1(3) and 28(1) of the Act. Subsequently by proceedings held on 31.07.2002 at 245th meeting of the Board, it was resolved that allotment of 5 acres in Sy. No. 28 and 29/2 at Kariyammana Agrahara has been made in favour of the Petitioner for setting up of its industrial unit besides R and D centre and the Petitioner was directed to convince M/s. Royal Fragrance Private limited to part with their lands for its proposed project so that an extent of 5 acres as a single-unit acquisition could be provided for the Petitioners, subject to the Petitioners securing consent from M/s. Royal Fragrance Private Ltd., Thereafter KIADB Board wrote to the Petitioner in that regard on 19.08.2002 and subsequently on 5.09.2002 after the Petitioner had obtained consent from M/s. Royal Fragrance Private Ltd., KIADB asked the Petitioner to

deposit 40% of the acquisition charges and accordingly a sum of Rs. 22,50,000/- was deposited by the Petitioner with KIADB by letter dated 13.09.2002, since there was no further step taken in respect of completion of the acquisition, the Petitioner wrote to KIADB on 17.09.2003 requesting it to complete the acquisition and to allot the lands to the Petitioner at the earliest. It is at this stage that the records leading up to the denotification of the lands in question by notification dated 5.5.2004 would have to be considered in order to adjudicate upon its validity.

31. However, before considering the same it would be of relevance to refer to certain decisions of the Apex Court in the matter of exercise of discretion while denitrifying the lands from acquisition. In AIR 2010 SC 2153 in the case of Mysore Urban Development Authority v. Veer Kumar Jain, the Apex Court considered the validity of the denotification and subsequent withdrawal of the denotification in the context of Section 48(1) of the Land Acquisition Act, 1894 and has stated as follows.

9. We may first refer to the relevant principles in regard to withdrawal from acquisition u/s 48(1) of the LA Act:

(i). Sub-section (1) of Section 48 clearly provides that the Government will have liberty to withdraw from the acquisition of any land, of which possession has not been taken. Therefore, the power u/s 48(1) of the LA Act could only be exercised before the possession of the acquired land is taken. Once possession of the land is taken by the government, the land vests in the government and the power of the government u/s 48(1) of the LA Act to withdraw acquisition in regard to such land would cease to exist.

(ii). Where possession of the acquired land has not been taken, the power and discretion u/s 48(1) of the LA Act can be exercised by the State Government, but only in a fair and non-arbitrary manner. Consequently, no order u/s 48(1) of the LA Act can be passed by the government, without hearing the local authority for whose benefit the acquisition is made, particularly when the preliminary notification has been issued by such local authority, and the final declaration states that the lands are acquired for such authority for a public purpose. (Vide: Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others, ; M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, and State Government Houseless Harijan Employees Association v. State of Karnataka, 2001 (1) SCC 610 : AIR 2001 SC 437 : AIR 2001 SCW 27.

32. Though the said propositions are stated in the context of exercise of powers u/s 48(1) of the Land Acquisition Act, 1894 the same can be read with regard to Section 4 of the Act under consideration also.

33. In the said decision the Apex Court has stated that the exercise of the power by the State must be fair and non-arbitrary and that discretion must be exercised in accordance with law. In this context, it would be of relevance to advert to the propositions regarding exercise of discretion by an administrative authority in the

context of judicial review of an administrative action. According to a learned Author, all principles of judicial review of discretionary powers fall into two major classifications- One, abuse of power by the authority; two, non-exercise of power. In the first category can be included exercise of power mala fide, or in bad faith, or for an improper purpose or taking into account irrelevant or extraneous considerations, or after leaving out relevant considerations or when there is colorable exercise of power. It is well-settled that exercise of administrative power will stand vitiated if there is a manifest error of record or if the exercise of power is arbitrary. Similarly if the power has been exercised by non-application of mind to relevant factors, the exercise of power. Similarly if the power has been exercised on the non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous or the refusal to take into consideration a relevant fact, or acting on the basis of irrelevant and extraneous factors not germane to the purpose of arriving at the conclusion would vitiate an administrative order. In case of *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , it has been held that if exercise of discretion is surrendered to an extraneous body, it would be vitiated by non-application of mind.

34. The Apex Court in the case of *Jaichand Lall Sethia Vs. State of West Bengal and Others*, has stated that malafide exercise of power does not necessarily imply any moral turpitude as a matter of law. It only means that the statutory power is exercised for purposes foreign to those for which it is in law intended.

35. In this sense, the Apex Court has equated mala fide exercise of power with ultra vires exercise of administrative power. However, malafides can be a distinct ground for quashing administrative action apart from ultravires. Two decisions of the Apex Court where mala fide exercise of power have been quashed can be cited for the purpose of the present case. One is *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, and the other is *State of Punjab and Another Vs. Gurdial Singh and Others*,

36. The latter case is one arising under the land acquisition proceedings where acquisition of land was struck down on account of mala fides.

37. In the context of mala fides Courts have stated that the plea of mala fides is raised often but it is rarely substantiated to the satisfaction of the Court. Mere raising a doubt or suspicion is not enough as there should be something specific and direct to sustain a plea of malafides. The burden of proving mala fides is on the individual making the allegation as there is a presumption in favour of the administration that it exercise its power in good faith and for public benefit. The Petitioner should produce sufficient material to convince the court of the mala fides of the Government as held by the Apex Court in the case of *Land Acquisition Collector and Another Vs. Durga Pada Mukherjee and Others*, . The burden of establishing mala fides lies very heavily on the person who makes such allegations and the court cannot permit such person to side track the issue and escape the burden of establishing hostility and malus animus.

38. In the case of Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, the Apex Court held that the evidence adduced must be certain clear and specific as vague allegations of mala fides are not enough to dislodge the burden resting on a person who makes the same though what is required in this connection is not a proof to the hilt. The person against whom such allegations are made must controvert the same by filing counter affidavit before Court.

39. In N.K. Singh Vs. Union of India and others, , while dealing with the context of the plea of the Court in dealing with the prayer of mala fides held that "The High Court while dealing with a plea of mala fides will look into records only and would not enter into a probing enquiry." The motive of an authority can, however, be deduced from the course of events and other material which the individual may bring before the court. In S. Pratap Singh Vs. The State of Punjab, , the Apex Court held that mala fides can be established only by direct evidence or can be deduced as a reasonable and inescapable inference of proved acts. The allegations of mala fides are often more easily made than proved. Very seriousness of such allegations demands proof of higher order of credibility. In the case of Delhi Development Authority and Another Vs. UEE Electricals Engg. (P) Ltd. and Another, , the Apex Court has also held that it is not necessary for the individual to prove which particular official of the Government acted mala fide - there is no such burden on the individual as facts lie within the knowledge of the government.

40. In the context of exercise of discretion, taking into consideration relevant considerations and leaving out irrelevant considerations is a hallmark of good exercise of discretion. In the context of abuse of discretion often the Courts use the phrase "colorable exercise of power" to deprecate an abuse of discretion. Colorable exercise means that under the guise of power conferred for one purpose, the authority would seek to achieve something else which it is not authorized to do under the law in question. In the same way non-application of mind is also a ground for quashing an administrative actions. In that context, acting under dictation, is a escape whereby the authority does not exercise discretion vested in it but would exercise discretion under the dictation of a superior authority. This is in effect is non-exercise of discretion or non-exercise of power by the authority which is also bad in law.

41. In the recent march of administrative law, often the concept of fraud on power is pressed into service. Fraud on power implies that power is not conferred but exercised by an authority under the guise of power conferred. However in this context one has to be cautious to ascertain as to whether the exercise of power can legitimately be traced.

42. Having regard to the aforesaid well-settled principle of exercise of discretion by an administrative authority the records in the present case will have to be scrutinized.

43. Learned Government Pleader has furnished the original records pertaining to

issuance of the denotification. The said records pertain to the Department of commerce and industry under whose jurisdiction the 2nd Respondent functions. As has already been stated after the communication addressed by the KIADB to the Petitioner the latter made the requisite initial deposit for the acquisition of the lands in question for the Petitioner to set up the industrial unit and thereafter there was a lull in the proceedings. The Petitioner then addressed a letter to the Special D.C. of the first Respondent on 17.09.2003 (Annexure "F") stating that there had been delay in completion of the acquisition proceedings and that it had not received any further communication with regard to the same. It is seen from the records that a few day prior to the said communication the then Minister for Science and Technology and Indian System of Medicines/Homeopathy, 3rd Respondent herein had addressed a letter to the then Chief Minister Sri. S.M. Krishna, stating that her daughter Noraine Fazal, Respondent No. 6 herein intended to start a business school the Kariyammana Agrahara village and had paid advance amounts in respect of Sy. Nos. 27, 28/1, 28/2 and 29/2 and that it had come to her knowledge that KIADB had issued preliminary notification u/s 28(1) of the Act to acquire land in the year 2001. Under the circumstances she made a request for dropping the acquisition. A copy of the said letter dated 22.8.2003 is extracted as follows:

Mrs. Nafees Fazal

Vidhana Soudha, Bangalore-1

Minister of State for Science Technology and Indian System of Medicine/
Homoeopathy

No/MST-ISM/1626/03 Dated: 22/08/2003

Respected Sir,

My daughter NOORAIN FAZAL intends to start a Business School in Karimana Agrahara Village, Vathur Hobli, K.R. Puram, Bangalore South Taluk. She has paid advance for survey Nos. 27, 28/1, 28/2 and 29/2. Now it has come to her knowledge that KIDB had issued a preliminary notification under 28/1 to acquire the land in 2001.

I request your kind self to consider dropping the acquisition.

Thanking you,

Yours Sincerely, (Nafees Fazal)

To,

The Hon''ble Chief Minister Government of Karnataka, Vidhana Soudha, Bangalore.

44. On the said letter the then Chief Minister has noted that the report from the KIADB has to be obtained as to why they required the said lands. It appears that after the receipt of the said letter, File No. CI47/SPE/004 has been opened and

notings have been recorded on various dates the relevant portions of which are extracted as follows:

(4). The request for deletion is made by Smt. Nafeeza Fazal, the Hon"ble Minister of State for Science and Technology, the Sy. No. 27, 28 and 29/2 which were included in the preliminary Notification issued on 10.12.2001 for IT Corridor.

The Minister for Science and Technology and KUIDFC Smt. Nafees Fazal had also telephoned to me in this regard.

The lands sought by Smt. Nooraine Fazal in her letter at CF 2, clearly over lap with the lands notified for M/s. Royal Fragrances Pvt. Ltd. and M/s. Base Corporation Ltd.

However the KIADB had written letters to both M/s. Royal Fragrances and Base Corporation Ltd. to clarify whether the lands sought to be deleted by Miss Fazal overlap with the lands notified by them. The replies have not yet been received.

17. The Minister for Science and Technology and KUIDFC Smt. Nafees Fazal had also telephoned to me in this regard.

18. The lands sought by Smt. Nooraine Fazal in her letter at CF 2, clearly over lap with the lands notified for M/s. Royal Fragrances Pvt. Ltd. and M/s. Base Corporation Ltd. As per the report of the CEO, KIADB. the JMC is under progress, and so a clear picture will emerge only after JMC is completed. However, the KIADB had written letters to both M/s. Royal Fragrances and Base Corporation Ltd. to clarify whether the lands sought to be deleted by Miss Fazal overlap with the lands notified by them. The replies have not yet been received.

19. A letter written by the Member Secretary of the Pollution Control Board is put up in the file which states that the proposal of M/s Base Corporation is not ideal from the point of view of Pollution control. However, the KIADB have sought specific opinion of the Pollution Control Board, which is yet to be given.

21. This file is regarding the request of Hon"ble Minister for S and T for deletion of lands. In this connection para 7 and para 17 onwards may kindly be perused.

22. Hon"ble Chief Minister had ordered deletion of Sy. Nos. 27 and 28 of Kariyamma Agrahara Village. However, on a separate file Hon"ble Chief Minister had ordered acquisition of Sy. No. 28 in favour of M/s. Base Corporation. As brought out on para 19 above, these lands may not be suitable for M/s. Base and

final orders of Hon"ble Chief Minister could be obtained on the matter.

25. In the mean time, Smt. Nafees Fazal, Hon"ble Minister of State of Science and Technology, KUIDFC has given a representation dated 22.8.2003 to the Hon"ble Chief Minister requesting him to delete then lands from the notification. It is stated in the representation that Smt. Nafees Fazal is interested to start a business School in the said Sy. Nos. and that she has paid an advance for purchase of lands in Sy. Nos. 27, 28/1, 28/2, and 29/2 of Kariyammana Agrahara Villate, Varthur Hobli, K.R. Pura, Bangalore South. The Hon"ble Chief Minister has ordered to consider the request.

28. Then an some objections filed against Base Corporation Ltd., with regard to pollution control and it was referred to the KSPCB. It is reported that the Member Secretary of the said Board has opined that the proposed location of the project was not suitable in the proposed land for acquisition. Hence in the circumstances there is no question of going ahead with the land acquisition for M/s. Base Corporation Ltd., The amount deposited by Base Corporation Ltd., be refunded by the ADB.

29. However as Sy. No. 29/2 of Kariyammana Agrahara Village is being acquired for M/s. Royal Fragrance Pvt. Ltd. as stated above, I do not there to interfere with the LAQ of the said Sy. No. 29/2 of Kariyammana Agrahara Village.

Earlier order is revoked. The land may be provided to Nooraine Fazal.

Sd/-Hon"ble C.M."

50. Hon"ble Chief Minister had ordered for acquisition of land for M/s. Base Corporation vide Flage "A" of the file below. Later, on a representation of M/s. Nooraine Fazal, Hon"ble Chief Minister has ordered as follows:

Earlier order is revoked, the land may be provided to Nooraine Fazal.

As desired, the file is submitted to Hon"ble Chief Minister for final orders in the matter.

52. Confirmed.

54. PS to Hon Min (LM1)

45. In this context it would be relevant to refer to another letter dated 27.01.2004 written by the CEO of the first Respondent Board to the Principal Secretary, Commerce and Industries Department wherein a specific reference has been made to the note received from the Hon"ble Chief Minister's office, "CM 1151 REP 03 dated 28.08.2003" wherein the Hon"ble Chief Minister has recorded the following remarks on the representation submitted by Respondent No. 3 herein which is as follows: "MD, KIADB -This may be dropped - action taken may be reported"

46. In response to that information is furnished to the Principal Secretary Commerce and Industry regard to the lands under acquisition process in respect of three units (1) M/s. Royal Fragrance Private Ltd., (2) M/s. Base Corporation Limited (Petitioner herein) (3) M/s. Phoenix Global. The relevant portions of the letter pertaining to the Petitioner is extracted as follows:

III M/s. Base Corporation Limited:

The Company has approached the Hon"ble Chief Minister of Karnataka on 8-7-2002 for allotment of land at Sy. No. 28 and 29/2 of Kariyamma Aghara for their proposed Software/Hardware Industry to provide facilities to "power back up system". On the same request the Hon"ble Chief Minister has ordered as under:

Chairman, KIADB "place it before the Board and consider the request and allot the lands on Single Unit Complex.

Consequently, the Board has resolved that an extent about 5:00 acres in Kariyamma Aghara village, Bangalore East Taluk be acquired in favour of M/s. Base Corporation Limited, as Single Unit acquisition, provided it secures consent from M/s. Royal Fragrances Pvt. Limited.

The Sy. No. 28 measuring 3-34 acres has been notified in favour of M/s. Phoenix Global and Sy. No. 29/2 measuring 3-33 acres has been notified in favour of M/s. Royal Fragrances Pvt. Limited respectively.

M/s. Royal Fragrances in their letter dt. 2-8-2002, have clarified that they had no objection to give up notified lands viz. Sy. No. 29/2 of Kariyamma Aghara village to an extent of 25 guntas to M/s. Base Corporation Limited and Base Corporation Ltd. have deposited 40% of tentative land cost of Rs. 22.50 lakhs to the Board.

In the meantime the Hon"ble Minister of State for Science and Technology has requested the Hon"ble Chief Minister of Karnataka on 22-8-2003 to drop the acquisition proceedings in Sy. No. 27, 28/1, 28/2 and 29/2 of Kariyamma Aghara village. (Copy of CM's note enclosed). Another Note dt. 28-8-03 was also received from Hon"ble CM's office, which is already discussed in beginning

paras.

At this stage some objections filed against M/s. Base Corporation were referred to KSPCB. The Member Secretary has opined that the proposed location was not suitable for the proposed project. However, the matter is once again referred to KSPCB for clear opinion about Board's opinion.

47. Hence the above facts were submitted for information in view of the then Hon'ble Chief Minister's direction on the request of Smt. Nafeeza Fazal, then Minister for Science and Technology for deletion of survey Nos. 27, 28 and 29/2 which were included in preliminary notification issued on 10.12.2001 for I.T. corridor.

48. Subsequently on 9.2.2004 the Under Secretary, Commerce and Industries Department addressed a letter to the first Respondent KIADB where a categorical answer was sought as to whether it was possible for Sy. No. 28 and 29/2 notified for the Petitioner herein could be deleted and the Petitioner could be compensated by equivalent land else where. In response to that the KIADB sent communication dated 10.02.2004 which is as follows:

Karnataka Industrial Areas Development Board (A Government of Karnataka Undertaking)

14/3, 2nd Floor, R.P. Building, Nrupathunga Road, Bangalore-560 001 Phone: 2215383, 2215679, 2242006, 2215069, Fax: 080-2217702 Website: <http://kiadb.Kar.nic.in> e-mail: kiadb@vsnl.net.

No. IADB/1432/12376/03-04 Date: 10-2-2004

The Principal Secretary to Govt, Commerce and Industries Department, M.S. Building, Bangalore-1.

Sir,

Sub: Deletion of land in Sy. No. 27, 28/1, 28/2 and 29/2 of Kariyammana Agrahara Village, Varthur Hobli, Bangalore East Taluk from acquisition from proceedings.

Ref: Your fax letter No. CI 47 SPQ 2004 Date.09.02.2004.

Please refer to your fax letter dt. 9-2-2004, the clarification sought from this office on three points is submitted as under:

1. With regard to this issue, 28(1) is already issued for 29-07 1/2 acres in favour of M/s. Royal Fragrances, as against the clearance of 12-00 acres by SLSWA. At present the JMC and 28(3) enquiry is in progress.

Hence, specific clarification as to whether deletion of Sy. No. 29 will adversely affect the project of M/s. Royal Fragrances needs to be answered only after due clarification from the party.

However, a letter has already been addressed to M/s. Royal Fragrances on 9-2-2004 and a reply is awaited.

2. M/s. Pheonix Global Solutions have already been allotted 10-00 acres of land at Electronic City II Phase.

Hence, presumption that the deletion of Sy. No. 27 will not affect anybody adversely appears to be right at this point of time.

3. Similar to the clarification given in Point (1) supra, a clear consultation and confirmation is required by M/s. Base Corporation with regard to the deletion of Sy. No. 28 and 29/2 which are already notified in favour of M/s. Base Corporation Ltd.

Hence, the above clarification submitted, may please be treated as an Interim reply to the fax dt.9-2-2004.

Yours faithfully, Chief Executive Officer

49. In the said communication no opinion was expressed by KIADB in regard to the deletion of land in Sy. No. 28, 29/2.

50. When the matter stood thus, one more letter dated 21/02/04 was addressed by Principal Secretary, Commerce and Industries Department to KIADB stating that the location of the lands for M/s. Base Corporation Ltd., for its proposed project was not suitable and that the amount deposited by the said company would have to be refunded by KIADB. Infact in the said letter a direction is issued to report compliance with regard to the report compliance at the earliest.

51. Thereafter it appears that no further steps were taken by the KIADB and under the circumstances Respondent No. 6 addressed a letter to the then Chief Minister on 01.05.2004, a copy of which is also produced by the Petitioner and the same is extracted as follows:

1 May 2004

Sri. S.M. Krishna Honourable Chief Minister Government of Karnataka

Subject: Status of Survey No. 27 and 28 Kariyammana Agrahara Village, Varthur Hobli, Bangalore East Taluk.

Dear Sir,

The objective of this letter is to request you to revoke the note issued by your office requesting KIADB to acquire the above land in favour of Base Corporation Limited.

Recap/background of events pertaining to Survey No. 27 and 28 Kariyammana Agrahara Village (land) are below:

A representation dated 16 Sept 2003 was given to you be me, requesting you to drop the acquisition of the land.

On the basis of this representation you directed the Commerce and Industries department not acquire the land; in turn the concerned Minister ordered KIADB to drop the acquisition vide govt. letter No. C 147SPQ2004 dated 21 Feb 2004 addressed to The Chief Executive Officer and Executive Manager K.I.A.D.B.

I am in the process of buying this land directly from the farmers at the prevailing market rate and have already paid a substantial advance towards the property. The primary objectives is to establish an Entrepreneurship center on the land. One of the keys to the success of this project is the appropriate location of this center. Should the project materialize; the center will be an asset to the State of Karnataka. and a fitting testament to your leadership.

However yesterday it was brought to my notice that another note has been issued subsequently by your office, requesting KIADB to acquire the land for Base Corporation Limited. This has led to confusion on the status of the land between KIADB and the Commerce and Industries department. Given that I have already paid a significant advance directly to the farmers; the acquisition of this property by KIADB will request in a substantial loss to me and negatively impact the project I am working on. I therefore request your help and intervention in clarifying the status of the land by revoking the latter order to KIADB.

Appreciate your assistance.

Yours faithfully Nooraine Fazal

52. On the said letter itself the then Chief Minister has ordered that the land may be provided to Nooraine Fazal and to treat the matter as urgent. On the basis of the said letter written by the 6th Respondent, on 4/5/2004, the file has been put up and on 5/5/2004 the impugned notification has been issued.

53. In this context, one other document has also be referred to wherein, on the basis of the letter written by the Respondent No. 3, a note is put up as follows:

An extent of 8 acres 12 guntas has been proposed in survey No. 27 and 28 of Kariyamma Agrahara village in Bangalore South Taluk for Global Phoenix solution a Software company. This Company has been allotted alternate land of 10 acres in Electronic City. As the agriculturists of Kariyammana Agrahara are very poor people without any other sources of livelihood, this acquisition by K.I.A.D.B., may be dropped.

54. Apparently, the reason assigned is that the agriculturists of Kariyammana Agrahara, had no other source of livelihood and therefore, the acquisition could be dropped. But the glaring reference to the letter of Respondent No. 3 in the said note is apparent and the note of the Chief Minister stating: "This may be dropped. Action taken may be reported" is also significant.

55. At this stage, it would be necessary to mention that the Petitioners' contention with regard to the denotification is that it is based on the request made by the Respondent No. 3 and Respondent No. 6 for the benefit of

Respondent No. 6. However, the contention of the counsel for the Respondent - authorities is that the denotification has been issued taking into consideration the report submitted by the Pollution Control Board. The third reason contended by some of the land owners is that on their request in the sense that on the basis of the objections filed by them, the State Government in its wisdom decided not to proceed with the acquisition and denitrified the lands in question.

56. Therefore, in order to test the validity of the impugned notification, it is now necessary to consider the records with regard to the report submitted to the Pollution Control Board, in the context of the pollution impact with the Petitioner's industrial unit would have on the surrounding environment.

57. It appears that on 17/10/2003 certain land owners of Sy. Nos. 27, 28 and 29 had represented to the Respondent No. 1 objecting to the allotment of the said survey numbers in favour of the Petitioner on the ground that the Petitioner's industrial units would cause pollution to the surrounding environment including Bellandur lake. Based on the representation of the land owners, a letter was addressed on 30/10/2003 by the Special Deputy Commissioner of KIADB to the 7th Respondent, seeking the latter's advice as to whether the said industry could be set up in the said area, enclosing copies of the representation of the land owners as well as the copy of the project report of the Petitioner. In response to the said request, the 7th Respondent after inspection of the site, wrote to Respondent No. 1 on 28/11/2003 as follows:

8th Floor, Sub has Chandra Bose Building (Public Utility Building) M.G. Road.
Bangalore-560 001 Phone: 558 1388/383 558 8142, 558 8520

No. CFE-CELL/KIADB/2003-2004/506 Dated 28 Nov 2003

TO:

The Special Deputy Commissioner Karnataka Industrial Areas Development Board 14/3, 2nd floor, R.P. Building Nrupathunga Road, Bangalore-560 001

Sir,

Sub: Acquisition of land in Sy. No. 27, 28 and 29 of Kariyamma Aghara, Verthur Hobli, Bangalore East Taluk - regarding.

Ref: Your letter dated 30.10.2003.

The proposal referred to this office is examined, site inspection is also made. The project involves use of land and Kariyamma Aghara Village, Bellandur Village and Tank are falling within the impact zone. There appears to be writ petition on this issue as informed by villagers and Bellandur panchayath. It is opined, that the proposed location is not suitable for the proposed project.

Yours faithfully Member Secretary.

58. On the very next date i.e. on 29/11/2003, a further communication was sent stating as follows:

8th Floor, Sub has Chandra Bose Building (Public Utility Building) M.G. Road. Bangalore-560 001 Phone: 558 1388/383 558 8142, 558 8520

No. CFE-CELL/KIADB/2003-2004/510 Dated 29 Nov 2003

To:

The Special Deputy Commissioner Karnataka Industrial Areas Development Board 14/3, 2ndfloor, R.P. Building Nrupathunga Road, Bangalore-560 001

Sir,

Sub: Acquisition of land in Sy. No. 27, 28 and 29 of Kariyammana Agrahara, Verthur Hobli, Bangalore East Taluk - regarding.

Ref: Your letter dated 30.10.2003.

With reference to the above, it is to be informed that, the site proposal for establishment of "Power back up system" industrial unit is not ideal. Since, the manufacture process involves use of lead, which is a toxic heavy metal and villages namely, Kariyammana Agrahara, Bellandur and Bellandur tank falls within the impact zone.

Yours faithfully Member Secretary.

59. Infact, prior to these communications inspection report dated 20/11/2003 had been submitted by the Environmental Officer, Bangalore South Region -1 of Respondent No. 7 after meeting some of the land owners whose names are mentioned in the said report. The said report is said to be based on the project profile submitted by the Petitioner and it states that since the industry propose to manufacture power back-up systems i.e., lead acid batteries, the lands in question were not suitable for manufacture of the same. Subsequently, on 5/4/2004 another communication was issued on behalf of KIADB No. 1 to Respondent No. 7, seeking a clear and specific opinion with regard to the Petitioner's industrial unit. In response to communication dated 5.4.2004, Respondent No. 7 sought further details with regard to the Petitioner's project, so that a clear and specific opinion could be given. Thereafter, there has been no communication between KIADB No. 1 and Respondent No. 7 and it is not in dispute that there has been no final opinion given by the Pollution Control Board.

60. Counsel for Respondent No. 4(b) has stated that the State Government on being convinced with the objections filed by the land owners had taken a decision not to proceed further in the matter and therefore, the impugned notifications is a cessation of the proceedings of acquisition which had taken place up to the stage of Section 28(3) of the Act.

61. Therefore, it is for this Court to answer the respective contentions as to what exactly led to the issuance of the impugned denotification.

62. While it is a case of the Petitioner that it is at the instance of the Respondent Nos. 3 and 6 that the impugned denotification has been issued by the State Government, the Respondent - authorities have contended that the denotification is primarily for the reason that the Petitioner's industrial unit would have caused pollution to the surrounding environment and therefore, the said denotification was issued. The land owners, on the other Land have contended that based on the objections filed by them, the State Government decided not to proceed with the acquisition. Infact, Respondents 3 and 6 have categorically denied the case of the Petitioner though learned Counsel for the said Respondents have fairly admitted the correspondence made by them to the then Chief Minister. The Petitioner and the Respondent - authorities as well as the Respondents- land owners have therefore assigned independent reasons leading up to the denotification. Hence, it is for this Court to discern as to which of the underlying reasons led Respondent authorities to ensure that the lands in question be denitrified and excluded in terms of Section 4 of the Act.

63. The detailed reference made to the notings on the file as well as the correspondence would reveal that the initial trigger to exclude these lands from acquisition did emanate from the letter written by the 3rd Respondent, then Minister of Science and Technology to the Chief Minister. Infact, notings at Page Nos. 1, 4, 12, 13 and 18 of the file referred to supra, clearly mentions the name of Smt. Nafeesa Fazal- Respondent No. 3 herein as well as the name of her daughter-Respondent No. 6 herein. Infact, the notings categorically state that a request for deletion is made by Respondent No. 3, Minister for Science and Technology. In terms of the said request, a direction was issued by the Chief Minister and several steps have thereafter been taken for de-notification of the lands. Infact, in Note No. 21, it is categorically stated as follows:

This file is relating to Hon"ble Minister for S and T, for deletion of lands. In this connection, Paragraphs 7 and 17 onwards may kindly be perused.

64. The order at Col. 50 of the file stating that "the earlier order is revoked and the land may be provided to Nooraine Fazal. As desired, the file is submitted to the Hon"ble Chief Minister, for consideration of the matter", clinches the issue.

65. In this context, the communication addressed to the Principal Secretary of the Pollution Control Board, based on the objections filed by some of the land owners would have to be considered. Though the objections of the land owners were made to the KIADB and inturn, communication was sent by KIADB to the Respondent No. 7 for its opinion and the Department of Commerce and Industry was not a party to the said communication, nevertheless, in Col. 19 of the file, it is stated that a letter written by the Member Secretary of the Pollution Control Board is put up with the file, which stated that the proposal of M/s. Base Corporation is not ideal from the point of view of the Pollution Control Board.

Thereafter, the K.I.A.D.B. sought specific report from the Pollution Control Board, which was yet to be given. Two things follow from the above. If indeed it was an independent decision of the State Government to denotify the lands, then no material in that regard is forthcoming from the records. It is not a case of deletion from acquisition, but deletion u/s 4 of the Act that is, the said lands have ceased to be industrial areas. On the other hand, opinion sought by the first KIADB from the Pollution Control Board was only with regard to the environmental impact of the Petitioner's industrial unit and not with regard to establishing an industrial area such on the lands in questions. Nevertheless, the State Government proceeded to denotify the lands in question invoking Section 4 of the Act. Even according to the land owners, they had no grievance with regard to the establishment of an industrial area. Their grievance was supposedly against Petitioner's industrial unit. Therefore, it is to be only inferred that the land owners were motivated by certain vested interest to file objections to the KIADB, who inturn acted on the guise of those objections so as to obtain an opinion from the Respondent No. 7 - Pollution Control Board, with regard to the suitability of the land in question for the Petitioner's project and even in the absence of there being any final specific and clear opinion expressed by the Pollution Control Board, based on the initial and tentative opinion expressed, a justification was sought to be given to the denotification. This was based on the fact that the Petitioner's industrial unit would cause pollution to the surrounding environment. Based on the tentative report of Respondent No. 7, the lands were denitrified. Infact, the subsequent notings in the file make no reference to the report of the Pollution Control Board but on the other hand, the interest of Respondents No. 3 and 6 were met by the issuance of the notification dated 5/5/2004. The immediate catalyst for the denotification order was the letter addressed by the Respondent No. 6 to the then Chief Minister on 1/5/2004. It appears that in all these proceedings, the then Minister for Large and Medium Industries, under whose jurisdiction the Respondent No. 1 - Board functions was kept in the dark. Infact, there is a noting which says that Hon"ble Minister (Large and Medium Industries) has desired to peruse the file.

66. The object of the land owners was also not the reason to denotify the lands as their object was only against the Petitioner's industrial unit and not against acquisition as such. The State Government relied upon the tentative Report of the pollution Control Board as a ruse to denotify the lands. However the real reason was to accede to the vested interest of Respondent Nos. 3 and 6 herein. It would become apparent that the opinion sought from the Pollution Control Board based on the objections filed by the land owners" was only an excuse to issue the denotification. The State High Level Committee had already cleared in principle the project of the Petitioner and despite the allotment of the land to be made for the Petitioner's industrial unit, pending approval of the project by the 7th Respondent - Pollution Control Board. The reason as to why the first Respondent KIADB took up on itself to obtain opinion from the 7th Respondent would have to be inferred in the context of the background facts, as noted from

in the file. Therefore, in order to camouflage the illegality of the action, prior to the issuance of the denotification, the first Respondent KIADB sought the opinion of the 7th Respondent with regard to the nature of the Petitioner - Industry. Infact, no final opinion was also given by the 7th Respondent in that regard. Therefore, any report which has been given by the 7th Respondent is only a preliminary and tentative report. Hence there was no material before the State Government to the effect that the Petitioner's industry would be a source of pollution to the surrounding environment. In the absence of such material, the State Government could not have satisfied itself on the issuance of the impugned notification.

67. Further, the voluminous records pointing to the significant role played by Respondent Nos. 3 and 6, preceding the denotification would only render the objections which have been filed by some of the Respondent - land owners, with regard to the lands in question being redundant. Infact, the case of the Respondent - land owners was that they required the lands in question particularly, Sy. Nos. 28/1 and 28/2, for setting up of their own industrial unit namely, for starting a software park. Therefore, all that they objected to was with regard to pollution by the Petitioner's industrial unit. Such being the case, the notification of Section 4 of the Act not only for deleting the lands from the acquisition but also from excluding these lands from industrial area was also to the prejudice of the land owners. The fact that Section 4 of the Act has been invoked in the instant case would only imply that since the requirement of Respondent No. 6 was not for an industrial purpose the lands to be deleted from such purpose. The apparent requirement of Respondent No. 6 was for starting of a Business school or an academic institution. But the actual interest in dealing with these lands was for real estate purpose. Therefore, while the Respondent No. 3 sought deletion of these lands, so as to enable her daughter - Respondent No. 6 to set up a business school namely, an educational institution, the invocation of Section 4 in the instant case is significant as it was to meet the vested interest of Respondent No. 6 since it is the case of Respondent No. 6 that she had already entered into certain agreements with the land owners of the lands in question, though the same is denied by the land owners. In this context, reference may be made to some of the sale deeds produced by the Petitioner with regard to the Sy. No. 27 where after the denotification, the said lands have been sold by certain persons acting as Power of Attorney for the land owners to M/s. Hitech Properties in which, Respondent No. 6 is a partner. From the letter dated 22/8/2003 written by Respondent No. 3 to the then Chief Minister, it is noticed that Sy. No. 27 was also to be utilized for the purpose of setting up of a business school. The fact that the sale deeds have been executed by the land owners of Sy. No. 27 subsequent to the denotification would make it clear that Respondent No. 6 had no interest in starting any business school.

68. As far as Sy. Nos. 28/1 and 28/2 are concerned, by an interim order granted by this Court, there has been stay of further proceedings though the said survey numbers are also part of the impugned denotification. Strangely, though an initial

request was made by Respondent No. 3 with regard to Sy. No. 29/2 also, the said land is not a part of the denotification. Possibly, Sy. No. 29/2 is excluded from the denotification since in the letter dated 1/5/2004 written by Respondent No. 6 to the then Chief Minister, no request was made for denitrifying the said land. It is also noticed that in the communication issued by the KIADB to the State Government on 27/1/2004 and also in the Government's communication to the first Respondent -KIADB on 21/2/2004, it is stated that in so far as Sy. No. 29/2 is concerned, the said land is sought to be allotted to M/s. Royal Fragrance Pvt. Ltd., and acquisition proceedings were at a final stage and therefore, it was not advisable to delete Sy. No. 29/2 from acquisition. Under the circumstances, Sy. No. 29/2 does not find a place in the impugned denotification. Therefore, in my considered view, the exercise of discretion leading up to the issuance of the impugned notification dated 5/5/2004 is wholly illegal, arbitrary and is an instance of colorable exercise of power for an improper purpose and therefore is fraudulent. It is unfortunate that then Chief Minister, who is an experienced politician and administrator yielded to the influence of his cabinet colleague and her daughter.

69. Having held that the denotification issued in the instant case is illegal, reference may be made to a decision of the Apex Court in the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, , wherein, the action of the Lt. Governor of Delhi, ordering demolition of the buildings belonging to the Express News Papers was challenged in a writ petition under Article 32 of the Constitution of India. The Apex Court while condemning the action of the then Lt. Governor, Delhi, for having initiated action on properties belonging to the Central Government held as follows:

Mere nearness to the seat of the Central Government does not clothe the Lt. Governor of Delhi with any power in respect of the property of the Central Government. He can discharge only those powers which are entrusted to him by the Constitution and the laws.

70. The analogy of the aforesaid extract squarely applies to the instant case. Respondent No. 3 being a member of the Cabinet of the Govt. of Karnataka, has abused the power vested in her by approaching the then Chief Minister for the sake of her daughter. This is a clear case where a Minister who has been endowed with powers and duties to be discharged for the public welfare and the public in general, has utilized her position for hankering a favour from her Chief Minister, for the vested interest of her daughter. The action of the daughter - Respondent No. 6 in directly communicating with the then Chief Minister by letter dated 1.5.2004 as a follow-up to her mother's correspondence and subsequent action which was taken on the basis of the said correspondence has also to be condemned as the same is simply an instance of abuse of her position as a daughter of a Cabinet Minister. The fact that the Respondent-authorities as well as the then Chief Minister acted on the request made by the daughter of a Minister to denotify the lands is indeed an instance of malafide exercise of

discretion. The submission of the counsel for Respondent No. 3 that as a concerned, mother, Respondent No. 3 wrote to the Chief Minister is wholly without substance. It is not that the Chief Minister or the powers that be would ever take into consideration any concern of a mother expressed in the context of acquisition of land. The abuse of position by Respondent No. 3 and also the role of Respondent No. 6 in using her mother's name and position to get favours from the State Government and the first Respondent and other authorities, in yielding to such pressures also requires to be condemned. In the instant case, the principles which I have stated prior to scrutinizing the records with regard to the exercise of discretion by administrative authorities and the approach of the Court in such matters are squarely applicable in the instant case. The voluminous documents produced by the Petitioner which are supported by the original records which have been submitted by the learned Govt. Pleader and also the records submitted by the counsel for Respondent No. 7 and the analysis of the said documents clearly bring out the corrupt motives of Respondent No. 3 and Respondent No. 6 in somehow saving the lands in question from acquisition for their vested interest. Therefore. Annexure "N" dated 5/5/2004 is quashed.

71. With regard to the manner in which the Governmental action must be taken particularly, when powers are vested with the State Government, in exercise of which, discretion must be exercised in according with law, the follow decisions are cited by the learned sr. Counsel for the Petitioner.

a. In case of M/s. Tandon Brothers Vs. State of West Bengal and Others, , the Apex Court has held that primary action must be based on utmost good faith, belief and ought to be supported with reason on the basis of the state of law -if the action is otherwise or runs counter to the same the action cannot but be ascribed to be mala fide and it would be a plain exercise of judicial power to countenance such action and set the same aside for the demands action clothed with bona fide reason and necessities of the situation in accordance with the law. But if the same runs counter, law courts would not be in a position to countenance the same.

With regard to the formation of opinion in the very same case, the Apex Court has observed as follows:

There are decisions galore of this Court as regards the issue of formation of opinion but we need not detain ourselves in this judgment to consider the issue since each case may be decided on the materials available for such formation of opinion - formation of opinion obviously is dependent upon available materials and cannot be a inere ipse dixit of the administrative authority. Existence of justifiable reasons in the matter of formation of opinion is the principal condition and any contra-action would habe the effect of the same being ascribed as arbitrary exercise of power which is admittedly an antithesis of law.

b. In the case of Common Cause Common Cause, A Registered Society Vs. Union of India (UOI) and Others, the Apex Court has observed as follows:

Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the peoples' property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people.

c. In case of Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, it has been held thus:

11. The Minister holds public office though he gets constitutional status acts done and duties performed are public acts or duties as the holder of public office. Therefore, he owes certain accountability for the acts done or duties performed.

12. When a Government in office misuses its powers figuratively, we refer to the individual Minister/Council of Ministers who are constituents of the Government. The Minister is responsible not only for his actions but also for the job of the bureaucrats who work or have worked under him.

14. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when in pursuit of a private satisfaction, as distinguished from public interest, he has done something which he ought not to have done.

17. The Court, therefore, would be required to consider whether the policy sought to be relied on and directed by the Minister was to further public good or was a means to fritter away the public property for personal gain or to misuse public power.

30. We have given our considered thought to the fervent and persuasive plea of Shri Sanghi. There are two aspects of the matter. The first is that this Court has the duty to correct every obvious ultra vires or illegal exercise of power or misuse of the same. Failure to do so would send wrong signals that the court legitimises wrong actions. There is, however, force in the contention of Shri Sanghi that if allotments would be cancelled by this Court, it would be virtually impossible for the Respondents to acquire residential plots anywhere now in a city like Jaipur in view of the great increase in prices of land in the meantime. We have not been able to overlook or ignore this facet of the case; more so, because it may be that the Respondents herein had not obtained the allotments by taking recourse to any illegal means. So, we have felt persuaded to agree with Shri Sanghi that we may not invoke our power under Article 136 to undo the impugned order of the High Court, even if the same be illegal, according to us.

d. In the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, , the Apex Court has observed that an illegality or any action contrary to law does not

become in accordance with law because it is done at the behest of the Chief Executive of the State. No one is above law. In a democracy what prevails is law and rule and not the height of the person exercising the power.

e. In *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*, , the Apex Court has held that the decision taken by a statutory authority at the behest of a person who has no statutory function is ultra vires. It was also held that by the impugned order, public interest has been given a complete go-by and a valuable public property was doled out at the behest of those who are duty-bound to protect the same.

f. In case of *Mrs. Behroze Ramyar Batha v. Special Land Acquisition Officer* ILR 1991 (4) Kar. 3556, a Division Bench of this Court has followed the decision of the Apex Court in the case of *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, , referred to supra, in the context of fraud on power and the following extract is apposite:

118. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh Vs. The State of Punjab*, . A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power: Same is the position when an order is made for a purpose other than that which finds place in the order.

g. With regard to the withdrawal of notifications of acquisition in the case of *State Govt. Houseless Harijan Employees' Association v. State of Karnataka and Ors.* (2001) 1 SCC 610, the Apex Court has held that where order of withdrawal of an executive action (Land Acquisition) is made on any ground, it is not open to Govt, to justify its decision later on some other ground. Though these observations are in the context with Section 48 of the Land Acquisition Act, they are equally applicable to the exercise of power under KIAD Act as well. Therefore, any justification of the exclusion of the lands in question in the instant case on the basis of the opinion expressed by the Respondent No. 7 - Pollution Control Board is of no assistance to the Respondent - authorities. Infact, in the instant case, detailed reasons have been assigned as to what was the real motive for excluding the lands in question from acquisition.

h. In the case of *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, , the Apex Court has held that owner need not be given any notice before

denitrifying lands from acquisition. However in the case of a Company.

72. The Apex Court held that a valuable right, thus accrues to the company to oppose the proposed decision of the State Government withdrawing from acquisition. The State Government may have sound reasons to withdraw from acquisition but those must be made known to the company which may have equally sound reasons or perhaps more which might persuade the State Government to reverse its decision withdrawing from acquisition. Though these observations are made in the context of acquisition for a company under the provisions of the Land Acquisition Act and though in the instant case, the acquisition is not for the Petitioner's company specifically, but for the purpose of Respondent No. 1 to establish an industrial area nevertheless the ratio of the said decision would be applicable having regard to the fact that the Petitioner and two other companies were offered and promised the lands in question. Therefore, the analogy with regard to hearing the company, who is in the position of a beneficiary, is a mandatory requirement, which has not been done so in the instant case.

73. Counsel for Respondent No. 1 has relied upon a few decisions in support of his submissions.

(a). The Apex Court in the case of Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, , wherein, the Apex Court held that the State Government had acted in best interests of the public and of public revenues and its decision cannot be faulted. If the Government is reluctant to go ahead with the acquisition in view of the genuine difficulties, it can hardly be blamed and the Government cannot be directed to acquire the land and embark on such a venture. The State cannot be compelled to take over the land because the owner of the land will need to take care of it at his own cost until it vests in the Government. The Apex in the said case further held that the State cannot be held responsible for the occupation of the land by trespassers. The fact that the Government exercised the power of withdrawal after the writ petition was filed by the land owner for a writ of mandamus directing the State Government to make the award u/s 11 of the Act and to take possession of the lands after payment of due compensation to the land owner, does not spell mala fides, once the existence of circumstances, which justified the Government's decision to withdraw, is acknowledged. The Apex Court further found that the State can be permitted to exercise its power of withdrawal u/s 48 unilaterally and no requirement that the owner of the land should be given an opportunity of being heard before doing so should be read into the provisions. The observations of the Apex Court have to be read in the context of the land owners seeking a direction to the State Government to conclude the acquisition proceedings in the said case. The Apex Court also stated the reasons as to why the land owners had made such a request. The Apex Court found that the land owners could not take care of the lands because some lands had been occupied by the trespassers and that was the reason as to why the Government had also exercised its discretion

to withdraw from acquisition. In that context, the Apex Court held that no direction can be issued to the State Government to conclude the acquisition proceedings but the observations of the Apex Court in the said case was that when power is exercised u/s 48 of the Land Acquisition Act for genuine reasons, the same cannot be interfered with by the Court is of significance. In other words, when discretion and power is not exercised for a genuine purpose or it is exercised for an improper purpose, then this Court has not only the power but also the duty to interfere in such matters.

(b). In fact, in case of Thomas Patrao since deceased by his LR and Another Vs. The State of Karnataka and Others, , this Court has referred to the observations of the Apex Court in the decision referred to supra and has held that the State Government cannot be compelled to continue the acquisition proceedings and is competent to cancel the notifications issued u/s 28(2) and 28(4) of the KIADB Act, by virtue of its power u/s 21 of the Karnataka General Clauses Act and this power can be exercised before taking possession of the lands. There can be no contra opinion with regard to the proposition expressed in the said case but however, the same has to be subject to the observation that the power exercised must be in accordance with law and not for any oblique purpose.

(c). In W.P. 11727/2006 and connected matters, disposed of on 13/4/2010, various companies who would have been the beneficiaries of the acquisition made by the Respondent No. 1, challenged the notification issued u/s 4 of the Act, after issuance of a final notification u/s 28(4) of the Act. This Court held that merely because the Petitioner - companies had preferred certain lands before the acquisition was completed, the very same lands could not be sought by them by issuance of a direction to the State Government to conclude the acquisition. The facts of the said case are quite different to the facts of the present case in as much as the State Government exercising power genuinely issued notification u/s 4(1) of the Act, excluding certain areas from industrial area. There was no contention with regard to mala fide exercise of power in the said case. Therefore, the decision in those writ petitions would not have a bearing on the present case.

74. Having considered the first relief sought by the Petitioner, the further question that arises is as to whether the Respondent - authorities would have to proceed with the acquisition in question or as the counsel for the Respondent No. 3 has stated that even if the Petitioner succeeds as far as getting the denotification quashed, no further relief can be granted to the Petitioner having regard to the fact that the State Government cannot be directed to proceed with acquisition by this Court is a matter which has to be considered next.

75. In this context, it would be necessary to advert to the contention of the learned Counsel for the Petitioner who has stated that the principles of promissory estoppel would apply in as much as the Petitioner has detracted from earlier status and in compliance with the direction issued by the first Respondent - KIADB has deposited 40% of the acquisition charges on 13/9/2002 and also has undertaken various acts for the purpose of establishing the project.

Therefore, a plea regarding promissory estoppel has been raised by the Petitioner. Before answering the said contention, it would be of relevance to refer to the celebrated decision on the Doctrine of promissory estoppel reported in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, In the said case, the Apex Court speaking through Bhagwati J. by elucidating the doctrine opined that the doctrine of promissory estoppel is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. According to the Apex Court, the doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence. Further it is stated that there is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position relying on the promise. By detriment if it is meant injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel, because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow the promisor to go back upon his promise.

76. In India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negated. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and. in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise

would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. According to the Apex Court, in a Republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned; the former is equally bound as the latter. The Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual.

77. The Court has also opined that if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency, nor can the Government claim to be the sole judge of its liability and repudiate it on an *ex parte* appraisal of the circumstances. If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. According to the Apex Court, mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government

would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This according to the Apex Court is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Where the Government owes a duty to the public to act in a particular manner - and here obviously duty means a course of conduct enjoined by law - the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law. It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the exercise of legislative power.

78. Therefore, on the principles stated by the Apex Court, reliefs sought in prayer (b) of the writ petition has to be considered. From the material on record, having regard to the circumstances, which prevailed on the State Government and the first Respondent - authority which led to the denotification dated 5/5/2004 and there being no material which has been produced by the State Government or the first Respondent - KIADB with regard to the dropping acquisition proceedings in respect of the lands in question, the question is as to whether a direction has to be issued to the State Government to continue the process of acquisition in respect of the lands in question.

79. In case of Chandra Bansi Singh and Others Vs. State of Bihar and Others, the Apex Court has held that where a large tract of land belonging to several persons was sought to be acquired for the purpose of construction of houses and allotment to the people belonging to the low and middle income groups by issuing notification u/s 4 of the Land Acquisition Act but about six years thereafter, the land belonging to a particular family was released by the

Government by way of a pure and simple favouritism, the release would be bad and non est. Though the observations are made in the context of release of certain lands for acquisition in favour of certain land owners, the same would apply having regard to the facts of the present case.

80. Since the State Government has failed to place on record any material to suggest that it would be impossible to continue with the acquisition proceedings as far as the lands in questions are concerned. I am of the considered view that there is no legal impediment for continuing and completing the acquisition proceedings. Infact, in this regard, it would be necessary to observe that the Respondents - authorities namely, Respondents No. 1 and 2 would have in all probability completed the acquisition proceedings but for the influence exercised by Respondents 3 and 6. There is no material whatsoever which has been produced to show that there is any legal or other impediment for the lands to be acquired. The feeble reliance placed on the Report of the Pollution Control Board is also of no assistance to the State Government. As already stated, the report which has been sought from the Pollution Control Board was only for the purpose of achieving the vested interest of the Respondents 3 and 6. There has been no final report given by the Pollution Control Board in this regard. Infact, even in the initial report of Respondent No. 7 stating that there is a likelihood of pollution to be caused by the Petitioner's - industrial unit, would also lose its significance in the face of the consent issued by the Respondent No. 7 on 1/12/2004 for establishing the industry at Sy. No. 1/1 and 2 of Yamnur village and Post Varthur Hobli, Bangalore - 560 037. The Petitioner sought concurrence of Respondent No. 7 over the establishment of its industrial unit namely, for Power Back-up Banks at the aforesaid survey numbers and the Respondent No. 7 has consented for the establishment of the said unit in the very same Hobli [Varthur Hobli]. The said consent letter dated 1/12/2004 is produced as Annexure "R-13" in the additional statement of objections filed by Respondent No. 3. Therefore, from this, it would become clear that on the project report submitted by the Petitioner in respect of Sy. No. 1/1 and 2 of Yamnur village, consent has been issued by Respondent No. 7. Therefore, with regard to the nature of the industry of the Petitioner, the 7th Respondent has consented for establishing the same in the neighbouring village i.e., in the very same Hobli. Therefore, in this context, it would also be of relevance to note that the first Respondent stopped short of proceeding to obtain a final report from the Respondent No. 7, possibly under the apprehension that the Respondent No. 7 would consent to the nature of the activity of the Petitioner. Therefore, in the absence of there being any adverse report issued by the Respondent No. 7 in so far as the lands in question are concerned and the State Govt, and the first Respondent not placing any other material with regard to any legal or other impediment to proceed with the acquisition of the lands in question, in my considered view, the consequential direction of Respondents 1 and 2 for quashing of Annexure "N" dated 5/5/2004, would also have to be issued in the instant case as the doctrine of promissory estoppel would apply to the instant case. In the case of Union of India (UOI) and Others Vs. Godfrey

Philips India Ltd., extending the ratio of the decision in Mottled Sugar Mills case referred to supra, the Apex Court held that there can be no doubt that the doctrine of promissory estoppel is applicable against the Government in exercise of its Governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. Under the circumstances, the second prayer sought by the Petitioner has also to be granted.

81. The Respondent authorities are directed to conclude the acquisition proceedings in terms of the acquisition notification and allot the lands in question to the Petitioner in accordance with law.

82. In the result, the writ petition is allowed. Parties to bear their own costs.