

(2013) 06 KAR CK 0081

In the Karnataka High Court

Case No : Writ Petition No's. 45085-45086 of 2012 (GM-RES)

M/s. Nandi Infrastructure Corridor Enterprise Limited and Sri. Ashok Kheny APPELLANT

Vs

State and Sri. Abraham T.J. RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 340, 482
Penal Code, 1860 (IPC) — Section 120(b)(1), 192, 415, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(1)c, 13(2)

Citation : (2013) 4 AKR 385

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : D.L.N. Rao, for Shri. R.V.S. Naik, for M/s. King and Partridge, in W.P. Nos. 45085-45086 of 2012 and in W.P. No. 45151 of 2012 GM-RES and Shri. C.V. Nagesh, for Shri. K. Suman in W.P. Nos. 45088-45089 of 2012, for the Appellant; B.A. Belliappa, Advocate for Respondent No. 1 in W.P. Nos. 45085-45086, 45151 of 2012 (GM-RES) and W.P. Nos. 45088-45089 of 2012, Shri. Abraham T.J. Party-in-person in W.P. Nos. 45085-45086 of 2012 and W.P. No. 45151 of 2012 (GM-RES) and Shri. K.V. Dhananjay, Advocate for Respondent No. 2 in W.P. Nos. 45088-45089 of 2012, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—These petitions are heard and disposed of by this common order, as the petitioners are commonly aggrieved and are seeking identical reliefs. The petitioners are all challenging a private complaint dated 27-8-2012 filed by one T.J. Abraham, before the designated Court of the Special Judge, under the Prevention of Corruption Act, 1988 (Hereinafter referred to as "the PC Act", for brevity), and an order passed by the said Court, dated 25.10.2012 referring the matter for investigation u/s 156(3) of the Code of Criminal Procedure, 1973 (Hereinafter referred to as "the Cr.P.C.," for brevity) and have also challenged a further Order of the same date, ordering attachment of property and monies, in exercise of power u/s 3 of the Criminal Law Amendment

Ordinance, 1944 (Hereinafter referred to as "Ordinance 1944" for brevity).

2. The petitioners are arraigned as Accused No. 3, 4, 13, 14 and 44. The Complainant has named a total of 104 persons as the accused. The gist of the complaint is as follows:

The complainant is a private citizen seeking to bring to light alleged large scale illegalities and irregularities in the formation of the contract and the execution thereof, pertaining to the Bangalore--Mysore Expressway, otherwise known as the Bangalore Mysore Infrastructure Corridor Project (BMIC).

The complaint is structured into Chapters 1 to 8.

CHAPTER-1: Increase in extent of lands in the Frame work Agreement contrary to the Government Order dated 20.11.1995

It is alleged that Shri H.D. Devegowda, the former Prime Minister of India, during his tenure as the Chief Minister of Karnataka had, along with his cabinet colleagues, granted rights to a foreign led consortium headed by Baba Saheb Kalyani, Ashok Kheny and Richard Hangen, Accused No. 3, 4 and 5, respectively, without verifying their antecedents and their personal financial strength and their capacity for arranging the promised investment of Rs. 1,583 crore to implement the Bangalore Mysore Infrastructure Corridor (BMIC) project in Karnataka. The acts and decision of Accused No. 1 had resulted in Accused 3, 4 and 5 plundering the wealth of Karnataka. It is alleged that since the Asian Development Bank (ADB) had refused to finance the same project as not feasible, during 1988, that private participation had become relevant. Accused No. 1 and his Cabinet Colleagues had granted rights to Accused No. 3, 4 and 5 based on the face value of Mr. William Weld, the then Governor of the State of Massachusetts, USA, A-2, who came to introduce Accused No. 3, 4 and 5 in the name of strengthening the bilateral ties between the two countries. Accused No. 1 has acted in sheer negligence and with non application of mind in granting the rights over 18, 313 acres of land to the Accused No. 3, 4 and 5. Subsequent to the issue of the Government Order of 20-11-1995 Maj. Ramesh and M.B. Prakash, IAS, A-6 and 7, respectively, in collusion with Accused No. 3, 4 and 5, had prepared a Cabinet Note, illegally, concealing the increase of about 1,880 acres of land from what should have been 18,313 acres to 20,193 acres and presented it for approval before the then Cabinet headed by late Shri. J.H. Patel the then Chief Minister and his Cabinet Colleagues including Siddaramaiah, C.M. Udasi and R.V. Deshpande, A-10, 90 and 12, respectively. The increase of 1,880 acres brought about by Accused No. 3, 4, 5, 6 and 7 was aimed at illegally acquiring lands at Bangalore in the name of building the Expressway. Accused No. 10, 90 and 12 did not make any attempt to prevent the "fraud, which amounted to abetment of the entire fraud perpetrated by Accused No. 3, 4, 5, 6 and 7. Accused No. 6 had entered into an agreement with Accused No. 13 represented by Mr. Shivkumar Kheny, A-14, in respect of an extent of 20,193 acres fraudulently increased by Accused No. 6 and 7 in collusion with Accused No. 3, 4 and 5.

It is alleged that the Government, represented by Accused No. 1 and his Cabinet colleague Mr. Kaujalgi Accused No. 11, had in a most negligent and careless manner accepted the project report and the fraudulent claims of the financial worthiness, without verifying the antecedents of the proposed investors and had granted approval to the project, relying on the face value of Accused No. 2.

The act of omission of Accused nos. 1 and 11 specifically and the concerned cabinet colleagues and other officials, should be treated as an act of Criminal Omission for the failure of ensuring professional care and deviation from required safeguards that could have hopefully prevented loss to the State exchequer in particular and irreversible damage to the life, liberty and property of innumerable farmers and others.

That the Public Servants namely, Accused No. 6 and Accused No. 7 in collusion with Accused Nos. 3, 4 and 5 had succeeded in defeating the Government Order dated 20.11.1995 by deliberately and illegally increasing 1,880 acres of lands for the Toll Road. The said Accused intentionally and fraudulently claimed that the approval for addition was granted by the Core group of officers, in the Cabinet Note submitted for approval by the Public Works Department (PWD). However, the Cabinet Note of the Revenue Department unconnected with the construction of the Road on the same date merely mentioned the increased extent of lands submitted by the Accused No. 3 and 4 in collusion with Accused No. 6 and 7.

CHAPTER-2: Manipulation of records to show lesser extent of available Government land to acquire increased extent of Government lands at minimal lease rent, appropriated to the project

Although the entire Government Land required for the BMIC project was identified and found available according to the Government Order of 27.03.1997, Accused No. 3, 4, 13 and 14 in association with Accused No. 6, misrepresented before the 1st and 2nd Empowered Committee and in a review meeting of the BMIC project before the then Chief Minister Late J.H. Patel and the then Deputy Chief Minister Accused No. 10, of non-availability of sufficient Government Lands. Accused No. 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and Govindaraj-Accused No. 29 are said to have subscribed to the idea of non-availability of Government lands, floated by Accused No. 3, 4, 13 and 6 and fraudulently brought about a reduction in the extent of lands for the record. Accused No. 6 during July 1999 had quit the Government and officially and publicly joined Accused No. 13 as its Advisor, publicly associating with Accused No. 3, 4, 13 and 14. The Accused No. 8, 9, 27 and 24 held a series of meetings with Accused No. 3, 4, 6, 13 and 14, only to emphasize the alleged non-availability of Government lands. The direction of Accused No. 24 given in the meetings to the Deputy Commissioner, Bangalore, to modify the Official Memorandum was a deliberate illegal act, as it was aimed at robbing highly valuable, hundreds of acres of government lands in Bangalore without government approval. Accused No. 8, 9, 27 and 24 had prepared a Cabinet Note, reducing Government lands from the available 6,956 acres to 4,460 acres and submitted it to the Cabinet for approval. The Cabinet headed by

the then Chief Minister late J.H. Patel and his Cabinet Colleagues, including the Accused No. 10, 12 and 90 negligently agreed to the Cabinet Note and approved the fraudulent proposal of non-availability of Government Lands, to ensure illegal benefit to Accused No. 3, 4, 6, 13 and 14. Further, Accused No. 8, 9, 27 and 24 had intentionally entered in the Government Order the availability of 5,688 acres of Government Lands instead of the approved extent of 4,460 acres on 07.10.1999. Accused No. 3, 4, 6, 13, 14, 8, 9, 27 and 24 conspired in causing a loss by fraudulently granting government lands at Rs. 10/- per acre, per annum, recording false information in the Government Order. Accused No. 101, on a mere oral direction of Accused No. 24 at a meeting, had issued two Official Memoranda granting 1,327 acres and 1,702 acres, respectively. This Accused No. 101 was the Chief Architect of the handing over a additional (1,702-1,075) 627 acres of land for the benefit of NICE, a blatant corrupt practice. Valued at an average market rate of Rs. 3 crore per acre, it would amount to an illegal gain of around Rs. 1,881 Crore. Thus Accused No. 4 assisted by Accused No. 6, 24 and 101 colluded with Accused No. 4 and 14 to lay claim to 627 acres of additional government lands in Bangalore (1702-1075=627).

CHAPTER-3: Shifting of the alignment of the Peripheral Road, Link Road and Township No. 1, after 1998

Accused No. 6 on behalf of Accused No. 3, 4, 13 and 14 had sent a proposal to the Bangalore Development Authority seeking No Objection Certificate (NOC) for Accused No. 3, 4, 13 and 14, to construct the Peripheral Road and Link Road of the BDA CDP with certain changes rather than constructing the Peripheral Road and Link Road as agreed under the Frame Work Agreement. Accused No. 28, the then Commissioner of BDA accepted the proposal of Accused No. 6 and issued a NOC for the illegal proposal of Accused No. 3, 4, 13 and 14. In the third meeting of the Empowered Committee Accused Nos. 16, 17, 30, 31, 32, 33, 34, 35, 36, 26, 8 and 9 did not object to the construction of Peripheral Road and Link Road by Accused No. 3, 4, 13 and 14, which was actually supposed to be built by the BDA for the public, free of cost. Even though the NOC is issued by Accused No. 28 in the year 1998 and also approved by the Accused No. 16 on 10.02.1999 for changes in the Peripheral Road and Link Road, Accused No. 15 had already circulated a list of lands at the behest of Accused No. 13 that suited the requirement of the changes Peripheral Road as early as the 31st July 1997 itself, 19 months before the approval, upon the application for change of Alignment of Peripheral road was made by Accused No. 6 on behalf of accused No. 13. This, it is claimed, is a demonstration of an illegally calculated criminal conspiracy to alter the documents and records for illegal gain by all the accused persons directly involving themselves in the act of commission or deliberate acts of omission of other accused.

CHAPTER-4: The KIADB-NICE nexus to incorporate lands illegally for the project, for the benefit of NICE and ICICI

The Accused No. 26 representing Karnataka Industrial Areas Development Board

(KIADB) entered into an agreement with Accused No. 13, represented by Accused No. 14, for a fraudulent extent of 23,846 acres of private land instead of 13,237 acres with a fraudulent list of survey numbers circulated by Accused No. 15, suppressing the list of lands sent by the government on 14.7.1997. Accused No. 37 entered into another agreement with accused No. 13, represented by Accused No. 14, agreeing to convey 5,688 acres of government lands instead of 6,956 acres, deliberately reducing the extent of Government lands for balancing the excess acquisition of private lands around Bangalore and to defeat the Frame Work Agreement (FWA). Accused nos. 27 and 37 intentionally took no steps to rectify the error, to conveniently support the illegal designs of Accused No. 3, 4, 6, 13 and 14. Accused No. 12 held a review meeting on 12.11.2003 in which Accused No. 8, 9, 38, 39, and 40 were present. In the said meeting, all the accused persons present jointly decided that the extent of private land required for the project is 14,505 acres, arrived at on the basis of 20,193 acres, less the government land of 5,688 acre, as against the 13,237 acres of private land agreed under the FWA-thus benefiting Accused No. 3, 4, 6, 13 and 14. Accused No. 12 held another review meeting on 8.1.2004 in the presence of Accused No. 4, 8, 9, 38, 24 and 71 and other officials in which Accused No. 12 confirmed the requirement of 14,505 acres of private lands instead of 13,237 acres of private land and none of the accused persons present made any attempt to clarify that the extent of private land required is 13,237 acres only. This proved that Accused No. 12, 8, 9 and other officials in the government were working towards acquiring 14,505 acres of private lands instead of 13,237 acres, consciously acting against the FWA, to illegally benefit Accused No. 3, 4, 6, 13 and 14.

CHAPTER-5: Fraudulent claim of Exemption of Stamp Duty for Toll Road and increase in extent of Private lands

The Cabinet headed by Accused No. 41, the then Chief Minister on 20.11.2000 approved Stamp Duty Exemption at the behest of Accused No. 3, 4, 6, 13 and 14, for 5,850 acres of saleable land falling within 13,000 acres of lands meant for 5 townships. However, Accused No. 4 and 13 in collusion with Accused No. 9, 42 and 43 entered false information in the Government Order pertaining to Stamp Duty Exemption for 14,337 acres and Accused No. 41 and his Cabinet Colleagues conveniently did not rescind the order or question the officials, or order an inquiry. Further the Accused No. 4 and 13 wrote to Accused No. 8 seeking Acquisition and Stamp Duty Exemption for 14,337 acres of Private Lands, contrary to a Cabinet decision. Accused No. 8 instead of objecting to such a Fraud accepted the letter of Accused No. 4 and 13 and recommended it to Accused No. 9 for getting stamp duty exemption for 14,337 acres of private land. Accused No. 9, 42 and 43 joined together and issued an order granting stamp duty exemption for 14,337 acres of private land to defeat the Cabinet decision of 20.11.2000, by entering false information in an order on 21.9.2002. Accused No. 41 and his cabinet colleagues did not take any objection to the issuing of the order of stamp duty exemption for 14,337 acres, which included the sale of the toll road in order to help the fraud being perpetuated by Accused No. 3, 4, 6, 13

and 14.

CHAPTER-6: Sale of Land facilitated at Inter changes on Toll Road and assignment of rights in favour of NECEL

Accused No. 13, represented by Accused No. 4, transferred part of its right over the Frame Work Agreement in favour of Accused No. 44, represented by Accused No. 14, creating a new concept of sale of land at interchanges, which was not at all agreed to or permitted in the FWA. Accused No. 9, 45, 46, 47, 48, 49, 50, 51, 52 and 53 concurred with the idea of executing a Tripartite Agreement with Accused No. 13 and Accused No. 44, without even verifying the contents of the said Assignment Agreement between Accused No. 13 and 45. Further Accused No. 9, 46, 47, 48, 49, 50, 51, 52, 53 and 54 had every opportunity to write to the government to rescind the contract with Accused No. 13, in view of Accused No. 13 seeking a guarantee from the government to raise loans from financial institutions, without bringing in the promoters equity of Rs. 522 crore, which was supposed to be invested as contribution by the promoters. If the government were to stand guarantee to Accused No. 3, 4, 13 and 14, to borrow money to acquire land and to construct the express way, the government could have raised the money itself, to take-up the project on its own. Further Accused No. 49 executed a Tripartite Agreement with Accused No. 13 represented by Accused No. 55 and Accused No. 44 represented by Accused No. 14 in full-cooperation of Accused No. 9, 49, 50 and 54 without raising any objections for the fraudulent conditions brought in into the Tripartite Agreement. Accused No. 56 executed a lease deed for 1,931 acres of government land in favour of Accused No. 44 on a yearly lease rent of Rs. 19,310, (in less than 15 days) which is mortgaged by Accused No. 44 with ICICI Bank, A-57, to raise a loan of Rs. 150 crore to acquire private lands. Accused No. 57, represented by Accused No. 58, the Joint General Manager wrote to Accused No. 59, the then Chief Executive Officer of KIADB, to acquire 2,605 acres of private lands for the Peripheral Road and Link Roads. Accused No. 46 convened a meeting of the KIADB in the presence of Accused No. 60, 61, 62, 63, 64 and Accused No. 8 and many other officers and decided to acquire 2,605 acres of private land for the Peripheral Road and Link Road in spite of having handed over possession of over 1,100 acres of government land on lease, for the Peripheral road and Link road, to help Accused Nos. 13, 45, 3, 4, 6 and 55 raise loan from the A-57, ICICI Bank. The Accused No. 13 represented by Accused No. 14 wrote to Accused No. 8 to acquire 2,605 acres to fulfill the requirement of Accused No. 57 to enable the release of funds to Accused No. 13 and 44. Accused No. 65 chaired a meeting in the presence of Accused No. 46, 24, 62, 60, 66, 67, 8 and 9 and other officials and directed the KIADB to acquire 2,605 acres of private land to help Accused No. 3, 4, 6, 13, 14, 44 and 55 to raise loan from Accused No. 57. The Accused No. 65 did not make any attempt to rectify the mistake, instead joined the other accused persons to help Accused No. 3, 4, 6, 13, 14, 44 and 45. The Accused No. 46 held a meeting in the presence of Accused Nos. 8, 9, 38, 53, 68, 69, 70, 71 and 89, and many other officials and confirmed the financial closure allegedly obtained by Accused No. 13 and agreed

with the need for acquisition of 20,193 acres as explained by Accused No. 4 without verifying the details in the documents, intentionally to help Accused No. 13 and 44 get the lands to suit their needs for financial closure with Accused No. 57. Accused No. 65 ought to have written to the Government for the cancellation of the FWA with Accused No. 13 since Accused No. 13 did not bring in the required financial resources to implement the project on their own strength. Accused No. 19 held a meeting in the presence of Accused No. 39, 61, 69, 72, 73, 74 and 75 and many other officers in which the Accused No. 4 refused to divulge the details of financial documents and mortgage details of government and private Lands, even though the government had stood guarantee for Accused No. 13, 44 and 58. The Accused officers could have demanded the details, failing which they should have written to the Government for cancellation of the guarantee given to Accused No. 13, 44 and 58 and the FWA itself. Accused No. 76 and 77 had executed sale deeds in favour of Accused No. 13 and 44 to help the Accused No. 13 and 14 to mortgage the lands acquired for Peripheral road and Link road with the Accused No. 57 in order to raise funds to pay the compensation to land owners. The Accused 76 and 77 could have stopped the sale of road component, but had executed the sale deeds to enable the Accused No. 13 and 44 to raise loans from Accused No. 57. Accused No. 44 represented by Accused No. 4 entered into a sale agreement to sell private lands acquired in the name of Peripheral road and Link roads Accused No. 78, the then Chief Minister of Karnataka as the Chairman of the High Level Committee held a meeting in the presence of Accused No. 52, 38, 79, 80, 81, 82, 83, 84, 85 and 86, amongst many other officers, Accused No. 3 and 4 threatened Accused No. 78, who buckled without any resistance and dropped the government agenda of the meeting and took up the agenda as proposed by Accused No. 3 and 4. Further Accused No. 78 also ordered for acquisition of lands as desired by Accused No. 3 and 4 and in addition ordered for the execution of sale deeds in respect of lands acquired for Peripheral road and Link roads too, in favour of Accused 13 and 44. Accused No. 96 and 97, in order to protect the interest of the Accused No. 3, 4, 6, 13 and 14, had illegally withheld the copy of the financial closure from the complainant as it would have exposed the fraud of Accused No. 3, 4, 6, 13, 14 and 58.

CHAPTER-7: Construction of Bituminous Road instead of a concrete road and illegal collection of toll

Accused No. 4 sought a guarantee from the Government to Accused No. 57-the ICICI BANK and sought also to construct a Tar Road instead of Cement Concrete Road. Accused No. 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54 discussed the modalities of issuing the guarantees, instead of deciding on canceling the contract with the Accused No. 13 which had shown that it did not have the required financial resources to construct the road in the manner stipulated in the PTR and FWA. Accused No. 41 on 09.08.2002 had failed to even suggest the cancellation of the contract with Accused No. 13 as Accused No. 44 was seeking modifications to the FWA due to non availability of funds, instead he had agreed

to help Accused 13 and 44 even though they did not possess sufficient funds to implement the project. Accused No. 9, 49, 87 and 88 recommended assisting Accused No. 13 to build a Tar Road instead of a Cement Concrete road by recommending the changes to the Cabinet for Approval. Accused No 41 and his Cabinet Colleagues approved the changes to the road to be built by Accused No. 13 to illegally help Accused No. 13. Accused No. 9, 49 and 88 colluded to issue a guarantee, contrary to the Cabinet decision, fraudulently to help Accused Nos. 13, 44 and 57. Not only that, Accused No. 9 went to the extent of closing the concerned government file even before the start of the construction of the road itself. Accused No. 89, 81, 52, 90 and 78 issued a direction to permit Accused No. 13 and 44 to collect toll by opening a new file, without verifying the old file and the Cabinet decision of 04.11.2002. Accused No. 89, 81, 52, 90 and 78 had deliberately taken such a decision to fraudulently help Accused No. 13 and 44. Accused No. 89, 81, 52, 90 and 78 had permitted Accused No. 13 and 44 to illegally collect higher toll from time to time to ensure illegal gains for Accused No. 13 and 44 without concern for the financial loss to the government and to the public. Accused No. 3, 4, 13, 14 and 44 were illegally collecting toll from the public by not completing the Cement Concrete Road as per agreement and this had been brought to the notice of the Accused No. 52 to put an end to the illegal collection of toll amounting to enrichment by corrupt methods. However, Accused No. 52, in order to fraudulently protect the interest of Accused No. 3, 4, 13, 14 and 44, had intentionally not taken any action till date.

CHAPTER-8: Preparation of ODP for 1.75 lakh acres instead of 20193 acres. NICE was the author of the document-the Government had merely put its stamp of approval on the same

The Cabinet headed by the then Chief Minister late J.H. Patel approved constitution of a new planning authority called BMICAPA on 05.10.1999. Accused No. 4, representing Accused No. 13 was appointed as a member of the authority contrary to Rule 6 of the Karnataka Town and Country Planning Act, 1961 (Hereinafter referred to as the "KTCP Act", for brevity), which disqualified any interested party from being appointed as a member of any planning authority. A huge extent of land was illegally deleted from the boundary of various other authorities, only to be added to the planning boundary of BMICAPA. Further Accused No. 41 got large areas of BDA limits illegally deleted on 20.11.2001 and the same were illegally added to the boundary of the BMICAPA. Accused No. 8, 9, 14, 65 and 91 held a meeting on 16.12.2002 along with other officers in which the Accused No. 65 confirmed that after conducting survey, ODP with 52 Planning Districts having various zones, including 702 square kilometre of planning area, was prepared and was ready to be submitted for provisional approval of the government. However, contrary to the decision of the BMICAPA on 16.12.2002, the note sheets in the file No. UDD 75 BEM UR PRA 2003, at Paras 33, 34 and 35 showed that there were no technical staff in the BMICAPA and that there was a shortage of technical staff in the Directorate of Town Planning, hence BMICAPA sought appointment of private experts to prepare the

ODP for the BMICAPA by making a provision for Rs. 2 lakh in the budget of 2003-04. Yet, on 28.05.2003, the government approved the provisional ODP even though it was not prepared by the BMICAPA, according to the said note sheets in the file of UDD 75 BEM RU PRA 2003. But then, the BMICAPA, in June 2003, sought permission of the government to appoint a private agency to prepare the ODP, even though the government was supposed to have accorded the provisional approval on 28.05.2003. Further, Accused No. 92, the then Chairman of BMICAPA and Urban Development Minister in September 2003, approved the proposed for BMICAPA, to appoint a private expert agency to prepare the ODP. This confirmed that the Provisional ODP was not prepared by the BMICAPA. The government had given provisional approval for an ODP that was not prepared by the BMICAPA. Subsequently, Accused No. 41 and 92 issued a Government Order on 16th October 2003 appointing a private agency to prepare the ODP for the BMICAPA and also allocated a budget of Rs. 2 lakh to be spent in 2003-04. Mysteriously, even without the appointment of the so called private agency, the ODP was prepared and various corrections, changes and modifications as suggested by Accused No. 92 was carried out by some mysterious private agency in the so called ODP of the BMICAPA. Interestingly, the ODP also included a theme plan approved by the Chief Engineer on 20.07.2002 showing a new alignment of the Peripheral Road and Link Road even though the PWD had not communicated the same to the BMICAPA, to include the theme plan in the ODP. Accused No. 93, the then Chief Engineer, PWD had approved the theme plan without any authority, at lightning speed. The BMICAPA had communicated under the Right to Information Act that it did not receive any communication by the PWD to incorporate the theme plan in the ODP. Interestingly, the theme plan of Accused No. 13 was submitted to Accused No. 93 for approval by Accused No. 6 as Project Director of Accused No. 13. The theme plan submitted by the Accused 3, 4, 6, 13 and 14 and 16th July 2002 to the Accused No. 93 for approval was alleged to have been taken up for discussion with the Engineers of Accused No. 13 on 19th July 2002 and the Approval was issued on 20th July 2002 within a day. Accused No. 94, 95, 99 and 100 had deliberately not issued a copy of the theme approval even after 70 days from the date of application under the RTI to the complainant. Whatsoever, the government is supposed to have approved the ODP of the BMICAPA on 12.02.2004, which got prepared by itself mysteriously. Accused No. 41 and 93 ought to have taken stringent measures and rejected the ODP instead of approving it, which proved that the ODP was approved with the intention of ensuring illegal benefits for Accused No. 3, 4, 6, 13 and 14. The Public Information Officer, BMICAPA and the Directorate of Town Planning have confirmed that it did not have any surveyors and did not possess the mandatory survey report as required according to the provisions of the KTCP Act. Further they had confirmed that the ODP did not contain the location of Township No. 1, which goes to prove that the ODP was not prepared by the BMICAPA, as such, it is a bogus and a concocted document planted in BMICAPA by some interest persons.

The prayer of complainant was to treat the contents of documents-A to DL in its totality as part of this complaint, to issue an ad interim order attaching all the Bank Accounts and Properties of Accused No. 4, 13, 14 and 44, by invoking Section 4 of The Criminal Law Amendment Ordinance, 1944 (Ordinance No. XXXVIII of 1944). And, to take cognizance of the offences against the Accused persons, for securing all the Accused persons before the Court and deal with them in accordance with law for offences punishable u/s 13(1)(c),(d) and Section 13(2) of the Prevention of Corruption Act, 1988, along with Sec. 119, Sec. 120(b) (1), Sec. 167, Sec. 192, Sec. 218, Sec. 403, Sec. 405, Sec. 409, Sec. 415, Sec. 418, Sec. 420, Sec. 463, Sec. 468 read with Section 423 of the Indian Penal Code and Under other applicable provisions OR, in the alternative refer the complaint u/s 156(3), Cr.P.C. for an investigation by the Lokayukta Police.

The complaint was accompanied by 117 documents running into several thousand pages. The Special Judge, on a perusal of the complaint and the accompanying documents and having heard the complainant, had framed the following points for consideration:

1. Whether the complainant has made out the grounds for referring the complaint u/s 156(3) of Cr.P.C. for detailed investigation?
2. Whether the prayer for passing the separate orders for chapter Nos. 1 and 2 to 8 is just and proper?

In proceeding to consider the complaint, the learned judge has addressed the particulars in the complaint with reference to the relevant documents, in detail. The court has held thus at paragraph 322 on page 242 of its Order:

322. It is necessary to mention that this Court considering the complaint the complaint with due respects to the verdicts already pronounced and the lands, extent and the earmarking already upheld by the Honourable High Court and the Apex Court. Thus the domain of consideration has been excluding 20,193 acres. This Court is looking into the aspects of the duping and cheating the public, keeping the farmers, residents of the area and the occupants in total darkness of what was going on and the land that is covered and the happenings that has resulted in loss of more than thousands of crores of rupees.

The court has, after referring to the head notes of certain decisions, and an incidental matter of the request of the complainant to include two persons as the accused as well, has drawn attention to the allegations against particular accused persons and the role attributed to them with reference to the documents. This can be found at paragraphs 331 to 434 of the impugned Order. From paragraph 435 to 458 is to be found the Court's overview of the complaint allegations and the Court's prima facie observations. At paragraph 460, point No. 1 framed for its consideration is answered as under:

460. It is to be noted that an individual has right to do any thing, which is not illegal. But Government while taking decisions has to consider and rely only on

what is legal. In the overall context and circumstances of the case, after reading of the complaint, annexures, documents and hearing the arguments, I am of the sincere view that there are prima facie grounds to refer the matter for investigation against the accused Nos. 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 14, 38, 39, 41, 44, 57, 58, 65, 77, 78, 88, 89, 90, 91, 92, 93, 94, 96, 97 and 102. At this stage, I do not find necessity of referring the matter for investigation against the rest of the accused persons. Hence, I answer the point No. 1 accordingly.

(emphasis supplied)

The accused, against whom investigation is directed, are the following:

1. Accused No. 1-Shri H.D. Devegowda, Former Chief Minister of Karnataka, Government of Karnataka,
2. Accused No. 2-Mr. William Weld, Governor of the State of Massachusetts, United States of America,
3. Accused No. 3-Mr. Baba Saheb Kalyani, Vice Chairman, Kalyani Group and Director M/s. Nandi Infrastructure Corridor Enterprises Limited and President SAB Engineering and Construction, Bangalore,
4. Accused No. 4-Mr. Ashok Kheny, Managing Director, M/s. Nandi Infrastructure Corridor Enterprises Limited and President SAB Engineering and Construction, Bangalore,
5. Accused No. 5-Mr. Richard Hangen, Chief Executive Officer, M/s. Vanasse Hangen Brustlin Inc., United States of America,
6. Accused No. 6-Maj. C.R. Ramesh, Former Secretary to Government-PWD, Government of Karnataka, Presently Director NICEL 1,
7. Accused No. 8-Mr. Anees Siraj, Former Special D.C., KIADB BMICP,
8. Accused No. 9-Mr. R. Basavaraj, Former Project Co-ordinator BMICP PWD,
9. Accused No. 12-Mr. R.V. Deshpande, Former Minister for Industries, Government of Karnataka,
10. Accused No. 13-M/s. Nandi Infrastructure Corridor Enterprises Limited,
11. Accused No. 14-Mr. Shivkumar Kheny, Director, NICEL,
12. Accused No. 38-Mr. Subhir Hari Singh IAS, Former Principal Secretary, Commerce and Industries,
13. Accused No. 39-Mr. Kongwad IAS, Former CEO and EM KIADB and Former D.C. Bangalore Rural,
14. Accused No. 41-Mr. S.M. Krishna, Former Chief Minister of Karnataka,
15. Accused No. 44-M/s. Nandi Economic Corridor Enterprises Limited,

16. Accused No. 57-M/s. ICICI Bank Limited, ICICI Bank Tower, Bandra, Mumbai,
17. Accused No. 58-Mr. Mohid Batra, Joint General Manager, ICICI Bank Limited,
18. Accused No. 65-Mr. B.S. Patil, IAS, Former Chief Secretary, Government of Karnataka,
19. Accused No. 77-Mr. T. Sham Bhat, IAS, Formers CEO and EM KIADB,
20. Accused No. 78-Mr. B.S. Yediyurappa, Former Chief Minister,
21. Accused No. 88-Mr. Vijay Gore, IAS, Former Principal Secretary,
22. Accused No. 89-Mr. T.B. Renuka Prasad, Deputy Secretary to Government Cum Project Co-ordinator, BMICP, Government of Karnataka,
23. Accused No. 90-Mr. CM. Udasi, Minister for Public Works, Government of Karnataka,
24. Accused No. 91-Mr. S.S. Topagi, Former Secretary, BMICAPA,
25. Accused No. 92-Mr. D.K. Shivkumar, Member of Karnataka Legislative Assembly Former Minister of Urban Development,
26. Accused No. 93-Mr. Mruthyunjaya Swamy, Former Chief Engineer, (C&B) in July 2002 and Secretary to Government, PWD, Government of Karnataka,"
27. Accused No. 94-Mr. Bisse Gowda, Chief Engineer C&B South-PWD,
28. Accused No. 96-Mr. M.B. Dyaberi, IAS CEO, KIADB,
29. Accused No. 97-Mr. Narasimha Murthy, Manager, Special DC"s Office, KIADB BMICP,
30. Accused No. 102-Mr. Narayan Vagul, Former Chairman ICICI Bank, presently Chairman NICEL.

The court has also allowed two applications filed by the Complainant seeking attachment of properties thus:

ORDER

The applications filed by the complainant u/s. 3 of the Criminal Law Amendment Ordinance, 1944 (Ordinance No. XXXVIII of 1944) are hereby partly allowed.

Issue ad-interim order of attachment against A.3 Mr. Baba Kalyani, A.4 Mr. Ashok Kheny, A.5 Mr. Richard Hangen, A.6 Maj. C.R. Ramesh, A.13 M/s. Nandi Infrastructure Corridor Enterprises Ltd., A.14 Mr. Shivkumar Kheny, A.44 M/s. Nandi Economic Corridor Enterprises Ltd., A.57 M/s. ICICI Bank Limited and A.58 Mr. Mohit Batra, in respect of the entire property at Annexure CE2 as reflected in Page 1781 u/s 4(1)(2) of the Criminal Law Amendment Ordinance 1944.

Issue show cause notices to A.3 Mr. Baba Kalyani, A.4 Mr. Ashok Kheny, A.5 Mr. Richard Hangen, A.6 Maj. C.R. Ramesh, A.13 M/s. Nandi Infrastructure Corridor

Enterprises Ltd., A.14 Mr. Shivkumar Kheny, A.44 M/s. Nandi Economic Corridor Enterprises Ltd., A.57 M/s. ICICI Bank limited and A.58 Mr. Mohit Batra as to why the attachment order should not be made absolute.

Further, issue ad-interim order of attachment of the amount collected in the form of toll for the preceding period of two years from today at all toll centers or equivalent value thereof with whomsoever the possession of the said amount of toll among accused persons is available, along with the necessary show cause notice as to why the order be not made absolute.

Notices shall be issued to all the interested parties of the order.

The investigating agency shall see the assistance of Governmental Agencies including the jurisdictional police to monitor the number of vehicles plying on the toll road to ascertain the proper quantification of the toll amount of equivalent value thereof.

3. The learned Senior Advocate Shri C.V. Nagesh and the learned Senior Advocate Shri D.L.N. Rao appearing for the counsel for the petitioners have raised the following contentions:

A complaint could be lodged before the Court of the Special Judge designated under the PC Act, only if it involves a public servant who is accused of an offence punishable under the provisions of the said Act. Conversely a complaint against private parties would not lie unless the complaint disclosed a nexus in the commission of an offence under the Act, by a public servant with the participation by such private party. It is hence contended that the Special Judge could not have proceeded in respect of the charges of offences under the PC Act without there being any prior sanction as required u/s 19 of the Act.

Reliance is placed on the decisions of the apex court in Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, and State of U.P. Vs. Paras Nath Singh,

It is further contended that the complaint is filed in respect of a public project which was conceived in the year 1995 and a Frame work Agreement was signed in the year 1997 between the State of Karnataka and Accused No. 13, NICE. The allegations of the terms of the said agreement having been blatantly and fraudulently manipulated and wrested in favour of the petitioners with the active and direct or indirect connivance of the large number of persons in the officialdom-for the illegal benefit of the petitioners at the cost of the people of the State and its land, is filed after a lapse of 15 years.

It is also stated that the above said project has been the subject matter of serial litigation since the year 1997. There was a major challenge by way of a public interest litigation in a writ petition before this court in WP 29221/1997-HT Somashekar Reddy v. Government of Karnataka. The above said Framework Agreement dated 3-4-1997 was sought to be quashed and a direction was sought to the Central Bureau of Investigation to enquire into the matter and prosecute those involved for criminal offences. A Division Bench of this court by

its Order dated 21-9-1998 had dismissed the petition holding as follows:

74. It has not been shown that the right of any individual or group of individuals has been illegally affected by the execution of the agreement. It has not been shown that how the agreement results in illegally depriving of any rights of any individual or groups of individuals. The agreement could only be challenged on the ground that it is mala fide or arbitrary or opposed to public policy of the laws of the land which the petitioners have failed to show.

75. As we do not find ourselves in agreement with the contentions raised by the petitioners, question of holding a C.B.I. enquiry for any act of omission or commission of Respondent No. 2 does not arise.

76. For the reasons stated above, we do not find any merit in this petition and dismiss the same with no order as to costs.

A SLP said to have been filed against the said Order, before the Supreme Court of India, was dismissed on 26-3-1999.

Subsequently, yet another writ petition in WP 45386/2004- J.C. Madhuswamy v. State of Karnataka was filed. A large number of respondents were arrayed therein, including many who are the accused in the present complaint.

That petition was founded on allegations of rank corruption, mal-administration, compromising the wealth of the State, unholy collusion of public servants with private parties etc. It is contended that various contentions raised therein are reiterated in the present complaint.

The said petition was dismissed by a detailed Order by a Division Bench by its Order dated 3-5-2005 in the following terms:

42. In the result, the writ petitions are disposed of as under:-

(1) Writ Petition No. 45386 of 2004 filed by J.C. Madhuswamy and others is dismissed with costs which are assessed at Rs. 50,000/- which the petitioners shall pay to the Karnataka State Legal Services Authority within four weeks from the date of receipt of a copy of this order failing which the Member Secretary of the said Authority will take steps in accordance with law to execute this order.

(2) Writ Petition Nos. 45334 and 48981 of 2004 are allowed directing the State of Karnataka and all its Instrumentalities including the Board to forthwith execute the Project as conceived originally and upheld by this Court in Somashekar Reddy's case and implement FWA in letter and spirit. Consequently, Government Orders dated 4.11.2004 and 17.12.2994 constituting the Review Committee and Expert Committee are quashed. The reports submitted by these committees in pursuance to these orders and all subsequent actions taken incidental thereto are also quashed. Nandi is also directed to implement the Project as expeditiously as possible. Parties will bear their own costs in these two cases.

(3) We further direct that Shri K.K. Misra, Chief Secretary to the Government of

Karnataka and Shri M. Shivalingaswamy, Under Secretary, Department of Industries and Commerce be prosecuted as envisaged by Section 340 of the Code of Criminal Procedure for knowingly withholding important facts and documents from the court and making false statements in their affidavits filed in this Court. Accordingly, Registrar (Judicial) of this Court is directed to file a complaint against them in the court of competent jurisdiction.

A copy of this judgment be sent to the Member Secretary, Karnataka State Legal Services Authority, Bangalore for necessary action.

It is emphasized by the learned counsel for the petitioners that while deciding the above petition, two issues framed for consideration were as follows:

1) Whether the FWA entered into between the Government of Karnataka and Nandi was a result of any fraud or misrepresentation as alleged by J.C. Madhuswamy and others and the State Government?

2) Whether any excess land than what is required for the Project had been acquired by the State Government and whether it is open to it to raise such a plea?

It is pointed out that the Division Bench negated the contention that the agreement was vitiated by misrepresentation and that there was any alleged mischief in acquiring the extent of land.

It is also contended that a Division Bench of this court, in other matters arising out of a challenge to acquisition of land for the project, upheld the acquisition in Writ Appeal 72/2004 and connected matters by its judgment dated 28.2.2005. It was specifically held that the requirement of 20193 acres of land comprising both private and Government lands was not irregular, and that this had been stated in Somashekar Reddy's case itself, earlier.

Both the above matters namely, the petition decided on 3-5-2005 and the appeals decided on 28-2-2005 having been heard by the apex court together, by its judgment dated 20.4.2006, has given a finality to all controversies surrounding the BMIC project and hence, the same cannot be re-opened in the guise of the present complaint.

It is also pointed out that the Supreme Court upheld the mandamus issued by the High Court of Karnataka to execute the project in respect of the Framework Agreement by holding as under:

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, there was no necessity for reviewing all decisions taken by the previous Government, which is what appears to have happened. That such an action cannot be taken every time there is a change of Government has been

clearly laid down in *State of U.P. v. Johri Mal* and in *State of Haryana v. State of Punjab* where this Court observed thus:

(I) 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.

It was also observed in Para 81:

We agree with the decision of the Division Bench with the acquisition of the entire land for the project was carried out in consonance with the provisions of KIAD for the public project of great importance for the development of State of Karnataka. We do not think that a project of this magnitude and urgency can be held up by individuals raising frivolous and untenable objections thereto. The powers under the KIAD represent power of making policy vested in the State which may need pre-exercise even to the detriment of individual property rights so long as it chose larger public purpose. Looking at the close as well, we are satisfied that the project is intended to represent larger public interest of the State and that is why it was entered into and implemented all alone.

In Para 62, the Supreme Court expressly held:

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

Apart from the above, the learned counsel would contend that the following decided cases were also a bar for consideration of the allegations raised in the complaint.

4. Judgment and Order dated 2.2.2009 passed by this court in Writ Petition No. 573/2009 (*V. Nagaraj vs. State of Karnataka and Others*) regarding a challenge to the toll collection notification,

5. SLP No. 12880/2009 (*V. Nagaraj vs. State of Karnataka and Others*), which was dismissed by the Supreme Court on 10.10.2011.

6. Order dated 20.2.2009 passed by the Supreme Court in SLP Nos. 1789/2009 (*NICE Ltd. Vs. State of Karnataka and Others*) and 3312/2009 staying the judgments and order of this court dated 12.1.2009 and 2.2.2009 whereby this court had directed an enquiry by Lokayukta into the letter accompanying a book by Mr. H.D. Devegowda raising similar allegations as in the present complaint. Later Mr. H.D. Devegowda filed an application for vacating the stay order dated 20.2.2009. The Supreme Court rejected the application and made absolute the order of stay till disposal of the SLP Nos. 1789/2009 and 3312/2009 on

23.8.2011. The matter is pending before the apex court.

7. Order dated 3.11.2009 passed by Special bench of the Supreme Court of India in Contempt Proceeding in C.P. No. 96/2007 dealing with the implementation of the present project, directing that the project shall be allowed to be completed as per the Outline Development Plan (ODP) dated 12.2.2004 issued by the BMICPA.

8. Judgment and order dated 11.2.2010 in Writ Petition No. 13813-17/2009 (Karihanumaiah vs. State of Karnataka and Others) of the Single Judge of this court inter alia holding that the present project has to be implemented without reduction of land and as per the ODP. The said judgment was affirmed by the Division Bench of this court in Writ Appeal No. 650-54 & 753/2010 (Hanumappa and Others vs. State of Karnataka and others) vide judgment and order dated 6.10.2010 and in Writ Appeal Nos. 1050-52/2010 (Karehanumaiah and Others vs. State of Karnataka and others) and Writ Appeal No. 470/2010 (Nirmala Devi and Others vs. State of Karnataka and Others) vide judgment and order dated 16.11.2010 and 23.11.2010, respectively.

9. Judgment and order dated 23.7.2010 passed by the Division bench of this court in Writ Appeal No. 1192/2007 (M. Nagabhushan vs. State of Karnataka and Others) negating the very same contention as sought to be raised in the present complaint. The said judgment and order was affirmed by the Supreme Court vide its judgment and order dated 2.2.2011 in Civil Appeal No. 1215/2011 M. Nagabhushana Vs. State of Karnataka and Others, Pertinently, the Supreme Court in the said judgment had held that reagitating the very same issue would amount to abuse of process of court. In the said judgment, the Supreme Court has also passed an unequivocal direction that the State Government should not do anything including releasing any land acquired under the present project as that may impede the completion of the project and would not be compatible with larger public interest which the project is intended to serve.

10. The Supreme Court in the aforesaid Contempt Proceeding in C.P. No. 96/2007, vide its order dated 21.7.2011 has directed that no land pertaining to BMICP should be de-notified.

It is therefore contended that the complaint is a mere rehash of the very controversies and issues sought to be raised from time to time by various parties—some with seemingly genuine concerns and others with an apparent vested interest and devious motives. It is pointed out that the present complaint professing to provide minute details of the irregularities committed at various levels of the officialdom, from time to time, from inception of the BMIC Project—to allegedly confer illegal benefit on the petitioners and others cannot be entertained under the nomenclature of a criminal complaint—when the very alleged irregularities has come in for detailed examination on innumerable occasions before this court and the apex court. Further, the scrutiny that the subject matter has undergone in judicial review was not restricted to the alleged

criminality alone of the transactions involved. It is hence contended that the attempt on the part of the complainant to rekindle stale issues is highly mischievous and mala fide. The proceedings, it is contended, is barred by res judicata.

It is further contended that in so far as the order of attachment issued by the court below is concerned, it is pointed out that the Special Judge has invoked power u/s 4(1)(2) of the Criminal Law Amendment Ordinance, 1944. The very jurisdiction of the court below to issue such an order is called in question. Reliance is placed on a decision of this court in the case of H.C. Sathyan and Sowmya Sathyan Vs. The State. Wherein this court has held thus, in interpreting the scope of Section 3 and 4 of the Ordinance, 1944 and sub-Section (6) of Section 5 of the P.C. Act, vis-à-vis the power of Court of Special Judge, under the P.C. Act to pass an Order of attachment during the stage of investigation:

11. Therefore, it is clear from a combined reading of Sections 3 and 4 of the Ordinance, 1944 that the application can be filed before a District Judge, whether or not any Court has taken cognizance of the offence and the offences would also include an offence punishable under the P.C. Act, which is clear from the schedule to Section 2 of the Ordinance.

12. The effect of sub-Section (6) of Section 5 of the P.C. Act and Sections 3 and 4 of the Ordinance, 1944 is that, an application for attachment of property in respect of an offence punishable under the P.C. Act can be made by the State Government or the Central Government before the District Judge, whether or not any Court has taken cognizance of the offence. In other words, the application can be filed for attachment of a property even before a case is taken up for trial by the Special Judge under the P.C. Act. The second conclusion to be drawn from a combined reading of the aforesaid provision is that, in order to exercise the power conferred on a District Judge by the Ordinance of 1944, the Special Judge, under the P.C. Act, can do so only when he is trying an offence under the P.C. Act.

13. Even looked from another angle, the contentions put forward by learned Counsel Rajendra Reddy for the respondent-Lokayukta cannot be accepted because, if the Special Judge were to be clothed with the powers of a District Judge with regard to passing an order of attachment even before trying an offence, then, such situation would militate against the provisions contained in Sections 3 and 4 of the Ordinance, 1944. If a Special Judge under the P.C. Act is also authorised to pass an order of attachment during the stage of investigation, it would mean that the District Judge, who is empowered under the Ordinance, 1944 as well as the Special Judge under the P.C. Act both will have the jurisdiction to pass an order on an application for attachment of property. Such a situation is not contemplated on a careful reading of Sections 3 and 4 of the Ordinance, 1944 and sub-Section (6) of Section 5 of the P.C. Act. Therefore, the provisions contained in sub-Section (6) of Section 5 of the P.C. Act cannot be read as to take the view that in respect of an application for attachment of a property, the District Judge and the Special Judge both will have the power to act

simultaneously.

14. The aforesaid reasoning is also supported by the Division Bench decision referred to by Learned Counsel Shri. S.G. Bhagavan for the appellants. In the case of Dr. V.K. Rajan vs. State of Kerala (supra), a Division Bench of the Kerala High Court has held that the power of attachment under the Ordinance is given to the Special Judge u/s 5(6) of the P.C. Act only "while trying the case" and not during pre-trial stage or investigation stage or after attachment. In the course of the said decision, the Division Bench also observed by relying on the Apex Court decision reported in Nelson Motis Vs. Union of India and another, that, when the words of the statute are clear, plain and unambiguous and capable of one meaning only, the Courts are bound to give effect to that meaning irrespective of the consequences.

Therefore, the learned Senior Advocates would seek that the petitions be allowed as prayed for.

11. On the other hand, the learned counsel appearing for Respondent No. 2 and the said respondent himself, appearing in person in one of the petitions, contend as follows:

The primary argument of the petitioners that there was no prior sanction to prosecute the complaint before the Special Judge, is not relevant as all the petitioners before this court were private parties and the question of sanction did not arise in so far as they are concerned. No public servant who has been made an accused has come forward to raise any such objection to the proceedings even though process had not been issued by the trial court, there was enough publicity generated to prompt those public servants to have taken steps. The present petitioners cannot be permitted to agitate an issue that does not concern them.

It is further contended that the petitioners are arraigned as the accused in the pending complaint. In respect of the specific allegations of illegality, conspiracy and corruption etc., made in the complaint, the petitioners had not provided any specific explanation and have also not denied the same. Hence it is contended that it would be patently unlawful for any judicial forum to proceed to consider the "defence" of the accused petitioners. As for instance the categorical assertion that the petitioners had proceeded to collect toll from March 2010, even though the condition precedent that the petitioners construct a cement concrete road to be entitled to collect such toll had been flagrantly and fraudulently violated, has not been denied, the silence of the petitioners in this regard when they had a duty to speak would disentitle the petitioners to any relief before this court.

It is pointed out that the petitions are supported by affidavits, which are defective in material particulars as there is no indication of the relationship of the deponent to Ashok Kheny or Shivkumar Kheny, in the affidavits filed in the respective petitions filed by them. It is also pointed out that having regard to the date of incorporation of M/s. NICEL and M/s. NECEL, namely, 1996 and 2002,

respectively, the entities would not be in a position to address any allegation concerning a period prior to their incorporation.

It is contended that as regards the previous litigation referred to by the petitioners, it is not disputed that the project has been upheld by this court and the apex court, but it is contended that the courts did not have the benefit of numerous documents that form the basis of the present Complaint, the same were not even available in the public domain earlier. In any event, it is contended, that there is not even an attempt to satisfy this court that the allegations made in those earlier proceedings were the very allegations made in the present complaint. The petitioners could not seek to halt the investigation solely on the strength of an unsupported erroneous belief.

(Incidentally, the petitioner in WP 45085-45086/2012 has filed into court a compilation dated 12-6-2013, furnishing detailed particulars of the very assertions and allegations made by the Complainant, Chapter wise, addressed or dealt with by this court or the apex court.)

It is contended that merely because there are several decisions of this court or the apex court holding in favour of the BMIC project, that the legality of the Court of the Special Judge proceeding to direct investigation u/s 156(3) of the Cr.P.C. could be doubted. It is asserted that no judgment can be read or interpreted to curtail the statutory power of a court.

It is contended that the decision of this court in B.V. Acharya's case and subsequent decisions on the same lines, to the effect that a Special Judge constituted under the PC Act, could not take any steps on a complaint, unless accompanied by a sanction order, as being erroneously decided. Attention is drawn to decisions of other High Courts, which according to the respondent lay down the correct position of law.

It is contended that there is an absolute bar for this court to interfere with any interim orders passed by the Special Judge, in view of Section 19(3)(c) of the PC Act. Resort cannot be had either to Section 482 CrPC or Article 226 or 227 of the Constitution of India, to sit in revision over the interim orders passed by the Special Judge.

It is contended that the Special Judge is competent to pass an Order of attachment in terms of the Ordinance, 1944. He is to be construed as a District Judge, whether the stage of the proceedings are at the pre-trial, trial or post-trial stage. The PC Act does not itself permit attachment of any property, suspected to have been derived from the commission of any of the offences specified therein. It has simply adopted a preexisting statute, for the purpose.

In the light of the rival contentions and on a consideration of the material facts and circumstances that form the basis of the complaint and having regard to the chequered history of legal battles that the BMIC Project has meandered through, it becomes necessary to examine whether the Special Judge is justified in not

only directing an investigation by the police in respect of the allegations against some of the accused but in also issuing an order of attachment of property of some of the accused.

It is a matter of record that there were repeated challenges made as to the legality and validity of the Frame Work Agreement, there were challenges on the basis of alleged mala fides, fraud and breach of trust in the matter of acquisition of land for the project on the part of the petitioners as well as the state government and its officials. There was a challenge to the alleged unlawful toll collection and other issues, in several petitions before this court, espousing public interest. This court in its writ jurisdiction having examined and re-examined the challenges so brought, which were on all conceivable grounds, and having soundly negated those petitions and the apex court in turn having affirmed the views expressed by this court-whether the complainant could have been permitted by the Special Judge to "test the waters" as it were, in seeking criminal prosecution of the concerned private parties and public servants, past and present, on allegations that do not, in the ultimate analysis, seek to make out a different case from the one sought to be made out by the above said petitioners who had sought intervention of this court in public interest.

The complaint, significantly does not make a single reference to any of the matters, that were agitated before this court and the apex court over the years, pertaining to the subject, that is central to the complaint, namely the BMIC project. Attention is not drawn to the particular documents in the list of documents accompanying the complaint, which would demonstrate that the complaint is unique and is with reference to allegations that were not canvassed earlier. The explanation sought to be offered that many of the documents that are now presented along with the complaint were not available earlier in the public domain and would substantiate the allegations fully and conclusively-whether could be a premise on which the complaint could be sustained was an imperative that does not appear to be demonstrated.

That the Special Judge has, apparently during the course of hearing the complainant on his complaint, been made aware of "verdicts" of this court as well as the apex court-but in spite of the same was proceeding to direct investigation, is evident from the following observation of the learned Special Judge:

It is necessary to mention that this Court considering the complaint with due respects to the verdicts already pronounced and the lands, extent and the earmarking already upheld by the Honourable High Court and the Apex Court....

This presumption that the subject matter of the complaint was therefore outside the purview of the "verdicts" in the earlier proceedings and the findings, observations and directions would have no bearing on the allegations made in the present complaint, ought to have been briefly stated. Though it is not evident as to which "verdicts", of this court, pertaining to the subject matter, had been brought to the attention of the Special Judge. The further observation to the

following effect would hardly justify the same being overreached, "with due respects". (sic).:

...This Court is looking into the aspects of the duping and cheating the public, keeping the farmers, residents of the area and the occupants in total darkness of what was going on and the land that is covered and the happenings that has resulted in loss of more than thousands of crores of rupees.

It is to be kept in view that this court acting under Article 226 and Article 227 of the Constitution of India and in proceedings seeking a writ of certiorari or such other writ, is not fettered by lack of pleadings or other niceties of procedure, if in its scrutiny, an illegality or acts of omission or commission, on the part of the State and its instrumentalities is brought to light, to take such measures as the law of the land would permit to correct the same. In this regard its might and reach is even greater than that of the apex court. This power comes into full play especially in matters that are brought before it in public interest. This court's jurisdiction in such matters would be in full bloom. The power to initiate criminal action, if necessary, in any given case is an incidental privilege. In fact, the several public interest litigation matters that were filed, pertaining to the BMIC Project, were seeking reference of the matter to the Central Bureau of Investigation for further investigation.

Further, even assuming that this Court, in the several earlier proceedings, did not have occasion to address the details that are now brought to light in the complaint with reference to documents, of the acts of omission and commission of the several accused, the project and its complex details having passed muster by this court with reference to illegalities, arbitrariness, constitutionality and more particularly to alleged criminal acts, it required the Special Judge to proceed with extreme prudence having regard to blatant overlapping allegations that pervade the complaint, vis-?-vis, the contentions raised in the several earlier writ proceedings.

It is also to be kept in view that the contract in question is between the State government and a private party or parties. It was for this primary reason that all alleged irregularities were sought to be tested in writ proceedings through out: As it invariably involved State action, no matter that an individual officer or other representative acted on behalf of the State in transacting business. Even if the argument of the complainant to the effect that he has now produced material that was never noticed earlier-these would at best qualify as additional documents to support the self-same allegations canvassed earlier as well as certain allegations made with a variation. It may be that in some of the earlier petitions the allegations were generally against the State, without specifying individual persons, the exercise of making specific allegations against particular persons, as is the highlight of the present complaint, would make no appreciable difference. This was precisely the endeavour of the several petitioners who had approached this court in the earlier petitions. In that, they sought that individual blame be fixed on the particular officer, minister or such other worthy, after a

probe by the CBI. The only difference in the present complaint is that the complainant has carried out the exercise of identifying the guilty and requires the Lokayukta Police to second his opinion, albeit with reference to material that is only now available, according to the complainant. This the Special Judge has not endorsed, which in the opinion of this court he ought to have, in devoting some space to that part of the reasoning justifying the reference of the matter for investigation.

In this regard, it is pertinent to take note of the attention the apex court has given to the controversies surrounding the BMIC Project-especially in the case of State of Karnataka and Another Vs. All India Manufacturers Organization and Others, A three judge bench decision.

The apex court has briefly stated the sequence of events commencing with the invitation of tenders for the Bangalore-Mysore Expressway, up to the date of its judgment. While also discussing the merits of the contentions in appeals against Orders of this Court dismissing several Public Interest petitions pertaining to BMIC. Therefore the better part of the judgment is reproduced for useful reference:

...The Project is a massive undertaking, which requires design, construction, maintenance and operation of an Express Highway between Bangalore and Mysore. Equally, the Project is to also develop infrastructure around the periphery of Bangalore and all along the Bangalore-Mysore Express Highway, which is about hundred years old and has become incapable of handling the heavy volume of vehicular traffic.

5. On 28.9.1988, the State of Karnataka invited tenders for implementation of such an Express Highway. There was no satisfactory response to the tenders called for. There was only one tenderer and the tenderer insisted on certain conditions which were not acceptable to the Government of Karnataka. Thus, the bid of the tenderer was not accepted. A survey was conducted by the Asian Development Bank and its report pointed out that the projected population of Bangalore city would be about 8.2 million by the year 2011 and, therefore, there was an urgent need for improvement of the Bangalore-Mysore Corridor. It was also suggested that the State Government bear 20% of the project cost, along with the cost of land acquisition, if such a project was to be implemented. The State Government did not have sufficient means and had to look for other alternative ways for implementing this project. The State Government then decided to take up the project on a Build-Own-Operate-Transfer (hereinafter "BOOT") basis with any consortium. The consortium was to carry out the development of the project from its own resources and recoup its investment by collection of tolls along the Express Highway.

6. On 20.2.1995, a Memorandum of Understanding (hereinafter "MOU") was entered into between the State Government and the Consortium of Vanasse Hangen Brustlin Inc. USA (hereinafter "VHB"), Kalyani Group of Companies

(hereinafter "Kalyani") and SAB Engineering and Construction Inc. USA (hereinafter "SAB"). The Governor of the State of Massachusetts, U.S.A., Mr. William Weld, and Mr. H.D. Deve Gowda, the then Chief Minister of the State of Karnataka were present and appended their signatures thereto. It was agreed that the State Government would extend support for the development of the Bangalore-Mysore Expressway, provided commercial viability, competitiveness and feasibility of the project was established to the satisfaction of the State Government. The Consortium submitted a Project Report for review by the State Government.

7. On 5.6.1995, a "High Level Committee" (hereinafter "the HLC") was formed under the Chairmanship of the Minister for Public Works. The HLC consisted of the Principal Secretary, Commerce and Industries Department; Principal Secretary, Housing and Urban Development; Secretary, Public Works Department; Chief Engineer C and B (South Zone, Bangalore). The Chairman and Managing Director, Karnataka State Industrial Investment Development Corporation, were official members and the Chairman, Technical Advisory Committee (Irrigation) one K.C. Reddy-was a non-official member. The HLC met from time to time and reviewed the progress made in the implementation of the Project. On 26.8.1995, the Consortium presented the details of the Project to the HLC. After detailed consideration of the Project, on 12.10.1995 the HLC submitted its report to the Government. The Project was considered in detail by the State Cabinet Sub-Committee, which recommended that the matter be placed before the Cabinet for consideration. The report of the HLC and the Project Report made by the Consortium was accepted by the Cabinet, subject to the modification that instead of seven townships as proposed in the Project Report, only five townships were to be developed.

8. A Government Order (No. PWD 32 CSR 95, Bangalore, dated 20.11.1995) ensued, which in terms pointed out that the implementation of the Project was to be done by a private consortium. The Preamble to the Government Order recited that the Project work was to be completed by the Consortium with their own resources and that the Consortium would keep the Project going for thirty years, so as to get a return of the expenditure, profit, etc. through collection of tolls. It is important to note that the land acquisition expenditure was also to be borne by the Consortium. To make the Project economically viable, the Consortium had proposed development of seven townships, which as already stated, was reduced to five by the Cabinet. It is also important to note that the Government Order specifically permitted the development of five townships along with the construction of the Express Highway. As already stated, the Consortium was to recoup its expenditure and obtain profits through tolls-the first system of its kind in Karnataka. Consequently, it was felt that the modification of the existing laws might become necessary. The necessary legal changes were to be examined by the concerned administrative departments, who would take ".....necessary action and also extend cooperation for implementation of the Project."

9. The three members of the Consortium-VHB, Kalyani and SAB-entered into a "Consent and Acknowledgement Agreement" (hereinafter "the CAA") dated 9.9.1996, specially assigning their respective rights under the Government Order (dated 20.11.1995) and the MOU with regard to the Project, in favour of Nandi Infrastructure Corridor Enterprises Ltd. (hereinafter "Nandi"). Nandi had been registered on 16.1.1996 as a company under the Companies Act, 1956, to serve as a corporate vehicle for the development and implementation of the Project. On 21.12.1996, the CAA was forwarded to the State Government for necessary action. The State Government was advised by its Law Department (through Opinion No. 182 OPN 11/97 dated 3/4.3.1997) that since the Government was finalising a separate agreement with Nandi, there was no need to specifically consent to the CAA. Consequently, the State Government took no further action except noting it.

10. In February 1997, Nandi submitted a draft of the Framework Agreement (hereinafter "the FWA") to be executed between it and the State Government. This draft FWA was considered by the Core Committee, which had been set up to negotiate the terms with Nandi. It was also referred to the Cabinet Sub-Committee, which suggested certain modifications to the FWA. After due incorporation of such modifications, the Government of Karnataka approved the FWA on 17.3.1997 and the same was signed between Nandi and the State Government on 3.4.1997.

11. Under Clause 4.1.1 of the FWA, the State Government set up an "Empowered Committee" headed by the Chief Secretary of the State to oversee the Project and its implementation keeping in mind the importance of timely completion. The Empowered Committee included technical experts and held about ten meetings from time to time, the last one being on 24.7.2004. The main task of the Empowered Committee was to remove administrative bottlenecks and to ensure the smooth execution of the Project. The Empowered Committee was the State's agent of coordination and carried out the State Government's obligations under the FWA.

12. One of the key obligations of the State Government under the FWA was to make available approximately 20,193 acres of land. As set out in Schedule I to the FWA, 6,956 acres was Government land and the remaining 13,237 acres was private land, which was to be acquired by the State Government. There was also an undertaking by the State Government under the FWA to carry out appropriate amendments to its laws, rules and regulations so that the massive Project could be implemented fully and within a time-bound schedule. Accordingly, the provisions of the Karnataka Industrial Areas Development Act, 1966 ("the KIAD Act") were amended by Act No 11 of 1997 so that the land required for the Project could be acquired expeditiously. The Karnataka Industrial Areas Development Board ("KIAD Board") set up under the KIAD Act, entered into an agreement with Nandi on 14.10.1998 for acquisition of private land. Notifications were issued from time to time for acquiring lands for the Project.

The Litigation in Somashekar Reddy

13. While all these frenetic activities were going on for the successful and timely implementation of the Project, the FWA was challenged in a Public Interest Writ Petition No. 29221/97 in November 1997 (reported as H.T. Somashekar Reddy v. Government of Karnataka and Anr.) by one H.T. Somashekar Reddy, a retired Chief Engineer. The State Government and Nandi were the two respondents thereto. The FWA was challenged on all conceivable grounds and the writ petition was vigorously opposed by the State Government and also by Nandi. Both the State Government and Nandi contended that the FWA was valid and that it had been entered into in larger public interest. It was also successfully pleaded on the part of the State Government that it had agreed to provide the "minimum extent of land" for the Project, which was 20,193 acres of land and that no excess land was being acquired.

14. The Division Bench of the Karnataka High Court hearing the said writ petition formulated for its consideration, the following questions:

- (a) Whether the Government has acted arbitrarily in entering into the agreement with Respondent No. 2?
- (b) Whether agreement is illegal as being opposed to public policy?
- (c) Whether the agreement contravenes any Constitutional provisions or other existing enactments?
- (d) Whether the agreement is vitiated by mala fides?
- (e) Whether the rights of any individual or groups of individuals is being illegally affected by the execution of the agreement?
- (f) Scope and extent of judicial review in matters of State Policy.

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

16. Each of the questions was answered in favour of the respondents i.e. State of Karnataka and Nandi. It was held that the FWA was not arbitrarily entered into by the State Government; that it was not opposed to public policy; that it was not unconstitutional or illegal; that it was not vitiated by mala fides; that no rights of any individual or individuals had been illegally affected by the execution

of the agreement. Finally, the court found that it could not exercise its power of judicial review to interfere with the FWA which was in reality a policy choice of the Government.

17. Further, as we shall discuss subsequently, the argument of excess land being acquired, was not acceded to by the High Court which found that the Project envisaged, in addition to the construction of an expressway between Bangalore and Mysore, other connected developmental activities, such as:

- (i) Development of area between Bangalore-Mysore.
- (ii) Divergence of traffic from Mysore-Chennai; Chennai-Bombay.
- (iii) Construction of elected road from Sirsi Circle upto 9.4 Kms.
- (iv) Construction of 2 truck terminals.
- (v) Development of five identified local areas into townships with all infrastructure for habitation and economic activities.
- (vi) Utilisation of sewage water being put to no productive use by BWSSB.
- (vii) Development of tourism to augment the State's revenues.

18. Thus, through an exhaustive consideration of all the background material and documents presented to it, the High Court dismissed the writ petition by holding against the petitioner on all the contentions urged. The judgment in Somashekar Reddy (supra) was challenged before this Court (in SLP (Civil).....CC 1423/99) but was dismissed in limine on 26.3.1999. The judgment in Somashekar Reddy (supra) thus reached finality.

The Present Litigation

19. Although the writ petition in Somashekar Reddy (supra) was dismissed by the High Court by its judgment dated 21.9.1998, it is of relevance to notice that between November 1997, when this writ petition was filed, and when the petition was dismissed, the work of implementing the Project was going on in view of the stand of the State Government and Nandi. Accordingly, a number of notifications were issued for acquisition of the land required under the FWA. Many landowners challenged the acquisition of their lands before the High Court. Although the issue of the landowners will be dealt with in the second part of our judgment, it will be useful to note that the Government supported the stand of Nandi before the Single Judge, who partially allowed the land owners' petitions. It was during the writ appeal stage that the Government reversed its stance and opposed Nandi.

20. Even while the said writ appeals filed in the land acquisition matters were pending before the High Court, a second round of writ petitions challenging the Project itself was filed before the High Court. Despite the High Court's go-ahead for the Project in 1997, and after seven years of implementation, suddenly in the year 2004, these petitions were filed against it in so-called "public interest" by

two Members of the Legislative Assembly (hereinafter "MLAs") and a "social worker" (i.e. Mr. J.C. Madhuswamy and others). This petition prayed for a CBI enquiry and to restrain the State Government from continuing with the Project or acquiring any further land thereunder. Perhaps inspired by Mr. J.C. Madhuswamy and others, and also in the so-called "public interest", All India Manufacturer's Organisation, as well as two ex-Mayors of Mysore (Mr. Dakshinamurthy and another), moved the High Court for a direction to the State Government to implement the Project according to the FWA.

21. The High Court in the impugned judgment (vide Paragraph 18) raised the following two questions for consideration in the three writ petitions:

(1) Whether the FWA entered into between the Government of Karnataka and Nandi was a result of any fraud or misrepresentation as alleged by J.C. Madhuswamy and others and the State Government?

(2) Whether any excess land than what is required for the Project had been acquired by the State Government and whether it is open to it to raise such a plea?

22. The Division Bench disposed of all the writ petitions by a common judgment by which it dismissed Writ Petition No. 45386/04 filed by Mr. J.C. Madhuswamy and others with costs. Writ Petition Nos. 45334/04 and 48981/04 were allowed by the Division Bench directing the State of Karnataka and all its instrumentalities, including the KIAD Board, to execute the Project as conceived originally and to implement the FWA in "letter and spirit". The High Court also directed the prosecution of K.K. Misra, Chief Secretary of the Government of Karnataka and M. Shivalingaswamy, Under Secretary, Department of Industries and Commerce, as envisaged by Section 340 of the Code of Criminal Procedure, 1973, for certain offences which came to its notice as a result of the affidavits filed by them. KK Misra and M. Shivalingaswamy have filed separate appeals with regard to the direction of their prosecution with which we are not concerned at present.

The Contentions of the Appellants

23. The main arguments in the present Civil Appeal Nos. 3492-3494 of 2005 were addressed on behalf of the State of Karnataka by Mr. Anil B. Divan, learned Senior Counsel, whose main contentions are as under:

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

2. That the principle of res judicata cannot be inflexibly applied to Public Interest Litigations, especially when a re-examination of decided issues might be in public interest.

3. To the bar of res judicata, it would be a successful answer that fraud and

misrepresentation had vitiated the entire transaction. Hence, there would be no question of res judicata since the fraud was discovered subsequent to the judgment in Somashekar Reddy (supra).

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

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

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

Fraud and Misrepresentation

24. The main ground on which the matter was argued by the learned counsel for the State of Karnataka before the Division Bench of the High Court was that there was fraud and misrepresentation on the part of Nandi, which vitiated the entire transaction. It was contended before the High Court by the State Government that this fraud came to be noticed subsequent to the judgment in Somashekar Reddy (supra). It is pertinent to note that this point was put on record through the affidavits of K.K. Misra, Chief Secretary of the Government of Karnataka, M. Shivalingaswamy, Under Secretary, Department of Industries and Commerce, which suggested that public interest was being affected as a result of the execution of the FWA. It appears that the main contention of the writ petitioners Mr. J.C. Madhuswamy and others before the High Court was that the FWA was vitiated as a result of fraud and/or misrepresentation. Presumably, this contention was urged in order to get over the bar of res judicata arising from the judgment in Somashekar Reddy (supra). When the matter was argued before us, although Mr. Divan addressed some arguments on fraud, he quickly abandoned them and expressly gave it up. Considering that this was the main thrust of the State's argument before the High Court and has been expressly given up before us, we could have dismissed the appeals on this narrow point alone. Nonetheless, since Mr. Divan argued the question of res judicata with some persistence, we will deal with it subsequently.

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

26. The High Court has come to the categorical conclusion that the flip-flop on the part of the State Government occurred only because of politicians, that the

mala fides, if any, appears to be on the part of the State Government for political reasons. The High Court has pointed out that the FWA did not materialise out of the blue. The FWA was negotiated over several months; it came to be drafted by considering several points that the Cabinet Sub-Committee had raised. As we have already highlighted, it was only thereafter, when detailed deliberations had taken place at the highest levels of the State Government that the MOU was signed and the Project Report accepted. A Government Order (dated 20.11.1995) was issued requiring the Public Works Department to enter into a Memorandum of Understanding with the Consortium of three companies, VHB, SAB and Kalyani. On 9.9.1996, through the CAA, the three members of the Consortium-agreed to "...unconditionally and irrevocably transfer and assign, jointly and severally... " to Nandi "...all rights, interest and title granted to them.....with respect to the Infrastructure Corridor by GOK under the Government Order and the Memorandum of Understanding". The CAA came to be signed by the three members of the Consortium on the one hand and Nandi on the other; the Governor of Karnataka, on behalf of the Government of Karnataka, was shown as the "Consenting Party". A copy of this agreement was forwarded to the State Government along with a forwarding letter dated 21.12.1996 requesting that the Government approve of the same and advise of its approval so that the original agreement could be given to the State Government for its consent. This letter was forwarded by the Public Works Department to the Law Department through a letter dated 22.1.1997 (No. PWD 155 CRM 96) seeking an opinion on the issue. The State Government was advised by its Law Department (through Opinion No. 182 OPN II/97 dated 3/4.3.1997) that since the Government was finalising a separate agreement with Nandi, there was no need to specifically consent to the CAA. Thus, it would appear that the State Government had specifically been made aware of the CAA and the fact that the members of the Consortium had transferred their rights to Nandi. The argument made before the High Court that the Government was unaware of the CAA, was defrauded to execute the FWA is therefore, utterly dishonest. We concur with the decision of the High Court on this issue that the plea was lacking any bona fides and that there was neither fraud nor misrepresentation on the part of Nandi or any member of the Consortium.

27. Subsequently, as we have already discussed, Nandi as the assignee of the Consortium, submitted a draft of the FWA to the State Government which was considered by the Core Committee that had been set up to negotiate the terms with Nandi. The Core Committee referred the draft FWA to the Cabinet Sub-Committee which suggested various modifications to it, which were incorporated in the FWA. Finally, the FWA was approved by the State Government and came to be signed on 3.4.1997. Thus, it appears that the plea of fraud and misrepresentation was clearly an afterthought and it was conveniently raised by the State Government through the petitioners in Writ Petition No. 45386/04, who were rightly described by the High Court as the State Government's "mouthpiece" (vide Paragraph 22).

28. The High Court has also totally disbelieved the affidavits of the Chief Secretary, K.K. Misra, and the Under Secretary, M. Shivalingaswamy on this issue. We have refrained from commenting on the merits of their affidavits since their appeals against prosecution for perjury are pending separately. We may, however, point out that both the affidavits of the two senior bureaucrats are on the issue that certain facts which had been suppressed from the Government had come to light after the judgment in Somashekar Reddy (supra) and that these indicated fraud and misrepresentation on the part of Nandi. Indeed, this was the central argument put forward for impugning the FWA.

29. The FWA was executed on 3.4.1997 and implemented by the parties for at least seven years. Several obligations under the FWA were carried out by the State Government and its instrumentalities and also by Nandi, which had invested a large amount of money in the Project. These included monies for payment of compensation to landowners whose lands were being acquired for the Project. Soon after the FWA was entered into, some interested parties had raised the issue in "public interest" that the FWA was a fraud and was nothing but a charade for a lucrative real estate business on the part of Nandi. The Government through the then Minister for Public Works vigilantly defended the Project against all these allegations both inside and outside the Legislature.

30. It would appear that the change of mind on the part of the State Government came about co-incidentally or otherwise-with a change of Government in Karnataka in 2004. In the year 2004, while the State Government's writ appeal was still pending before the Division Bench, a statement was made by Mr. H.D. Deve Gowda, former Prime Minister, making serious allegations with regard to the Project stating that it was nothing but a charade by which Nandi had converted it into a real estate business. It was at this stage that a note (No. PWD/E/375/2004 dated 6.7.2004) was written by the new Minister, Public Works Department, Mr. H.D. Revanna, who is none other than the son of Mr. Deve Gowda, to the Principal Secretary, Public Works Department. The note in terms states that land acquisition by the State Government for the Project was to cease all the allegation that Nandi was carrying out a real estate business was enquired into. With this, the State Government suddenly halted/slowed all ongoing activities for smooth implementation of the Project. Indeed, it is strange that the State Government woke up after seven long years, and even more strangely after a change in the State's political leadership, to the fact that there was fraud/misrepresentation by Nandi or anyone else.

31. Pursuant to this, the Minister of the Public Works Department set up the "Expert Committee" (headed by K.C. Reddy) to go into the allegations of excess land acquired by the Government for implementation of the Project. After accepting the Interim Report of the Expert Committee, the Government withdrew its appeal filed before the High Court and the reasons for the same are mentioned in a Government Order (PWD 155 CRM 95 BMICP Expert

Committee/2004, Bangalore dated 7.1.2005). As we shall see later in the judgment, the constitution and functioning of this Committee also illustrates the mala fides with which the State Government has approached the Project. Thus, the utter irresponsibility with which the theory of fraud/misrepresentation was put forward is thoroughly exposed by the High Court in its impugned judgment.

Res Judicata

32. Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim *nemo debet bis vexari pro una et eadem causa* ("No one ought to be twice vexed for one and the same cause") and second, public policy that there ought to be an end to the same litigation. It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "the CPC") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the Section is not to be considered exhaustive of the general principle of law. The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to re-agitate the matter again and again. Section 11 of the CPC recognises this principle and forbids a court from trying any suit or issue, which is res judicata, recognising both "cause of action estoppel" and "issue estoppel". There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of principle, can be applied to Public Interest Litigations and second, whether the issues and findings in Somashekar Reddy (supra) constitute res judicata for the present litigation.

Explanation VI to Section 11 states:

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

33. Explanation VI came up for consideration before this Court in *Forward Construction Co. and Ors. v. Prabhat Mandal and Ors.* (hereinafter "*Forward Construction Co.*"). This Court held that in view of Explanation VI, it could not be disputed that Section 11 applies to Public Interest Litigation, as long as it is shown that the previous litigation was in public interest and not by way of private grievance. Further, the previous litigation has to be a bona fide litigation in respect of a right which is common and is agitated in common with others.

34. As a matter of fact, in a Public Interest Litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in a previous Public Interest Litigation would be a judgment in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised/should have been raised on an earlier occasion by way of a Public Interest Litigation. It cannot be doubted that the petitioner in Somashekar Reddy (supra) was acting bona fide. Further, we may note that, as a

retired Chief Engineer, Somashekar Reddy had the special technical expertise to impugn the Project on the grounds that he did and so, he cannot be dismissed as a busybody. Thus, we are satisfied in principle that Somashekar Reddy (supra), as a Public Interest Litigation, could bar the present litigation.

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

Further, Explanation IV to Section 11, states:

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

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

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

37. In *Greenhalgh v. Mallard* (hereinafter "Greenhalgh"), Somervell L.J. observed thus:

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

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

...an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had (sic) decided as incidental to or essentially

connected with (sic) subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the" principle of constructive res judicata underlying Explanation IV of Section 11 of the CPC was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata.

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

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

41. Second, the cause of action in both Somashekar Reddy (supra) and the present cases is the FWA, which includes the provisions for acquiring 20,193 acres of land for the Project (comprising 13,237 acres of private land and 6,956 acres of Government land). Indeed, it was stated in Somashekar Reddy's Writ Petition that the land requirement in Schedule I of the FWA was "highly exaggerated" and would illegally create "huge profits" for Nandi. Somashekar Reddy thus prayed that the FWA be quashed this prayer was, however, specifically rejected. The very same FWA that was upheld earlier has now been impugned in the present case.

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

The next submission of the Counsel for the petitioner is that Government of Karnataka though ostensible (sic-ostensibly) purported to form an Express

Highway has in reality allowed the 2nd respondent to develop the townships as a developer by conferring a huge largess (sic-largesse) by way of giving 20,000 acres of land..... According to petitioner, the land required for the construction of four lane Highway is only 2775 acres, whereas the remaining land would be utilized for the purpose of development of the towns thereby permitting respondent No. 2 to develop townships as a developer and on huge profits.

43. The averment of Somashekar Reddy regarding excess land came to be considered by the High Court which records some of the opposing contentions of the Respondent-State, in the following terms:

As a mega project like the Expressway involves considerable extent of land, answering respondent (the State) has agreed to provide the minimum extent of land required for the project partly out of the land owned by the State and by acquiring the balance. Second respondent will not only construct the proposed Expressway but also link roads, peripheral road, interchanges, Service Roads, toll plazas and Maintenance area etc., in addition to the townships.

It is stated that the project by its very nature requires considerable extent of land and that is why the respondent has agreed to provide the land to the extent available with it and acquire the balance and make available the same to the replying respondent. There are mutual obligations on both the parties under the impugned agreement and Respondent-No. 1 is only facilitating the acquisition of land for which the replying respondent has to pay at the existing market rates.

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

So out of 20,193 acres, land required for the Expressway would be 6999 acres leaving 13,000 acres for development of townships. Government of Karnataka in its written statement has said that it has agreed to provide minimum extent of land for the project partly out of the land owned by the Government and by acquiring the balance. Permission has been given to develop the five township instead of 7, proposed by respondent No. 2 to make the Project viable.

The submission that the contract was entered in a clandestine manner also cannot be accepted.....respondents in their statement of objections have admitted that this point was raised on the floor of the House and the respondent made detailed presentation on this subject in the House.....Every minute detail was explained including the scientific method adopted by the respondent for identification of the land for the Project.

45. All of these unequivocally show that the issue of excess land (and connected issues) was specifically raised by the petitioner in Somashekar Reddy (supra) and was also forcefully denied by the State. In fact, the decision in Somashekar Reddy (supra), went further with the High Court according its imprimatur to the land requirements "under the FWA amounting to 20,193 acres, which in no small measure, resulted from the State's successful defence that it had provided the

"bare minimum of land" for the Project calculated by a "scientific method". The judgment also contains copious references to the issue of land (including the acreage), the types of land to be acquired, the land requirement for different aspects of the Project, the scientific techniques involved in identifying the land and road alignment etc. In these circumstances, it cannot be doubted that Explanation III to Section 11 squarely applies. It is clear that the issue of excess land under the FWA was "directly and substantially in issue" in *Somashekar Reddy* (supra) and hence, the findings recorded therein having reached finality, cannot be reopened in this case.

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

It is common case of the parties that the validity of FWA had earlier been challenged in *Somashekar Reddy*'s case (supra) on all conceivable grounds including the one that land in excess of what is required for the Project had been acquired by the State Government"

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

48. As we have pointed out, the cause of action, the issues raised, the prayers made, the relief sought in *Somashekar Reddy*'s petition and the findings in *Somashekar Reddy* (supra), and the claims and arguments in the present petitions were substantially the same. Therefore, it is not possible to accept the contention of the appellants before us that the judgment in *Somashekar Reddy* (supra) does not operate as *res judicata* for the questions raised in the present petitions.

Excess Land and the Expert Committee

49. There was considerable time taken by the learned counsel for the appellants in trying to persuade us that excess land had actually been delivered to Nandi under the FWA. A subsidiary argument was that even though the actual area of land delivered might not have been in excess, since land in prime areas had improperly been acquired for Nandi's benefit, the issue needed to be re-examined. In our view, this argument too is not open to be agitated at this point.

As we have already pointed out, the writ petition in Somashekar Reddy (supra) was the culmination of all such allegations which had been successfully refuted even on the floor of the Legislature. Finally, having failed on the floor of the Legislature, a Public Interest Litigation was filed on the ground that there was something wrong with the FWA and that it was virtually a sell-out to Nandi. The Division Bench of the High Court considered every argument very carefully and recorded findings on all the issues against Mr. J.C. Madhuswamy and others. In our view, permitting the argument on excess land to be heard again to scuttle a project of this magnitude for public benefit would encourage dishonest politically motivated litigation and permit the judicial process to be abused for political ends. The High Court, therefore, has refused to answer the first part of the second question framed for consideration on the ground that it was already answered in Somashekar Reddy (supra) and as it was *res judicata*, it could not be re-agitated. Further, that since this argument involved details of contractual disputes, the High Court would not examine it in its writ jurisdiction. We are not satisfied that the High Court was wrong in so holding.

50. The High Court's finding on this issue only gains strength if we were to examine the factual matrix in which the State took its stand that excess land had been acquired for the Project. As we have previously stated, pursuant to the objections raised to the Project by the new Minister for Public Works, an "Expert Committee" was setup in 2004 to review the Project. The Expert Committee was conveniently headed by K.C. Reddy, who was the Advisor to the Public Works Minister. This K.C. Reddy was the same gentleman who as a member of the previous HLC, had scrutinised the Project threadbare and had given it the green signal. Surprisingly however, at this stage, he appeared to be all willing to find faults and flaws in the Project and the FWA, despite the fact that there was an Empowered Committee that was required to monitor the implementation of the Project. The High Court rightly pointed out that the Expert Committee was constituted virtually in supersession of Clause 4.1.1 of the FWA.

51. The Expert Committee suddenly woke up to the alleged fact that excess land was being acquired. Like the State Government, the Expert Committee also made flip-flops and came out with a report saying that there was acquisition of excess land. Crucially, it left the actual identification of the excess lands to the KIAD Board. "Surprisingly, the State Cabinet in its meeting dated 26.10.2004 accepted the report but reaffirmed its support to the Project and expressed some reservations on the acquisition of more lands than what was necessary for the Project. In this regard, the High Court critically comments (vide Paragraph 26) that:

By constituting this Committee the State Government has ensured that the Project gets stalled. It is "interesting to note that Sri K.C. Reddy who is the Chairman of the Expert Committee was also a Member of the HLC which had approved the Project and was associated with it till the signing of the FWA which provides for 20,193 acres of land to be made available. Sri K.C. Reddy did not

record his dissent in those proceedings and at no stage did he ever point out that the land that was sought to be provided for the Project was in excess of what was required but now as the Chairman of the Expert Committee he has, without identifying the excess lands which he has left for the Board to identify, opined that excess land has been acquired for the Project. We cannot appreciate such a conduct.

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

53. Interestingly, neither the interim report nor the final report of the Expert Committee identified the excess land but in fact, left it for the KIAD Board. The counsel for the KIAD Board handed over a set of documents, which purportedly identified the specific excess lands. It was the grievance of the KIAD Board that they had not been given the opportunity for placing these documents before the High Court. Since the date of documents showed that they were drawn subsequent to the date on which the High Court had delivered its judgment, the learned Senior Counsel for KIAD Board Mr. KK Venugopal candidly admitted that this exercise was carried out after the impugned judgment had been delivered. It is a moot point whether the person, who swore this affidavit on behalf of the KIAD Board stating that no opportunity had been given to the KIAD Board to place these documents on the record of the High Court, needs to be considered for prosecution u/s 340 read with Section 195 of the Code of Criminal Procedure, 1973. We strongly deprecate such misleading or false affidavits on the part of the KIAD Board.

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

as an instrumentality of the State, the KIAD Board cannot have a case to plead different from that of the State of Karnataka. Thus, we are unable to countenance the arguments of Mr. Venugopal on behalf of the KIAD Board.

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

The Relief Granted by the High Court

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

Writ petitions nos. 45334 and 48981 of 2004 are allowed directing the State of Karnataka and all its Instrumentalities including the Board to forthwith execute the Project as conceived originally and upheld by this court in Somashekar Reddy's case (supra) and implement FWA in letter and spirit. Consequently, Government Orders dated 4.11.2004 and 17.12.2004 constituting the Review Committee and Expert Committee are quashed. The report submitted by these committees in pursuance to these orders and all subsequent actions taken incidental thereto are also quashed. Nandi is also directed to implement the Project as expeditiously as possible Parties will bear their own costs in these two cases.

57. Mr. Divan strongly urged that the relief granted was wholly beyond the jurisdiction of the High Court under Article 226 of the Constitution, as it would amount to granting a decree for specific performance in writ jurisdiction. A reading of the relief granted by the High Court does not persuade us that it is so. The High Court merely directed that the Project and the FWA, as conceived originally and upheld by the High Court in Somashekar Reddy (supra), should be implemented "in letter and spirit". In other words, the High Court said that there is no scope for raising frivolous and mala fide objections for ulterior purposes. This, the High Court was fully entitled to do. It is trite law that when one of the contracting parties is "State" within the meaning of Article 12 of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the Constitutional Courts in this country. We may refer to Gujarat State Financial Corporation v. M/s. Lotus Hotels Pvt. Ltd., in which a statutory corporation (the Gujarat State Financial Corporation) arbitrarily refused to grant the sanction of loans to entrepreneurs

who had already acted on the basis of the sanction and had incurred expenditure and liabilities. The argument that the transaction was purely a contractual arrangement between the parties and, therefore, not amenable to writ jurisdiction, was categorically rejected by the following observations:

Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by "other authority" as envisaged by Article 12.

58. Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors. is another authority for the proposition that the State Government has to act reasonably and without arbitrariness even with regard to the exercise of its contractual rights. In M/s. Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay the situation was one in which a lease between the Bombay Port Trust and certain parties was terminated in exercise of contractual rights and the lease rent was abnormally increased. It was held that there was always an obligation on the part of public authorities in their acts of omission and commission to be reasonable. In Biman Krishna Bose v. United India Insurance Co. Ltd. and Anr. the question was whether an insurance company could arbitrarily and unreasonably refuse the renewal of a policy. Considering that the insurance company, as a result of State-monopoly in the insurance sector, had become "State" under Article 12 of the Constitution, this Court held that:

....it (the insurance company) requires (sic) to satisfy the requirement of reasonableness and fairness while dealing with the customers. Even in an area of contractual relations, the State and its instrumentalities are enjoined with the obligations to act with fairness and in doing so, can take into consideration only the relevant materials. They must not take any irrelevant and extraneous consideration while arriving at a decision. Arbitrariness should not appear in their actions or decisions.

59. Thus, it appears that no exception could be taken to relief granted in the judgment of the High Court impugned before us. All that the High Court has done is to reaffirm and require the State Government and its instrumentalities, as "State" under the Constitution, to act without arbitrariness and mala fides, especially in the matter of land acquisition. It is pertinent to note that the State had agreed (vide Clause 5.1.1.1 of the FWA) in respect of the lands required under the FWA, that:

GOK shall use its best efforts and cause its Governmental Instrumentalities to use their best efforts, to exercise its and their legal right of eminent domain (or other right of similar nature) under the Laws of India to acquire the Acquired

Land. Prior to acquiring any Acquired Land, GOK will obtain from the company written confirmation of its willingness to purchase such Acquired Land from GOK at the purchase price (whether in the form of cash or comparable land) required under the Laws of India (the "Acquired Land Compensation"). GOK shall offer to the ex-propriated owners of the land the Rehabilitation package specifically worked out for this Infrastructure Corridor Project with mutual consultation of the consortium and the Revenue Authorities in accordance with the applicable rules.

60. 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.

While keeping in view the findings and observations of the apex court, on the areas of controversy urged therein, it is to be noticed that the eight heads under which the present complaint is framed areas follows:

1. Fraudulent and illegal inclusion of Township no. 7 (4285 acres) and enhancement of land requirement from 18314 acres to 20193 acres, in the Frame work Agreement.
2. Manipulation of records to indicate lesser extent of government lands available, to obtain land on lease from the government, at Rs. 10 per acre per annum, which would have had to be purchased at market price from the government by the stake holders.
3. Realignment of the Peripheral Road proposed in the year 1999 was preceded by pre-planned blocking of alienation of the lands involved, in the year 1997 itself.
4. An unholy nexus between KIADB-NICE-ICICI Bank to acquire and hold private lands to the extent of 23846, along the Peripheral Road for the benefit of NICE and ICICI.
5. Illegal alteration of Cabinet Notes to enable NICE to claim stamp duty exemption in respect of 5850 acres spread over 5 townships and issuing illegal orders for 14337 acres of private lands. Further having manipulated the issuance of a Government Order exempting stamp duty in respect of the entire extent of land of 20193 acres.
6. Illegal development and sale of lands at the Toll Road-which was not permitted under the FWA. And the illegal acquisition of 2605 acres of private land for the Peripheral road and link road.
7. Toll collection without meeting the pre-condition of constructing a 4 lane cement concrete road-even after expiry of the 6 year extended period to complete such construction.

8. The fraudulent and ghost preparation by NICE of the BMICPA Outline Development Plan for an extent of 175250 acres of land for the project as against 20193 acres required. In the opinion of this court, the above are in the ultimate analysis allegations of illegalities committed by the petitioners with the connivance of the State and its officials.

The second respondent-complainant contends that all cases subsequent to Somashekar Reddy's case have been shut out by the courts on the principle of *res judicata*. And though several additional documents have been produced in each successive case-the same have not been examined for the criminality involved and have not been analyzed and presented in the manner that the respondent intends in the complaint.

The complaint seeks to break through the smoke screen, created by the officialdom,-comprising technicalities, government orders and other convenient excuses.

However, there can be no doubt about the intensive study that the complainant appears to have made of the transactions concerning the project, the minutiae of the complaint demonstrates the same. The Complainant claiming to be an alert social activist would certainly have followed the earlier bouts of litigation on the subject before this court. However, in the absence of an explanation, by the complainant and in the absence of particulars as to the documents which are said to throw new light on the case, exposing alleged criminality of the concerned, the criminal court cannot be used as a medium to test the legality or otherwise of what may essentially be state action, in the usual course of its business.

As pointed out by the apex court in *All India Manufacturers Organization*, a judgment in a public interest litigation would be a judgment in *rem*. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue which had been raised or should have been raised on an earlier occasion.

There can be no doubt that the principle of *res judicata* cannot be restricted in application to civil proceedings and between the same parties. As held in 20 CWN 738 (Privy Council)

The application of the rule by the courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law

Again in *Hook v. Administrator General*, AIR 1921 PC 11, the judicial committee held that the plea of *res judicata* still remains apart from the limited provisions of the Code of Civil Procedure.

The Supreme court has reaffirmed this view and has observed that the principles underlying Section 11 CPC are that there should be finality in litigation and that a person should not be vexed twice over in respect of the same matter and these principles are applicable even when the case does not fall within the strict terms

of Section 11. (See: Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, Burn & Co. v. Employees AIR 1957 SC 38, Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, Daryao v. State of UP AIR 1961 SC 1457)

It was held in Jagnarain Singh Vs. State of U.P., that when a matter is finally decided in writ jurisdiction, it cannot be allowed to be reopened and reagitated in subsequent criminal proceedings.

The complainant seeking to contend that the relevant documents were not available in the public domain and it is only with the coming into force of the Right to Information Act, 2005, that the petitioner has been able to access the same and has discovered the criminality, cannot be readily accepted. As already stated-there is no indication of which particular documents would answer to that category. Secondly, even if this circumstance could be a valid reason justifying the complaint, there is no explanation as to period of the complainant's research. The Right to Information Act, has come into force with effect from October 2005-the present complaint filed in the year 2012 is apparently resorted to as even a Review of trig earlier decisions of this court, assuming that the new material gathered by the petitioner would require a relook at the decision making process of the State on account of it being tainted with criminality, was clearly barred by delay and laches Hence the exercise of the complainant borders on abuse of the process of court in approaching the criminal court as an alternative.

The Complaint is clearly barred on the principle of res judicata.

In the above view of this court, it would be wholly unnecessary to deal with any other ground raised in the petition or the objections raised by respondent no. 2. The above circumstances are sufficient to grant the prayer of the petitioners and consequently in exercise of power under Article 226 and 227 of the Constitution of India, the petitions are allowed as prayed for.

The impleading applications filed in Interlocutory Application Nos. 1 to 465 of 2013 do not arise for consideration in view of the dismissal of the petitions on merits.