

**(2009) 03 KAR CK 0059**

**In the Karnataka High Court**

**Case No :** Contempt of Court Case No. 641 of 2006 connected with Writ Petition No"s. 17550 of 2006 and 3568 and 12607 of 2007

H.V. Vijayaraghavan and Another

APPELLANT

Vs

Malathi Das and Others

RESPONDENT

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**Date of Decision :** 19-03-2009

**Acts Referred:**

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (2), 5 A  
Karnataka Town and Country Planning Act, 1961 — Section 14 A, 15, 15 (1), 15 (2)

**Citation :** (2009) 5 KarLJ 375 : (2009) 4 KCCR 2313

**Hon'ble Judges :** P.D. Dinakaran, C.J.;V.G. Sabhahit, J

**Bench :** Division Bench

**Advocate :** Naganand for Sundara Swamy, Ramdas and Anand, in C.C.C. No. 641 of 2006 and Impleading Applicant in I.A. 1 of 2007, Jayakumar S. Patil for King and Partridge, in W.P. No. 3568 of 2007, D.L.N. Rao for S.R. Anuradha, in W.P. No. 17550 of 2006, Nalini Venkatesh for Basavaprabhu S. Patil, in W.P. No. 12607 of 2007, K. Shashikiran Shetty, in I.A. No. 4 of 2007 in W.P. Nos. 3568 of 2007 and 17550 of 2006, V. Lakshminarayana, for Sunitha P. Kalsoor, in I.A. No. IV of 2007 in W.P. No. 3568 of 2007, T. Narayanaswamy, in I.A. No. III of 2008 in W.P. No. 3568 of 2007, Leo F. Saldana, Party in Person for Impleading Applicant in I.A. No. 5 of 2007 in W.P. No. 3568 of 2007 and Law Park Associates, for Impleading Applicant in I.A. No. 5 of 2007 in W.P. No. 17550 of 2006, for the Appellant; Naganand for Sundara Swamy, Ramdas and Anand for Respondent-3 in W.P. No. 3568 of 2007, Jayakumar S. Patil for King and Partridge for Respondent-3 in W.P. No. 17550 of 2006 and for Respondents-3 and 4 in W.P. No. 12607 of 2007, Ashok Haranahalli for Respondent-1 in C.C.C. No. 641 of 2006, in W.P. Nos. 3568 of 2007, 17550 of 2006 and 12607 of 2007, Y. Narayana Swamy, for Respondent-2 in W.P. No. 3568 of 2007, V.T. Gopalan for K.N. Subbareddy, for Respondent-4 in W.P. No. 3568 of 2007, S. Vijayashankar for P.V. Chandrashekar, for Respondent-5 in C.C.C. No. 641 of 2006, for the Respondent

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**Judgement**

V.G. Sabhahit, J.—The writ petitions and the contempt of Court case are disposed of by this common order since they are interconnected.

2. W.P. No. 3568 of 2007 is filed by Nandi Infrastructure Corridor Enterprises

Limited (for short, "NICEL") and two others seeking for quashing of the order dated 4-11-2006 passed by the State-first respondent in the writ petition (Annexure-P to the writ petition) and to prohibit the respondents and their servants and agents permanently from acting pursuant to the Government order dated 4-11-2006.

3. W.P. No. 17550 of 2006 is filed by Dr. B.K. Chakrapani seeking for quashing of the order dated 4-11-2006 passed by the respondent-State (Annexure-A to the writ petition); quashing of the report of the fifth respondent-Chief Engineer, Communication and Building (South), Bangalore, dated 15-7-2006 (Annexure-AI to the writ petition) and to direct the respondents not to construct the peripheral road or any other road on or over the Gottigere Tank on pillars or in a manner which would harm the ecology and environment of the tank and the surrounding areas, and take such measures as may be fit to ensure conservation of the ecology and the environment.

4. W.P. No. 12607 of 2007 is filed by Electronic City Industries Association seeking for a writ of mandamus quashing the order dated 4-11-2006 passed by the first respondent-State (Annexure-K to the writ petition); to issue direction to the respondents to expedite the construction of peripheral road and link road as per the Outline Development Plan approved by the State Government vide order dated 12-2-2004 (Annexure-F to the writ petition) and for a direction to the respondents to undertake preparation and implementation of comprehensive traffic management plan for the City of Bangalore.

5.1 C.C.C. No. 641 of 2006 is filed by the complainants praying to initiate contempt proceedings against the respondents for willful disobedience of the order passed by this Court in W.P. No. 20729 of 2003, dated 18-11-2005 and to punish the respondents in accordance with law and to award costs.

5.2 It is averred in the writ petition - W.P. No. 3568 of 2007 that the first petitioner is a company incorporated and registered under the Companies Act, 1956, and is engaged in the execution and implementation of the construction of the Bangalore-Mysore Infrastructure Corridor Project (hereinafter referred to as "the Project"). The project was entrusted to petitioner 1 under the Framework Agreement (for short, "FWA") dated 3-4-1997, which has been upheld by this Court and the Hon'ble Supreme Court. Petitioner 2 is a sister company of the first petitioner, in whose favour, rights under the FWA and ancillary agreements relating to Phase I of the project have been assigned. Petitioner 3 is a citizen of India and a shareholder in the first and second petitioner companies

6.1 The FWA entered into between the first petitioner and the Government of Karnataka has been upheld by the Hon'ble Supreme Court in the case of State of Karnataka and Another Vs. All India Manufacturers Organization and Others, wherein it is held as follows.:

62. In these circumstances, we find no reason to interfere with the said directions of the High Court. In the future also, we make it clear that while the

State Government and its instrumentalities are entitled to exercise their contractual rights under the FWA, they must do so fairly, reasonably and without mala fides; in the event that they do not do so, the Court will be entitled to interfere with the same.

63. The High Court also found, justifiably in our view, that the writ petitioners had been sponsored by the State Government to put forward its changed stand in the garb of a public interest litigation. In the opinion of the High Court (vide para 29):

The Court cannot allow its process to be abused by politicians and others to delay the implementation of a public project which is in larger public interest nor can the Court allow any one to gain a political objective. These legislators who have not been successful in achieving their objective on the floor of the Assembly have now chosen this forum to achieve their political objective which cannot be allowed.

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

65. Writ Petition No. 45386 of 2004 (J.C. Madhuswamy and Ors. v. State of Karnataka and Ors.) was rightly dismissed as raising the very same issues which had been concluded by the decision in H.T. Somashekar Reddy v. Government of Karnataka and Anr. 2000 (1) Kar. L.J. 224 (DB). Writ Petition Nos. 45334 of 2004 and 48981 of 2004 were rightly allowed and the order to implement the project in its letter and spirit had been made in exercise of the writ jurisdiction of the High Court. We refrain from dealing with the third relief granted, namely, directing the prosecution of K.K. Misra and M. Shivalingaswamy, as their appeals shall be independently dealt with by this Court.

66. Taking an overall view of the matter, it appears that there could hardly be a dispute that the project is a mega project which is in the larger public interest of the State of Karnataka and merely because there was a change in the Government, there was no necessity for reviewing all decisions taken by the previous Government, which is what appears to have happened. That such an action cannot be taken every time there is a change of Government has been clearly laid down in State of U.P. and Another Vs. Johri Mal, and in State of Haryana Vs. State of Punjab and Another, , wherein this Court observed thus:

...in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at,

which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same.

#### The Land Acquisition Matters

(Civil Appeal Nos. 3848 to 3884, 3889 to 4366, 4575, 4576, 5399 to 5402, 5746, 5747, 5759, 5797 to 5799, 6098, 6099, 5092, 5093, 7024 to 7040, 7591, 7592 of 2005; 61, 73 to 76 of 2006 and SLP No. 1562 and 1563 of 2006).

#### The Background

67. In all these appeals, another attempt by a side wind, was made to scuttle the project. The attempt, this time, was primarily on the part of the landowners, whose lands were acquired for implementation of the project and who challenged the same before the High Court of Karnataka. A learned Single Judge of the Karnataka High Court, through judgment dated 18-12-2003 ( K.P. Sachidananda and Others Vs. State of Karnataka, Revenue Department and Others, , disposed of these petitions. The learned Judge took the view that acquisition of 60% of the land by the State Government, insofar as it related to the formation of roads and infrastructure development was valid, while the acquisition of the remaining 40% meant for the development of townships and convention centres was invalid and to that extent the acquisition was quashed. The landowners, the State Government, the KIAD Board and also Nandi were aggrieved by the judgment of the learned Single Judge and filed separate writ appeals challenging the judgment. The stand of the State Government in its writ appeal was that the learned Single Judge was wrong in quashing 40% of the acquisition of land. This was also the stand of the KIAD Board. Nandi also challenged the said part of the order. Thus, it would appear that the State Government, the KIAD Board and Nandi were ad idem in their writ appeals that the learned Single Judge had erred in interfering and quashing 40% of the land as not being in public interest.

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

69. Various connected appeals against the order of the learned Single Judge came to be disposed of by orders of the High Court dated 29-6-2005 and 18-11-2005, in terms of the detailed judgment and order of a Division Bench of

the High Court dated 28-2-2005 (hereinafter in the Land Acquisition Matters "the impugned judgment").

The contentions of the appellants

70. Though there are a number of appellants before us, the contentions raised before the High Court and us were principally as under: first, that no notice was served on the landowners u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966; secondly, that the notice of acquisition was vague and consequently prejudiced any effective objection being raised by the landowners whose lands were sought to be acquired and finally, that the land acquisition was not for a public purpose, or for a purpose as specified in the KIAD Act, and was also in excess of the project's requirement.

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

Non-service of notice

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

Vagueness of notice of acquisition

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

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

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

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

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

#### Purpose of acquisition

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

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

78. The various changes brought about to the KIAD Act, also reflect the intention of the State Legislature to provide for land acquisition for the project. The expressions "industrial area" and "industrial infrastructural facilities" as defined under the KIAD Act, definitely include within their ambit establishment of facilities that contribute to the development of industries. We cannot forget that,

as originally enacted, the KIAD Act had a different, narrower definition of "industrial area" in Section 2(6). In 1997, the definition was broadened to also include "industrial infrastructural facilities and amenities". Further, Section 2(7-a) was added to define "industrial infrastructural facilities" in a manner broad enough to take into its sweep the land acquisition for the project.

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

Civil Appeal Nos. 7024 and 7025 of 2005

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

81. In summary, having perused the well-considered judgment of the Division Bench which is under appeal in the light of the contentions advanced at the bar, we are not satisfied that the acquisitions were, in any way, liable to be interfered with by the High Court, even to the extent as held by the learned Single Judge. We agree with the decision of the Division Bench that the acquisition of the entire land for the project was carried out in consonance with the provisions of the KIAD Act for a public project of great importance for the development of the State of Karnataka. We do not think that a project of this magnitude and urgency can be held up by individuals raising frivolous and tenable objections thereto. The powers under the KIAD Act represent the powers of eminent domain vested in the State, which may need to be exercised even to the detriment of individual's property rights so long as it achieves a larger public purpose. Looking at the case as a whole, we are satisfied that the project is intended to represent the larger public interest of the State and that is why it was entered into and implemented all along.

(emphasis supplied)

7.1 It is averred in the petition (W.P. No. 3568 of 2007) that in view of the magnitude of the project, the Government of Karnataka constituted a separate Planning Authority known as Bangalore-Mysore Infrastructure Corridor Area Planning Authority ("BMICAPA", for brevity) to regulate the orderly development including the alignment of the various components of the project. The first petitioner made an application for approval of the alignment of the expressway, service roads, link road, peripheral road, 12 km. expressway and related components from the Public Works Department, Government of Karnataka.

7.2 Theme approval of the said plan was granted on 20th July, 2002. BMICAPA, in exercise of the power u/s 10 of the Karnataka Town and Country Planning Act, 1961 (hereinafter referred to as "the KTCP Act"), issued a notification declaring its intention to prepare an Outline Development Plan (for short, "ODP") for the entire area coining under the project.

7.3 In pursuance thereto, the BMICAPA prepared the ODP comprising of 52 planning Districts and after public hearing and other requisite procedures stipulated under the KTCP Act, the same was submitted to the State Government.

7.4 The State Government has accorded its approval to the said ODP u/s 13(3) of the KTCP Act by its order dated 12-2-2004. The approved ODP, including inter alia, the alignment of the expressway and related components.

7.5 While approving the alignment in the ODP, the following provision in respect of protecting Gottigere Tank in view of the direction of this Court dated 16-6-1999 in W.P. No. 17823 of 1999 was stipulated:

1. As per the orders of the High Court in W.P. No. 17823 of 1999, Nandi Infrastructure Corridor Enterprises Limited, shall construct the road as per the alignment and designs specified by PWD without bifurcating the Gottigere Tank and without obstructing the flow of water to the tank.

8.1 It is further averred that the project, inter alia, includes construction of peripheral road of 40.8 km. connecting NH-7 (Hosur Road) to NH-4 (Tumkur Road) around Bangalore. On the said road is situated a lake called Gottigere Tank, of chainage 8600 (i.e., at 8.64 km. from Hosur Road interchange). Gottigere Tank and its surrounding area were earlier part of the Local Planning Area for Bangalore City. In the Comprehensive Development Plan (CDP) for the Bangalore Local Planning Area, the Bangalore Development Authority (BDA) had proposed to construct peripheral ring road, which passed through Gottigere Tank bisecting the tank into two segments.

8.2 Sri Suresh Heblikar, an environmentalist and three others filed W.P. No. 17823 of 1999 against the State of Karnataka and BDA, seeking for a direction in the nature of mandamus to the respondents not to divide the Gottigere Tank as per the CDP and while disposing of the writ petition on 16-6-1999, it was ordered as follows.:

3. In view of the above circumstances, we feel it just and proper to issue a

direction to the respondents not to lay the road bisecting the Gottigere Tank.

4. In the light of the above, we make the following order.:

The respondents are directed not to lay any road bisecting the Gottigere Tank preventing or disturbing the inflow of water into the tank. In case they want to lay a ring road or any other road, it is open to them to lay any such road by providing an overpass without disturbing the free flow of water to the tank. However, it is open to them to dig up the tank bed for laying pillars for providing the overpass.

8.3 It is further averred that some areas including the Gottigere Village and Gottigere Tank was taken out and amalgamated into a new planning area of which BMICAPA is the Planning Authority and a new ODP was prepared and approved and such approval was conditional upon, inter alia, the petitioner abiding by the Court order in Suresh Heblkar and Ors. v. State of Karnataka and Anr. W.P. No. 17823 of 1999, DD: 16-6-1999.

8.4 All challenges to the project were negated by the Hon"ble Supreme Court and the validity of the FWA and acquisition of the land was upheld by the Hon"ble Supreme Court.

8.5 The respondent-State on 27/29-7-2006, acting through Secretary, Urban Development Department, sent to the Chairman of BMICAPA, letter to revise the alignment of the peripheral road near Gottigere Tank by modifying the ODP pertaining to planning District No. 4P. The realignment was purported to be on account, inter alia, of certain contempt proceedings pending before this Court and also allegedly on the ground that the alignment submitted to the Ministry of Environment and Forests, Government of India, showed the road as passing over the tank.

9.1 It is averred that W.P. No. 15973 of 2005 was filed before this Court by Gottigere Village Panchayat seeking for declaration that the proposal to construct a curved road around Gottigere Tank was illegal and contrary to the directions of this Court and to quash the revised alignment approved by BMICAPA and for appointment of a Court Commissioner to ensure that the road around Gottigere Tank was constructed strictly as per the directions of this Court in W.P. No. 17823 of 1999, dated 16-6-1999 and W.P. No. 45334 of 2004, dated 3-5-2005 (All India Manufacturers Organisation, Bangalore v. State of Karnataka and Ors. 2005 (3) Kar. L.J. 438 (DB)).

9.2 The said Writ Petition No. 15973 of 2005 was disposed of on 24-6-2005 by observing that identical contentions had been raised in W.P. No. 17823 of 1999 and the said contentions have been negated by order dated 16-6-1999 and the same was challenged before the Hon"ble Supreme Court and stay of the said order was granted by the Hon"ble Supreme Court and wherefore, as the matter was pending before the Hon"ble Supreme Court, it was not appropriate to interfere when the matter was pending before the Hon"ble Supreme Court. It

was also observed that the primary grievance made by the petitioner therein (W.P. No. 15973 of 2005) was the violation of the direction issued by this Court in Suresh Heblikar's case and the proper remedy was by way of contempt and those proceedings had already been initiated by the petitioner.

10.1 Gottigere Village Panchayat had already filed C.C.C. No. 1623 of 2004 against the respondents therein - State and BDA, contending that there was willful disobedience to the direction issued by this Court in W.P. No. 17823 of 1999, dated 16-6-1999 as the alignment approved for construction of the road by skirting the Gottigere Tank was contrary to the undertaking given by the State that it would construct the peripheral ring road by straight line without obstructing free flow of water to the tank.

10.2 In view of the undertaking given by the respondent-State that the respondent had taken a decision and issued necessary instructions to BMICAPA to form and construct the peripheral ring road by straight line without obstructing free flow of water to Gottigere Tank, the contempt petition was dropped against the State and the BDA, by this Court by order dated 22-12-2005.

10.3 However, since the order passed by this Court had not been complied with, application was filed by the complainant in C.C.C. No. 1623 of 2004 for recalling the order dated 22-12-2005. Nandi Infrastructure Corridor Enterprises Limited (for short, "NICEL") and Nandi Economic Corridor Enterprises Limited (for short, "NECEL") filed an application for impleading to come on record as they were not arraigned as respondents in C.C.C. No. 1623 of 2004 and they also filed Review Petition No. 160 of 2006 seeking for review of the order dated 22-12-2005 passed in C.C.C. No. 1623 of 2004.

10.4 The Division Bench of this Court by order dated 18-4-2006, reviewed the order dated 22-12-2005 and recalled the same and restored C.C.C. No. 1623 of 2004 to the file of this Court since there was prima facie case for having committed disobedience to the order passed by this Court, it was ordered that C.C.C. No. 1623 of 2004 shall be posted for framing charges before the Division Bench assigned with the roster of C.C.C. (Civil).

10.5 But, the impleading application and the review petition filed by NICEL and NECEL were rejected as not maintainable. Being aggrieved by the order passed in C.C.C. No. 1623 of 2004, dated 18-4-2006 and, insofar as it rejected the application for impleading filed by NICEL and NECEL, SLP was filed before the Hon'ble Supreme Court and the Hon'ble Supreme Court allowed the said SLP (C) No. 8189 of 2006 and directed that the applicants in LA. No. II of 2006 in C.C.C. No. 1623 of 2004 shall be impleaded as parties in the contempt petition.

10.6 Despite, before the said applicants-NICEL and NECEL could file application before this Court in C.C.C. No. 1623 of 2004, the said C.C.C. was dismissed as withdrawn as the order which had been alleged to have been disobeyed had been complied with.

11.1 It is further averred that the first petitioner filed objections to the notification issued by the second respondent u/s 14-A of the KTCP Act proposing realignment of the peripheral road near Gottigere Tank contending that the proposed change of alignment was contrary to the alignment in ODP, which had been approved by the BMICAPA on 12-2-2004 and also by this Court and the Hon"ble Supreme Court and wherefore, no change could be made in the said alignment.

11.2 However, the respondent-State issued a notification dated 4-11-2006 u/s 14-A of the KTCP Act, modifying the alignment of the peripheral road proposed near the Gottigere Tank in the approved Master Plan (ODP) of BMICAPA by the Government on 12-2-2004 as to construct straight over the tank by laying the pillars as was indicated in the Comprehensive Development Plan, 1995, approved earlier by the Government on behalf of Bangalore Development Authority and to change the interchanges, Toll plazas as per CFE order already issued by the KSPCB subject to the following conditions:

(i) Necessary changes should be made to the Master Plan (ODP) approved by the Government on 12-2-2004 to the Local Planning Area of BMICAPA.

(ii) Changes made as above should be brought to the notice of the general public through paper publication.

11.3 That being aggrieved by the said order passed by the Government modifying the alignment approved on 12-2-2004, petitioners 1 to 3 have filed W.P. No. 3568 of 2007 for quashing the said order dated 4-11-2006 contending that:

(i) the alignment, which was approved on 12-2-2004 has been wrongly set aside in exercise of power u/s 14-A of the KTCP Act, because the alignment dated 12-2-2004 had been approved by the Division Bench of this Court in the case of All India Manufacturers Organisation and the same had been approved by the Hon"ble Supreme Court and thereafter, W.P. No. 15973 of 2005 had been filed by Gottigere Village Panchayat before this Court challenging the alignment approved on 12-2-2004 and the said writ petition had also been dismissed by this Court by order dated 24-6-2005;

(ii) the alignment in ODP could not be changed in exercise of power u/s 14-A of the KTCP Act;

(iii) the letter dated 27/29-7-2006, public notice dated 7-8-2006 and the impugned order dated 4-11-2006 make it clear that the respondents have based the alignment on reasons that are neither clear nor concrete and the said alignment falls beyond the ambit of Section 14-A of the KTCP Act and is not in public interest and the same was opposed by the petitioners and the members of public;

(iv) the said order dated 4-11-2006 passed by the Government without proper authority of law and does not satisfy the ingredients of Section 14-A of the KTCP

Act;

(v) the respondent-State having approved the alignment on 12-2-2004 which has been referred to and approved by the Division Bench of this Court as also the Hon''ble Supreme Court, was estopped from changing the said alignment by order dated 4-11-2006 and the same would amount to disobedience of the order passed by the Division Bench of this Court and the Hon''ble Supreme Court;

(vi) The change of alignment by setting aside the alignment approved on 12-2-2004 is not in public interest and the same would prejudicially affect the ecology and environment of Gottigere lake and taking all the facts into consideration, the alignment dated 12-2-2004 had been approved and as the said alignment would not in any way affect the Gottigere lake; and

(vii) in any event, the order dated 4-11-2006 is unjust, illegal and so mischievous as to cause grave and irreparable prejudice to public interest.

11.4 Hence, the W.P. No. 3568 of 2007 for quashing of the order dated 4-11-2006 passed by the first respondent-State and for a direction to the respondents prohibiting them and their servants and agents permanently from acting pursuant to the Government order dated 4-11-2006. State of Karnataka and BMICAPA were arraigned as respondents 1 and 2 in the writ petition. However, on an application filed under Order 1, Rule 10 of the Civil Procedure Code, 1908, by the writ petitioners, respondent 3 was impleaded on 2-4-2007 and an impleading application was filed by respondent 4 to come himself on record as a respondent and the said application was also allowed by order dated 2-4-2007.

12.1.1 The first respondent-State has filed objections statement to the Writ Petition No. 3568 of 2007 contending that the order dated 4-11-2006, wherein the Government has approved the change in the alignment of the road passing over Gottigere Tank as required by BMICAPA to bring the alignment of the road in conformity with the original alignment and in conformity with the orders passed by this Court and the Hon''ble Supreme Court and the environmental clearance/ approval given by the Ministry of Environment and Forest (MOEF) and the Karnataka State Pollution Control Board (KSPCB). The writ petition lacks merits and bona fides.

12.1.2 It is farther averred that as per the CDP of 1995, Gottigere Road was to go across the Gottigere Tank in a straight line. The environmental clearance obtained by NICEL from the MOEF and KSPCB for the road alignment of peripheral road of which Gottigere Road is a part also was for the road going straight across and over Gottigere Tank. Without their consent, no change could be made to the alignment of the road. The order of the Division Bench of this Court in W.P. No. 17823 of 1999, dated 16-6-1999 is to the effect that the road shall go across and over Gottigere Tank and on pillars/stilts. In W.P. No. 29221 of 1997 H.T. Somashekar Reddy Vs. Government of Karnataka and another, ), the contention of Somashekar Reddy was that there was already an outer ring road

which he claimed to be a peripheral road and therefore, the peripheral road in BMIC project should not be taken up. NICEL, which was a party therein filed an objection statement clearly stating that it was developing peripheral ring road as indicated in the CDP dated 5-1-1995.

12.1.3 It is further averred that the Division Bench of this Court in W.P. No. 45334 of 2005, has directed that NICEL shall implement the project as originally conceived and upheld in H.T. Somashekar Reddy's case i.e., the road shall go straight across and over Gottigere Tank in a straight line, which order has been upheld by the Hon'ble Supreme Court.

12.1.4 It is further averred that the petitioners have approached M/s. Lakshmi Vilas Bank for a loan stating that at Banneraghatta Road (peripheral road), 18 acres of private land and 114 acres of Government land would be sold by them and they would get Rs. 401.09 crores. Similarly, Unit Trust of India, which is the financial advisor of NICEL has prepared a report wherein also, 142 acres in Banneraghatta Road (Gottigere Tank area) was said to be being sold by NICEL. The petitioners have suppressed the material facts before this Court in H.T. Somashekar Reddy's case and are doing real estate business at the cost of the State and the poor farmers/citizens. If the road goes straight on Gottigere Tank, the petitioners cannot get lands to sell and wherefore, they are seeking to have the road crooked/curved so that they could acquire more lands and sell them, contrary to the judgment of this Hon'ble Court. The real purpose of this is to enable the petitioners to dabble in real estate venture at the cost of the State and the poor farmers/citizens of the State. The petitioners conduct and motive are so unfair and atrocious that they are not entitled to any discretionary order from this Court.

12.2 It is further averred that Dr. Chakrapani, who has filed W.P. No. 17550 of 2006 seeking for the same relief as sought for in this writ petition has been set up by the petitioners. The CDP was originally approved by the Planning Authority and the State Government also indicated that Gottigere Road was to go straight across the tank. Subsequent thereto, NICEL in order to save money and for some ulterior motive, got the road to take a bend at the Gottigere Tank in such a manner that the road was to go on the Southern side of the Gottigere Tank. The said alignment would have prevented free flow of water into the tank and from its catchment area and would have resulted in the drying up and destruction of the tank. The alignment dated 12-2-2004 has been set aside and new alignment proposed by the BMICAPA has been approved by the Government u/s 14-A of the KTCP Act and the said order has been passed in accordance with law. The new alignment is in conformity with the order passed by this Court and the petitioners are not entitled to any relief in the writ petition. Copy of the documents referred to in the objections statement have been annexed to the objections statement.

13. Respondent 2 in W.P. No. 3568 of 2007 has filed objections statement inter alia contending that the amended alignment is intended to considerably avoid any harm to the tank, its ecology and environment, which is explained in the

report of the Chief Engineer, PWD and also the resolution of the respondent 2 dated 18-10-2006 and the order passed by the Government dated 4-11-2006 is justified and is in conformity with the Division Bench judgment of this Court in W.P. No. 17823 of 1999 and W.P. No. 45334 of 2004 and C.C.C. No. 1623 of 2004 and wherefore, the petitioners are not entitled to any relief as sought for and writ petition is liable to be dismissed.

14. Petitioners in W.,P. No. 3568 of 2007 have filed rejoinder to the statement of objections filed by respondent 1 denying the averments made in the statement of objections and reiterating the averments made in the petition.

15. Interim applications - Misc. W. Nos. 168 and 212 of 2009 have been filed by respondents 3 and 4 in W.P. No. 3568 of 2007 for disposal of the writ petition contending that the FWA has been entered into between petitioner 1 and the respondent-State and the same has been approved by the Division Bench of this Court and the Hon"ble Supreme Court in All India Manufacturers Organisation"s case. The alignment in ODP has been arrived on the basis of a proposal made by the petitioners on 12-2-2004 and thereafter, since it was felt that the said alignment would be contrary to the direction issued by this Court in Suresh Heblikar"s case, BMICAPA has passed the order u/s 14-A of the KTCP Act, so that the alignment is brought in consonance with the direction issued by the Division Bench of this Court and the Hon"ble Supreme Court. It is also averred that the peripheral road that is now built by the petitioners is built on the alignment which was made for construction of road by the BDA, and not as per the plan shown in the original FWA and wherefore, the said alignment dated 12-2-2004 was without authority of law. It is contended that in the alignment shown in the FWA, the peripheral road to be constructed by the petitioners in this case is situate at a distance of 2 kms. from the periphery of Gottigere lake and wherefore, the petition is liable to be dismissed.

16. Applications-I.A. Nos. 4 and 5 of 2007 and I.A. No. 3 of 2008 have also been filed by the applicants therein contending that the modification of the alignment that is now made as also the alignment of laying the road by constructing overpass by putting up pillars in the tank bed would prejudicially affect the ecology and environment of the lake.

17.1 W.P. No. 17550 of 2006 is filed by Dr. B.K. Chakrapani seeking for quashing of the order dated 4-11-2006 passed by the Government and for a direction to the respondents not to construct the peripheral road or any other road on or over the Gottigere Tank on pillars or in a manner which would harm the ecology and environment of the tank and the surrounding areas. The facts leading to passing of the order dated 4-11-2006 u/s 14-A of the KTCP Act have been enumerated in the writ petition. It is unnecessary to narrate the same in detail as the said facts have been enumerated while narrating the facts in W.P. No. 3568 of 2007. The impugned order dated 4-11-2006 is challenged in this writ petition filed as a public interest litigation petition on the ground that the alignment now proposed would affect the Gottigere Tank. The proposed peripheral road over Gottigere

Tank would involve construction of an over pass on pillars, width of which is said to be 75 meters. Construction of such a massive structure in the tank bed of Gottigere Tank would render the tank unfit for acqua life and would affect the surrounding environment, hydrology of the tank and cause other adverse environmental impact.

The impacts from raising pillar within the lake are as follows.:

loss of water impoundment area.

surface soil disturbances.

problem of pollution.

effect of the raise in water turbidity.

tremendous impact on aquatic life.

Impacts from road area and the pillars over the lake are enumerated as follows.:

Loss of sunlight indigence on more than 2/3rd of lake water surface.

The above impact may be extended on total water surface in lean months.

Loss of productivity by phytoplankton and subsequent impact on food chain in the lake, finally affecting bird life.

Since the lake is a stagnant water body compared to a river due to the presence of huge pillars within the lake area may result in excessive siltation which may lead to the death of the lake in a short span.

Degradation of Urban Aesthetics.

17.2 It is further averred in the petition that in W.P. No. 17823 of 1999 disposed of on 16-6-1999, this Court has not stated that the peripheral ring road or any other road should be constructed only through the tank by way of overpass and pillars and the only direction of this Court in the said writ petition is that Gottigere Tank should not be bisected and inflow of water should not be affected. It is further averred that the alignment that is now proposed by the impugned order dated 4-11-2006 will cause large scale irreversible environmental and ecological harm, which is adverse to public interest. The impugned order has not been passed in accordance with law. The order seems to have been passed only to save the concerned officials of the State, against whom the contempt proceedings were initiated in C.C.C. No. 1623 of 2004. The impugned order dated 4-11-2006 is passed by the State without application of mind by the BMICAPA and wherefore, the same is liable to be set aside.

17.3 Respondent 1 in W.P. No. 17550 of 2006 - State has filed the statement of objections taking identical contentions as taken in W.P. No. 3568 of 2007.

18.1 W.P. No. 12607 of 2007 is filed by the Electronic City Industries Association as a public interest litigation petition challenging the order passed by the State

dated 4-11-2006, which order has also been challenged in W.P. No. 3568 of 2007 and W.P. 17550 of 2006. The averments made for challenging the said order in the instant case are identical to the averments made in the above referred writ petitions. It is further averred that the order dated 4-11-2006 has not been passed in accordance with the provisions of Section 14-A of the KTCP Act and the same is not in public interest and the respondents may be directed to implement the project for construction of peripheral road and link road as per the ODP approved by the State by order dated 12-2-2004.

18.2 Respondents in W.P. No. 17550 of 2006 have filed objections to the said writ petition taking identical contentions as taken in W.P. No. 3568 of 2007.

19.1 C.C.C. No. 641 of 2006 is filed by H.V. Vijayaraghavan, respondent 3 in W.P. No. 3568 of 2007 and his wife Smt. Sujatha complaining that the respondents being the Chief Secretary to Government of Karnataka, Executive Director, Karnataka Industrial Area Development Board (KIADB), Special Deputy Commissioner, KIADB and Special Land Acquisition Officer, KIADB (BMICP), have willfully disobeyed the direction issued by this Court in W.P. No. 20729 of 2003, dated 18-11-2005 and thereby, committed the offence of contempt. It is averred that the complainants are the owners of lands in Sy. Nos. 104/2 to 104/7, in all measuring 13 acres 5 guntas situate at Gottigere Village, Uttarahalli Hobli, Bangalore South Taluk. The lands were converted for non-agricultural residential purposes under the provisions of Karnataka Land Revenue Act, 1964. After obtaining necessary approvals, the land was developed and houses have been built. The fourth accused has issued an endorsement on 22-11-2001 assuring the complainants that the lands in question would not stand acquired for BMIC project. Based on the said assurance, the complainants took up the work of development of the property by investing huge sums of money. In a portion of the property, sites were sold to third parties, who have already constructed houses and are residing therein. Initially, the lands in Sy. Nos. 104/2 to 104/7 were falling within the jurisdiction of the BDA, and after constitution of BMICAPA, the said lands are now within the jurisdiction of BMICAPA. The BDA, by exercise of its power vested under the provisions of the KTCP Act, had formulated a CDP. It had envisaged formation of a peripheral ring road. The said proposed ring road was to cross the Gottigere Tank in a straight line.

19.2 It is further averred that in W.P. No. 17823 of 1999 by order of this Court dated 16-6-1999, it was specifically ordered that the Gottigere Tank should not be bisected and in case, the State wants to lay ring road or any other road, the authorities were given the option of laying such road by providing an overpass without disturbing free flow of water to the tank. Authorities were also allowed to dig up the tank bed for the purpose of laying pillars to support the overpass. However, the said alignment was changed at the instance of certain influential individuals, by making the peripheral road to take a curve and proceed on Southern side edge of the tank bed. Notification was issued by KIADB u/s 3(1) of the Karnataka Industrial Areas Development Act, 1966 on 24-1-2003 for

acquisition of lands, which included the lands in Sy. Nos. 104/2 to 104/7 belonging to the complainants. The same was following by a notification u/s 28(1) of the KIADB Act dated 29-1-2003. The said acquisition of land by the KIADB was necessitated due to the change of alignment of peripheral road near Gottigere Tank. The complainants along with the mother and brother of the first complainant filed W.P. Nos. 20729 to 20734 of 2003. In the said writ petitions, this Court by order dated 2-5-2003, has observed that proper remedy for the writ petitioners is to file contempt petition and wherefore, the contempt petition is filed by the complainants.

19.3 In the said contempt petition, notice was issued to the respondents.

19.4 Application was filed by the complainants in C.C.C. No. 641 of 2006 seeking for withdrawal of the contempt petition averring that the Government had given up the proposal for acquisition of land belonging to the complainants as an undertaking had been given by the State that peripheral road would be constructed over the Gottigere lake. The said application was disposed of with a direction to the complainants to seek appropriate clarification from the Hon''ble Supreme Court. Civil Appeal No. 911 of 2008 (arising out of SLP (C) No. 7565 of 2007) and Civil Appeal No. 912 of 2008 (arising out of SLP (C) No. 7567 of 2007) were filed before the Hon''ble Supreme Court. In view of the submission made on behalf of the NICEL that the authorities of the State of Karnataka have been passing orders de-notifying the lands from the acquisition proceedings taking shelter in the contempt proceedings, which in view of the earlier judgments passed by the Hon''ble Supreme Court should be held to be impermissible and in view of the fact that the company had already filed separate writ petition challenging the de-notification of the lands before the High Court, the said civil appeals were disposed of by the Hon''ble Supreme Court by order dated 28-1-2008, wherein it has been observed as follows.:

Keeping in view the facts and circumstances of this case, we dispose of both these appeals observing that it would be open to the High Court to dispose of the application of H.V. Vijayaraghavan for withdrawal of the contempt petition, but, before doing so, the High Court would apply its mind as regards implication thereof vis-a-vis other proceedings pending before it.

(emphasis supplied)

19.5 In view of the above said order of the Hon''ble Supreme Court, the contempt petition as also the application in the contempt petition are heard along with the writ petitions.

20.1 Learned Senior Counsel appearing for the petitioners in W.P. No. 3568 of 2007 submitted that:

(i) the impugned order dated 4-11-2006 passed by the BMICAPA is illegal and without jurisdiction;

(ii) the alignment in ODP dated 12-2-2004, which has been approved and

confirmed by the Division Bench of this Court and the Hon"ble Supreme Court could not be set aside by the first respondent-State in exercise of power u/s 14-A of the KTCP Act;

(iii) the material on record would clearly show that the original authority, BMICAPA has not initiated any proceedings for change of alignment and only on the basis of the direction issued by the State Government, which was facing notice in contempt proceedings;

(iv) the impugned order dated 4-11-2006 is not passed in accordance with law and material on record would show that it is not in the interest of justice and the impugned alignment as ordered by the Government in exercise of its power u/s 14-A of the KTCP Act by order dated 4-11-2006 would prejudicially affect the ecology and environment of the Gottigere lake; and

(v) the respondents were not at all justified in setting aside the alignment, which had already been approved by BMICAPA on 12-2-2004 and wherefore, the impugned order is liable to be set aside.

20.2 Learned Senior Counsel for the petitioner in W.P. No. 3568 of 2007 has taken us through the various proceedings that have taken place between the parties as also the annexures produced in the writ petition and further submitted that the impugned order dated 4-11-2006 passed by BMICAPA is liable to be set aside.

21. Learned Senior Counsel appearing for the petitioner in W.P. No. 17550 of 2006, wherein also the order passed by the Government dated 4-11-2006 is impugned submitted that the alignment in ODP was approved by BMICAPA on 12-2-2004 and the proposal made by NICEL for constructing the peripheral road along the Southern side of Gottigere Tank by skirting the said tank would not in any way affect the ecology or environment of the tank and if the road is constructed as per the alignment approved by the State by order dated 4-11-2006, the same would prejudicially cause irreversible environmental and ecological damage to Gottigere lake and the impugned order is wholly without jurisdiction as the alignment that was approved on 12-2-2004 has been considered by this Court and the Hon"ble Supreme Court and the challenge to the same made by Gottigere Village Panchayat in W.P. No. 15973 of 2005 has been negated. Therefore, the impugned order is liable to be set aside. Learned Senior Counsel has taken us through the observations made by the Division Bench of this Court in All India Manufacturers Organisation"s case as also the Hon"ble Supreme Court in the said case and the averments made in W.P. No. 15973 of 2005 and the reliefs sought therein and further submitted that the writ petition is entitled to be allowed.

22. The impleading applicants in W.P. No. 3568 of 2007 submitted that any alignment for construction of peripheral road should not in any way affect the ecology and environment of Gottigere lake and they are interested in protecting the lake. Learned Counsel appearing for the impleading applicants submitted that

the only interest of the applicants is to see that the Gottigere lake is not destroyed and does not suffer from any ecological or environmental problem by construction of bridge over the lake.

23.1 Learned Senior Counsel appearing for respondent 4 in W.P. No. 3568 of 2007 submitted that:

(i) NICEL has no locus standi to challenge the order dated 4-11-2006 as per the original FWA entered into between the NICEL and the State Government;

(ii) the proposed road to be constructed by NICEL would not touch the lake and the proposed peripheral road is at a distance of 2 kms. from the Gottigere lake and the alignment approved by BMICAPA on 12-2-2004 is contrary to the FWA and FWA has not been amended;

(iii) in view of the observations made by this Court and the Hon'ble Supreme Court in the case of All India Manufacturers Organisation's case, there is a direction to implement the FWA as originally conceived and in the original FWA, the proposed peripheral road would not in any way affect the Gottigere lake as the peripheral road is at a distance of 2 kms. from Gottigere lake;

(iv) the peripheral road, which was shown in CDP, 1995 was a road to be constructed by the BDA, and the proposed road to be constructed by NICE has been illegally shifted to the peripheral road which was shown in the CDP of 1995, by collusion of the Planning Authority - BDA and the Government with NICE; and

(v) the road as proposed in FWA has itself been shifted and as per the road proposed in the FWA, the road would not in any way affect the Gottigere lake and the road is at a distance of 2 kms. from the lake and the impugned order would not in any way affect the writ petitioners.

23.2 Learned Senior Counsel has taken us through the contents of FWA and contended that Gottigere lake is not at all mentioned in the FWA and even in the environmental impact report, Gottigere lake is not mentioned. The alignment of peripheral road to be constructed by NICEL has been illegally changed without modification or amending the FWA and wherefore, the writ petition is liable to be dismissed as sought for in the application filed by the fourth respondent. Learned Senior Counsel has taken us through the observations made by the Hon'ble Supreme Court as also the Division Bench decision of this Court in All India Manufacturers Organisation's case.

24. Learned Senior Counsel appearing for respondent 3 in W.P. No. 3568 of 2007, who is also the first complainant in C.C.C. No. 641 of 2006 submitted that he would concur with the submission of the learned Senior Counsel who has made submission on behalf of respondent 4 that the peripheral road as shown in the FWA originally conceived and which has been approved by this Court and the Hon'ble Supreme Court has been illegally changed and shifted and Gottigere lake was not at all in picture in the road proposed to be constructed by NICEL as per the FWA and the said road is at a distance of 2 kms. from the Gottigere lake

as per the FWA. The land belonging to respondent 3 in Sy. Nos. 104/2 to 104/7 in Gottigere Village was not at all proposed to be acquired as per the original alignment as shown in the FWA and only because of the change in alignment at the instance of NICEL, which is unsustainable in the eye of law, the land belonging to the third respondent was sought to be acquired. In the final notification, the land belonging to respondent 3 in Sy. Nos. 104/2 to 104/7 of Gottigere Village was not included. It is also clarified that the lands belonging to the claimants would not be acquired in view of the undertaking given in the contempt petition C.C.C. No. 1623 of 2004. In view of the observations made by this Court in Suresh Heblikar's case, which has been confirmed by the Hon''ble Supreme Court, the proposal peripheral road is to be constructed over the Gottigere lake by means of overpass, in which case, the land of the third respondent is not at all required to be acquired. Learned Senior Counsel further submitted that even if the peripheral road is permitted as per the alignment approved on 12-2-2004, the land belonging to the third respondent comprised in Sy. Nos. 104/2 to 104/7 is at a distance of 2 kms. from the said peripheral road and is not at all required for construction of the peripheral road. In view of the undertaking given by the respondents in the writ petition, Contempt Petition No. 641 of 2006 may be permitted to be withdrawn and W.P. No. 3568 of 2007 is liable to be dismissed.

25. We have given careful consideration to the contentions of the learned Counsel appearing for the parties and scrutinised the material on record and also perused the decision of this Court as also the Hon''ble Supreme Court in respect of the proceedings before this Court and the Hon''ble Supreme Court pertaining to FWA entered into between the NICEL and the State Government and the documents annexed to the writ petition and objections statement as also the written submission submitted by the learned Counsel.

26. The above said observations made by the Division Bench of this Court and which have been confirmed by the Hon''ble Supreme Court would clearly show that the alignment made on the application made by NICEL by BMICAPA would not in any way affect the observations made by the Division Bench of this Court in Suresh Heblikar's case, as the same would not bisect the Gottigere lake nor affect the inflow of water into the lake. The alignment of peripheral road by constructing a road skirting the Gottigere lake on its Southern side would in any way affect the Gottigere lake, which has been approved by the Government on the recommendation of BMICAPA, by order dated 12-2-2004 has become final as challenge to the said order was unsuccessful.

27. Section 14-A of the Karnataka Town and Country Planning Act, 1961, in exercise of which power, impugned order has been passed by the State in the present case reads as follows.:

14-A. Change of land use from the Master Plan.- (1) At any time after the date on which the Master Plan for an area comes into operation, the Planning Authority may, with the previous approval of the State Government, allow such

changes in the land use or development from the Master Plan as may be necessitated by topographical or cartographical or other errors and omissions, or due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in Master Plan or the circumstances prevailing at any particular time, by the enforcement of the plan:

Provided that.:

- (a) all changes are in public interest;
  - (b) the changes proposed do not contravene any of the provisions of this Act or any other law governing planning, development or use of land within the local planning area; and
  - (c) the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public within a period of not less than fifteen days from the date of publication as may be specified by the Planning Authority.
- (2) The provisions of Sub-sections (2) and (3) of Section 14 shall apply mutatis mutandis to the change in land use or development from the Master Plan.
- (3) Notwithstanding anything contrary contained in the Act, if the change in land use or development is from commercial or industrial to residential or from industrial to commercial and the stipulated fee is paid and the Local Planning Authority is informed prior to effecting the change, the permission for such change of land use or development shall be deemed to have been given".

(emphasis supplied)

28. Interpretation of the above said section had come up for consideration before the Hon"ble Supreme Court in S.N. Chandrashekar and Another Vs. State of Karnataka and Others, wherein the Hon"ble Supreme Court has analysed the provisions of Section 14-A of the KTCP Act and has observed as follows.:

19. The Act prior to coming into force of Section 14-A of the Act contained two provisions for enabling change in land use. The definition of land use" indisputably will have to be read with the Zoning Regulations.

20. Section 14(1), as it then stood, of the Act provided that every change in land use and every development in the area covered by the plan subject to Section 14-A shall conform to the provisions of the Act. Section 14(2) however, provides that no such change in land use or development shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate in the form prescribed. Section 15 provides for the procedure required to be followed where the Planning Authority is required to pass an order in terms of Section 14 of the Act. So far as changes of land use or development from the Outline Development Plan is concerned, the same would be subject to the procedure laid down in Section 14-A of the Act. Outline Development Plan being a one time plan, evidently Sub-section (2) of Section 14

had no application. It is only for that purpose Section 14-A had to be introduced. Section 14-A categorically states that change in the land use or development from the Outline Development Plan must be necessitated by: (i) topographical or cartographical or other errors and omissions; (ii) due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in Outline Development Plan; and (iii) circumstances prevailing at any particular time by the enforcement of the plan.

21. The proviso appended to Section 14-A enumerates that: (i) such changes should be one in public interest; (ii) the changes proposed should not contravene any of the provisions of the Act or any other law governing planning, development or use of land within the local planning area; and (iii) the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public. Sub-sections (2) and (3) of Section 14 of the Act are applicable mutatis mutandis to the change in land use or development from the Outline Development Plan. Sub-section (1) of Section 15 provides that on receipt of the application for permission u/s 14, the Planning Authority shall cause an enquiry to be made whereupon it may either grant or refuse a commencement certificate. Sub-section (2) of Section 15 raises a legal fiction as regard failure on the part of the Planning Authority to issue such certificate, as by reason thereof such certificate would be deemed to have been granted. The proviso appended thereto, however, provides that such change in land use or development for which such permission was sought for must be in conformity with the Outline Development Plan and the regulation finally approved under Sub-section (3) of Section 13. The said proviso applies to both Sub-sections (1) and (2). By reason of the said proviso, it is, therefore, explicitly clear that all such changes in the land use must conform both with the Outline Development Plan and the regulation finally approved under Sub-section (3) of Section 13, which would in turn mean the changes which are permissible for which no prior permission is required and the changes which are permissible upon obtaining the requisite sanction therefore.

33. It is now well-known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reason) inconsistent, unintelligible or substantially inadequate. (See De Smith's Judicial Review of Administrative Action, 5th Edition, page 286)

34. The authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by the BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regard the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment.

36. The order passed by the statutory authority, it is trite, must be judged on the

basis of the contents thereof and not as explained in affidavit (See Bangalore Development Authority and Others Vs. R. Hanumaiah and Others, .

(emphasis supplied)

29. The validity of the impugned order dated 4-11-2006, which is impugned in the writ petitions has to be considered in the light of the above said interpretation of Section 14-A of the KTCP Act with reference to the contentions of the learned Counsel appearing for the parties. Scrutiny of the material on record would clearly show that after the FWA was entered into between the Government of Karnataka and NICEL on 3-4-1997, for implementation of FWA, separate Planning Authority i.e., Bangalore-Mysore Infrastructure Corridor Area Planning Authority (BMICAPA) was established. On the application given by NICEL for approval of the alignment for peripheral road, recommendation was made by the office of the Chief Engineer, Communications and Buildings (South), Bangalore-1 and theme approval to alignment was granted and the same was communicated with the approved alignment to the Project Co-ordinator, BMICP, by letter 20-7-2002 as per Annexure-A to the Writ Petition No. 3568 of 2007. Thereafter, notification was issued u/s 13 of the KTCP Act and objections were called for. After considering the objections, the State Government has accorded its approval to the ODP u/s 13(3) of the KTCP Act by its order dated 12-2-2004 (Annexure-B1 to W.P. No. 3568 of 2007) subject to the condition that as per the order of this Court in W.P. No. 17823 of 1999 requiring that Gottigere Tank should not be bifurcated and the inflow of water to the tank should not be obstructed, NICE should construct the road as per the alignment and design specified by PWD. Even as per the final approved plan, peripheral road had to be constructed on the Southern side of the Gottigere lake instead of constructing the road across the said Gottigere lake. The validity of the said alignment approved by the Government on 12-2-2004, according to which, the peripheral road by NICEL has to be constructed along the Southern boundary of the Gottigere lake, in modification of the earlier alignment of constructing the road bisecting the Gottigere lake was challenged by the Gottigere Village Panchayat in W.P. No. 15973 of 2005. In the said writ petition, following prayers were made:

- i. A writ, order or direction in the nature of mandamus to the respondents not to divide the Gottigere Tank as per Annexure-B plan;
- ii. A writ, order or direction to the respondent authorities to preserve the Gottigere Tank and water resources of the said tank.
- iii. A writ, order or direction to the respondents not to disturb the environment round about Bangalore.
- iv. Any other appropriate writ, order or direction as the Hon''ble Court deems fit including the costs of this W.P..

The above referred W.P.No. 15973 of 2005 was disposed of by the Division Bench of this Court on 24-6-2005 and it was observed that identical contentions had

been raised in W.P. No. 17823 of 1999 decided on 16-6-1999 and the said order was pending consideration before the Hon''ble Supreme Court. The operation of the order dated 16-6-1999 passed in W.P. No. 17823 of 1999, wherein, a direction had been issued to the respondent therein not to lay any road bisecting the Gottigere Tank disturbing the inflow of water into the lake, had been stayed by the Hon''ble Supreme Court. In view of the fact that the matter was pending in the Hon''ble Supreme Court, the Division Bench of this Court declined to pass any order in the writ petition and accordingly, dismissed the writ petition. The petitioner in W.P. No. 15973 of 2005 did not challenge the order of the Division Bench of this Court dated 24-6-2005 and the same has become final. However, the petitioner in W.P. No. 15973 of 2005 - Gottigere Village Panchayat pursued the proceedings in Contempt Petition No. 1623 of 2004 as per the observation made by the Division Bench of this Court in W.P. No. 15973 of 2005, disposed of on 24-6-2005, which is also referred to above. Therefore, it is clear that the alignment of the peripheral road approved by the Government by order dated 12-2-2004 had been challenged before this Court in W.P. No. 15973 of 2005 and the said writ petition was dismissed and the same has become final. Further, the judgment of this Court in W.P. No. 17823 of 1999 (Suresh Heblikar''s case) dated 16-6-1999 has been confirmed by the Hon''ble Supreme Court.

30. The Hon''ble Supreme Court in All India Manufacturers Organisation''s case referred to above, while considering the question of res judicata and the constructive res judicata, which would be applicable to the facts of the present case in view of the dismissal of W.P. No. 17823 of 1999, wherein the validity of the order dated 12-2-2004 was challenged, has held that the petitioner cannot re-agitate the validity of the said order and has observed as follows.:

38. The spirit behind Explanation IV is brought out in the pithy words of Wigram V.C. in *Henderson v. Henderson* (1843-60) All ER 378, as follows:

The plea of res judicata applies, except in special case (sic), not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.

39. In *Greenhalgh v. Mallard* (1947) 2 All ER 255, (hereinafter "Greenhalgh"), Somervell L.J., observed thus:

I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the Court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them.

40. The judgment in *Greenhalgh*''s case was approvingly referred to by this Court in *State of U.P. Vs. Nawab Hussain*, . Combining all these principles, a

Constitution Bench of this Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, , expounded on the principle laid down in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, *Andheri and Others*, , by holding that:

An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive *res judicata* underlying Explanation IV of Section 11 of the CPC was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of *res judicata*.

31. The scrutiny of the material on record in the light of the decisions rendered by this Court and the Hon''ble Supreme Court, would clearly show that the FWA entered into between the Government of Karnataka and NICEL dated 3-4-1997 has been upheld by the Division Bench of this Court in the case of *All India Manufacturers Organisation* and the same has been confirmed by the Hon''ble Supreme Court. The decision of this Court in *Suresh Heblkar's* case has also been upheld by the Hon''ble Supreme Court. The validity of the order of the Government dated 4-11-2006 impugned in the writ petitions has to be considered in the light of the observations made by the Division Bench of this Court and the Hon''ble Supreme Court in the cases referred to above as also the scope of power conferred upon the Planning Authority, BMICAPA in this case, u/s 14-A of the KTCP Act.

32.1 The scrutiny of the material on record would also show that the impugned order dated 4-11-2006 is passed in violation of the directions issued by the Hon''ble Supreme Court while confirming the Division Bench decision of this Court in the case of *All India Manufacturers Organisation*. The writ petition filed by Sri J.C. Madhuswamy (W.P. No. 45386 of 2004) was also considered and dismissed along with *All India Manufacturers Organisation's* case and the validity and correctness of alignment approved by the impugned order dated 4-11-2006 was also in issue in the said writ petition, as is clear from the averments made in para 77 of the writ petition as follows.:

77. The petitioners submit that in fact by virtue of this great anomaly the present project and the illegal alignment of NICE are on the verge destroying several natural formations such as lakes, dunes, and other ecologically sensitive spheres. One such classic illustrations is the loss and damage occasioned to *Gottigere lake* by the favouritism doled out to politicians which would otherwise be saved if but the earlier alignment as fixed by the NICE was retained. Earlier the road was to pass through the lake and a public interest litigation filed in this regard directed that the lake or its inflow of water must not in any manner be hindered or restricted. For this, the Hon''ble High Court in public interest petition directed that the authorities were permitted to erect pillars on the lake bed and take the

road overhead but would not be permitted to block or hinder the inflow of water into the lake. Despite the clear directions, the authorities are now trying to move the road in such a fashion that it would circumambulate the lake on its fringe where its water inflow channels and courses are situated and which would prevent water from entering the lake. The petitioners submit that the earlier alignment that was fixed was at Annexure-F3, BDA CDP plan. This alignment did not hinder the inflow of water into the Gottigere lake nor bisected the lake by splitting it into two from its lake bed level. The new alignment in the ODP plan which shows a sharp curve on the road trespassing into the lake and curbing the inflow of water into the lake is produced as Annexure-F4. But, however, subsequently, and shockingly enough after Hon'ble High Court had directed specifically not to hinder the inflow and even take the road by erecting pillars on the lake. The NICE company in order to favour a few politicians who had lands in the vicinity of the lake have suddenly changed the alignment itself and are erecting the road so as to impede the entire inflow of water which is in contrary to the orders of the Court and which would also destroy the old courses and channels which would bring water into the lake. The Lake Development Authority has also inspected this lake and found that the deviation of the road would threaten and destroy the lake and is conducting a detailed analysis of this. The petitioners submit that the Grama Panchayat of Gottigere has also passed a resolution seeking protection of the lake and its inflow channels. It has sought that the lake be protected but yet the authorities are to act on this. The resolution of the Gottigere Panchayat is produced as Annexure-F5.

32.2 In the light of the above referred averments, it was contended by the learned Senior Counsel appearing for the said writ petitioner, which has been observed in para 33 of the judgment in All India Manufacturers Organisation's case, as follows.:

33. Another grievance projected by the petitioners is that Nandi in order to favour some politicians had changed the original alignment of roads thereby destroying the Gottigere lake which would adversely affect the ecology of the area. The learned Senior Counsel referred to the Division Bench order of this Court in Suresh Heblikar's case to contend that the alignment now made by Nandi would violate the said order. There is no merit in this contention. We have gone through the order passed by this Court in Suresh Heblikar's case and find that a direction had been issued to the respondent therein not to lay any road bisecting the Gottigere Tank disturbing the inflow of water into the lake. The Court further directed that in case any road was constructed, there should be an overpass without disturbing free flow of water to the tank. No material has been placed on the record to show that the alignment as made by Nandi for the execution of the project will bisect the lake or will in any way affect the inflow of water to the lake. The mere ipse dixit of the petitioners cannot be accepted particularly when the same has been denied by Nandi. We may, however, observe that Nandi while making alignment of roads through that area will keep in view the directions issued by this Court in Suresh Heblikar's case.

32.3 The above said decision of the Division Bench of this Court in All India Manufacturers Organisation's case and J.C. Madhuswamy's case, has been confirmed by the Hon'ble Supreme Court in All India Manufacturers Organisation's case, wherein, the Hon'ble Supreme Court has observed in para 62 of the judgment as follows.:

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

Hon'ble Supreme Court has further observed in All India Manufacturers Organisation's case as follows.:

The High Court merely directed that the project and the FWA, as conceived originally and upheld by the High Court in H.T. Somashekar Reddy's case, should be implemented "in letter and spirit". In other words, the High Court said that there is no scope for raising frivolous and mala fide objections for ulterior purposes.

32.4 The Division Bench of this Court in All India Manufacturers Organisation's case has clearly negated the contention that excess land has been acquired to benefit BMIC project and this finding is confirmed by the Hon'ble Supreme Court in All India Manufacturers Organisation's case and Hon'ble Supreme Court has specifically observed in paras 76 and 77 of the judgment as follows.:

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

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

33. The averments made in the statement of objections as also preamble to the impugned order dated 4-11-2006 would clearly show that in view of the fact that contempt petition, C.C.C. No. 1623 of 2004 had been filed alleging willful disobedience to the direction issued in Suresh Heblikar's case, the Government itself directed the BMICAPA to submit a proposal pertaining to alignment of peripheral road at Gottigere lake by constructing overpass by putting pillars, as suggested in Suresh Heblikar's case. Preamble of the impugned order would show that the BMICAPA has modified the alignment, which was earlier approved by Government on 12-2-2004, only in obedience and compliance with the direction issued by the Government, without any application of mind.

34. We have already seen as to how the provisions of Section 14-A of the KTCP Act as has been interpreted by the Hon'ble Supreme Court in S.N. Chandrashekar's case and the ratio laid down by the Apex Court therein would clearly show that the proceedings for change of alignment must be initiated from the Planning Authority and not from the Government and the Planning Authority can pass the order only after obtaining prior approval of the Government. Further, the said change or amendment of the alignment must be in the interest of public and must be done in the circumstances enumerated in Section 14-A of the KTCP Act i.e., change necessitated by topographical or cartographical or other errors and omissions or due to failure to fully indicate the details in the plan or changes arising out of implementation of the proposals in Master Plan or the circumstances prevailing at any particular time, by the enforcement of the plan. Also the changes proposed should not contravene any of the provisions of the KTCP Act or any other law governing planning, development or use of the land within the local planning area. Mere perusal of the impugned order dated 4-11-2006 produced at Annexure-P to W.P. No. 3568 of 2007 would clearly show that BMICAPA has not at all applied its mind and has simply obeyed the direction of the State in view of the contempt petition filed against the officials of the State alleging disobedience to the direction issued by this Court in Suresh Heblikar's case.

35.1 It is a well-settled law that when a statute prescribes a particular manner for doing a particular act, that act must be done in that manner alone (Taylor v. Taylor (1876) 1 Ch. D. 426).

35.2 The above well-settled position is constantly applied by the Indian Courts also without any deviation. The Apex Court in Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others, , held as under:

D. Statue Law - When statute prescribes a particular manner for doing a particular act, that act must be done in that manner alone.

16. ...There is no option left with any one to give up or waive any mode and not all such modes have to be strictly resorted to. The principle is well-settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner

prescribed therefore in the Act.

(emphasis supplied)

35.3 In the instant case, in view of Section 14-A of the KTCP Act, as interpreted by the Apex Court in the case of S.N. Chandrashekar, powers conferred on the BMICAPA cannot be intruded or interfered with, by any other authority, much less the Government also; because, the manner in which a duty is to be performed by the BMICAPA is also well laid down by the statute u/s 14-A of the KTCP Act.

35.4 The authority concerned viz., BMICAPA alone shall do it in the manner prescribed u/s 14-A of the KTCP Act, in order to follow the steps prescribed thereunder for reaching the result; otherwise, it will be a gross violation to the rule of law.

35.5 It is apparent on the face of records that the Government had interfered and intruded into the powers conferred on the BMICAPA u/s 14-A of the KTCP Act and consequently, the statutory authority viz., BMICAPA, who are conferred with such powers, have failed to discharge the duty in the manner required under law. Therefore, this Court is bound to satisfy itself as to whether the duties cast on the respective authorities for discharging the relevant statutory obligations under the relevant provisions of the statute are duly discharged in the manner contemplated under the statute, by applying the following tests, viz.

(i) Whether rights conferred on the statutory authorities under the statute have been intruded or interfered with by any other authority?

(ii) Whether the statutory authority had failed to perform the duties; or any other authority have interfered and intruded into the powers specifically conferred on the statutory authority under the statute?

(iii) Whether by non-compliance of the statutory obligations prescribed under the statute, the statutory authority concerned, had allowed themselves to be influenced by any other authority, who is not required to do such obligation; and would such consideration amount to an extraneous interference, which falls outside the statutory requirement?

36. Applying the above tests to the facts of the case on hand, we are satisfied that the Planning Authority-BMICAPA, instead of applying their mind and satisfying themselves of the conditions imposed u/s 14-A of the KTCP Act, as interpreted by the Hon'ble Supreme Court in S.N. Chandrashekar's case, while recommending modification of the earlier alignment, which was already approved by the Government on 12-2-2004, yielded to the views or directions of the Government, which is not contemplated u/s 14-A of the KTCP Act and therefore, there is an apparent gross violation to the procedure prescribed u/s 14-A of the KTCP Act. The interference of the Government in this regard is, obviously, on account of the directions of this Court dated 18-11-2005 issued in W.P. No. 20729 of 2003 to consider the representation of the petitioner therein. That

apart, the Government was constrained to take such decision under the teeth of contempt proceedings pending in contempt petition in C.C.C. No. 1623 of 2004., These factors, in our considered opinion, are nothing but a clear extraneous interference by the Government into the powers of the statutory authority viz. BMICAPA.

37. In view of the fact that the alignment as per ODP approved by the Government dated 12-2-2004 had been challenged before this Court by the complainant in the contempt petition-Gottigere Village Panchayat in W.P. No. 15973 of 2005, which was dismissed on 24-6-2005 and the same has become final and the observations made in para 33 of the Division Bench decision of this Court in All India Manufacturers Organisation's case, would also show that the alignment as per ODP approved by the Government dated 4-11-2006 did not in any way affect the observations made in Suresh Heblikar's case and the same has been affirmed by the Hon'ble Supreme Court in All India Manufacturers Organisation's case. Therefore, when the alignment which has been approved by the Government on 12-2-2004 by holding that it was in public interest, the Planning Authority ought to have satisfied itself about the conditions to be satisfied before recommending for change in the approved alignment dated 12-2-2004, which had also been confirmed by the Division Bench of this Court and the Hon'ble Supreme Court as referred to above.

38. It is unnecessary to go into the contentions of the learned Counsel appearing for respondents 3 and 4 that: NICEL has changed the alignment of the peripheral road as per the alignment in ODP approved by the Government on 12-2-2004 by shifting the proposed peripheral road to the alignment meant for formation of road by BDA; the peripheral road as per the FWA was to pass 2 kms. away from the Gottigere lake and would not pass near the Gottigere lake; in the absence of amendment of FWA, the said alignment could not have been approved by the Government by order dated 12-2-2004 and the same is illegal and wherefore, the petitioners cannot challenge the order passed by the Government u/s 14-A of the KTCP Act as they are not interested parties, as it is clear from the material referred to above that the said question cannot be permitted to be agitated at this stage by the respondents in the writ petition filed by the petitioners challenging the impugned order dated 4-11-2006 and in view of the fact that the challenge to the order dated 12-2-2004 on similar grounds has been rejected in the writ petition filed on behalf of Gottigere Village Panchayat in W.P. No. 15973 of 2005 by order dated 24-6-2005, as referred to above.

39. It is also unnecessary to consider the contentions of the learned Counsel for the impleading applicants referred to above, in view of the finding that the impugned order dated 4-11-2006 changing the alignment approved on 12-2-2004 is liable to be quashed, whereby, the alignment as approved on 12-2-2004 would revive, in which case, there would not be any topographical or environmental damage to the Gottigere lake in view of the fact that as per the alignment approved on 12-2-2004, the peripheral road would be skirting the

Gottigere lake and would not in any way bisect or obstruct inflow of water into the lake as held by the Division Bench decision of this Court referred to above. Therefore, it is unnecessary to permit the impleading applicants in LA. Nos. 4 of 2007, 5 of 2007 and 3 of 2008 to come on record.

40. So far as the Contempt Petition No. 641 of 2006 is concerned, it is not disputed that the de-notification of the lands belonging to respondents 3 and 4 were sought to be acquired as the same were required in view of the alignment of peripheral road in ODP approved by the Government dated 12-2-2004, wherein peripheral road would be skirting the boundary of Gottigere lake, in which case, the lands belonging to respondents 3 and 4 in Sy. Nos. 104/2 to 104/7 would also be required for the construction of the said peripheral road as per the alignment approved on 12-2-2004. The writ petition filed by the complainants and others challenging preliminary notifications has been disposed of by the Division Bench of this Court on 18-11-2005, by permitting the writ petitioners to file further objections and directing the Competent Authority to consider the request of the landowners to decide as to whether their lands have to be acquired. Therefore, the question as to whether the lands belonging to the complainants in C.C.C. No. 641 of 2006 are required for construction of the peripheral road has to be considered by the Competent Authority and not by this Court as the matter is pending before the acquiring authority for consideration as per the direction issued by this Court in W.P. No. 20729 of 2003 disposed of on 18-11-2005. In view of our above said finding that the order of the Government dated 4-11-2006 impugned in the writ petitions is liable to be quashed, which would revive the alignment of peripheral road as approved by the Government on 12-2-2004, which would not in any way affect the observations made by this Court in Suresh Heblikar's case, the question of willful disobedience on the part of the accused to the direction issued by this Court in W.P. No. 20729 of 2003, dated 18-11-2005, as contended in the contempt petition, would not survive at all. Therefore, the contempt petition, C.C.C. No. 641 of 2006 is liable to be dismissed by discharging the accused on the ground that the order impugned in the writ petitions is to be quashed and the alignment of the peripheral road approved on 12-2-2004 is to revive and the de-notification of the lands belonging to the complainants in C.C.C. No. 641 of 2006 had been made subject to the result of these writ petitions. Therefore, the acquiring authority is at liberty to proceed with the acquisition if the lands belonging to the complainants in C.C.C. No. 641 of 2006 are required for constructing the peripheral road as per the alignment approved on 12-2-2004 and the question of disobedience to the direction issued by this Court in W.P. No. 20729 of 2003, dated 18-11-2005 as alleged in the contempt petition would not arise. The question of considering the memo for withdrawal of the contempt petition would not arise and the same is disposed of accordingly.

41. Accordingly, we hold that the order impugned in W.P. Nos. 3568 of 2007, 17550 of 2006 and 12607 of 2007, dated 4-11-2006 passed by the State is liable to be quashed and in view of the above said reasoning, it is unnecessary to issue

any further direction in W.P. No. 12607 of 2007 and other writ petitions and the contempt petition, C.C.C. No. 641 of 2006 is liable to be dismissed and pass the following order:

- (i) W.P. Nos. 3568 of 2007, 17550 of 2006 and 12607 of 2007 are allowed;
- (ii) The impugned order passed by the Government dated 4-11-2006 is quashed;
- (iii) Contempt petition - C.C.C. No. 641 of 2006 is dismissed and the accused in C.C.C. No. 641 of 2006 are discharged. However, there shall be no order as to cost.