R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JANUARY 2023

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

W.A.No.4861/2010 (LA-KIADB)

BETWEEN:

1. SMT. SUJATHA VIJAY
   W/O SRI H.V. VIJAYARAGHAVAN
   AGED ABOUT 51 YEARS.

2. SRI H.V. VIJAYARAGHAVAN
   S/O H.V. REDDY
   AGED ABOUT 53 YEARS.

   BOTH RESIDING AT 10/7
   UMIYA LAND MARKLAVELLE
   RAOD, BANGALORE - 560 001. ...APPELLANTS

(BY SRI S.S. NAGANANDA, SR. COUNSEL FOR
SRI S.G. PRASHANTH MURTHY, ADV.,)

AND:

1. STATE OF KARNATAKA
   REPRESENTED BY ITS
   CHIEF SECRETARY
   DEPARTMENT OF COMMERCE
   & INDUSTRIES, VIKASA SOUDHA
   BANGALORE - 560 001.

2. KARNATAKA INDUSTRIAL AREA
   DEVELOPMENT BOARD
   RASTROTANA BUIDLING
   NRUPATHUNGA RAOD
   BANGALORE - 560 001.

3. THE PRINCIPAL SECRETARY
DEPARTMENT OF PUBLIC WORKS
VIKASA SOUDHA
BANGALORE - 560 001.

4. THE PRINCIPAL SECRETARY
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
VIKASA SOUDHA
BANGALORE - 560 001.

5. THE SPECIAL LAND ACQUISITION
OFFICER, KIADB 3RD FLOOR
MARIYAPPA BUIDLING
GANDHINAGAR
BANGALORE - 560 009.

6. MINISTRY OF ENVIRONMENT
AND FOREST, GOVERNMENT OF
INDIA, PARYAVARANA BHAVAN
CGO COMPELX, LODHI ROAD
NEW DELHI - 110 003
REPRESENTED BY THE MINISTER
FOR ENVIRONMENT AND FOREST.

7. STATION HOUSE OFFICER
BANNERGHATTA POLICE STATION
BANNERGHATTA BANGALORE.

8. SRI V.P. BALIGAR, IAS
THE PRINCIPAL SECRETARY
COMMERCE AND INDUSTREIS
DEPARTMENT, VIKASA SOUDHA
BANGALORE.

9. SRI T. SHAM BHATTA, IAS
CEO, KIADB,NRUPATHUNGA ROAD
BANGALORE.

10. SRI ABDUL KAYUM
SPECIAL D.C. KIADB (BMICP)
3RD FLOOR MARIYAPPA BUILDING
GANDHINAGAR
BANGALORE -560 009.

11. SRI S.B. HONNUR
MEMBER SECRERAERY
(BMICAPA)BANGALORE.

12. NANDI INFRASTRUCTURE
CORRIDOR ENTERPRISES LIMITED
NO.1, MIDFORD GARDENS OFF
M.G. ROAD, BANGALORE - 560 001
REPRESENTED BY ITS
MANAGING DIRECTOR.

13. NANDI ECONOMIC CORRIDOR
ENTERPRISES LIMITED
NO.1 MIDFOR, GARDENS
OFF M.G. ROAD
BANGALORE - 560 001
REPRESENTED BY ITS
MANAGING DIRECTOR. ...RESPONDENTS

(BY MS. SRUTI CHAGANTI, SPL. COUNSEL FOR R-1 & R-3;
SRI SANDEEP PATIL, ADV. FOR R-4, R-7 & R-8;
SRI BASAVARAJ V. SABARAD, SR. COUNSEL FOR
SRI H. PRADEEP KUMAR, ADV., FOR R-2, R-5, R-9 & R-10;
SRI H.SHANTHI BHUSHAN, DSG FOR R-6;
SRI NARAYANA SWAMY, ADV. FOR R-11;
SRI D.L.N.RAO, SR. COUNSEL FOR M/S. KING & PATRIDGE FOR R-12;
SRI VIKRAM HUILGOL, SR. COUNSEL FOR M/S. KING & PATRIDGE FOR R-13)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 39277-278/2010 DATED 15/12/10

THIS APPEAL HAVING BEEN HEARD AND RESEVED, COMING ON FOR PRONOUNCEMENT THIS DAY, ***VISHWAJITH SHETTY J.,*** DELIVERED THE FOLLOWING:

J U D G M E N T

This intra court appeal is filed by the unsuccessful petitioners assailing the order dated 15.12.2010 passed by the learned Single Judge of this Court in W.P.Nos.39277-278 of 2010.

2. Heard the learned counsel's appearing for the parties and also perused the materials placed on record.

3. Brief facts of the case as revealed from the records which may be necessary for the purpose of disposal of this appeal are, the

appellants claim to be the owners of land bearing Survey No.104/2 to 104/7 at Gottigere Village, Bannerghatta Road, Bengaluru South Taluk which totally measures 13 acres 7 guntas (hereinafter referred to as 'the lands in question'). The lands in question were acquired by the Karnataka Industrial Area Development Board (hereinafter referred to as the 'Board' for short) for the purpose of construction of interchange, ramp and service road to the peripheral road that was being built by respondent Nos.12 & 13 pursuant to Frame Work Agreement (FWA) entered into between respondent No.12 and the State Government on 03.04.1997.

4. The State Government, therefore, had issued notification under Sections 3(1) and 1(3) of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as the 'Act of 1966' for short) on 24.01.2003. Thereafter, preliminary notification under Section 28(1) of the Act of 1966 was issued on 29.01.2003. The appellants herein had filed objections to the said preliminary notification and also challenged the preliminary notification by filing W.P.No.20729-34/2003 before this Court which was disposed of on 18.11.2005 directing the concerned authorities to consider whether the lands in question were actually required for the project and proceed thereafter.

5. In the meanwhile on 12.02.2004 the State Government had approved the ODP and the proposed alignment in the ODP including construction of interchange, ramp and service road to the peripheral road (hereinafter referred to as ODP of 2004). Subsequently the State Government issued notification dated 04.11.2006 superseding the ODP of 2004 and this notification dated 04.11.2006 was questioned before this Court by respondent No.12 herein in W.P.No.3568/2007. The order dated 12.02.2004 was challenged before this Court in W.P.No.15973/2005 and the said writ petition was dismissed by this Court and the order passed therein has attained finality.

6. The objections filed by the appellants to the preliminary notification issued under Section 28(1) of the Act of 1966 was considered and rejected by the Special Land Acquisition Officer vide order dated 02.02.2007 and a recommendation was also made by him for issuance of Section 28(4) notification in respect of the lands in question. However, the Department of Public Works Department which is the nodal department of the State for the purpose of implementing the project had recommended for de-notification of the lands in question and considering the same, the State Government had issued a notification under Section 4 of the Act of 1966 on 19.10.2007 and in the said notification itself, it was made clear that the order of de-

notification would be subject to the order of this Court in W.P.No.3568/2007 & W.P.No.17550/2006 and other matters which were pending consideration before this Court. Subsequently W.P.Nos.3568/2007 & 17550/2006 were allowed by this Court on 19.03.2009 and the notification dated 04.11.2006 was quashed and thereby the ODP of 2004 was restored and this Court taking into consideration that the notification dated 19.10.2007 issued under Section 4 of the Act of 1966 was made subject to the result of the said writ petitions, had reserved liberty to the acquiring authority to proceed further with the acquisition proceedings if the lands in question were required for construction of the peripheral road as per the ODP of 2004.

7. The State, thereafter, on 02.09.2009 had issued final notification under Section 28(4) of the Act of 1966 and the appellants had filed W.P.Nos.26793-795/2009 before this Court challenging the preliminary and final notifications issued in respect of the lands in question. A learned Single Judge of this Court on 07.09.2009 had granted an interim order staying the acquisition proceedings in respect of the lands in question. Subsequently, the Advocate General had appeared before the learned Single Judge and made a submission that lands in question were not required for the purpose of the project and the said submission was recorded by the learned Single Judge. On

29.04.2010, the Public Works Department which is the nodal agency for the purpose of the project had recommended for de-notification of the lands in question as the same was not required for any of the components of the project. The appellants presumed that pendency of the writ petition was coming in the way of the authorities considering the proposal for de-notification of the lands in question. Therefore, appellants had filed a memo seeking withdrawal of W.P.Nos.26793-795/2009 and respondent No.12, who is the project proponent had opposed the said memo. This Court permitted the appellants to withdraw the writ petition with liberty to file fresh petition.

8. After withdrawal of the writ petition, the appellants had given representations on 11.10.2010 and 03.11.2010 requesting to drop the acquisition proceedings in respect of the lands in question and in the meanwhile, the project proponent had issued a letter dated 12.10.2010 to handover the lands in question in its favour and considering the said letter, the Special Land Acquisition Officer of the Board had issued a letter dated 09.11.2010 seeking permission to handover the lands in question to the project proponent. It is under these circumstances, the appellants had approached this Court in W.P.Nos.39277-78/2010 with a prayer to quash the notification dated 24.01.2003 issued under Sections 3(1) & 1(3) of the Act of 1966, the notification dated 29.01.2003 issued under Section 28(1) of the Act of

1966, the notification dated 02.02.2007 issued under Section 28(3) of the Act of 1966, notification dated 02.09.2009 issued under Section 28(4) of the Act of 1966, notification dated 03.09.2009 issued under Section 28(6) of the Act of 1966, and to further declare that the alignment in ODP dated 12.02.2004 being implemented by respondent No.12 is contrary to the directions issued by this Court and the Hon'ble Supreme Court and also to declare that the project can only be implemented as originally conceived and not in accordance with the ODP of 2004, which is not in terms of FWA and further declare that change in alignment made by respondent No.12 and the agreement dated 14.10.1998 between respondent No.12 and the Board are illegal.

9. The said writ petition in W.P.No.39277-78/2010 was dismissed by the learned Single Judge of this Court at the stage of admission on the ground that the writ petition is hit by delay and latches and there was no cause of action to file the writ petition. Challenging the said order dated 15.12.2010 passed by the learned Single Judge, the appellants who were the petitioners before the learned Single Judge have preferred this intra court appeal.

10. Learned Senior Counsel appearing on behalf of the appellants submits that the learned Single Judge had failed to consider

that the authorities concerned have not applied their mind before issuing the communication for handing over possession of the lands in question to the project proponent and the said act of the authority is arbitrary and is orchestrated by the beneficiary. He submits that the State Government as well as the Public Works Department which is the nodal agency to the project have put it on record that the lands in question are not required for the purpose of the project and though recommendation is made for de-notification of the lands in question, instead of proceeding further pursuant to such a recommendation, the Land Acquisition Officer had taken steps to hand over the possession of the lands in question to the project proponent. He submits that the material on record would go to show that the project work has been completed and the lands in question are not any more required for the purpose of the project. He submits that the ODP of 2004 is contrary to FWA and in view of the judgment of the Hon'ble Supreme Court in the case of **H.T.SOMASHEKAR REDDY VS GOVERNMENT OF KARNATAKA & ANOTHER - (2000)1 KantLJ 224,** wherein the validity of the project as contained in FWA was upheld, any deviation from the FWA is not permitted. He also submitted that in the case of **ALL INDIA MANUFACTURERS ORGANISATION VS STATE OF KARNATAKA & OTHERS - 2005(3) KarLJ 521**, the Division Bench of this Court has issued a mandamus directing implementation of the project in letter and spirit

of FWA. The Division Bench also held that the judgment in **H.T.SOMASHEKHAR REDDY'S** case supra constituted *res judicata* and the validity of the project cannot be re-considered. He submits that the judgment of the Division Bench has been affirmed by the Hon'ble Supreme Court.

11. He submits that the State Government being the acquiring authority alone can decide which lands are required for the project and beneficiary cannot have any say in the matter. He also submits that since a recommendation is already made for de-notification of lands in question by the nodal agency, the project proponent cannot seek possession of the lands in question. He submits that the adjacent lands belonging to important personalities have been de-notified for which the beneficiary had given his consent and though this land is away from the project, the beneficiary/project proponent is seeking possession of the lands in question. In support of his submission he has relied upon the judgments of the Hon'ble Supreme Court in the case of **USHA STUD AND AGRICULTURAL FARMS PVT. LTD. & OTHERS VS STATE OF HARYANA & OTHERS - (2013) 4 SCC 210, M/S. VIJAYA LEASING LTD. VS STATE OF KARNATAKA BY ITS SECRETARY & OTHERS - ILR 2005 KAR 2539**, and **BANGALORE MYSORE INFRASTRUCTURE CORRIDOR AREA PLANNING AUTHORITY & ANOTHER VS NANDI INFRASTRUCTURE CORRIDOR**

ENTERPRISES LIMITED & OTHERS - 2020 SCC Online SC 463 (BMICPA's case).

12. Learned Special Counsel appearing on behalf of respondent Nos.1 & 3 submits that the lands in question are not required for the purpose of the project, and therefore, it will not be handed over to respondent no.12. She submits that respondent no.12 is entitled for possession of only 20,193 acres of extent of land as agreed in the FWA and as has been held by the Hon'ble Supreme Court in **H.T.Somashekhar Reddy**'s case supra. She submits that the de-notification order dated 19.10.2007 is still in force and the same has not been questioned by anybody till date. She submits that even as per the ODP of 2004, the proposed ramp does not pass on the lands in question, and therefore, the lands in question are not required for the project.

13. Learned Senior Counsel Sri D.L.N.Rao appearing on behalf of respondent no.12 submits that the judgment in **VIJAYA LEASING LTD**.'s case supra, on which heavy reliance has been placed by the learned Counsel for the appellants has been overruled by the Hon'ble Supreme Court in the case of **BANGALORE DEVELOPMENT AUTHORITY VS VIJAYA LEASING LTD. & OTHERS - (2013)14 SCC 737**. He submits that the judgment in **BMICPA's** case supra cannot be made applicable to the

facts of the present case. He submits that the said judgment is rendered by the Hon'ble Supreme Court in a case where the project proponent wanted to build group housing at the interchange areas and it is in this background, the Hon'ble Supreme Court had held that the project proponent has to approach the State Government seeking their prior approval. He submits that the ODP of 2004 was superseded by the State Government by issuing modified ODP on 04.11.2006 which was questioned before this Court by respondent No.12 in W.P.No.3568/2007. When the said writ petition was pending, the State Government had issued the notification dated 19.10.2007 under Section 4 of the Act of 1966 deleting the lands in question subject to the result of W.P.No.3568/2007 and the said writ petition was allowed by this Court on 19.03.2009 and in effect, the ODP of the year 2004 was restored and the notification issued under Section 4 of the Act of 1966 stands impliedly rescinded.

14. He submits that the appellants had earlier filed W.P.No.14287/2009 with a prayer to quash the preliminary and final notifications and the said writ petition was withdrawn without seeking any liberty, and therefore, the present writ petition is hit by the principles of *res judicata*. The special leave petition in SLP.No.10556/2009 filed against the order passed in W.P.No.3568/2007 was withdrawn by the appellants to prosecute this

appeal. He submits that the liberty reserved in SLP.No.10556/2009 will not take away the bar of *res judicata*. He also submits that in the order dated 29.10.2010, the notification under Section 28(4) of the Act of 1966 is not rescinded and only the notification under Sections 1(3), 3(1) & 28(1) of the Act of 1966 has been rescinded. He submits that the Hon'ble Supreme Court in the case of **STATE OF KARNATAKA & ANOTHER VS ALL INDIA MANUFACTURERS ORGANISATION & OTHERS - (2006)4 SCC 683** has considered the question of the purpose of acquisition and the question of excess land being acquired for the very same project and the same questions cannot be re-opened once again. He submits that the stand of the State Government has been deprecated by the Hon'ble Supreme Court in **ALL INDIA MANUFACTURERS ORGANISATION**'s case supra and **M.NAGABHUSHANA VS STATE OF KARNATAKA & OTHERS - (2011)3 SCC 408**, and exemplary costs have been imposed on the State for their conduct.

15. He also submits that the State Government in **VIJAYA LEASING LTD.'S** case supra has taken a stand that it has no power to issue the de-notification order once possession of the land has been taken over, and therefore, a different stand cannot be taken in the present case. He submits that the then Advocate General had made a statement before this Court that ODP of 2004 is the approved

alignment of the road and the alignment in the said ODP would be followed by the State and its authorities and in this regard, he refers to the judgment of this Court in **K.SUKUMARAN VS STATE OF KARNATAKA, REPRESENTED BY ITS CHIEF SECRETARY & CHAIRMAN AND OTHERS - 2011 SCC Online Kar 4512**. He submits that the Hon'ble Supreme Court has held that the allotment and possession of the land to the project proponent should be as per the ODP of 2004, and therefore, the State Government cannot deviate from their earlier stand. He submits that the sketch which is available on record would go to show that the proposed plan is as per the ODP of 2004 and the proposed ramp/alignment passes through the lands in question, and therefore, it is not correct to state that the project has been completed or that the lands in question are not required for the purpose of the project.

16. He submits that once the acquired land vests with the Government, the State Government can utilize the same for any other purpose and merely for the reason that the said land is not utilized for the purpose for which it was acquired, the owner of the land does not get a right to seek restoration of the said land. He submits that the State Government has already issued a notification under Section 28(4) of the Act of 1966 and the further acquisition proceedings continued is therefore in accordance with law. In support of his contentions, he has relied upon the judgment of the Division Bench of

this Court in the case of **NANDI INFRASTRUCTURE CORRIDOR ENTERPRISES LTD. VS BANGALORE MYSORE INFRASTRUCTURE CORRIDOR AREA PLANNING AUTHORITY** in **W.P.Nos.16576-77/2015 & connected cases** disposed of on 15.10.2019. He also submits that the concerned Minister has passed an order on 29.10.2010 to rescind from the acquisition proceedings on the ground that the same was not permissible after issuance of the notification under Section 4 of the Act of 1966. He submits that the appellants have sold a portion of the lands in question and have entered into a development agreement in respect of the remaining extent of land which is the subject matter of acquisition and the said fact has been suppressed before this Court. He also submits that the appellants have been abusing the process of the court by filing repeated cases.

17. Learned Senior Counsel appearing for respondent Nos.2 and 5 submits that the objection filed by the appellants to Preliminary Notification was heard and rejected by respondent No.5. He submits that acquisition of lands in question is in accordance with law and lands in question are required for the purpose of project. He also refers to his statement of objection and submits that the order passed by this Court as well as by the Hon'ble Supreme Court directs completion of the project as per FWA and ODP of 2004. He refers to the judgment of the Hon'ble Supreme Court in the case of

M.NAGABHUSHANA (supra) and submits that there was a direction to the State Government to complete the project as early as possible and the lands acquired under the project are also directed not to be released as that may impede completion of project.

18. Learned Senior Counsel appearing for respondent No.13 submits that the contention the lands in question are not required for the purpose of project is not correct. He also submits that acquisition cannot be quashed at the instance of the appellants on the said ground. He submits that the Act of 1966 does not provide for de-notification of acquired land and the same is not permissible since the acquired lands gets vested with the State Government under Section 28(5) of the Act of 1966. He submits that the judgment in the case of **THOMAS PATRAO By His LR & ANR v. STATE OF KARNATAKA & ORS - ILR 2005 KAR 4190** is no longer a good law in view of judgment passed by the Division Bench of this Court in W.P.No.17600/2004 - **NANDI INFRASTRUCTURE CORRIDOR ENTERPRISES LTD. VS STATE OF KARNATAKA & OTHERS.** He submits that the appellants were party respondents in W.P.No.3568/2007 wherein the notification issued by the State Government dated 04.11.2006 was questioned. He submits that in the said writ petition, it was urged on behalf of the appellants that the lands in question were not required for the purpose of construction of peripheral road and the said contention has been rejected by the

division bench of this Court and it has been held that lands in question belonging to the appellants in Sy.Nos.104/2 to 104/7 are also required for the purpose of peripheral road as per the alignment approved on 12.02.2004 and accordingly, liberty was reserved to the acquiring authority to proceed with the acquisition if the lands in question belonging to the appellants if they are required for the purpose of constructing peripheral road as per alignment approved on 12.02.2004. It is only after this Court reserved such liberty, a Final Notification under Section 28(4) of the Act of 1966 has been issued by the State Government and the same has been challenged once again on the very same ground i.e., the lands in question are not required for the purpose of the project. He submits that the State Government had earlier taken a stand that lands in question are required for the purpose of the project and having issued a notification under Section 28(4) of the Act of 1966, thereafter changed its mind and this aspect has been taken into consideration and deprecated by the Hon'ble Supreme Court in the case of **ALL INDIA MANUFACTURERS ORGANISATION** (supra)**.** He also submits that, once the acquisition proceedings under the Act of 1966 is completed, the acquired land vests with the State, and therefore, the same cannot be de-notified or restored to the possession of the owner.

19. In reply, the learned Senior Counsel for the appellants submits that the judgment in the case of **VIJAYA LEASING LTD.** (supra) has not been overruled. He submits that merely for the reason that the judgment in the case of **VIJAYA LEASING LTD.** has been reversed by the Hon'ble Supreme Court it does not mean that the ratio laid down by this Court in **VIJAYA LEASING LTD.** is also reversed. In this regard, he has placed reliance on the judgment of Hon'ble Supreme Court in the case of **KUNJAN NAIR SIVARAMAN NAIR V. NARAYANAN NAIR AND OTHERS - AIR 2004 SC 1761.** He also submits that even the judgment in the case of **THOMAS PATRAO**(supra) has not been overruled by the Division Bench of this Court in W.P.No.17600/2004. He submits that in W.P.No.17600/2004 it has been held that the de-notification is not permissible after issuance of notification under Section 28(4) of the 1966, whereas in the present case, the de-notification order has been issued even prior to the notification under Section 28(4) of the Act of 1966. He also submits that except W.P.Nos.26793-795/2009, the earlier writ petitions filed by the appellants did not contain a challenge to the Final Notification under Section 28(4) of the Act of 1966 at any point of time and the present petitions are filed on the strength of liberty reserved by this Court in W.P.Nos.26793-795/2009, and therefore, the principles of *res judicata* or constructive *res judicata* would not apply to this writ petition and in this regard he has referred

to the judgment of Hon'ble Supreme Court in the case of **KUNJAN NAIR SIVARAMAN NAIR**(supra). He submits that the learned Single Judge was not justified in dismissing the writ petition on the ground of delay and latches as the writ petition is filed in the year 2010 whereas Final Notification was issued in the month of September, 2009. He also submits that with regard to the allegation that the appellants have sold the lands in question to private parties, there is no pleading, and therefore, the same cannot be urged.

20. As a rejoinder to the said submission, learned Senior Counsel for respondent No.12 submits that the writ petition was dismissed at the stage of admission and therefore no statement of objection was filed before the learned Single Judge. He also submits that the statement of objection is now filed in the writ appeal, wherein a specific plea is made that lands in question have been sold by the appellants to private parties and therefore they cannot maintain the writ petition.

21. Indisputable facts relating to the case are, the State Government has entered into a FWA with respondent No.12 on 03.04.1997 for the purpose of construction of peripheral road, and for the purpose of construction of interchange, ramp and service road to the peripheral road that was being built by respondent nos.12 and 13

pursuant to FWA dated 03.04.1997, the lands in question were notified for acquisition by the State Government. The legality and validity of FWA has been upheld by the Division Bench of this Court in the case of **H.T.SOMASHEKAR REDDY** (supra) and it has been observed as under:

> *"15. Allegation that the agreement entered is opposed to the Constitution and the laws in force or that it is detrimental to the people of the area who are likely to be directly affected by the proposed project, has been denied. Allegation that it would result in disastrous consequences affecting agriculture, horticulture, environment and pollution control etc., is denied being baseless and vague. There is no wildlife, forest on the alignment. The project provides for relief and rehabilitation package separately for the people affected in the area where Expressway and the townships are proposed. The project does not affect the citizens of Bangalore City as alleged. It is submitted respondent 2 will augment independent sources of water supply, electricity and other essential amenities at its cost. The project will help in decongesting the city by developing townships which will be self-contained. The Expressway also contemplates high speed roads to connect North and South of Bangalore by the formation of peripheral road to ease out the considerable heavy traffic and congestion which otherwise plies through the city. As a mega project like the Expressway involves considerable extent of land, answering respondent 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. The townships can be developed by respondent 2 only after Expressway is completed. Under Clause 3.5.1*

the concession period is 30 years initially and however extendable on mutual consent which the replying respondent may or may not extend since it is not obliged to extend the said period.

23. The replying respondent approached the Indian Space Research Organisation for assistance to determine the alignment of the Expressway and the location of the townships. Using Satellite imagery, and aerial photographs taken by the National Remote Sensing Agency the replying respondent has been able to identify land involving no forest area at all and minimal wet and garden land, thus requiring only kharab or dry land, largely. The above survey has enabled this respondent to identify lands mostly belonging to the State Government and having lesser population to reduce the displacement of the existing population to the minimum. Effort has been made to avoid all natural creeks and underground water sources to avoid any environmental damage. Table showing the details of classification of land required to the project is as follows:

"Land Road (acres) Township (acres) Total (acres) Percentage Kharab 1,740 5,818 7,558 Dry 2,936 6,881 10,817 Wet 1,183 1,662 Garden Total 6,999 13,194 20,193 100"

50. On factual aspects it may be clarified that in all 20,193 acres of land is required for the Toll Project, out of which the types of land to be acquired is: Kharab-7,558 acres, dry-10,817 acres, wet-1,662 acres, gar-den-156 acres, totalling to 20,193 acres. Conversion would be payable only regarding wet and the garden land and not the remaining land. Moreover, when once the land is acquired for public purpose under any enactment then the question of payment of conversion charges does not arise. The project of this magnitude could not have been executed by

purchase of land by a private person. As of necessity land has to be acquired for the execution of such a project. Whenever the land is acquired compulsorily for a public purpose, then the person for whose benefit the land is acquired is not required to pay the conversion charges. Respondent 2 has not been singled out for this. No undue favouritism has been shown to it. It is being treated at par with other similarly situated persons or organisations for whose benefit the State acquires the land. Construction of Expressway between Bangalore-Mysore is a public purpose, it cannot be held that it was incumbent upon the Government to charge conversion fees for converting the user of the land from agricultural to a non-agricultural purpose.

51. Under the project respondent 2 has to construct a 162 kms. of road requiring 6,999 acres, details of which are as follows:

1. Expressway - 111 kms. including interchanges toll plazas etc. 4,528 Acres;

2. Peripheral road 41 kms. 2,193 Acres;

3. Link road 9.8 kms. 278 Acres, Totalling 6,999 Acres."

22. In the case of **ALL INDIA MANUFACTURERS ORGANISATION** (supra), the Division Bench of this Court had directed the State Government and its instrumentalities including the Board to forthwith execute the project as conceived originally and upheld by this Court in the case of **H.T.SOMASHEKAR REDDY** (supra) and a further direction was issued to implement the FWA in its letter and spirit. In paragraph No.29 of the said judgment it has been observed as follows:

"29. From the narration of the above facts we find that the Bangalore-Mysore Infrastructure Corridor Project, envisages, 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-Bom-bay.

(iii) Construction of elevated road from Sirsi Circle upto 9.4 k.ms.

(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."

23. The judgment passed in the case of **ALL INDIA MANUFACTURERS ORGANISATION** (supra) by the Division Bench of this Court has been affirmed by the Hon'ble Supreme Court. In paragraph Nos.47 and 79 of the said judgment, the Hon'ble Supreme Court has observed as follows:

"47. All of these unequivocally show that the issue of excess land (and connected issues) was specifically raised by the petitioner in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] and was also forcefully denied by the State. In fact, the decision in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] , 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 [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] and hence, the findings recorded therein having reached finality, cannot be reopened in this case

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

24. The Hon'ble Supreme Court in the case of **M.NAGABHUSHANA** (supra) has observed in paragraph No.48 as follows:

"48. In that view of the matter, this Court makes it clear that the State Government should complete the project as early as possible and should not do anything, including releasing any land acquired under this project,

as that may impede the completion of the project and would not be compatible with the larger public interest which the project is intended to serve."

25. From the aforesaid pronouncement made by this Court as well as by the Hon'ble Supreme Court, it is clear that FWA entered into between the State Government and respondent No.12 has been upheld and directions have been issued to complete the project in terms of FWA. The writ petition challenging the ODP of 2004 has been dismissed by this court and the notification dated 04.11.2006 issued by State superseding the ODP of 2004 was assailed in W.P.No.3568/2007. The Division Bench of this Court in W.P.No.3568/2007 disposed of on 19.03.2009 has upheld the alignment in ODP of 2004 while quashing the subsequent modified ODP dated 04.11.2006 issued by the State Government and in the said case, contention urged on behalf of the appellants that lands in question are not required for the purpose of project has been negatived and in paragraph No.40 of the said judgment it has been specifically held that lands belonging to the appellants in survey No.104/2 to 104/7 would also be required for construction of peripheral road as per alignment in ODP of 2004 approved on 12.02.2004 and liberty was reserved to the acquiring authority to proceed with the acquisition of land belonging to the appellants, if it is

required for construction of peripheral road as per alignment approved on 12.02.2004.

26. After disposal of W.P.No.3568/2007 on 19.03.2009, Final Notification under Section 28(4) of the Act of 1966 was issued on 02.09.2009 by the State Government. From the pronouncements made by this Court as well as Hon'ble Supreme Court which are referred to hereinabove it is clear that FWA agreement and alignment in ODP of 2004 has been upheld and directions have been issued to the State Government as well as the other authorities concerned to complete the project in terms of FWA agreement and as per alignment in ODP of 2004. In the meanwhile, during the pendency of W.P.No.3568/2007, the State Government had issued a notification under Section 4 of the Act of 1966 on 19.10.2007 and it was made clear in the notification itself, that the said notification would be subject to the orders passed by this Court in W.P.No.3568/2007, W.P.No.17550/2006 and other connected matters which were pending consideration before this Court. Thereafter, this Court allowed W.P.No.3568/2007 and W.P.No.17550/2006 on 19.03.2009 reserving liberty to the acquiring authority to proceed further with the acquisition proceedings and pursuant to the said order, the State Government had issued the notification under Section 28(4) of the Act

of 1966 in respect of the lands in question which has been assailed by the appellants in the present proceedings.

27. The questions that arise for consideration in this intra court appeal are:

1) Whether the notification issued under Section 4 of Act, of 1966 by respondent No.1 on 19.10.2007 is still valid and continuation of acquisition proceedings in respect of lands in question even thereafter, is bad in law?

2) Whether the lands in question are required for the purpose of project by respondent Nos.12 and 13 and if not whether the appellants/owners are entitled for restoration of the said lands?

3) Whether the writ petition filed by the appellants in W.P.No.39277-278/2010 is hit by principles of res judicata?

28. **Point no.1**: For the purpose of construction of interchange, ramp and service road to the peripheral road that was being constructed by respondent nos.12 & 13 pursuant to FWA dated 03.04.1997 the proposed alignment in the ODP of 2004was approved by the State Government on 12.02.2004. Challenge to the order dated 12.02.2004 was rejected by this Court in W.P.No.15937/2005. The State Government had thereafter issued notification dated 04.11.2006 superseding the ODP of 2004 and the said notification dated 04.11.2006 was questioned before this Court in W.P.No.3568/2007. When the said writ petition was pending, the State Government had

issued notification under Section 4 of the Act of 1966 on 19.10.2007 deleting the lands in question from the acquisition proceedings and the said notification was made subject to W.P.No.3568/2007. The Division Bench of this Court subsequently allowed W.P.No.3568/2007 on 19.03.2009 and it has been observed in the said order that de-notification of the lands belonging to the appellant were made subject to orders of the said writ petition and therefore, acquiring authority was given liberty to proceed with the acquisition of lands belonging to the appellants, if they were required for construction of peripheral road as per alignment approved by the State Government on 12.02.2004.

29. Since the notification issued under Section 4 of the Act of 1966 was made subject to result of W.P.No.3568/2007 and connected writ petitions, the said notification stands impliedly rescinded/revoked once the said writ petitions are allowed by this Court. The same has been taken note of by this Court in its order dated 19.03.2009 passed in W.P.No.3568/2007 and therefore it is not open to the appellants who were parties to the W.P.No.3568/2007 to now contend that the notification issued under Section 4 of the Act of 1966 dated 19.10.2007 is still valid and is in existence. Undisputedly, the order passed by the Division Bench of this Court in W.P.No.3568/2007 and connected matters has attained finality and having regard to the liberty reserved to the acquiring authority to proceed with the

acquisition of lands in question belonging to the appellants, if they are required for the purpose of construction of peripheral road as per alignment approved on 12.02.2004, the notification under Section 28(4) of the Act of 1966 has been issued by the State Government and therefore, continuation of acquisition proceedings even after issuance of de-notification order dated 19.10.2007 cannot be said to be bad in law. Under the aforesaid circumstances, the judgment in the case of **VIJAYA LEASING LTD.(supra)** cannot be made applicable to the facts of this case. Moreover, the said judgment has been set aside by the Hon'ble Supreme Court in the case of Bangalore Development Authority Vs Vijaya Leasing Ltd. (supra).

30. It is also relevant to take note of the fact that W.P.No.14287/2009 was withdrawn on 13.08.2010 by the appellants and in the memo for withdrawal filed in the said writ petition, it has been stated that the appellants were expecting that the lands in question are likely to be deleted from the acquisition praoceedings. Further, W.P.No.26793-795/2009 which was filed by the appellants herein challenging the notifications issued under Sections 28(1) & 28(4) of the Act of 1966 in respect of the lands in question, was also withdrawn by the appellants on 23.09.2010 and in the memo for withdrawal filed by them in the said writ petition, it has been stated as follows:

"MEMO

Petitioners submit that the Public Works Department of the Government of Karnataka, which is the nodal agency to over see the BMIC Project, has recommended that the lands of the petitioners be denotified since they are not required for the construction of the road/interchange in question.

In view of the above, and also in view of the statement made by the Counsel appearing on behalf of the State Government before this Hon'ble Court on 28.7.2010, reserving unto themselves the right to agitate their grievance in other pending proceedings, petitioners crave leave of this Hon'ble Court to withdraw the present writ petition with liberty to file a fresh writ petition in case of a need."

31. This Court while accepting the aforesaid memo and permitting the appellants to withdraw the writ petitions with liberty to file fresh petition on the same cause of action has taken note of the contentions by the appellants that the nodal agency had recommended for de-notification of the land in question and observed that whether the competent authority accepts the recommendation or not cannot be considered at that stage. No orders regarding de-notification has been passed thereafter by the competent authority.

32. The material on record would also go to show that the learned Advocate General appearing on behalf of the State on 04.05.2010 before the Hon'ble Supreme Court in C.C.C.No.144/2006 in C.A.No.3492-94/2005, had made a statement before the Hon'ble Supreme court that lands in question will not be de-notified till next date of hearing.

33. Therefore, it is evident that in all aforesaid proceedings, the appellants as well as the State Government have proceeded as if the de-notification order dated 19.10.2007 was not in existence and material available on record would go to show that after issuance of Final Notification dated 02.09.2009, the appellants have given representation on 11.10.2010 and 03.11.2010 to delete the lands in question from the acquisition proceedings and considering the said representation, Nodal Agency had recommended for deleting the lands in question from the acquisition proceedings. Liberty was granted to the appellants to withdraw W.P.No.26793-95/2009 and file a fresh writ petition on the same cause of action, considering the submission made by them that competent authority will not consider the recommendation by nodal agency for deletion of lands in question from the acquisition proceedings, if the writ petitions are pending before this Court. This Court was persuaded to believe that pendency of W.P.Nos.26793-795/2009 was coming in the way of the competent authorities considering the recommendation made by the nodal agency for de-notification of the lands in question. The appellants now cannot be permitted to contradict their said stand taken in the earlier proceedings, wherein they were permitted to file a fresh petition on the same cause of action. The doctrine of estoppel also does not permit the appellant to take a different stand in this petition. Estoppel

is a judicial device whereby a court may prevent or estop a person from making assertions or going back on his word or earlier statement. It is legal doctrine to prevent or estop the party from doing something that is inconsistent with his earlier actions. Principle of estoppel prohibits a person from contradicting what was earlier said by him in a court of law. The principle of estoppel by pleading is squarely attracted in this case. In the said background, it is not open for the appellants to now raise a contention in this proceedings that de-notification order passed on 19.10.2007 is still valid and all acquisition proceedings pursuant to the same is unsustainable. Accordingly, we answer point No.1 for consideration in the negative.

34. **Point no.2**:- It is the specific case of the appellants that the lands in question are situated at a distance of about 2 k.m. from the peripheral road and therefore, the lands in question are not required for the project. It is also the case of the appellants that excess land had been acquired by the State to benefit respondent No.12 and this contention was considered by the division bench of this Court in **ALL INDIA MANUFACTURERS ORGANISATION** (supra) case and in paragraph nos.76 & 77 of this High Courts judgment it has been observed as follows:

> *76. The next contention urged on behalf of the landowners is that the lands were not being acquired for a public purpose. The counsel who have argued for the landowners have expatiated in their contention by urging that land in excess of what was required under*

the FWA had been acquired; land far away from the actual alignment of the road and periphery had been acquired; consequently, it is urged that even if the implementation of the highway project is assumed to be for a public purpose, acquisition of land far away there from would not amount to a public purpose nor would it be covered by the provisions of the KIAD Act.

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

35. The Hon'ble Supreme Court has affirmed the judgment of this Court in All India Manufactures case (supra) and in paragraph No.51 of its judgment, the Hon'ble Supreme Court has observed as follows:

"51. 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 [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] 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 [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] and as it was res

judicata, it could not be reagitated. 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."

36. The alignment to the peripheral road as per ODP of 2004 was challenged before this Court in W.P.No.15973/2005 which was dismissed and the said order has reached finality. Revised ODP of 2006 issued by the State Government on 04.11.2006 superseding ODP of 2004 was subject matter of W.P.No.3568/2007 and this Court has allowed the said writ petition and the Government notification dated 04.11.2006 was quashed and in effect ODP of 2004 was restored. The appellant No.2 herein was party respondent in W.P.No.3568/2007. The contention urged on behalf of the appellants in W.P.No.3568/2007 that the lands in question are not required for the purpose of project has been rejected by this Court in the said writ petition and this Court has held that lands in question have been acquired as the same would be required in view of alignment to the peripheral road in the ODP of 2004 approved by the Government on 12.02.2004, wherein the peripheral road would be skirting the boundary to Gottigere village in which case the lands in question would also be required for construction of the said peripheral road as per the alignment approved on 12.02.2004.

37. The order passed in W.P.No.3568/2007 has attained finality and the appellants who were parties to the said writ petition

cannot be once again permitted to raise the very same contention in this writ petition. The question of excess land being acquired for the purpose of project has been considered by this Court and the Hon'ble Supreme Court in the case of **ALL INDIA MANUFACTURERS ORGANISATION** (supra) and it is already held said issue cannot be re-agitated.

38. In the case of **K.SUKUMARAN** (supra), the Division Bench of this Court has recorded the contention urged by the learned Advocate General on behalf of the State in paragraph No.62 of the judgment which reads as follows:

> *"62. The learned Advocate General contended as follows:*
>
> *The matter has already been concluded. The direction to execute the project as originally conceived relates to extent of land. The Govt. wanted to reduce the land. Therefore, AIMO approached the court. In that context court has directed to implement the project as originally conceived. He also invited our attention to the pleadings in Madhuswamy and Nagabhushan's case. The alignment was finalised as per ODP and the Court has considered it and it has become final. There is no merit in the contention that PTR should be followed. The ODP is in accordance with the Govt. order dated 12.2.2004 and it has been confirmed. The order dated 4.11.2006 modifying the alignment in the ODP has been quashed. PTR was only a broad proposal. Planning Authority has come out with final details in the form of ODP. The alignment in ODP has to be followed, The planning authority was constituted as per FWA and it has worked out the details and prepared ODP which has been approved."*

39. In the said case land owners had urged that their lands were not required for the purpose of project and they were away from

the peripheral road. In paragraph No.84 of the said judgment, it has been observed as follows:

> *"84. In view of the above discussion and reasons, most of these petitioners have approached this Court in more than one occasion. Though they have sought for a different prayer, in substance whatever was the challenge made in the earlier round of litigation at their behest once again is raised in these writ petitions contending that the land of these petitioners is not at all required for the project and it is beyond or away from the peripheral road and the alignment of the road. The said issue has reached finality as the highest Court of the land has opined that as long as the lands in question are needed for the integrated infrastructure project, the situation of the land away or outside the peripheral road or the alignment of the road cannot be a ground to scuttle the project. Therefore, this contention is negatived."*

40. The question of acquisition of excess land was also considered in **Sukumaran's** case (supra) and in paragraph No.100, it has been observed as follows:

> *100. One Mr. Nagabhushan had also approached the learned single Judge in W.P. No. 1028/2007 and the said writ petition came to be dismissed by the learned single Judge on 28.5.2007. In the said case also, one serious challenge raised was land in excess of the requirement for FWA being acquired. Aggrieved by the orders of the learned single Judge, he filed an appeal in W.A.1192/2007 before the Division Bench. The Co-ordinate Bench of this Court disposed of the matter on 23.7.2010 and the same is reported in ILR 2010 Kar. 4265. The contention of the appellants in the said appeal was also with regard to the excess land being acquired far beyond the 20,193 acres and the same came to be rejected as the said issue was the subject matter of earlier litigation. This order of the Division Bench was taken up before the Apex Court in Civil Appeal No. 1215/wherein the allegation of excess land being acquired was raised. Their Lordships held that the allegation of excess land being acquired was the subject matter of earlier litigation and therefore, it was barred by the principles of res judicata and constructive res judicata. Accordingly, the appeal came to be dismissed*

> *holding that it is nothing but abuse of process of the Court. Hence, even allegation of excess land is not available to the petitioners as it is already covered in the previous judgments.*

41. Learned counsel for the respondent No.12 has also produced a google photograph showing alignment of interchange ramp/100p at interchange 2/7 as per ODP of 2004 and was pointed out to this Court that lands in question are required for the purpose of project. The said document has been produced along with the memo dated 16.02.2018 and a letter issued by the Chief Engineer of PWD Department to the Chief Secretary dated 28.06.2014 is also enclosed along with the said memo which would go to show that the Chief Engineer has opined that lands in question are necessary for the purpose of project and the proposed ramp passes through the lands in question. Having regard to the above referred pronouncements made by this Court and by the Hon'ble Supreme Court with regard to the very same issue, it is too late in the date for the appellants to contend that lands in question are not required for the purpose of the project.

42. In the case of **NORTHERN INDIAN GLASS INDUSTRIES V. JASWANT SINGH** - **(2003) 1 SCC 335** at paragraph No.9, it has been observed as follows:

> *"9. … There is no explanation whatsoever for the inordinate delay in filing the writ petitions. Merely because full enhanced compensation amount was not paid to the respondents, that itself was not a ground to*

> *condone the delay and laches in filing the writ petition. In our view, the High Court was also not right in ordering restoration of land to the respondents on the ground that the land acquired was not used for which it had been acquired. It is a well-settled position in law that after passing the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the landowner does not get any right to ask for revesting the land in him and to ask for restitution of the possession. This Court as early as in 1976 in Gulam Mustafa v. State of Maharashtra [Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800] in para 5 has stated thus: (SCC p. 802)*
>
> *'5. At this stage, Shri Deshpande complained that actually the Municipal Committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration.' "*
>
> *(emphasis supplied)"*

43. The said principle has been reiterated by the Hon'ble Supreme Court in the case of **INDORE DEVELOPMENT AUTHORITY V. MANOHARLAL & OTHERS - (2020) 8 SCC 129**. It is also relevant to take note of the fact that pursuant to the liberty reserved by the division bench of this Court in W.P.No.3568/2007, the State which is the acquiring authority has issued a notification under Section 28(4) of the Act in respect of the lands in question.

44. In the case of **The Karnataka Industrial Areas Development Board v. Government of Karnataka** in

W.A.No.5083/2016 dated 23.01.2020 in paragraph No.23 it has been held as follows:

> *"....When once the acquisition process is completed, the land loser is entitled to just and fair compensation or in the alternative, assail the acquisition process in accordance with law. The land loser does not have a right in law to enquire as to whether the object and purpose of acquisition is achieved....."*

45. In the case of **SULOCHANA CHANDRAKANT GALANDE V. PUNE MUNICIPAL TRANSPORT, [(2010) 8 SCC 467]** by following **FRUIT AND VEGETABLE MERCHANTS** UNION **V. DELHI IMPROVEMENT TRUST (AIR 1957 SC 344)** it has been held as follows:

> *"that the expression "vesting" means that the property acquired becomes the property of the Government without any conditions or limitations either as to title or possession. Vesting of the land is not for any limited purpose or any limited duration. It is also settled legal proposition that once the land vests in the State Government free from all encumbrances, there cannot be any rider on the part of the State Government to change user of the land in the manner it chooses. How the State Government uses the excess land is no concern to the original owner and cannot be the basis for invalidating the acquisition. The original land owners cannot seek restoration of possession on the ground that either the original public purpose has ceased to be in operation or that the land could not be used for any other purpose."*

46. It is trite law that on publication of notification under Section 28(4) of the Act of 1966, the lands which are subject matter of such notification get vested in the State free from encumbrance, by operation of Section 28(5) of the Act of 1966. Once the lands gets vested with the State, the question of restoring the said lands to the

owner or the question of deleting the said land from acquisition proceedings does not arise and the same is not permissible in law. This question was considered by the division bench of this Court in W.P.No.17600/2004 and in paragraph No.27 of the said judgment, it has been held as follows:

> *"27. As already stated above, once the land is vested in the Government free from all encumbrances, even if the purpose for which the land was originally acquired is aborted for some reason or the other, the land will not revert back to the owner but it vests with the State Government and the State can use the same for any other public purpose as ling as it is for the use of the public."*

47. Under the circumstances, we answer, point no.2 for consideration in the negative and state that lands in question are required for the purpose of project and the appellants are not entitled to restoration of land.

48. **Point no.3:** "Res" in latin means "matter" and "judicata" means "decided". Therefore principle of resjudicata would be applicable when the "matter is decided". Section 11 of CPC provides for this principle and principle of resjudicata would be applicable when the same issue interse between the parties on the same subject has been finally decided by a competent Court. Explanation IV of Section 11 of CPC provides for "constructive resjudicata" and to attract this principle it must be shown that in the formerly instituted suit, the issue

or ground which the parties might or ought to have raised, had not been raised. Thus, principles of constructive resjudicata is an exception to the general rule. It is trite law that principles of res judicata and constructive res judicata would also be applicable to writ proceedings. To consider whether the principles of resjudicata would be applicable to the present case, it would be necessary to briefly refer to the various petition filed interse or same subject.

49. The appellants had initially approached this Court in W.P.No.20729/2003 challenging Section 28(1) notification and the said writ petition was disposed of by this Court on 18.11.2005 directing the concerned authorities to consider the objections filed by the appellants herein under Section 28(2) of the Act of 1966 and decide whether the lands in question are required for the purpose of project and proceed thereafter. There was no adjudication of the issue on its merits in the said petition. W.P.No.15973/2005 was filed challenging the OPD of 2004, while W.P.No.3568/2007 was filed challenging the notification issued superseding the OPD of 2004. The objections filed by the appellants to Section 28(1) notification was thereafter overruled by the competent authority and subsequently, final Notification under Section 28(4) of the Act of 1966 was issued by the State on 02.09.2009. In the meanwhile, W.P.No.14287/2009 was filed by appellant No.2 with a prayer to take action against respondent nos.12 & 13 herein for having

undertaken construction of the road without obtaining approval of alignment and design of road as contemplated under MOEF clearance dated 08.08.2001 and the Government order dated 12.02.2004. The said writ petition was withdrawn on 13.08.2010. In the meanwhile, the appellants had also filed W.P.No.26793-795/2009 before this Court challenging the Preliminary and Final Notification issued in respect of the lands in question. The said writ petition was permitted to be withdrawn by the appellants with liberty to file a fresh petition on the same cause of action.

50. In paragraph No.10 of the order dated 23.09.2010 passed in W.P.Nos.26793-795/2009, wherein this Court had permitted the appellants to withdraw the writ petition, it has been observed as follows:

> *10. Coming to the facts of the present case, the petitioners have challenged the validity of the notifications issued by the State Government for acquiring the petition schedule lands. It is not in dispute that the Public Works Department of the Government of Karnataka, which is a nodal agency to over see the BMIC project has recommended that the lands of the petitioners be de-notified since they are not required for the construction of road/interchange in question. Whether the competent authority accepts the same or not cannot be considered at this stage. It is the case of the petitioners that the competent authority will not consider the recommendation when the writ petitions are pending before this Court. Therefore, they have sought for withdrawal of the writ petitions with liberty to file a fresh writ petition in case of a need. Pendency of a writ appeal challenging an interim order passed in the writ petitions cannot be a bar to consider the request of the petitioners seeking permission to withdraw the writ petitions with liberty to file a fresh*

> *writ petition. In my opinion, the reasons assigned for withdrawal of the writ petitions with liberty to file a fresh writ petition constitute 'sufficient grounds' for grant of the relief sought for in the memo."*

51. The contesting respondents in W.P.No.26793-795/2009 had opposed the prayer for withdrawal of the writ petition with liberty to file fresh writ petition on the same cause of action. Therefore, this Court had passed a detailed reasoned order permitting withdrawal of writ petition with liberty as prayed for and the said order passed in W.P.Nos.26793-795/2009 has attained finality. Though the appellants had earlier filed W.P.Nos.26793-795/2009 seeking the very same reliefs, the fact remains that the said writ petition has been withdrawn by them with liberty to file fresh petition on the very same cause of action and there has been no determination or adjudication of the issue involved therein. The principle of resjudicata applies only where the lis between inter parties had attained finality in respect of the issue involved.

52. W.P.No.20729-34/2003 and W.P.No.14287/2009 were filed by the appellants prior to issuance of Final Notification and therefore, after issuance of Final Notification a separate cause of action accrues to the appellants for filing a writ petition challenging the said notification. The Hon'ble Supreme Court in the case of **KUNJAN NAIR SIVARAMAN NAIR** (supra) in paragraph Nos.15 and 16 has observed as follows:

"15. The doctrine of res judicata differs from the principle underlying Order 2 Rule 2 in that the former places emphasis on the plaintiff's duty to exhaust all available grounds in support of his claim, while the latter requires the plaintiff to claim all reliefs emanating from the same cause of action. Order 2 concerns framing of a suit and requires that the plaintiffs shall include whole of his claim in the framing of the suit. Sub-rule (1), inter alia, provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the very same cause of action. If he relinquishes any claim to bring the suit within the jurisdiction of any court, he will not be entitled to that relief in any subsequent suit. Further sub-rule (3) provides that the person entitled to more than one reliefs in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for such relief he shall not afterwards be permitted to sue for relief so omitted.

16. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action".

53. Order XXIII Rule 1(3) of Code of Civil Procedure provides for withdrawal of the suit, which reads as follows:

"1. Withdrawal of suit of abandonment of part of claim.-

1. xxx

2. xxx

(3). Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

> *(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of claim,*
>
> *it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim".*

54. As per Order XXIII Rule 1(3) of CPC, suit may be permitted to be withdrawn with liberty to institute fresh suit when the court is satisfied that the plaintiff has made out a case in terms of Order XXIII Rule 1(3)(a) or (b) of CPC. That is, existence of ''formal defect'' or "sufficient grounds". The very same principle is applicable even to the case of withdrawal of writ petition. In the present case liberty has been granted to appellants to file fresh writ petition on same cause of action under Order XXIII Rule 1(3)(b) of CPC, since the Court had found sufficient grounds for granting such prayer.

55. The Hon'ble Supreme Court in the case of **SARGUJA TRANSPORT SERVICE V. STATE TRANSPORT APPELLATE TRIBUNAL, M.P, GWALIOR, AND OTHERS - (1987) 1 SCC 5** has held that principle underlying Rule 1 Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy. In the case of **K.SIVARAMAIAH V. RUKMANI AMMAL - (2004) 1 SCC 471**, the Hon'ble Supreme Court has held that as under:

> *"Once the suit has been permitted to be withdrawn all the proceedings taken therein including the judgment passed by the trial court are wiped out. A judgment given in a suit which has been permitted to be withdrawn with the liberty of filing a fresh suit on the same cause of action cannot constitute resjudicata in subsequent suit filed pursuant to such permission of the court".*

56. W.P.No.20729-34/2003 filed by appellants challenging the preliminary notification was disposed of by this Court with a direction to the concerned authorities to consider whether the lands in question were required for the project and proceed thereafter. The concerned authority thereafter rejected the objections raised by appellants and passed order under Section 28(3) of the Act of 1966 recommending to issue final notification under Section 28(4) of the Act of 1966. The appellants had filed W.P.No.26793-795/2009 challenging the preliminary and final notifications and said writ petitions were permitted to be withdrawn with liberty to file fresh writ petition on the same cause of action and thereafter the present writ petition in W.P.Nos.39277-278/2010 have been filed by the appellants challenging the preliminary and final notifications issued in respect of the lands in question.

57. In the other writ petitions that were filed by the appellants prior to filing of W.P.No.26793-795/2009, they had not questioned the notification issued under Section 28(4) and as on the date of filing of

the earlier petitions, Section 28(4) notification was not at all issued. W.P.No.14287/2009 was not filed challenging the preliminary notification or final notification as contended by the learned counsel for respondent No.12. Section 28(4) notification was issued on 02.09.2009 and for the first time, it was questioned in W.P.Nos.26793-795/2009 and since the said writ petitions were withdrawn with liberty to file fresh petition on the same cause of action, we are of the considered view that it cannot be said that the present writ petitions in W.P.Nos.39277-278/2010 or this intra court appeal arising from the said writ petition is hit by the principles of res judicata. Moreover, the Hon'ble Apex Court while permitting the appellants to withdraw SLP No.10556/2009 which arose from the order passed in W.P.No.3568/2007, has reserved liberty to appellants to prosecute this appeal. Under the circumstances, we answer point no.3 for consideration in the negative.

58. In view of the foregoing analysis of the case, we are of the considered view that this intra court appeal is devoid of any merit and accordingly, the same is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

KK/NMS