(2016) 03 KAR CK 0134

In the Karnataka High Court

Case No : Criminal Petition No. 5102 of 2015

S.V. Srinivas APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Citation : (2016) 4 AICLR 9 : (2016) 3 AirKarR 321

Hon'ble Judges : Pradeep D. Waingankar, J.

Bench : Single Bench

Advocate : Sri S.S. Naganand, Sr. Counsel, Swaroop Anand R, Advocate, for the Appellant; Sri Ventatesh P. Dalwai, Standing Counsel (SPL.PP), for the Respondent

Final Decision : Allowed

Judgement

Pradeep D. Waingankar, J.—The petitioner is arrayed as accused No.3 in Spl.C.C.No.135/2011 on the file of XXIII Addl. City Civil and Sessions Judge and Special Judge under Prevention of Corruption Act, 1988 arising out of Cr.No.57/2010 by Lokayukta police station, Bangalore City. He has filed this petition under Section 482 Cr.P.C. to quash the proceedings as against him on the ground that there can be no second FIR or multiple FIRs and fresh investigation in respect of same offences or connected offences found to have been committed in the course of same transaction and that there is no legal evidence to prove the charges levelled against the petitioner and under such circumstance, the continuation of the proceedings against the petitioner would amount to abuse of process of Court.

2. The relevant facts which gave rise to this petition are as under: -

In the year 2003, Government of Karnataka had formed a Task Force headed by Azim Premji. The Task Force identified 1422 acres of land in four different villages in Bangalore for the purpose of establishment of IT, ITES and Hardware based Industries. The petitioner was one of the founder directors of M/s. ITASCA

Software Development Pvt. Limited along with his sister and brother-in-law. It was a private limited company which had interest in software related activities. In the year 2006, the petitioner was desirous of making a proposal for setting up a hardware park, Special Economic Zone. He made an application for establishing TT based Special Economic Zone on the outskirts of Bangalore under the provisions of Karnataka Industrial Facilitation Act, 2002 in an area of 325 acres of land at Bandi Kodigehalli Village, Bangalore North Taluk with an investment of Rs.1130 crores with a potential to generate 75,000 jobs. The petitioner submitted the application to the nodal agency i.e., Karnataka Udyog Mitra. As the project investment was more than Rs.50.00 crores, under the provisions of Karnataka Industrial Facilitation Act, 2002 which was notified on 4.11.2003., the application was placed before the State High Level Clearance Committee as there was no requirement in law to place it before screening committee for scrutiny. On 25.8.2006, the proposal of M/s. ITASCA Software Development Pvt. Limited was put up by the Managing Director of Udyog Mitra for orders by the then Major and Medium Industries Minister, Government of Karnataka Sri. Katta Subramanya Naidu for placing the proposal before the VII State High Level Clearance Committee meeting to be held on 28 8.2006. On 26.8.2006, the Minister vide his older noted that in the meeting of State High Level Clearance Committee, the proposal of the company M/s. Shapoorji Pallonji was placed and the land sought by M/s. Shapoorji Pallonji overlapped with the lands sought by M/s. ITASCA Software Development Pvt. Limited. It was ordered to put up the proposal by M/s. ITASCA Software Development Pvt. Limited as an additional agenda in the meeting to be held on 28.8.2006 so that proper and impartial decision can be taken. In the said meeting, proposal of M/s. ITASCA Software Development Pvt. Limited was placed as an additional agenda in the meeting held on 28.8.2006. In the meeting, clearance of the project was given as per the procedure established in the Karnataka Industrial Facilitation Act, 2002 by a committee headed by the then Chief Minister with the members-Deputy Chief Minister, Minister for Large and Medium Industries, Secretaries of various Government: Departments and Deputy Commissioner. The committee allowed the proposal of M/s. ITASCA Software Development Pvt. Limited and cleared the project.

3. After project of M/s. ITASCA Software Development Pvt. Limited being cleared to set up Special Economic Zone in 325 acres of land in Bandi Kodigehalli village by the State High Level Clearance Committee, on 16.1.2007, the Government of Karnataka passed a Government Order No.ITD 42 MDA 2006(1) stating that the project of M/s. ITASCA Software Development Pvt. limited having investment of Rs. 1,130 crores in an area of 325 acres of land at Bandi Kodigehalli village was accepted on consent award basis. Pursuant to the Government Order, M/s. United Telecom Limited (UTL) decided to associate with M/s. ITASCA Software Development Pvt. Limited and invested 317 crores into M/s. ITASCA Software Development Pvt. Limited in pursuance of the Memorandum of Understanding between M/s. ITASCA Software Development Pvt. Limited and M/s. United Telecom Limited (UTL) dated 2.5.2007. Consequently, M/s. United Telecom

Limited acquired 99% shares in M/s. ITASCA Software Development Pvt. Limited and majority number of board of directors. The Board of Directors of M/s. ITASCA Software Development Pvt. Limited took a decision to appoint a Land Aggregator Agency by name M/s. Indu Builders and Developers videa Tripartite Agreement, where under Indu Builders & Developers would carry out the function of land aggregator and facilitate consent of individual land owners and handle negotiations in that regard. Accordingly, the Management Board of M/s. ITASCA Software Development Pvt. Limited deposited 118 crores to KIADB in terms of Government Guideline value for acquisition of 325 acres of land in Bandi Kodigehalli village. Said sum has been utilised by KIADB to pay for each land owner whose lands have been acquired. Apart from compensation paid by KIADB, M/s. ITASCA Software Development Pvt. Limited through M/s. Indu Builders & Developers paid additional ex gratia to each individual land owner for obtaining consent award from the Government. Thus entire acquisition proceedings was privately funded by M/s. United Telecom Limited (UTL) for acquiring of land in its favour through M/s. ITASCA Software Development Pvt. Limited. Consequently, M/s. ITASCA Software Development Pvt. Limited submitted consent of all the land owners to KIADB for acquisition of 325 acres of land in Bande Kodigenahalli village. Till this day, not a single land owner challenged the said consent nor they have complained regarding non- receipt of the compensation to be received from the Government.

4. When matter stood thus, on 28.6.2010, an FIR in Cr.No.24/2010 was registered by Lokayukta police against the Special Land Acquisition Officer and the Clerks working in KIADB regarding demand of bribe amount in releasing the compensation amount for acquisition of land by KIADB on the basis of complaint given by one Sri. Rukmangada Naidu. A charge-sheet came to be filed in Spl.C.C.No. 306/2010. Proceedings initiated by KIADB for acquisition of lands for various projects in Bangalore were subjected to scrutiny by an Expert Committee constituted by Lokayukta police in Cr.No.24/2010. The Committee made certain observations and submitted a report to Lokayukta police and on the basis of the said report, the Lokayukta police suo-moto registered Cr.Nos.42 to 46/2010 for the offences punishable under Sections 7, 8, 13(1)(d) r/w 13(2) of PC Act and Sections 465, 468, 471, 420 r/w 120-B of IPC.

5. In Cr.No.43/2010 registered on 21.9.2010, suo-moto by the Lokayukta Police, in the complaint appended to FIR, it is stated that after registration of Cr.No.24/2010, the Expert Committee observed impropriety in the manner of acquisition of land and disbursement of the compensation amount to the land owners by M/s. ITASCA Software Development Pvt. Limited. During the course of investigation of Cr.No.43/2010, one Sri. Ramanjinappa was being examined as witness and on the basis of his statement, Cr.No.48/ 2010 vide complaint dated 28.9.2010 was registered. Katta Jagadish/accused No.2 was trapped and arrested in Cr.No.48/2010. The petitioner was given notice under Section 160 of Cr.P.C. dated 5.10.2010 in Cr.No.48/2010 by the Investigation Officer to remain present on 6.10.2010 to answer the queries. The petitioner appeared, he was

asked to produce certain documents and furnish information with respect to M/s. ITASCA Software Development Pvt. Limited. He produced documents which were seized under a mahazar in Cr.No.42/2010. The Investigation in Cr.No.42/ 2010 came to be stayed by this Court in Cri.P.No.5010/2010. The Lokayukta police continued investigation in Cr.No.43/2010, regarding alleged irregularities in the matter of acquisition and disbursement of compensation by M/s. ITASCA Software Development Pvt. Limited by summoning the petitioner on 27.10.2010, 28.10.2010, 25.11.2010 and 26.11.2010 under Sections 91 and 160 Cr.P.C. The petitioner appeared before the Lokayukta police on the aforesaid dates and produced the documents sought for and provided all the information. Subsequently, crime No.43/2010 also came to be stayed in Cri.P.No.5377/2010. When the matter stood thus, based on the documents and the information furnished by the petitioner in Cr.Nos.42/2010,43/2010 and 48/2010 and the revelations allegedly found by the Lokayukta police during the course of investigation in Cr.Nos.42/2010and 43/2010, they registered Cr.No.57/2010 to circumvent the order of stay granted by this Court in which this petitioner came to be arrayed as accused No.3 using the very same material produced by him in Cr.No.43/2010 which was sought from him under Sections 91 and 160 Cr.P.C. A Crime No.57/2010 came to be registered suo-moto on 1.12.2010 in which the then Minister for Major and Medium Industries, Government of Karnataka is arrayed as accused No.1, his son as accused No.2, petitioner as accused No.3-the land Aggregator appointed by the Board of M/s. ITASCA Software Development Pvt. Limited i.e., partners of M/s. Indu Builders & Developers as accused Nos. 4 and 5, the Chairman of the Board M/s. United Telecom Limited as accused No.6, Spl. Land Acquisition Officer, KIADB as accused No.7 and three others. Upon investigation, charge-sheet came to be filed in Spl.C.C.No. 135/2011 on the file of Spl. Judge under Prevention of Corruption Act, Bangalore. The charges levelled against this petitioner are under Section 12 of Prevention of Corruption Act and Sections 420, 465, 506 r/w 120-B IPC.

6. To quash the proceedings initiated against him in Spl.C.C.No.135/2011, the petitioner-accused No.3 has filed this petition to quash the proceedings arising out of Cr.No.57/2010 on the ground that the second FIR or multiple FIRs in respect of same offence or connected offences or offences committed in the same transaction is impermissible, inasmuch as, it is violative of Articles 14, 20 and 21 of the Constitution of India, that there is no legal evidence against the petitioner to constitute the ingredients of any of the charges levelled against the petitioner and therefore continuation of proceedings against the petitioner is nothing but abuse of the process of Court.

7. The submission of the learned Senior Counsel for the petitioner Sri. Naganand is that the registration of second FIR in respect of very same transaction is in violation of Articles 14, 20 and 21 of the Constitution of India, inasmuch as, it is impermissible in law, the material on record do not disclose the ingredients of offences with which the petitioner is charged, there is no legally acceptable evidence against the petitioner, which would ultimately result in his conviction

and in that case continuation of the proceedings against the petitioner is nothing but gross abuse of process of Court and hence, the learned Senior counsel sought to quash the proceedings as against the petitioner.

8. The standing counsel - Special Public Prosecutor for respondent Lokayukta Sri. Venkatesh P. Dalwai on the other hand would submit that the Lokayukta Police upon investigation filed charge sheet against the petitioner and others for the offences punishable under Sections 7, 8, 12 and 13(1) (a) of PC. Act and Sections 419, 420, 426, 468, 471 r/w 120(B) IPC. Now the case is posted for hearing before charge and therefore it is proper for the petitioner to address his arguments before framing the charge before the Special Judge. The learned counsel would further submit that the Lokayukta Police have collected sufficient material to establish the complicity of the petitioner in the commission of the alleged offences, the petition is devoid of merits and hence he sought for dismissal of the petition.

9. The gist of the prosecution case is that accused No.1 at the relevant point of time was the Minister for Major and Medium Industries, Government of Karnataka. Accused No.2 is the son of accused No.1, petitioner/accused No.3 is a practicing Advocate at Bangalore. Accused Nos. 1 and 2 were in real estate business in Bangalore. They used to purchase lands and sell it for higher price. For documentation i.e., to prepare the sale agreement, sale deed etc., they used to approach the petitioner, whose'' father is a leading Advocate in Bangalore who was looking after their litigation in the Court of law. The petitioner though a lawyer was founder Director of M/s. ITASCA Software Development Pvt. Limited. The other Directors were his sister and brother-in-law. M/s. ITASCA Software Development Pvt. Limited wanted to establish I.T. Park in Bangalore, for which, he was in need of 325 acres of land. He approached a nodal agency called Karnataka Udyog Mitra and forwarded the application/proposal for establishment of I.T. Park. The proposal was placed before the State High Level Clearance Committee headed by the then Chief Minister along with Deputy Chief Minister, Industries Minister, Secretaries of the various Departments and the Deputy Commissioner as its members. The proposal was approved. The Government agreed to provide 325 acres of land in Bandi Kodigehalli village to M/s. ITASCA Software Development Pvt. Limited on consent acquisition through KIADB. The petitioner was required to deposit the necessary amount for acquisition of land. Since the amount to be invested was more, the petitioner approached M/s. United Telecom Limited, who in turn entered into an agreement with M/s. ITASCA Software Development Pvt. Limited and deposited 87 crores of rupees with KIADB for acquisition of land. Both M/s. ITASCA Software Development Pvt. Limited and M/s. United Telecom Limited (UTL) appointed M/s. Indu Builders & Developers to negotiate with the land owners and to obtain their consent for acquisition of the land. Accordingly, M/s. Indu Builders & Developers negotiated with the land owners and obtained consent from all the land owners which were produced before KIADB. KIADB in turn acquired the land on payment of compensation. Over and above the compensation paid by KIADB, M/s. ITASCA

Software Development Pvt. Limited paid ex gratia payment to all the land owners. It is at this stage, a complaint came to be filed by one Rukmangada Naidu, stating that the Land Acquisition Officer, KIADB and clerks working in the office were demanding bribe amount for release of the compensation amount. That is how Cr.No.24/2010 came to be registered. During the course of enquiry, various irregularities committed by the office of KIADB in acquisition of lands for various projects in Bangalore c me to limelight. An enquiry was held. On the basis of enquiry report, Cr.No.42/2010 to (r.No.46/2010 came to be registered. During the investigation of Cr.No.43/2010, this petitioner was summoned under Section 160 Cr.P.C.. He gave his statement and produced all the information as sought for. Since the investigation in Cr.No.43/2010 was stayed by this Court in Cr.P.No.5377/2010 the Lokayukta police registered another FIR in Cr.No.57/2010 wherein this petitioner is shown as accused No.3, Katta Subramanya Naidu as accused No.1, his son as accused Nos.2 and 7 others. Upon completion of investigation, charge sheet came to be filed in Spl. CC No.135/2011 on the file of Special Court. The proceedings against this petitioner sought to be quashed on the ground that there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of offence committed during the course of same transaction.

10. Running through the records and charge-sheet filed in Cr.No.57/2010, it transpired that in respect of acquisition of land and payment of compensation to the land owners by KIADB for various projects, KIADB officials committed certain irregularities and illegalities. They started demanding bribe amount from the land owners for payment of compensation amount. In that connection, one Ruk mangada Naidu lodged information to Lokayukta police. Based on his information, crime No.24/2010 was registered against the officials of KIADB on 28.6.2010 for the offences punishable under Sections 7, 13(1) (d) r/w 13(2) of P.C. Act, 1988. Upon investigation, charge-sheet came to be filed on 27.9.2010 in Spl.C.C.No.306/2010 on the file of Spl. Court for the aforesaid offences against one B.M. Nagabhushan working as FDA in the office of SLAO, KIADB, Gandhinagar, Bangalore and one N.R. Nagaraj, Special LAO, KIADB.

11. Thereafter, in respect of KIADB Land Acquisition scam, Cr.Nos.42/2010, 43/2010, 44/2010, 45/2010 and 46/2010 came to be registered on source report by the Lokayukta police for the offences punishable under sections 7, 13(1) (d) r/ w 13(2) of P.C. Act, 1988 and Sections 465, 468, 471, 420 r/w I20-B IPC on 21.9.2010 by the Lokayukta police, Bangalore City against T.P. Muninarayappa, SLAO-11, KIADB, Shankaraiah, Kenchaiah and Smt. N. Laxmi, Manager, Byregowda, Nagabhushan, Mahalingaiah, Siddaiah, Ramachandra-all case workers and some revenue officials and private persons. Cr.No.42/2010 was being investigated by H.S. Manjunatha, Dy.S.P, Lokayukta, Cr.No.43/2010 by Smt. H.S. Radhamani, Dy.S.P., Lokayukta, Cr.No.46/2010 by Krishna Murthy, Police Inspector. While investigation in all crimes was going on, the Investigating of officer/complainant in Cr.No.42/2010, H.S. Manjunatha, Dy.S.P., Lokayukta was ordered by Lokayukta Superintendent of Police, by order LOK/DNV(G)/CT/

Cr.Nos.42 - 46/2010 dated 1.10.2010 to investigate into the role of M/s. ITASCA Software Development Pvt. Limited company in KIADB land acquisition scam and to register a separate crime. Accordingly, the petitioner who is accused No.3, Managing Director of M/s. ITASCA Software Development Pvt. Limited company was summoned by issuance of notice dated 5.10.2010 under Section 160 of Cr.P.C. in Cr.No.46/2010 calling upon him to appear before H.S. Manjunatha, Dy.S.P.-I on 6.10.2010 at 10.30 a.m. for the purpose of interrogation. A panchanama was drawn in the presence of panchas viz., Srinandan and Anjana Murthy, where under four files pertaining to M/s. ITASCA Software Development Pvt. Limited produced by the petitioner were seized. Thereafter, the petitioner was taken to his office and asked to give other files pertaining to M/s. ITASCA Software Development Pvt. Limited company for the purpose of investigation. On 27.10.2010, the petitioner was issued with another notice under Section 160 Cr.P.C. in Cr.No.43/2010 by K.C. Laxminarayana, Police Inspector, Police Wing, City Division, Karnataka Lokayukta, Bangalore calling upon him to be present in his office on 27.10.2010 for interrogation. Again, he was issued with another notice under Section 91 Cr.P.C. in Cr.No.43/2010 to furnish information pertaining to M/s. ITASCA Software Development Pvt. Limited company of the petitioner as sought for in the notice within seven days without fail. The said notice was issued by H.S. Manjunatha, Dy.S.P, Karnataka Lokayukta. Again on 25.11.2010, the petitioner was issued with another two notices by H.S. Manjunatha, Dy.S.P. calling upon him to furnish information sought for in the notices immediately on the same day. On 26.11.2010, he was issued with another notice under Section 160 of Cr.P.C. in Cr.No.43/2010 calling upon him to come to Lokayukta office before H.S. Manjunatha, Dy.S.P. and co-operate in the investigation. After further investigation as to the role of M/s. ITASCA Software Development Pvt. Limited in KIADB land acquisition scam in Cr.No.43/2010, H.S. Manjunatha, Dy.S.P Karnataka Lokayuktha, Bangalore submitted a report to Superintendent of Police, Lokayukta. The Superintendent of Police, Lokayukta, upon perusal of the report, by his letter dated 1.12.2010, directed H.S. Manjunatha, Dy.S.P. to lodge information to that effect and directed Girish S., Dy.S.P II Karnataka Lokayuktha to investigate into the matter. Accordingly, FIR in Cr.No.57/2010 came to be registered against the petitioner-accused No.3, Managing Director of M/s. ITASCA Software Development Pvt. Limited and nine others for the offences punishable under Sections 7, 13(1) (d) r/w 13(2) of PC. Act, 1988 and Sections 465,468,471,420 r/w 120-B IPC on 1.12.2010.

12. On 2.12.2010, the Investigating Officer obtained search warrant to search the premises of M/s. Indu Builders & Developers, Sowbhagya Petroleum Bunk, belonging to accused No.2-Katta Jagadish and office of M/s. ITASCA Software Development Pvt. Limited located in United Telecom Company building. He seized 19 documents from M/s. Indu Builders & Developers, which were subjected to P.F.No. 102/2010. The Investigating Officer also seized eight files from the office of UTL. On 3.12.2010, the documents seized in Cr.No.42/ 2010 pertaining to M/s. ITASCA Software Development Pvt. Limited from the petitioner were handed over

to Investigating Officer- Girish S. by H.S. Manjunatha, Investigating Officer in Cr.No.42/2010. The documents were transferred from Cr.No.42/2010 under a panchanama to Cr.No.57/2010 and subjected to P.F.No. 106/ 2010. The documents are as under: -

1. File No.1- pertaining to interaction between M/s. ITASCA Software Development Pvt. Limited and KIADB.

2. File No.2- Agreement between M/s. ITASCA Software Development Pvt. Limited and State High Level Clearance Committee.

3. File No.3- I.T. papers pertaining to M/s. ITASCA Software Development Pvt. Limited.

4. File No.4- Special Economic Zone Guide-lines relating to M/s. ITASCA Software Development Pvt. Limited.

5. File No.5- Resolution of M/s. ITASCA Software Development Pvt. Limited.

6. File No.6- Proceedings of State High Level Clearance Committee meeting and notice.

7. File No.7- Special Economic Zone file pertaining to M/s. ITASCA Software Development Pvt. Limited.

8. File No.8- Two Notary registers seized from Jay anna.

True copies of following documents were also seized: -

a. File pertaining to application of M/s. ITASCA Software Development Pvt. Limited, project report, notices and orders obtained from Karnataka Udyog Mitra on 2.11.2010.

b. The Auditor''s report of M/s. ITASCA Software Development Pvt. Limited for the year 2005-2007 given by S. Srinivas, Chartered Accountant dated 22.1 1.2010.

c. Report prepared and given by Mohammed Hidayathulla upon going through the balance sheet of M/s. ITASCA Software Development Pvt. Limited company.

d. Letters written by Investigating Officer to various offices and persons in relation to M/s. ITASCA Software Development Pvt. Limited company and the reply received.

The statements of following persons were also seized.

a. Anjana Murthy dated 6.10.2010.

b. Srinandan dated 6.10.2010.

c. S. Jayanna dated 29.10.2010.

d. S.V. Srinivas and S.K.V. Chalapalhi

e. B.M. Vijayshankar, Senior Managing Director of IT- BT dated 3.11.2010.

f. Mohammed Hidayathulla dated 3.11.2010 and 8.11.2010.

g. H.M. Revanna dated 8.11.2010.

h. L. Ningaraju dated 8.11.2010.

i. Requisition dated 8.11.2010 submitted by XVII Addl. CMM along with statement of Mohammed Hidayathulla recorded under Section 164 Cr.P.C.

j. B.K. Lokesh dated 8.1 1.2010.

k. K. Shivaswamy dated 9.11.2010.

l. H.L. Shivananda dated 9.11.2010.

m. K. Puttaswamvgowda dated 12.11.2010.

n. Janardhana dated 12.11.2010

o. S. Murugesh dated 12.11.2010

p. R. Ramesh, Joint Director dated 22.11.2010.

13. The Investigating Officer also secured the documents from H.S. Radhamani, Dy.S.P. Lokayukta on 7.12.2010 which were seized in Cr.No.43/2010 under a mahazar drawn on 7.12.2010 in between 3.30 p.m. to 8.00 p.m. They were subjected to P.F.No. 108/2010. The statements of Dr. Merijan, Ravi, Satyabhodha Narayana Singh recorded under Section 164 Cr.P.C. by the Magistrate in Cr.No.43/2010 were also seized and transferred in Cr.No.57/ 2010. Smt. H.S. Radhamani also handed over the 47 documents pertaining to bank transactions of the accused.

14. The Investigating Officer has also secured records seized in Cr.No.46/2010 by Krishnamurthy, Police Inspector, who was investigating the said crime. Those documents are as under:-

1. File pertaining to acquisition of 325 acres of land in Bandikodigenahalli village of Bangalore North Taluk.

2. File pertaining to acquisition and allotment of325 acres of land in Bandikodigenahalli village, Bangalore North Taluk.

3. P.F.No.83/2010 and panchanama drawn on 2.11.2010 in the office of SLAO, KIADB, Gandhinagar.

4. KIADB/LAQ/CR/04-2004-2005, Volume-1, pertaining to Hardware Technology Park in respect of acquisition of land in Bagaluru, Bandikodigenahalli village, Huvinayakanahalli, Mahadevkodigehalli village.

5. KIADB/LAQ/CR/04-2004-2005, Volume-2, pertaining to Hardware Technology Park in respect of acquisition of land in Bagaluru, Bandikodigenahalli village,

Huvinayakanahalli, Mahadevkodigehalli village.

6. KIADB/LAQ/CR/04-2004-2005, Volume-3, pertaining to Hardware Technology Park in respect of acquisition of land in Bagaluru, Bandikodigenahalli village, Huvinayakanahalli, Mahadevkodigehalli village.

7. Original file pertaining to acquisition of land for M/s. ITASCA Software Development Pvt. Limited of Bandikodeginahalli village.

8. Notes of case worker Dulaiah and Byregowda upon inspection of file.

9. True copies of Volumes 1 to 8 pertaining to file 1583 obtained from the office of KIADB.

All these documents were seized by Krishnamurthy, Police Inspector, who was investigating Cr.No.46/2010 and were transferred to Cr.No.57/2010 under a mahazar.

15. Thus whatever investigation said the have been done in Cr.No.57/2010 is nothing but transfer of material collected during investigation of Cr.Nos.42/2010, 43/2010 and 46/2010 for the same offences. All these documents that were seized in the aforesaid crimes have been transferred to this crime by drawing a panchanama and they were subjected to P.F. in Cr.No.57/2010. Nothing more is brought on record during the course of investigation of Cr.No.57/2010.

16. The Investigating Officer filed charge-sheet against 10 accused persons including the petitioner, who is arrayed as accused No.3 for the offences punishable under Sections 7, 8, 12, 13(1) (d) r/w 13(2) of P.C. Act and Sections 465, 468, 471, 420 r/w 120-B IPC on 30.6.2011 in Spl.C.C.No. 135/2011 arising out of Cr.No.57/2010.

17. The gist of charge-sheet reads as under: -

''The petitioner-Managing Director of M/s. ITASCA Software Development Pvt. Limited and accused Nos. 1 and 2 hatched a conspiracy to acquire 325 acres of land in Bandikodigenahalli village for M/s. ITASCA Software Development Pvt. Limited through KIADB and to make wrongful gain, filed an application. In furtherance of the conspiracy, on 24.8.2006, accused No.2 approached Shivananda, Managing Director of Karnataka Udyog Mitra and submitted application of M/s. ITASCA Software Development Pvt. Limited along with Demand Draft drawn from his bank account without necessary documents to accused No.1 and accused No.1 without placing the proposal before the screening committee and without obtaining report from the concerned department ordered to place the proposal before the State High Level Clearance Committee meeting held on 28.8.2006.

In that meeting of State High Level Clearance Committee held on 28.8.2006, accused No.1 being Industries Minister approved the proposal of M/s. ITASCA Software Development Pvt. Limited, though it was not qualified and accorded approval to start Special Economic Zone at Bandikodigenahalli in an area of 325 acres of land. In the proceedings of the meeting of VII State High Level Clearance Committee meeting, in the relevant pages pertaining to M/s. ITASCA Software Development Pvt. Limited company, accused No.1 erased the words ''consent'' and ''on consent'' by white ink, after proceedings were signed by Chief Minister, Chairman of the Committee and thereby fabricated the documents. On 26.10.2006, accused No. 1 in a hurry denotified 450.24 acres of land to be given to M/s. ITASCA Software Development Pvt. Limited from notification for acquisition of 1422 acres of land and issued a separate notification for acquisition of 450.20 acres of land in Bandikodigehalli village and thereby instigated M/s. ITASCA Software Development Pvt. Limited in their illegal activities. The application dated 30.11.2006 submitted by M/s. ITASCA Software Development Pvt. Limited to KIADB with a request for acquisition was accompanied by Demand Draft obtained from the bank account of accused No.2 Special Deputy Commissioner, KIADB issued final notification for acquisition of the land for M/s. ITASCA Software Development Pvt. Limited without obtaining consent letter from the owners of the lands and without deposit of amount by M/s. ITASCA Software Development Pvt. Limited. For the purpose of obtaining consent letters from the land owners of the land to be acquired for M/s. ITASCA Software Development Pvt. Limited, M/s. Indu Builders & Developers a benami partnership firm has been created by accused Nos.2, 4 and 5. Accused Nos. 6 and 3 transferred 87 crores to the account of M/s. Indu Builders & Developers as bribe amount to accused Nos. 1 and 2 for having shown favour".

18. The petitioner has sought to quash FIR in Cr.No.57/2010 of Lokayukta police station, Bangalore City and the proceedings arising out of the said crime in Spl.C.C.No. 135/2011 on the file of Special Court, on the ground that there can be no second FIR or multiple FIRs in the case of offences relating to same transactions. It is impermissible and consequently there can be no fresh investigation on receipt of subsequent information in respect of the same congnizable offence or same occurence or incident giving rise to one or more cognisable offences. If we look at the FIR in Cr.Nos.42/2010, 43/2010, 46/2010 and 57/2010, the offences alleged are one and the same. It discloses that accused Nos. 1, 2 and 3 hatched conspiracy to acquire 325 acres of land in Bandikodigehalli village for the establishment of Special Economic Zone by M/s. ITASCA Software Development Pvt. Limited, of which, the petitioner is the Managing Director and in furtherance of the said conspiracy, all the accused acquired the lands through consent award without payment of the compensation to the land owners by forging the signatures and by giving bribe to accused Nos. 1 and 2. That is the only conspiracy set up by the prosecution even in Cr.Nos.42, 43 and 46/2010. The offences al leged in FIR pertaining to Cr.No.57/2010 are the same offences and conspiracy or part of the same conspiracy. The conspiracy said to have been hatched on 26.10.2006 when the application of M/s. ITASCA Software Development Pvt. Limited was submitted to Karnataka Udyog Mitra to start Special Economic Zone and for allotment of 325 acres of land, which ultimately culminated into acquisition of private lands on consent award. Since

the alleged conspiracy in Cr.No.57/2010 is same as alleged in Cr.Nos.42/2010, 43/2010 & 46/2010, the subsequent FIR in Cr.No.57/2010 was unwarranted, that too, when no separate complaint was filed. Offences covered by FIR in Crime No.57/2010 is part of the same conspiracy, which culminated into the same series of acts forming the same transactions in which the offences alleged in the previous FIR were committed, wherein, the petitioner was summoned by issuance of notice under Section 160 Cr.P.C on number of occasions and the documents were seized and necessary information was secured. The transactions in Cr.No.57/2010 is same or part of the same transaction in Cr.Nos.42/2010, 43/2010 and 46/2010 i.e., part of the same conspiracy to grab the lands of private persons without payment of compensation by forging consent letters of the land owners. There is no second conspiracy other than the above conspiracy.

19. The Special Judge has taken cognizance of the offences in pursuance of the FIR in Cr.No.57/2010 which were covered by FIR pertaining to Cr.Nos.42/2010, 43/2010, 46/2010 itself and therefore the registration of FIR in Cr.No.57/2010 was unwarranted and impermissible. At this stage, it has to be stated that sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of same incident giving rise to one or more cognisable offences. The FIR in Cr.No.57/2010 does not satisfy the requirement of Section 154 Cr.P.C.

20. Registration of second FIR is permissible only if the offences disclosed in the second FIR are not part of the first FIR as held by the Supreme Court in (2013) 6 SCC 384 in the case of Anju Chaudhary v. State of Uttar Pradesh and another. I have paused the FIR in Cr.Nos.42/2010, 43/2010, 46/2010 and 57/2010 and compared. The place of occurrence in all FIR is same, conspiracy is same, narration of events are same. Except registration of FIR in Cr.No.57/2010, no further investigation is done and the charge-sheet has been filed by just transferring the documents seized and statement of the witnesses recorded in Cr.Nos.42/2010, 43/2010 and 46/2010 in Cr.No.57/2010.

21. The decision relied upon by the petitioner reported in (2001) 6 SCC 181, in the case of T.T. Antony v. State of Kerala and others and the decisions reported in (2013) 6 SCC 348 in the case of Amitbhai Anilchandra Shah v. Central Bureau of Investigation and another are rightly applicable to the facts of this case.

22. In (2001) 6 SCC 181 in the case of T.T. Antony v. State of Kerala & others in Head notes A and B, the Supreme Court held as under -

Criminal Procedure Code, 1973 - Sections 154 and 155, 156, 157, 162, 169, 170 & 173 - FIR - There can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cogtiizable offence or same occurrence giving rise to one or more cognisable offences - Only information about commission of a cognisable offence which is first entered in station house diary by officer-in-charge of the police station can be regarded as FIR under Section 154 - All such subsequent informations will be covered by Section 162 -

Officer-in-charge of the police station has to investigate not merely the cognisable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 - Even if after conclusion of the investigation pursuant to filing of the FDR and submission of report under Section 173(2), the officer in charge of the police station comes across any further information pertaining to the same incident, he can make further investigation, normally with the leave of the court and forward the further evidence, if any collected, with further report or reports under Section 173(8) - Words and Phrases - "FIR"

- Meaning of.

Constitution of India - Articles 226/227 & 136 and 19 & 21 -Interference with statutory right of police to make investigation into cognisable offence pursuant to lodging of FIR- A just balance has to be struck between citizen''s right under Articles 19 and 21 and expansive power of police to make investigation - After registering the FIR and commencing investigation, registering of second FIR or successive FIRs in respect of the same incident and crime and making of fresh investigation pursuant thereto would be irregular which call for interference by High Court under Article 136 with the fresh investigation to prevent abuse of statutory power of investigation or otherwise to secure ends of justice- Criminal Procedure Code, 1973 Sections 482 and 154, 155, 156, 157, 162, 169, 170 and 173.

23. In (2013) 6 SCC 348 in the case of Amitbhai Anilchandra Shah v. CBI & others, in head note ''F'', the Apex Court held as under: -

Criminal Procedure Code, 1973 - Sections 154 to 162, 173(8), 173(2), 169, 170 and 482. - FIR, initial investigation, further investigation, first charge- sheet, subsequent/supplementary charge-sheet(s) and second FIR - Scheme of Cr.P.C., explained - Duty of IO to investigate connected offences committed in course of same transaction - Held, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognisable offence or the same occurrence or incident giving rise to one or more cognisable offences - Rather, investigating agency may investigate further upon receipt of subsequent information, normally with the leave of Magistrate/court and where during further investigation, investigating agency collects further evidence, oral or documentary, it is obliged to forward (he same with one or more supplementary reports/charge-sheets to court.

24. From the ratio laid down in the above decisions of the Apex Court, it is manifest that the registration of second FIR or multiple FIRs in respect of offences committed in the same transactions is impermissible. Considering the scheme of Cr.P.C, fundamental rights of the accused guaranteed under Articles 20, 21 and 14 of the Constitution of India and the stand of Lokayukta, FIR in Cr.No.57/2010 is held to be invalid. Subjecting citizens to fresh investigation on

the basis of subsequent FIR or second FIR is abuse of power. It is a fit case to exercise inherent power under Section 482 Cr.P.C to quash the second FIR. The investigation in Cr.No.57/2010 cannot be even treated as further investigation, since the investigation was carried out without prior permission of the Magistrate nor charge-sheet filed in Cr.No.57/2010 can be treated as additional charge-sheet in earlier crimes. Moreover investigation in Cr.No.57/2010 is nothing but transfer of all the documents seized and the statements of the witnesses recorded in Cr.No.42/2010, 43/2010 & 46/2010. Added to that, investigation in Cr.No.57/2010 is bad in law since the investigation was carried out without registration of the crime. The reason for registration of Cr.No.57/2010 is that H.S. Manjunatha, Dy.S.P. who was investigating Cr.No.42/2010. S.P., Lokayukta by order No. LOK/ING(a) City/Crime/42- 46/2010 dated 1.10.2010 directed him to conduct investigation as to the role of M/s. ITASCA Software Development Pvt. Limited in the land acquisition scam by KIADB and on satisfaction to register a crime and investigate in detail. Accordingly, Sri. H.S. Manjunatha, Dy.S.P. investigated and gave a report to the S.P, Lokayukta, who in turn directed one Girish S. Dy.S.P. to investigate and FIR in Cr.No.57/ 2010 came to be registered on 1.12.2010 though investigation was almost completed. It is against the law laid down by the Supreme Court in the decision reported in 2014 (2), SCC 1 in the case of Lalitha Kumari v. State of U.P. and others. Sri. H.S. Manjunatha Dy.S.P. was disclosed of the information as to the non-cogniszable offences by M/ s. ITASCA Software Development Pvt. Limited on 1.10.2010 itself. He was aware of the same as on 1.10.2010, when he received letter from Superintendent of Police. He did conduct investigation for two months. But Cr.No.57/2010 came to be registered on 1.12.2010 by transferring the material that was seized in other crimes, on this count also, registration of FIR in Cr.No.57/2010 is bad in law.

25. Regarding the merits, as admitted, no Government money was involved for acquisition of land. The application of M/s. ITASCA Software Development Pvt. Limited was placed before the State High Level Clearance Committee by Karnataka Udyog Mitra headed by Chief Minister in the meeting of the committee and the application was approved. M/s. ITASCA Software Development Pvt. Limited was permitted to start Special Economic Zone in an area of 325 acres of land in Bandikodigehalli village. The amount to be paid to the land owners was deposited by United Telecom Limited. The land was to be acquired by SLAO, KIADB - a Government agency. It is not the case of the Lokayukta (hat the amount required for payment of compensation was not deposited by M/s. ITASCA Software Development Pvt. Limited and UT1,. M/s. ITASCA did not gain anything. The amount for payment of ex gratia to the land owners was deposited by M/s. ITASCA Software Development Pvt. Limited into account of M/s. Indu Builders and Developers, which was entrusted with the work of negotiating with the land owners and to obtain the consent letters from the owners to pass the consent award. The case of the Lokayukta is that the amount deposited with M/s. Indu Builders and Developers to make ex gratia payment has been misused by accused Nos. 1 and 2, since M/s. Indu Builders and Developers is a benami

company of accused Nos. 1 and 2. Accused Nos. 1 and 2 said to have received bribe to approve the application submitted by M/s. ITASCA Software Development Pvt. Limited. Nobody questioned the integrity of the petitioner for all these days. The consent award was passed through KIADB a Government agency. Not a single complaint cropped up with regard to acquisition of land and payment of compensation. For all these reasons, the continuation of proceedings against the petitioner is nothing but abuse of power and abuse of process of Court. As such, proceedings as against the petitioner are liable to be quashed.

26. Accordingly, petition is allowed. The FIR registered in Cr.No.57/2010 of Lokayukta police station, Bangalore City and the charge-sheet filed in pursuance of Cr.No.57/2010 for the offences punishable under Sections 7, 8, 13(1) (d) r/w 13(2) of P.C. Act and Sections 465, 468, 471, 420 r/w 120-B IPC in Spl.C.C.No.135/2011 on the file of XXIII Addl. City Civil and Sessions Judge and Special Judge under Prevention of Corruption Act, 1988 in so far as it relates to the petitioner-Sri. S.V. Srinivas(accused No.3) are hereby quashed.

