

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2116-2128/2020

(Arising out of SLP(C) Nos. 326-338/2020)

**Bangalore Mysore Infrastructure Corridor
Area Planning Authority & Anr.**

...Appellant(s)

Versus

**Nandi Infrastructure Corridor
Enterprise Limited & Ors.**

...Respondent(s)

With

CIVIL APPEAL NOS. 2129-2141/2020

(Arising out of SLP(C) Nos. 3166-3178/2020)

J U D G M E N T

A.M. Khanwilkar, J.

1. These appeals filed by Bangalore Mysore Infrastructure Corridor Area Planning Authority¹ and the State of Karnataka² are directed against the common judgment and order dated

1 For short, "the Planning Authority"

2 For short, "the State"

15.10.2019 passed by the High Court of Karnataka at Bengaluru³ in Writ Petition Nos. 16576-16577/2015 and 18481-18491/2015 (GM-RES), whereby the High Court quashed the communication bearing No. BMICAPA/339/Praa.Pra.Pa./1541/2011-12 dated 7.2.2015 issued by the Planning Authority rejecting the application made by the respondent No. 1 – Nandi Infrastructure Corridor Enterprise Limited⁴ and respondent No. 2 - Nandi Economic Corridor Enterprises Limited^{5,6}, dated 5.5.2012, for permission to develop a group housing scheme under the Framework Agreement dated 3.4.1997⁷ in different survey numbers at Kommagatta village, Kengeri Hobli, Bangalore South Taluk (at interchanges 5/7 of peripheral road) covering 42 acres 30 guntas of land. The High Court additionally directed the Planning Authority to issue Commencement Certificate to the Project Proponents in terms of application dated 5.5.2012, within six weeks from the date of receipt of copy of the High Court's order.

3 For short, "the High Court"

4 For short, "NICE"

5 For short, "NECE"

6 NICE and NECE are jointly referred to as "the Project Proponents", for short

7 For short, "the FWA"

2. This is the fifth round of litigation pertaining to the Integrated Infrastructure Corridor and Finance Project⁸ situated between Bangalore and Mysore, Karnataka, consisting of residential, industrial and commercial facilities, such as, among other things, self-sustaining Townships, expressways, utilities and amenities including power plants, industrial plants, water treatment plants and other infrastructural developments, as more specifically described in the Infrastructure Corridor Project Technical Report⁹ dated August, 1995, as amended.

3. The first round of litigation was in the form of a public interest litigation filed by H.T. Somashekar Reddy before the High Court, questioning the requirement of land for the Project as per the FWA for development of industrial infrastructure facilities (residential, commercial, industrial etc.) and to quash the FWA besides directing an enquiry to be conducted by Central Bureau of Investigation¹⁰. That challenge was rejected by the Division Bench of the High Court vide judgment and order dated 21.9.1998 in Writ Petition No. 29221/1997¹¹ and which decision

8 For short, "the IICFP" or "the Project"

9 For short, "the PTR"

10 For short, "the CBI"

11 Reported as *H.T. Somashekar Reddy vs. Government of Karnataka & Anr.*, 1998 SCC Online Kar 609

came to be affirmed by this Court on 26.3.1999 in SLP(C) No. 4922/1999, dismissing the said special leave petition *in limine*.

4. The second round of litigation was at the instance of J.C. Madhuswamy and Srirama Reddy, again a public interest litigation to question the land acquisition proceedings initiated by the State for implementation of the Project. The main grouse in this petition was about excess land being acquired for real estate purpose near Bangalore at interchange areas to pass on the benefit to the Project Proponents and illegal sale of land for construction of Bangalore Exhibition Centre. The group of writ petitions raising aforementioned challenge being Writ Petition Nos. 45334/2004 (GM-RES-PIL), 45386/2004 (PIL-LA-KIADB) and 48981/2004 (GM-RES-PIL) came to be disposed of by the Division Bench of the High Court vide judgment and order dated 3.5.2005, resulting in dismissal of stated writ petitions and issuance of a direction to the State to continue to implement the Project. That decision was affirmed by this Court in ***State of Karnataka & Anr. Vs. All India Manufacturers Organisation & Ors.***¹².

12 (2006) 4 SCC 683

5. The third round of litigation was at the instance of one M. Nagabhushana, challenging the acquisition proceedings initiated for implementation of the Project. That challenge was rejected by the Division Bench of the High Court in Writ Appeal No. 1192/2007 vide judgment and order dated 23.7.2010. The said proceedings culminated with the decision of this Court in **M. Nagabhushana vs. State of Karnataka & Ors.**¹³.

6. The fourth round of litigation was initiated by Abraham T.J. in reference to allegations of illegality and offences committed under the Prevention of Corruption Act in the course of implementation of the Project. That culminated with the dismissal of SLP(Crl.) No. 397/2017 vide order dated 5.9.2018 and R.P.(Crl.) 647/2018 in the dismissed SLP vide order dated 11.12.2018 by this Court.

7. The present (fifth) round of litigation, however is by the Project Proponents themselves, who had applied to the Planning Authority for grant of permission for construction of group housing scheme at the stated location(s). That permission having been rejected on 7.2.2015, subject writ petitions were filed before

13 (2011) 3 SCC 408

the High Court, which have been disposed of by the common judgment and order dated 15.10.2019 of the Division Bench, in the following terms: -

“ORDER

- (i) Writ petitions are allowed.
- (ii) Communication bearing No. BMICAPA/339/Praa. Pra. Pa/1541/20 11-12 dated 07.02.2015 (Annexure-A) issued by first respondent to the petitioner is hereby quashed.
- (iii) A writ of mandamus is issued directing first respondent to issue commencement certificate as sought for by the petitioner in its application bearing No. NECE//05/170 dated 05.05.2012 (Annexure-G) expeditiously and at any rate, within an outer limit of 6 weeks from the date of receipt of copy of this order.
- (iv) Costs made easy.”

8. Considering the fact that this is the fifth round of litigation before this Court and that the importance of the Project has already been taken note of in the earlier decisions, we deem it apposite to confine to the factual matrix essential to answer the matters in issue in reference to the relief granted by the High Court vide impugned judgment.

9. Shorn of unnecessary details, the State and the NICE had executed the FWA on 3.4.1997, setting out various terms for the purposes of developing the proposed infrastructure corridor. The

FWA was followed by supplementary agreements dated 6.10.1999 and 31.3.2000 between the same parties. Besides the supplementary agreements, a Tripartite Agreement was executed between the State, NICE and NECE on 9.8.2002.

10. The FWA delineates the location(s)/areas where the five self-sustaining Townships were to be set up. The subsequent agreements between the State and the Project Proponents do not alter the substance of that dispensation. The FWA makes reference to provisions in the PTR in respect of certain matters.

11. Indeed, the Outline Development Plan¹⁴/Master Plan was prepared by the Planning Authority for the new planning area on 12.2.2004 and had received approval of the State. However, the ODP/Master Plan was not intended to materially change or alter the location(s) for Townships specified in the FWA.

12. The State in exercise of its powers under the Karnataka Town and Country Planning Act, 1961¹⁵, made amendments to the Zonal Regulations of ODP/Master Plan of various towns and cities permitting the single plot usage for residential purpose subject to certain conditions vide notification dated 10.3.2006.

14 For short, "the ODP"

15 For short, "the KTCP Act"

13. In the backdrop of the stated agreements, ODP/Master Plan and the amendment to Zonal Regulations of ODP/Master Plan, the Project Proponents submitted an application on 6.1.2012 to the Planning Authority for sanction of group housing scheme in 53 acres 5 guntas of land, which included lands transferred to the Project Proponents under sale deeds and notified under Section 28(4) of the Karnataka Industrial Areas Development Act, 1966¹⁶.

14. Later on, the Project Proponents submitted modified development plan on 5.5.2012 for permission to set up group housing scheme in 42 acres 30 guntas of land by excluding the lands in respect of which no sale deed was executed in their favour. The Planning Authority vide letter dated 28.5.2012 called upon the Project Proponents to furnish certain documents, namely, sketches, No Objection Certificates (NOCs), detailed project report etc., since in its view, the application submitted by the Project Proponents was defective in that regard. The Planning Authority also moved a proposal to place the matter for approval before the High-Level/Empowered Committee.

¹⁶ For short, "the KIADA Act"

15. The Project Proponents submitted the clarifications and documents in support of the modified development plan vide communication dated 6.6.2012 and 5.7.2012. The Planning Authority, however, vide letter dated 17.7.2012 called upon the Project Proponents to furnish more documents i.e. RTCs, clarification pertaining to the possession over the proposed land and NOC for water supply in support of their application. The Project Proponents claimed to have submitted NOC received from the Karnataka Fire and Emergency Services Department on 10.9.2012.

16. The Planning Authority in its 34th General Meeting convened on 12.9.2012 resolved that the application of the Project Proponents be placed before the High-Level/Empowered Committee for decision. As a consequence of this resolution, the Planning Authority vide letter dated 3.11.2012 directed the Project Proponents to stop work on proposed lands till a decision was taken by the High-Level/Empowered Committee, having noticed that some unauthorised road construction activity was being carried out by the Project Proponents. The Planning Authority had thus kept the modified development plan

submitted by the Project Proponents in abeyance till the decision of the High-Level/Empowered Committee.

17. Once again, the Planning Authority vide letter dated 15.1.2013 directed the Project Proponents to stop unauthorised work of construction of road, laying of water pipeline and electricity cables in the concerned area. In response, on 23.3.2013, the Project Proponents requested the Planning Authority to issue necessary approvals (Commencement Certificates) against their request letters including letter dated 5.5.2012. The Planning Authority vide letter dated 30.4.2013, informed the Project Proponents that appropriate decision would be taken on the modified development plan dated 5.5.2012 only after the decision of the High-Level/Empowered Committee. Accordingly, the Project Proponents were once again asked to stop all construction activities until final decision on the proposal was taken.

18. The Project Proponents then filed Writ Petition Nos. 57249-57250/2013 (GM-RES) and 57266-57267/2013 (GM-RES) before the High Court for quashing of the decision of the Planning Authority taken in its 34th General Meeting held on 12.9.2012

and instead to grant approval in reference to the modified development plan dated 5.5.2012. The Project Proponents had also sought a declaration that the approvals were deemed to have been granted in terms of Section 15(2) of the KTCP Act and to direct the Planning Authority to forthwith issue Commencement Certificate in reference to the application dated 5.5.2012.

19. When the said writ petitions were pending, the Principal Secretary, Public Works, Ports and Inland Water Transport Department of the State, vide letter dated 19.12.2013, directed the Planning Authority to await the decision of the High-Level/Empowered Committee constituted under the FWA before considering the request of the Project Proponents, which would involve change of land use and approval of residential developments. On 25.6.2014, the Planning Authority issued notice under Section 15(4) of the KTCP Act to the Project Proponents directing, inter alia, to refrain from taking up the development works at the proposed sites and to remove the works already done and restore the land to its original form.

20. The writ petitions filed by the Project Proponents being Writ Petition Nos. 57249-57250/2013 (GM-RES) and 57266-

57267/2013 (GM-RES) came to be disposed of on 16.12.2014 recording the statement of the counsel for the Planning Authority that appropriate decision would be taken on the modified development plan dated 5.5.2012 submitted by the Project Proponents expeditiously. The High Court directed the Planning Authority to send appropriate communication to the Project Proponents by 15.3.2015.

21. Before the decision was taken by the Planning Authority, the Project Proponents submitted their response to the notice dated 25.6.2014 issued by the Planning Authority under Section 15(4) of the KTCP Act, on 6.1.2015. The Planning Authority took decision on 7.2.2015 on the application filed by the Project Proponents dated 5.5.2012 regarding the modified plan for group housing scheme. The Planning Authority rejected that proposal, for the reasons noted in the communication dated 7.2.2015, which reads thus: -

“BANGALORE MYSORE INFRASTRUCTURE CORRIDOR
AREA PLANNING AUTHORITY
SECOND FLOOR, GATE NO.4, M.S. BUILDING, DR. B.R.
AMBEDKAR VEEDHI,
BANGALORE-560001 [TEL:080-22353976](tel:080-22353976) FAX: 080-
22389519
No BMICAPA/339/CC/1541/201 1-12 Date: 07.02.2015

To,

Managing Director
M/s. Nandi Economic: Corridor Enterprises Limited.
No.1, Midford House,
M.G. Road, Bangalore

Sir,

Sub: Regarding your application for plan approval for group housing in Sy. Nos. 17(P), 18, 19, 20/1, 20/3, 20/4, 21/1 (P), 21/2A1 (P), 21/2A2(P), 21/2B(P), 21/2C(P), 21/2D(P) and 21/2E(P), totally measuring 53 Acres-05 Gunte of Kommaghatta Village, Kengeri Hobli, Bangalore South Taluk.

Ref. 1. Order of the Hon'ble in W.P. No.57249-50/2013 (GM.-RES) and 57266-67/2013 (GM-2013 dated 16.12.2014)
2. Your application dated 05.05.2012
3. Your re-application dated 06.01.2015

On verification of your application and documents following drawback are observed;

1) In the master plan approved by the Government, the proposed land was earmarked for transport and communication, park and open space, public and semi public zone. There is no opportunity for residential building in the said zone. In the plan submitted, lands are not reserved for park and open space.

2) As per Form-15 (EC) submitted shows that development agreement is entered with Umang Reality Pvt. Ltd. Copy of the said agreement not submitted.

3) As per sale deed submitted, the proposed lands were acquired for Stage-1 of Infrastructure Project. (as per FWA phase-1 included 9.8 k.m. link road and 3 k.m. of peripheral road). Further as per sale deed lands has to be returned to the Government after 30 years and there is no clarity in the said document about permitting for building plan in the land. In this regard we have written letter to PWD for information and they have not provided any information till now. That apart, the proposed land is not transferred to you for group housing purpose.

4) As per village map, there is a stream (halla) passing through east to west in the land. But in the survey sketch/building plan submitted only portion of the hall is shown.

5) Construction of Unauthorized road in the lands in question has been observed

In view of the above, it is hereby informed that, your proposal is rejected.

Yours sincerely,
Additional Director, Town and Country
Planning and Member Secretary,
BMICAPA, Bangalore.”

The above communication was assailed by the Project Proponents before the High Court and it was prayed that a writ be issued directing the Planning Authority to grant Commencement Certificate for the proposed group housing scheme. Those writ petitions [Writ Petition Nos. 16576-16577/2015 and 18481-18491/2015 (GM-RES)] have been disposed of by the Division Bench of the High Court vide impugned judgment.

22. The High Court, after considering the stand taken by both the sides, formulated three points/questions for its consideration, as noted in the impugned judgment, which read thus: -

“9.....

(1) Whether writ petitions are liable to be dismissed on the ground of same not being maintainable as it relates to discharge of contractual obligations between the petitioner and third respondent?

OR

Whether writ petitions are liable to be dismissed on the ground of FWA providing for redressal of grievances of petitioner to be routed through High Level Committee?

(2) Whether communication dated 07.02.2015 -Annexure-A issued by first respondent rejecting the prayer of the petitioner for approval of development plan for group housing in the Sy.Nos. indicated therein is liable to be upheld or quashed?

(3) What order?"

At the outset, the High Court, while considering point No. 1, dealt with the argument regarding maintainability of writ petitions. It referred to the decisions of this Court in **Tata Cellular vs. Union of India**¹⁷, **Raunaq International Ltd. vs. IVR Construction Ltd. & Ors.**¹⁸, **Association of Registration Plates vs. Union of India & Ors.**¹⁹ and **Michigan Rubber (India) Limited vs. State of Karnataka & Ors.**²⁰. Thereafter, the High Court proceeded to observe as follows: -

“15. At the outset it requires to be noticed that petitioners are seeking for quashing of the communication dated 07.02.2015 (Annexure-A) addressed to the petitioners whereunder the approval of the plan for Group Housing which requires to be approved by BMIC-first respondent has been rejected. A perusal of the said communication would clearly disclose that nowhere first respondent has either contended or whispered about non consideration of the application submitted by the petitioners on the ground of petitioners having sought for enforcement of a contractual obligation or on the ground FWA providing for mechanism to enable the petitioners to

17 (1994) 6 SCC 651

18 (1999) 1 SCC 492

19 (2005) 1 SCC 679

20 (2012) 8 SCC 216

work out their right as per said mechanism. On the other hand, first respondent by virtue of the said authority being the planning authority empowered under the FWA to grant approval, has examined the prayer of the petitioners for approval of the plan for group housing and has rejected the same by assigning five (5) specific reasons. It is nowhere stated said application of petitioner is not being considered on account of petitioner is attempting to enforce a contractual obligation or said application has to be placed before High Level/Power Committee. **Thus, prima facie contention of third respondent with regard to maintainability of the writ petitions cannot be accepted.**

16. In fact, petitioners herein had approached this Court in W.P. No. 57429-50/2013 and connected matters at the first instance when first respondent had resolved to refer said application to High Level Committee whereunder this Court had disposed of the writ petition by order dated 16.12.2014 based on stand by counsel appearing for BMIC therein undertaking to consider the application on merits. **In said proceedings third respondent herein was a party and in fact, no statement of objections had been filed by the third respondent raising contention now raised and thereby it would clearly indicate that third respondent is attempting to improvise its stand stage by stage and step by step.**

17. In the instant case, petitioner has impugned the communication dated 07.02.2005 (Annexure-A) whereunder application filed by the petitioner for approval of Group Housing has been rejected and said right of the petitioner to seek approval stems out of the FWA entered into between the petitioner and GOK and the consequential agreements. It is agreed between the parties that under clause 3.1.1 it is the obligation of the GOK to use its best efforts to grant and cause its Governmental Instrumentalities, Government of India and its instrumentalities to grant, all approvals required in connection with the Infrastructure Corridor project including the approvals indicated in Schedule II of FWA. The approval under the Town and Country Planning Act, 1961 has been referred at Sl. No. 15 of Schedule II. Respondents - 1 and 2 being the statutory authority conferred with the power under the Karnataka Town and Country Planning Act to accord approval for the "Proposed Development Plan" submitted by the petitioner,

they are required to examine the application filed by petitioner for Group Housing and approve or reject said plan in accordance with the statutory provisions. In fact, petitioner by its communication dated 03.07.2014 (Annexure-H13) addressed to first respondent has contended that on account of development plan for Group Housing having not been approved, Section 15 which is a deeming provision under the Town and Country Planning Act, 1961 would be applicable. **In other words, petitioner has sought for enforcement of statutory right. As such, the contention of respondents that petitioner has to avail the remedy available under clause 4.1.2 of FWA cannot be accepted.** At the cost of repetition, it requires to be noticed that when the application of the petitioner for grant of approval of Group Housing was not disposed of by first respondent, petitioner had approached this Court in W.P. Nos. 57249-250/2013 and 57266-267/2013 which came to be disposed of by the Division Bench by order dated 16.12.2014 (Annexure-J) in the light of statement made by the Planning Authority namely, first respondent herein. The statement so made which came to be recorded by the Division Bench in the said writ petitions reads:

"2. Before the petitions could be heard on merits, a statement is proposed to be made for BMICAPA, which being acceptable to the petitioners, the petitions are to be disposed of in terms of the statement as under:

"The applications dated 05.05.2012 and 21.04.2013 (both at Annexure-F in each set of petitions) shall be considered by the BMICAPA within a period of three months and the decisions thereon shall be communicated to the petitioners by the BMICAPA on or before 15.03.2015".

3. Accordingly, *making the above statement, the order of the Court, by consent*, the petitions are disposed of in the aforesaid terms, with no order as to costs. Since none of the contentions of the parties are considered or pressed at this stage, the rights and contentions of the parties remain open to be agitated, if need be, in future."

(emphasis supplied by

us)

18. In the said writ petitions, GOK was also represented by the Special Government Advocate and the statement made by the first respondent in the said proceedings would clearly indicate that application of the petitioner was required to be considered under the provisions of the Karnataka Town and Country Planning Act, 1961 and as such, it came to be considered on merits and has been rejected on five (5) grounds as already noticed hereinabove. **Hence, these writ petitions being dismissed on the ground of petitioner having remedy under the FWA does not arise. Petitioner having sought to enforce statutory right as well as the impugned communication stemming out of FWA being challenged on the ground of misuse of statutory powers by the respondent - authorities, contention raised with regard to maintainability of writ petitions is to be necessarily held as untenable and said contention is liable to be rejected.**

19. It would not be out of context to state that the very same petitioner had sought for issuance of commencement certificate for residential layout plan relating to land measuring 14 acres 35 guntas in Sy. No. 27/2A of Kommaghatta village, Kengeri Hobli, Bangalore South Taluk and 17 acres 39 guntas in Sy. Nos. 164/4(P), 164/5, 165P, 166P, 167/1P, 168(P), 241(P), 242(P), 247(P), 248(P), 252(P) of Kengeri village, Kengeri Hobli, Bangalore South Taluk enclosing therewith layout plan. Since portions of land in Sy. No. 27/2A measuring 7.27 acres was reflected in ODP as Park, Open space/Traffic and transportation/agricultural, petitioners herein sought for change of land use and as such, petitioners had requested first respondent - authority herein to recommend to the Government for change of land use. This request was turned down by first respondent by its decision taken at its 33rd General Meeting held on 29.05.2012 and first respondent had resolved to place the matter before High Level/Empowered Committee. Being aggrieved by said decision, petitioner herein approached this Court in W.P. Nos. 37298-299/2013 and Division Bench by order dated 22.11.2013 allowed the said writ petition on the ground first respondent being the Planning Authority is bound to take its decision in accordance with Section 14A of the Act. Further direction was also issued to first respondent to consider the request of petitioner for change of land use strictly in accordance with the provisions of Section 14A of the Act. Similar direction had

also been issued to first respondent by Division Bench of this Court in W.P. Nos. 37300-301/2013 by order dated 22.11.2013. In the said writ petitions, State namely, third respondent herein had been arrayed as second respondent and was represented by learned Advocate and in the said writ petitions, there was no plea raised with regard to maintainability of said writ petitions. **As such, third respondent herein cannot be permitted to raise said ground in these writ petitions by attempting to improve its case step by step. Even otherwise, on merits also, we have held said contention not being tenable for the reasons already recorded.**

20. That apart, contract in question also having element of public interest, we are of the considered view that writ petitions are maintainable and as such, contention raised regarding non-maintainability of writ petitions stands rejected.”

(emphasis supplied)

The High Court then considered point No. 2 and by referring to clause 1.1.3 in the Tripartite Agreement dated 9.8.2002, held that it was a clear admission of the State that stage-1 of the infrastructure corridor would include 10 (ten) interchanges and Townships. On that basis, the High Court held that the Planning Authority ought not to entertain any doubt regarding the Townships being established at the interchanges. Further, the High Court in the first round of litigation in **H.T. Somashekar Reddy** (supra) had held that Townships can be established by the Project Proponents under the FWA. It extracted paragraph 66 of the said decision in support thereof. The High Court then

examined the first ground on which the application dated 5.5.2012 was rejected by the Planning Authority and observed thus: -

“23. The Outline Development Plan (for short 'ODP') came to be approved by the Government of Karnataka on 12.02.2002 as per Annexures-L and L-1 respectively and same would indicate that area proposed by the petitioner for putting up residential buildings would fall within yellow zone/residential zone and thereby plan submitted by petitioner is in compliance with the zoning regulations and permitted under the ODP. In fact, plan submitted by petitioner along with application dated 05.05.2012, as rightly pointed out by Sri. D.L.N. Rao, learned Senior Counsel appearing for petitioner when juxtapositioned with the ODP, it would clearly demonstrate that plan submitted by the petitioner is in conformity with the zoning regulations. In fact, Hon'ble Apex Court by its order dated 03.11.2009 passed in C.P. No. 96/2007 has directed that project should be completed as per the ODP dated 12.02.2004.

24. Under FWA Clauses 3.1.1, 3.2.3, 3.2.5 and 3.2.6 it is incumbent upon Government of Karnataka (for short 'GOK') to make best efforts to grant and cause its instrumentalities all approvals required in connection with project including approvals specified under Schedule 2 of the agreement whereunder it is clearly specified that "petitioner would receive the requisite permissions, approvals, sanctions and/or licences...." under the Acts and Rules of GOI and GOK as specified thereunder. This would also include granting approval under Karnataka Town and Country Planning Act, 1961. **In fact, under Clause 3.2.3 it is agreed that GOK would not restrict the use of land in any way and petitioner would have freedom and discretion to develop and use the land as generally contemplated by the agreement and it would also be incumbent upon the GOK to zone and re-zone and caused to be done in a manner consistent with use in the infrastructure project as contemplated under the agreement and under Clause 3.2.5 it is understood by GOK that development of townships would have many components and take many forms**

including the industries, businesses and services contemplated in Schedule 4 of FWA.

25. In the light of above findings, contention raised by the learned Senior Counsel appearing for respondent No. 3 with regard to petitioners could not have approached the first respondent directly for plan approval on the ground that all approvals required in connection with the infrastructure corridor project had to be granted by the High Level Empowered committee consisting of members from each affected ministries of GOK, would not hold water and complete answer to such technical plea being raised has been laid to rest by the Hon'ble Apex Court in its judgment rendered on 20.04.2006 in the matter of STATE OF KARNATAKA AND OTHERS vs. ALL INDIA MANUFACTURERS ORGANIZATION reported in (2006) 4 SCC 683 whereunder it has been held to the following effect:

"In the future also, we make it clear that while the State Government and its instrumentalities are entitled to exercise their contractual rights under the FWA, they must do so fairly, reasonably and without malafides; in the event they do not do so, the Court will be entitled to interfere with the same."

Hence, first ground on which plan approval/permission has been refused cannot be sustained and it is liable to be rejected and accordingly it stands rejected."

(emphasis supplied)

23. The High Court then examined the second ground in the impugned communication dated 7.2.2015 and observed that the document was never demanded by the Planning Authority.

24. While dealing with the third ground, in the impugned communication, it noted that the entire cost of acquisition of the

land in question and implementation of the project, was to be borne and carried out by the Project Proponents. The State, on issuing notification under Section 4A(1) of the KTCP Act on 13.7.1999, had notified the appellant No. 1 (in C.A. Nos. 2116-2128/2020) to be a separate Planning Authority for the infrastructure corridor in question. And that Authority had prepared ODP/Master Plan for the new planning area. Relying on the observations in **All India Manufacturers Organisation** (supra), the High Court opined that the lands have been acquired for the Project which is an integrated infrastructure project and not limited only to construction of road as indicated in the impugned communication. It once again relied on clause 1.1.3 of the Tripartite Agreement and also the communication dated 19.12.2013 and noted that it was not open to the Cabinet to unilaterally cancel the Tripartite Agreement dated 9.8.2002. It then noticed the amendment of Section 2(7a) of the KIADA Act, which defines “industrial infrastructural facilities”. It then moved over to consider the issue about return of the subject lands to the State Government after 30 years and for that, referred to the recitals in the sale deeds. The High Court held that it is agreed between the parties that what is to be transferred back is

“Transferred Toll Road Assets”, as defined in the FWA on completion of the concession period. As regards the “Transferred Township Assets”, clause 7.2 of the FWA was adverted to and it concluded as follows: -

“37. A plain reading of expression "Transferred Toll Road Assets", "Transferred Township Assets", along with Clause 6.8 of FWA, it would indicate that petitioner has to transfer to GOK at the end of concession period, "Transferred Toll Road Assets" upon terms and conditions mutually agreed by the parties as set forth in Clause 6.8. **Thus, there is no ad-idem between the parties with regard to townships being transferred by the petitioner to GOK.** Under Schedule 5 it is more specifically indicated as to the assets, which are to be transferred in the township by the petitioner to the GOK. It reads:

"SCHEDULE 5

Transferred Township Assets

1. Right of way relating to the public roads in the Townships other than the Toll Road
2. Buildings solely housing municipal offices
3. Fire Station and related fire fighting equipment
4. Police Station
5. Employment of such employee employed in connection with the civil operation of the Township as mutually agreed
6. Such other assets as may be mutually agreed between GOK and the Company"

Thus, what is agreed under FWA and supplemental agreements by petitioner with GOK is to transfer the assets of townships as specified in Schedule - 5 of FWA and nothing new can be added or read into it.

38. In fact, contention now raised in the present writ petition was also the plea put forward by State Government before the Division Bench in the matter of

J.C. MADHUSWAMY AND OTHERS vs. THE STATE OF KARNATAKA AND OTHERS in W.P. No. 45386/2004 (GM-PIL), which came to be considered and rejected. Same was also affirmed by the Hon'ble Apex Court in the matter of STATE OF KARNATAKA AND OTHERS vs. ALL INDIA MANUFACTURERS ORGANISATION reported in (2006) 4 SCC 683 whereunder Hon'ble Apex Court has negated said contention as already observed herein above.

39. Thus, a combined reading of the above clauses in the FWA and the agreements would clearly indicate as to what assets would revert back to the Government and the developments that would take place in the subject lands other than what has been mentioned in clause 6.8.3 which would revert back to the State Government. As such, plea now raised by third respondent with regard to township established by the petitioner is required to be transferred to GOK cannot be accepted and it stands rejected.”

(emphasis supplied)

The High Court thereafter adverted to the ODP/Master Plan prepared by the Planning Authority and opined that it defines the developmental activities to be carried out at the interchanges. After extracting the relevant portion thereof and adverted to the correspondence between the Public Works Department (PWD) of the State and the Planning Authority and the discussion during the 34th General Meeting of the Planning Authority, the High Court concluded that interchange areas at link road and peripheral road are permitted for residential developments as per the FWA. It then went on to consider the argument of “single plot” and held that the plan submitted by the Project Proponents

was in respect of one single plot, wherein they had proposed to develop group housing block wise. The High Court was also impressed by the argument of the Project Proponents that the Department of Town and Country Planning in respect of these very Project Proponents had granted approval for residential layout in Survey No. 15/1 (part), 16 & 18 (part) measuring 15 acres 38½ guntas at Varashansandra Village, Kengeri Hobli, Bangalore North Taluk for allotting sites to land losers followed by issuance of Commencement Certificate dated 7.3.2014. Therefore, the High Court went on to observe that it would not lie in the mouth of the Planning Authority to approbate and reprobate on the same subject matter. The High Court also adverted to the permissions accorded by the Planning Authority for setting up housing scheme by private persons nearby interchanges. After referring to those instances, the High Court concluded that the Planning Authority was adopting policy of pick and choose for grant of approval or sanction.

25. As regards the fourth ground in the impugned communication, the same was also overturned on the finding that the Authority committed factual error in that regard. The

High Court opined that the plan submitted by the Project Proponents did not violate any condition.

26. Resultantly, the High Court was pleased to set aside the impugned communication dated 7.2.2015 rejecting the application preferred by the Project Proponents for permission to construct group housing scheme at the location(s) referred to in the application dated 5.5.2012 and issued a direction to the Planning Authority to grant Commencement Certificate as sought by the Project Proponents.

27. Feeling aggrieved, the Planning Authority and the State have filed separate appeals by special leave, assailing the impugned judgment. The thrust of assail is that the High Court has completely undermined the scheme of the FWA, which was binding on the Project Proponents and the State. The Project Proponents could develop the project only as per the specified components of the Project. The FWA was founded on the extensive exercise of holistic development of the area as recorded in the PTR. The theme of the PTR was duly deliberated at different levels and eventually an informed decision was taken by the Authority to implement the report (PTR) subject to certain

changes and modifications. Consistent with such decision, the FWA was executed between the Project Proponents and the State. The terms and conditions set out in the FWA, are self-contained. The parties (Project Proponents and the State) are bound to comply with the same in its letter and spirit. The essence of the FWA can be traced to the recitals therein. To wit, the Project was necessitated to achieve an orderly development of Bangalore as a major industrial, commercial and residential city in the manner prescribed. The contours of development work have been delineated in such a manner so as to ensure amongst other things, self-sustaining townships, expressways, utilities and amenities, including power plants, industrial plants, water treatment plants and other infrastructural developments, as referred to in the PTR dated August, 1995, as amended. The development work was to promote industrial, commercial and economic activities, so as to generate new job opportunities for the residents in and around the infrastructure corridor, promote tourism, decongest traffic in Bangalore and Mysore, ensure smooth and safer traffic between Bangalore and Mysore and provide a world class expressway between the two cities. The utility of the land that would be offered by the State for the

Project was clearly defined and prioritised. The Project was to consist of a limited-access toll expressway; electric power transmission line; water pipeline; and fibre optic telecommunications cabling including construction of southern section of the Bangalore City Outer Peripheral Road connecting National Highway (NH)-7 and National Highway (NH)-4. As a limited-access expressway with a continuous barrier on either side, the road would prevent ribbon development, increase efficiency of individual travel and cargo movement, and improve vehicle safety. Originally, seven “Township” areas in the entire project were earmarked and clearly identified, but after due consideration of all aspects, it was decided to reduce the number of “Townships” to only five, identified as Townships 1, 2, 4, 5 and 7 in the PTR. The “possible business and services” of the Project have been articulated in Schedule 4 of the FWA to include real estate and housing as one of the activities.

28. According to the appellants, the proposal submitted by the Project Proponents was for development of group housing scheme. That was not in accord with the usage of the land specified in the FWA and the relevant specifications in the PTR.

The PTR as well as FWA recognise development of “Townships” and not group housing scheme as such. The two concepts are materially different. Further, the subject proposal to construct group housing scheme was in area other than the identified five Townships in the FWA and the PTR, which was not permissible in terms of the FWA. Besides, the proposal submitted by the Project Proponents vide communication dated 5.5.2012 to develop group housing scheme in the stated area also did not include other components required to be constructed and provided for in the Townships. Being a deviation of the FWA, it was essential for the Project Proponents to first take permission of the State, as provided in the FWA, which could be granted on the basis of the opinion of the “Empowered Committee”. Until grant of such permission, it was not open to the Project Proponents to maintain any application or submit proposal directly to the Planning Authority merely on the basis of the ODP/Master Plan and the municipal laws concerning the town planning scheme under the KTCP Act. It is urged that the High Court posed wrong questions to itself and proceeded to answer the same, that too in a manner which is untenable and founded on erroneous assumptions. Despite the limited relief claimed by the Project Proponents, the

High Court went ahead with the issue of validity of the Cabinet decision of the State in respect of the tripartite agreement. That was uncalled for. Similarly, it proceeded to answer the issue regarding the “single plot” which ought to have been left for consideration of the competent authority.

29. In substance, the argument of the appellant is that in absence of prior permission of the State regarding deviation from the FWA, it was not open to the Planning Authority to process the application/proposal under consideration. Nor such an application could be treated as a valid application by the Planning Authority, for the purpose of Section 15 of the KTCP Act regarding deemed permission. It is urged that the proposal submitted by the Project Proponents, if accepted, would result in allowing development on the toll road or at toll road interchanges, which cannot be made part of the Townships in view of the express provision in that regard in the FWA. In case the Project Proponents were not in agreement with the stipulations in the FWA or the conditions specified by the competent authority of the State, they could resort to remedy of resolution of disputes provided for in the FWA itself, before the Committee or by way of

arbitration, as the case may be. However, the Project Proponents could not have directly approached the Planning Authority for grant of permission and the High Court for issue of writ of mandamus against the Planning Authority. In other words, no relief could be granted to the Project Proponents unless the State had agreed to the deviation. Significantly, the State had advised the Planning Authority vide letter dated 19.12.2013 pointing out that, before taking any decision with respect to change in land use and approving residential complex, decision of Empowered Committee constituted under the FWA be obtained. It is urged that the Project Proponents were conscious about their obligations. That is manifest from the letter sent by NICE to Executive Member of the Karnataka Industrial Development Board²¹, dated 6.1.1998, including from the stand taken by them before the High Court in different proceedings. It is also urged that the PTR and the FWA clearly provide for the sequence of implementation and execution of the Project and it is open to the State to insist for execution of Project strictly in that order. The Project Proponents cannot be allowed to disregard these obligations.

21 For short, "the KIADB"

30. It is further urged that the logic invoked by the High Court is, to say the least, unstatable. Inasmuch as, merely because “Housing” is mentioned in “Real Estate” column in Schedule 4, it would not follow that the other components of the “Townships” specified in the FWA and the PTR are dispensed with. On the other hand, the FWA, if read as a whole alongwith the relevant stipulations in PTR referred to in FWA, it would be evident that the Project ought to be implemented in the manner specified therein including the establishment of Townships. Housing scheme would only be one of the components of the “Townships” to be constructed at the designated location of the five Townships. That the lands on which development was proposed were allotted to the Project Proponents for implementation of the Project only as per the FWA with obligation to retransfer the “Transferred Toll Road Assets” back to the State. This has been completely misinterpreted by the High Court. Further, the High Court was more impressed by the fact that in the earlier writ petition filed by the Project Proponents, the Planning Authority had agreed to consider the modified proposal dated 5.5.2012 submitted by the Project Proponents. The assurance so given by the Planning Authority cannot be the basis to disregard the

binding obligations of the Project Proponents flowing from the FWA regarding the manner in which the Project should be taken forward.

31. The appellants urge that the fact that permissions were granted by the Planning Authority in respect of the neighbouring lands of private persons for construction of group housing complex or for that matter given to the Project Proponents in respect of some other area, cannot be the basis to disregard the obligations flowing from the FWA and the PTR. The housing scheme to be constructed by the Project Proponents must be in the designated areas/location(s) specified as “Townships” and only in the manner specified in the FWA and the PTR. For, the FWA refers to the PTR in some measure, and by such reference the stipulations and specifications regarding the execution of the Project given in the PTR would get incorporated in the FWA to that extent. The Project Proponents are obliged to adhere to all such stipulations.

32. Concededly, the right of the Project Proponents flows from the FWA and is circumscribed by the same. If proposed deviation is to be ignored, the whole purpose for which the Project has

been conceived, will be defeated. It would not be a development, as planned in the PTR and approved in the FWA. It is, therefore, not open to the Project Proponents to rely on general provisions applicable to other lands in the neighbourhood not covered by the FWA. It is urged that it is essential to keep in mind that the private land is made available to the Project Proponents by the State after acquiring it from land owners for implementation and execution of the Project. The regional or the zonal plan showing the entire area as yellow zone being residential, would, therefore, be of no avail to the Project Proponents. The Project Proponents cannot be heard to say that unless they are permitted to develop group housing scheme, it would not be possible for them to finance the Project, inasmuch as, the manner of financing the Project and generation of revenue is already specified in the FWA. It is urged that in any case, the High Court exceeded its jurisdiction in issuing mandamus against the Planning Authority, directing to issue Commencement Certificate, as sought by the Project Proponents vide modified proposal dated 5.5.2012.

33. The Project Proponents, on the other hand, would reiterate the stand taken by them before the High Court and which had

found favour with the High Court. According to the Project Proponents, the High Court in the facts of the present case, was justified in not only quashing the communication issued by the Planning Authority, dated 7.2.2015, but also directing the Planning Authority to issue Commencement Certificate, as prayed in terms of the modified proposal dated 5.5.2012. According to them, the State authorities including the Planning Authority have been obstructing the implementation of the Project, which has been approved long back and elucidated in the FWA dated 3.4.1997. The group housing scheme is one of the activities clearly permitted by the FWA. And being a permissible activity, it was unnecessary for the Project Proponents to approach the State or the Empowered Committee, as the case may be. As a matter of fact, the Empowered Committee is not a statutory Committee. It is only a facilitation Committee under the FWA to ensure smooth implementation of the Project. In any case, the four grounds articulated in the impugned communication dated 7.2.2015 issued by the Planning Authority, make no reference to the requirement of obtaining prior approval

from the State or the Empowered Committee. The State cannot be heard to raise any objection in that regard in the present proceedings, as it did not raise the same in the earlier writ petition filed by the Project Proponents bearing Writ Petition Nos. 57249-57250/2013 (GM-RES) and 57266-57267/2013 (GM-RES), to which it was made party. In fact, an order was passed on the basis of the assurance given by the Planning Authority that it would consider the modified proposal submitted by the Project Proponents on 5.5.2012 within specified time. According to the Project Proponents, the reasons recorded by the High Court are in the context of the arguments canvassed before it and invited by the parties.

34. It is urged that the entire action of the Planning Authority and the stand taken by the State is replete with mala fides. This Court even on the earlier occasion, had taken notice of the obstructions created by the State authorities in the implementation of the Project, as can be discerned from the observations in *All India Manufacturers Organisation* (supra). It is urged that the Project Proponents were not invoking the

deeming provision, but have pursued grounds to assail the reasons stated by the Planning Authority in the impugned communication dated 7.2.2015. The High Court dealt with all the four grounds noted by the Planning Authority in the impugned communication and justly concluded that the same were unsustainable. Having said that, the High Court was justified in issuing direction to the Planning Authority for grant of Commencement Certificate, as it was satisfied that no fruitful purpose would have been served by relegating the Project Proponents before the same (Planning) Authority. For, it was determined to create obstruction in the implementation of the Project. It is urged that the Planning Authority having issued ODP/Master Plan, was obliged to process the modified proposal submitted by the Project Proponents on that basis. The land use categorised in ODP/Master Plan refers to outer peripheral road including the land reserved for interchanges. The High Court had considered this aspect and accepted the stand of the Project Proponents that it is clear from perusal of the ODP/Master Plan that the land in question can be used for various purposes including residential, commercial, industrial developments, which would be in consonance with clause 3.2.3 of the FWA. It is

urged that the Project Proponents had agreed to undertake and carry on the construction of group housing scheme in strict compliance of the ODP/Master Plan. The Project Proponents are also relying on the argument of the Advocate General of the State of Karnataka, reproduced in paragraph 41 of the judgment of the High Court in Writ Petition No. 3438/2010 dated 15.6.2011, wherein it was pleaded on behalf of the State that the PTR was only a proposal and the ODP-2004 was the approved alignment of the road. It is urged that the State having approved the ODP/Master Plan, was bound to give effect thereto and cannot be allowed to approbate and reprobate relying on the PTR/FWA. It is contended that this Court in **All India Manufacturers Organisation** (supra) had negatived the submission of the State that 5119.37 acres of land was required for the toll road in the PTR, however, in the FWA, the area was enhanced to 6999 acres. It is urged that the PTR is not a sacrosanct document and the parties accepted various modifications to the same. It is also urged that the State cannot be permitted to raise the same plea, which would be otherwise hit by principles of constructive *res judicata*. According to the Project Proponents, the issue

regarding the development of land reserved for “Townships” has attained finality and cannot be raised again in light of the dictum in ***All India Manufacturers Organisation*** (supra) including dismissal of review petition raising the same ground now urged by the State. Further, there is no infirmity in the view taken by the High Court, much less regarding the direction issued vide the impugned judgment.

35. We have heard Mr. C.A. Sundaram, learned senior counsel for the appellant-Planning Authority, Mr. Chandra Uday Singh, learned senior counsel for the State and Dr. Abhishek Manu Singhvi and Mr. Mukul Rohatgi, learned senior counsel for the Project Proponents.

36. Considering the rival submissions, we are inclined to accept the argument of the appellants that the High Court in paragraph 9 of the impugned judgment (reproduced in paragraph 22 of this judgment), posed wrong questions to itself and that led to the erroneous and untenable conclusion deduced by it. The fundamental issue is: whether the subject modified plan submitted by the Project Proponents directly to the Planning Authority for approval is replete with deviations and/or violation

of the stipulations and specifications in the FWA? In that, the FWA had circumscribed the user of the land in terms of the location(s), as well as, the area thereof for implementation of the Project. If so, was it imperative for the Project Proponents under the FWA to obtain prior approval of the State including that of the Empowered Committee? And if that was declined or granted in part, should they take recourse to remedy of resolution of disputes or through arbitration mechanism, as provided in the FWA itself? If all these questions were to be answered in favour of the Project Proponents, only then the Court could be called upon to examine the justness of the four reasons recorded by the Planning Authority. The High Court, in our opinion, hastened to examine the justness of the reasons given by the Planning Authority for rejecting the proposal, vide the impugned communication dated 7.2.2015.

37. For answering the matters in issue in proper perspective, it would be essential to first understand the purpose of the Integrated Infrastructure Corridor and Finance Project (the Project). It was conceived and formalised to construct a privately financed infrastructure corridor and seven new Townships

between Bangalore city and Mysore city in Karnataka State. The Project also included construction of the southern section of the Bangalore City Outer Peripheral Road. The infrastructure corridor was to include a modern, four-lane (extendable to six-lane) limited access expressway; potable water, sewage treatment, and electric power transmission facilities; and fibre optic communication cables. The southern section of the Outer Peripheral Road was to link the infrastructure corridor with the region's entire highway network. The report (PTR) plainly sets out that the seven new Townships were to be organic, self-sufficient communities, each with its own unique economic base and directly served by the infrastructure corridor. All this would fulfil the National and State policy goals for population dispersion, infrastructure modernisation and economic development, and inevitably, economic and infrastructure privatisation. As a limited-access expressway with a continuous barrier on either side, the road was intended to prevent ribbon development, increase efficiency of individual travel and cargo movement, and improve vehicle safety. It also notes that it was intended to provide access to existing and proposed Townships, for which nine (9) interchanges were to be constructed along the

length of the expressway. Location(s) of the interchanges, as well as, the “Townships” area were clearly demarcated in the PTR.

The relevant extract from the PTR reads thus: -

- “1. The intersection of the expressway with the outer peripheral road
2. **The Corporate Counter (Township Site #1)**
3. **The Commercial Center (Township Site #2) and Bidadi**
4. The Farming Market Center (Township Site #3), **the Industrial Center (Township Site #4), the Heritage Center (Township Site #5), Ramanagaram and Channapatna**
5. Maddur
6. Mandya
7. The Agricultural Center (Township Site #6) and Arakere
8. **The Eco-Tourism Center (Township Site #7) and Shrirangapatta**
9. The intersection of the Expressway with the Mysore Ring Road

The expressway will bypass congested village roadways, eliminating conflict between inter-city and local traffic. By limiting access to the expressway and charging tolls, local traffic will be discouraged from using the corridor. As a result, the corridor will significantly reduce travel time between Bangalore and Mysore to about one and one-half hours. The design of the expressway will, to the greatest extent possible, maintain the travel patterns of the rural populace. For the most part, local cross roads, although separate from the expressway, will be maintained through the construction of bridges and culverts. Where crossing the expressway with a local roadway or cattle path is not feasible, local access roads will connect to nearby roadways that do cross the corridor. Bridges and

underpasses for local roads, and most of the large culverts will serve as cattle crossings during the dry season.

The expressway and its facilities will be constructed of the best materials and implemented using state-of-the-art highway engineering and construction techniques. The expressway will be constructed to high standards of roadway safety with two marked lanes in each direction and divided by a wide landscaped median. The roadway alignment and pavement surface will be designed to ensure safe travel and a smooth ride. To achieve this objective, the expressway will be designed using innovative materials and construction techniques such as jointless cement concrete pavement. All bridges will be but of modern materials. The roadway surface will be graded to prevent water pooling and curves will be banked to enhance driving safety.”

(emphasis supplied)

The map of the concerned area clearly specified the location(s) of the interchanges and the Townships, forming part of the PTR. As regards the Townships development, the relevant portion of the PTR reads thus: -

“TOWNSHIP DEVELOPMENT SUMMARY

The Consortium proposes to design, acquire land for, and construct seven new townships as part of the Bangalore-Mysore Infrastructure Corridor. **The townships will be developed entirely by the Consortium, including the provision of infrastructure municipal services, and recreation facilities. The creation of the new townships will provide significant benefits to Bangalore, Mysore, the investment corridor, and the entire state of Karnataka. The townships are being planned to be compatible with their environments. They will strengthen the rural agricultural economies of the area and maintain the stability of existing rural settlements.**

Each of the proposed townships has a unique identity determined by its economic base. The urban form,

transportation network, and municipal services serve and are guided by the basic purpose and theme of the community. The proposed townships are as follows:

Corporate Center: A home for corporate headquarters, offices and research and development facilities.

Industrial Center: A self-sufficient community dedicated to clear manufacturing and industrial research and development.

Agricultural Center: A town centered on a university and institute dedicated to agricultural research and its application.

Eco-tourism Center: An environmental park and cultural arts center which will become a destination for Indians and foreign travellers who wish to learn about the region's environmental resources, fine and performing arts, and heritage crafts.

Heritage Center: A pilgrimage site with conference and traditional healing facilities.

Commercial Center: A residential suburb of Bangalore with retail, light industry, and municipal support services.

Farming and Market Center: A farming community with a market center for the sale of locally grown produce.

Beyond these themes, the communities share a common planning philosophy. The towns must be modern, but accommodate traditional Karnataka lifestyles, customs, and cultural values. Transportation access and utility infrastructure will be provided to a greater ultimate development capacity than will be initially needed for those areas to be created by the Consortium. **This excess capacity will permit the new townships to accommodate future growth with minimal disruption.**

Each township has a primary town center with supporting neighbourhood centers. The residential areas are planned to include a range of housing models and are situated so that the walking distances to work, school, or shopping are not greater than ½ mile (0.9 km). Elementary schools are located in each neighbourhood. Parks and recreation facilities are generously allocated to neighborhoods and town centers. Transportation access to the expressway and internal vehicle and pedestrian circulation patterns are considered carefully. ...”

(emphasis supplied)

The other crucial aspect predicated in the PTR is the manner in which the Project needs to be implemented and prioritized including the Townships. It reads thus: -

PROJECT SCHEDULING AND PHASING:

The current project schedule and phasing plan is responsive to the financial plan of the Consortium, and it meets the transportation and township development needs of the region. A master schedule illustrating the Bangalore-Mysore Infrastructure Corridor Project elements and their interrelationships is presented on the following page.

The project schedule and phasing plan has been developed that sequentially constructs the expressway elements of the project. **Township development is phased to financially support the construction of the Expressway and the southern section of the Outer Peripheral Road.** The project phasing can be summarised as follows:

Construction of the Southern section of the Outer peripheral Road around Bangalore City between years 1-3.

Construction of the Bangalore link Road between years 1-3

Construction of the northern section of the Expressway (0-55 km) between years 2-4.

Construction of the southern section of the Expressway and the Mysore Link Road between years 4-6.

Construction of the Bangalore City Elevated Link Road Extension between years 7-10.

Construction of the townships would begin in year 2 and extend over a period of 12-15 years.

Development in each of the townships would be concurrent with the construction of the community and municipal services. This will enable the financing of these township elements and allow the consortium to manage their cash flow.

Once construction of the various expressway elements has been completed, tolled traffic operations will commence. For example, it is envisioned that the Southern section of the Outer Peripheral Road would open for traffic operations at the end of year three. Upon completion of each subsequent expressway section, it would also be opened for traffic operation.”

(emphasis supplied)

38. Section I of the report (PTR) deals with topics such as Socio-Economic Profile, Highway Planning Issues, Recommended Scheme, Traffic Data and Analysis, Engineering Design, Bridges, Initial Environmental Examination, Cost Estimate, Privatisation of Highway Projects, Appendix-I and Appendix-II. Under topic “Recommended Scheme”, the details of the Expressway, Underpasses/Overpasses, Cattle Underpasses, Utilities Road, Interchanges, Service Areas, Toll Plazas, Central Administrative

Complex, Express Lighting, City Centre Access etc. have been duly elaborated including their exact location and other essential specifications.

39. The topic “Townships Along the Corridor” has been separately detailed in Section-II. The relevant portion of the PTR dealing with “Townships” reads thus: -

“1. TOWNSHIPS ALONG THE CORRIDOR

This part of the report deals with the analysis of developing seven urban townships with all infrastructure and civic facilities along the Bangalore-Mysore expressway.

Historically, the chieftain from Magadi, Kempegowda built Bangalore during 1597 and established a few towers on the boundary limits of Bangalore. The Mughals conquered it in 1687. It is said, it was sold to Chikka Devaraya in 1690 for Rupees three lakhs. It was Hyder Ali who got it as a personal jagir in 1759. However in 1791, Tippu Sultan was given suzerainty over it after the Treaty of Srirangapatnam. After the fall of Tippu at Srirangapatnam, the same was returned to the Hindu Royalty in 1799. A military cantonment of the British was established in 1809 and Bangalore later on flourished as an administrative centre since 1830. It grew spectacularly after 1951.

1.3. The population of Bangalore was 12 lakhs during 1961 and it rose to 29 lakhs as per 1981 census. In 1981, it was the fifth most populated city in the country and accounted for 25% of the population of the state – Hubli-Dharwad, the next urban centre accounting for a fifth of Bangalore size population.

1.4. Compared to Karnataka’s growth in population during 1981-91 which was 20.09%, the growth of population of Bangalore urban area was 59.08% during 1971-81 and 38.00% in 1981-91 and that of rural

Bangalore was 24.30% during 1971-81 and 14.70% in 1981-91.

1.5. As against this, Mysore with a population of 6.52 lakhs in 1991 recorded a growth of 24.97% in 1971-81 and 21.58% in 1981-91 at the district level. Various agencies estimated the expected population of Bangalore during 2001 as 70 lakhs (Town Planning Department) and 82 lakhs (anticipated by Bangalore Water supply and sewage Board). The Comprehensive Development Plan (CDP) 1984 for 2001 of Bangalore Development Authority (BDA) projected a population of 70.00 lakhs for Bangalore in 2001. The revised (1995) CDP for 2011 AD proposed land uses for 56,465 hac. as against 43,928 hac. During 2001. This is in addition to the green belt, surrounding the conurbation area.

1.6. **The rapid increase in population necessitated a thinking process to contain Bangalore to a reasonable size, assure it the desired level of civic and social services to keep its premier status and direct additional growth to alternate places in a desirable manner. The acute problems of Bangalore are increasing level of pollution, pressure on land, acute shortage of water, inadequate sewage system and lack of proper sewage treatment and disposal arrangements, shortage of power, shortage of residential accommodation, inefficient telecommunication system, paucity of land space within green belt etc.**

1.7. Bangalore, located at an elevation of +900m is suffering for want of a good transport system, inter and intracity wise. A reliable power supply system to assure 1000mw was planned as a part of Karnataka power requirement. Tourist and amusement areas like T.G. Halli Reservoir, Hesarghatta Tank, Bannerghata National Park and Ramohalli Banyan Tree and Kanva Reservoir were considered, but no active steps taken. The region lacks the facility of good environment parks or amusement places.

The above and many other factors indicate that there is a need for a policy to establish urban growth centers, with dependable infrastructure and accessibility to the metropolitan area along a fast

corridor. Examples of this nature are many in Switzerland, Norway, Mourville away from Paris in France are just a few instances of polycentred settlements working as counter magnets, with a strong support base. **The townships along the proposed Bangalore Mysore Expressway would go a long way in reducing pressure on Bangalore. These settlements should, however, take into account the growth pressure likely to be faced by them after a decade of their completion. Creation of new settlements is likely to bring in better results compared to improvements and modification or creating new urban extensions to metropolitan Bangalore as these actions need to necessarily serve under severe constraints on the other facilities like land, transport and power.** Usewise for any unit of expenditure, the efficacy of modifications will be comparatively less. The environment and purity will only reduce. But in the case of new settlements, it will be easier to achieve better results. It is, however, necessary to ensure that the existing structures and balances in the rural sector are not thoughtlessly disturbed; **the emphasis in the new townships should be for achieving a high degree of green and low rise and low density development.**

A very important aspect is to give orientation towards the direction in which new townships should grow. Referring to Bangalore, good transport facilities towards Mysore are in the offing which is a good boost for industrial and tourism growth. Mysore having an excellent source of shelter, tourism, industry, and raw materials, will serve very well the purpose of an important supporting city (as the other end of a corridor of development with other facilities and settlements dispersed judiciously in between). Secondly, there are three medium irrigation projects near about Bangalore viz the Manchanabale Project, the Iggalur project and the Arobele project, which can yield some water for supporting the growth. Rivers Arakavati Shimsa and Cauveri are on the corridor towards Mysore. The Ground Water department ascertained that there is good ground water development possibility for making about 33,000 additional well structures in Bangalore; 41,600 in Mysore and 42,100 in Mandya. At least it indicates good ground water condition at depths ranging 50m and more. By far the climatic and physical conditions in this area are very

congenial, compared to some other areas in Karnataka. Therefore, it is most desirable to develop the belt as a corridor with settlements of high order of infrastructure well connected to the two metropolitan towns of Bangalore and Mysore.

Selection of Townships

1.10 Estimates indicate that the population of Bangalore will reach 85 lakhs by 2011. There is an absolute need to restrict the population to 70 lakhs by 2011. Even for achieving this objective, a number of measures to prepare Bangalore for sustaining a holding capacity of 70 lakhs will be required to be taken. The proposal now is an effort to absorb almost 7 to 8 lakhs population in the proposed corridor by developing seven townships (Mandya, Maddur, Ramanagram and Chanpatna shall be geared to absorb about 2.0 lakhs additional population). The balance of 6 lakh population has to be diverted across towards other countermagnets and some administrative actions taken.

1.10.2. The selection of the seven townships and the need for land has been done by physical examination of the present ground level conditions and development. Since an expressway is being considered, a comprehensive view has been taken about the availability of access to the corridor from the proposed townships each of which will be given an access to the expressway.

1.10.3. Availability of water is an important consideration. There are no water sources of perennial nature, barring Cauveri which can be tapped for water supply to these townships. Ground water conditions do indicate the presence of water at depths 40 to 50m between the rocks, but this is not an adequate source to sustain the nature and level of development. Even the National Water Policy hints that drinking water for urban areas shall be met from surface flows, and only in rural areas, extensive dependence on tube wells may be considered. Heavy exploitation of subsoil water can reduce the growth of greens. The idea of bringing water from Cauveri along the expressway and supplying to the townships is the only solution. Some water to be tapped through tube wells and water ponding by digging lakes can be only auxiliary measures.

1.10.4. Efforts are being made to avoid acquisition of lands which are under good cultivation. Such lands which are good for agriculture and gardens are being almost avoided. Forest land is also being avoided. Since it is necessary to have one expanse of land of about 2,000 acres and more for about 1.0 lakh population (or more), search was made for presence of continuous plots of land, as far as possible, forming a regular geometric figure without wedges projecting in or out. However in a few cases, a few villages and major district roads exist on ground in the midst of such expansive areas. In such cases, the villages and road are to be integrated suitably with other planning, and some measures will have to be taken to integrate them with main area. This will be a right step to encourage the rural settlements adopting new norms of a system and not distort, or feel disparities.

1.11. The area on the corridor towards Maddur and Mandya are highly agricultural in character with existing irrigation facilities. **It is for this reason that more townships are located in the first half of the corridor nearer to Bangalore and only 2 out of seven in the other half of corridor nearer Mysore.**

Fig. 3.1 (Section-I) shows the location of the townships and the areas and the location of expressway. Where the township area is away from the expressway, a dedicated road with good specification is proposed to be constructed up to the expressway as a part of the township development. They will be served through the Expressway interchanges.

To avoid speculation, no survey of land has been done. Help of Topo maps has been taken to know ground conditions. Ground conditions are further examined by limited walking along. There are some changes on ground since the last survey work was done for preparing topo maps. **Land use maps of each township have been prepared to indicate the suggested breakup of areas. After the land is finally selected and ground survey done to some extent of precision (the existing maps are to a scale of 1:50,000), the land uses firmed up and density can be finally decided with zoning and other development components like FAR, Height, Set Backs, Architectural Control etc.**

1.14. The present comprehensive development plan for Bangalore shows the following land use pattern. In addition, there is a green belt on the periphery

Residential	43.16%
Commercial	2.91%
Industrial	6.81%
Public and Open Spaces	13.79%
Public and semi public	8.69%
Transportation	20.72%
Unclassified	3.92%

100.00%

1.15. **Some townships are exclusively designed to promote industry and one for Environment and amusement. The land use pattern at city level in Bangalore cannot be extended for townships outside.** The land use pattern in the other township areas will generally be as below.

Housing	30-50%
Parks, open spaces University)	15-20% (excl. Agr.
Commercial	5-10%
Industrial	0-20%
Roads and Utilities	20%
Municipal & Institutional	5-15%
Total	100%

Subsequent chapters describe the concept of township layouts infrastructural services and the manner in which they will be designed and provided.”

(emphasis supplied)

The Conceptual Aspects of Townships are separately discussed as second item in Section-II, which reads thus: -

“2. CONCEPTUAL ASPECTS OF TOWNSHIPS

2.1 Problems of the urban community multiply with the increasing complexity of our age. The physical

expansion of cities is running out of control, and the economic and social consequences command the attention of civic leadership in Government, business and industry. The Practical limitation of the pyramidal form of the city has forced decentralization. When the congestion at the core becomes unbearable, the inner layers slip out. The present exercise is to contain this phenomenon by planning the infrastructural corridor having seven new townships to cater to the varying and complex needs of the region, along the proposed expressway connecting Bangalore and Mysore. These are indicated on the index map.

The new townships would be of relatively small sizes, designed to encourage pedestrians circulation and maintain close proximity to surrounding open space. The plans indicate an abundance of space flowing throughout the community. The special endeavour has been made to preserve natural wooded areas or unusual topographical characteristics in all the towns. The existing villages are assimilated in the overall schemes of development as they are existing on all sites. The human scale predominates in the total planning of all the new town ships which are planned as self-contained communities seeking a balance between sources of employment, business centres, centre for fashion technology, medical and other research centres etc. are suitably located in various townships which are essentially organic elements in a broad programme of decentralization of the congested urban centres of Bangalore and Mysore.

In all townships, the floor-space required to be occupied by people and ground space for circulation has been carefully worked out. The emerging pattern is a balance between these elements. The high rise 'Land Mark' buildings, for all towns have been thought of essentially in the commercial sectors, to dominate the skyline and also to be seen from the Expressway.

The grid pattern is followed for roads with circles and radials in some cases. Three types of principal rights of way have been followed, the respective width being 33.0, 24.5 m and 18.00 m.

Each neighbourhood in the new townships has a small sub centre for shopping, a primary school, and social facilities. The secondary schools serve several neighbourhoods.

Fig. 3.1 indicates the general locations of the townships along the proposed Expressway and existing Bangalore-Mysore State Highway No.17. The existing villages and towns are also indicated. The distance in km is shown on the drawing along the alignment of proposed Expressway. There are five townships within the distance of 40 kms from Bangalore and two townships in the vicinity of Mysore on either side of the Kaveri River.

Township No.1 assumes great significance due to its proximity to Bangalore. It is situated on either side of the Expressway on the fringes of the Outer Ring Road of Bangalore city. The nature of this township may be roughly identified as a corporate township providing facilities for Research and Development, Business Centre, Hotels, Golf Course, Residential, and related infrastructure. Some facilities from the core of the city could be shifted here in a planned and organised manner.

The entrance and exit to the township is through an interchange and toll-booths. This is located on the west of the town. The town is provided with a Green Belt on its periphery. Due consideration has been given to the ecological and environmental factors. The total area of the township is 2792 acres.

The 'Land Mark' buildings are proposed at appropriate locations.

The city is designed as a self-contained entity with all facilities, including a hospital and a college with appropriate number of primary schools, high schools and other town requirements.

2.8 Township No. 2 is located about 10 kms from the Bangalore conurbation boundary. The site is proposed to be developed as a commercial township, contributing to relieve the pressures of urbanization.

Covering an area of 1868 acres, the township is situated about 7-8 kms off the Bangalore-Mysore Expressway and 4 kms from the existing railway line and state highway No.17 to the south of the township.

The existing site features are more or less suitably modified according to the layout with an exception of a few rivulets, natural water bodies and hillocks and rocky outcrops scattered within the site boundary. The proposed township site is bounded by two roads leading to Bangalore from Nejjala and Bidadi towns. A number of existing settlements are present all around the site boundary especially towards the south while two settlements fall within the site boundary.

The basic design of this township revolves around the central core. This central core is the major commercial, business, services and institutional hub of the town. The residential area is distributed all around this central core.

The multifunctional central core offers varied services, right from a commercial complex to hotel, bus terminal municipal offices, institutional and office use, hospital, and college, all located within 2 kms from the farthest point in the township and hence confirms to the standards of human scale, facilitating use of non motorised form of transport.

The road layout is more or less a grid pattern. Each residential pocket is to be developed as a self-contained neighbourhood with facilities like school, playground, park, dispensary, convenient shopping etc.

The environmentally friendly nature of the township is emphasized by developing the township for non-motorised transport system, encompassing the existing settlements within the overall structure of the township and provision of a green buffer all along the site boundary besides the provision of community parks and trees lining the major roads of the township.

Last but not the least is the link to the proposed Expressway which will be provided through an interchange on the expressway.

2.10. **Town ship No. 4** is about 36-37 kms. west of Bangalore along the proposed Expressway. The site has an area of about 1660 acres and is meant for the industrial land use. It is intended to accommodate different types of plots for the various industries. A green buffer is maintained all round the township and the environmental considerations shall be well looked after. The site has an approach from the Expressway. The necessary provision has also been maintained for the public and semi-public and the green areas. The town shall be designed on the lines of a modern Industrial township will all necessary trapping.

2.11. **Township No. 5** is north of township no.4. This township is located near the existing Bangalore-Mysore State Highway No.17 and also near the existing Railway line.

The site of this township in on the north of the existing village of Archahakra Halli, which is along the State Highway No.17 from where an existing roadway leads to the hinterlands. This road passes through the entire length of the proposed township. This proposed township has a mix of cultural and residential land use and it occupies an area of about 2700 acres. The town shall have a medical centre with a full-fledged hospital with centres for the study of various types of medical systems like Allopathy, Ayurveda etc. it will also have a centre for religious studies with subcentres for all world religion and will accommodate special centre for the Vedic studies. Housing also forms the major component of this township.

Township No. 6 xxx xxx xxx

Township No. 7 is in the near vicinity of Mysore City, about 3 km on its outskirts and about 1 km on the north of Kaveri River. It occupies an area of 4010 acres. The township is designed for Ecotourism and all facilities have been provided to meet this target.

This is the township of contrasts. It will have an Amusement Park, Golf Course and hotels with some residential neighbourhoods. A town centre with commercial, public buildings and other necessary infrastructure facilities is provided.

All these townships together provide for necessary infrastructure support required in this region for perspective requirements.

The townships will be developed in line with modern town planning practices. Special consideration should be shown while detailing open spaces parks and greens. Special attention is to be given to Agricultural Zone and the Agriculture University where uses like agriculture, horticulture farming, chilling centers, farm houses and accessory buildings will be planned.

Since the detailed layout and architectural control & drafting zoning applicable norms is not within the scope of this report, this is not attempted; also it is an exclusive work, which has to be handled separately. However there are certain points which have links with land use planning and which need to be considered in development planning. They are listed below.

1. Road hierarchy has to be planned to avoid main traffic in a subcity going through residential areas.
2. Wind Rose is to be kept in view while treating high rise buildings vs. low rise buildings.
3. Continuous green may be attempted to allow minimum public use of motorised transport – encourage cycle or pedestrian movement.
4. All high rise buildings to be on wide roads only.
5. Drainage and greens to be integrated
6. Low rise buildings to be attempted to harmonize with environment
7. Energy savings should be an important criterion while detailing architectural plans.
8. Local zoning to ensure a low noise environment for schools, hospitals, and residences.”

(emphasis supplied)

40. The project report (PTR) was deliberated and eventually translated into a formal decision of the State with some modifications and changes to the recommendations made therein. Finally, the Framework Agreement (FWA) was executed between the State and NICE. Even this agreement at the outset - in the recitals, unambiguously refers to the PTR and the necessity to implement the Project as finally approved by the Government in larger public interest. The relevant recitals read thus: -

“W I T N E S S E T H

WHEREAS, Bangalore and Mysore are the fastest developing cities in the State of Karnataka and are leading centres for industry, trade and commerce, simultaneously attracting tourists from all over the world;

WHEREAS, the traffic intensity between Bangalore and Mysore has been very high and will continue to increase with further growth of industry, trade, commerce and tourism in such cities and in the State of Karnataka;

WHEREAS, in order to ensure smooth and accident-free traffic between Bangalore and Mysore, an expressway between the two cities is proposed;

WHEREAS, in light of the ever-increasing urbanisation problems and in an effort to achieve the orderly development of Bangalore as a major industrial commercial and residential city. GOK has proposed to **promote an integrated infrastructure corridor** situated between Bangalore and Mysore, Karnataka, consisting of residential, industrial and commercial facilities such as among other things, self-sustaining townships, expressways, utilities and amenities, including power plants, industrial plants, water treatment plants and other infrastructural

developments, **as more specifically described in the Infrastructure Corridor Project Technical Report, dated August 1995, as amended** (collectively, the “Infrastructure Corridor”);

WHEREAS, GOK has been consistently attempting to attract on agreeable terms a consortium to industrially and commercially develop the Infrastructure Corridor in accordance with the vision of GOK;

WHEREAS, the Kalyani Group, SAB Engineering and Construction Inc., and Vanasse Hangen Brustlin Inc. (collectively, the “Consortium”) and GOK entered into a Memorandum of Understanding dated 20 February, 1995 relating to the further consideration of the industrial and commercial development of the Infrastructure Corridor by the Consortium (the “Memorandum of Understanding”);

WHEREAS, GOK, upon review, assessment and consideration of the Infrastructure Corridor Project Technical Report dated August – 1995 prepared by the Consortium, as amended by the Government Order (defined below) and the Annexure thereto (the “Infrastructure Corridor Project Technical Report”) is satisfied that the interests of the State of Karnataka would be best served if the Infrastructure Corridor is industrially and commercially developed as contemplated by the Infrastructure Corridor Project Technical Report inasmuch as such development would promote industrial, commercial and economic growth in the State of Karnataka generally and in Bangalore and Mysore and the Infrastructure Corridor specifically create new job opportunities for the residents in and around the Infrastructure Corridor, promote tourism, decongest traffic in Bangalore and Mysore, ensure smooth and safer traffic between Bangalore and Mysore and provide a world-class expressway between the two cities;

WHEREAS, GOK issued Order No. PWD 32 CSR 95 dated 20 November 1995 (the “**Government Order**”) authorizing the development of the Infrastructure Corridor by the Consortium as contemplated by the Infrastructure Corridor Project Technical Report;

WHEREAS, GOK has consented to and acknowledged the exercise by the Company of the Consortium’s rights under the Memorandum of Understanding and the Government Order pursuant to a Consent and Acknowledgement Agreement dated 9th September, 1996 among the GOK and the members of the Consortium;

WHEREAS, the Company has agreed to industrially and commercially develop the Infrastructure Corridor and finance, own and/or operate such developments in the manner contemplated by this Agreement;

WHEREAS, under the above recited premises, GOK has undertaken to extend to and provide the Company with the necessary governmental actions, cooperation and assistance and grant the Company rights required for the industrial and commercial development of the Infrastructure Corridor, including the services and businesses contemplated in Schedule 4, which GOK believes is in the best interests of the State of Karnataka and its citizens because, among other things, it will (i) promote industrial, commercial and economic growth in the Infrastructure Corridor, the cities of Bangalore and Mysore and the State of Karnataka generally, (ii) create new jobs, (iii) provide the State of Karnataka a much needed world-class expressway between Bangalore and Mysore, (iv) create a counter-magnet to Bangalore city and (v) help in promotion and development of world-class tourism; and

WHEREAS, the Company will assign its rights under this Agreement to the various Project Companies, each of which will develop, construct and finance part of the Infrastructure Corridor Project in a manner to be determined by the Company in accordance with this Agreement;

NOW, THEREFORE, in consideration of the mutual premises, covenants and promises herein contained, the Company and GOK do hereby agree as follows:"

(emphasis supplied)

Suffice it to observe that the underlying concern of the State was about the increasing urbanisation problems and to assuage the hardship caused on that account to the general public. The Project, as envisaged and finalised was intended to achieve the objective of orderly development of Bangalore as a major industrial, commercial and residential city. The Integrated

Infrastructure Corridor (the Project) was to consist of residential, industrial and commercial facilities, amongst other things, self-sustaining townships, expressways, utilities and amenities including power plants, industrial plants, water treatment plants and other infrastructural developments, as envisaged in the PTR, as amended. The objective of the Project was also to ensure smooth and accident-free traffic between Bangalore and Mysore; to create new job opportunities for the residents in and around the Infrastructure Corridor; promote tourism; decongest traffic etc.

41. Notably, the PTR had suggested creation of seven Townships, but in the final decision, as noted in the FWA, only five Townships have been approved as part of the Project being Townships 1, 2, 4, 5 and 7. It was a conscious decision taken by the State to have limited number of self-sustaining Townships in the entire belt, so as to fulfil the National and State policy goals of population dispersion and to ensure proper functionality in the region. In other words, the FWA predicates that the Project Proponents will be allowed to develop only five Townships at the demarcated locations and which are self-sustaining with

sufficient infrastructure for ensuring smooth and accident-free traffic on Bangalore-Mysore Expressway stretched to about 140 kilometres. Keeping that objective in mind, the stipulations and specifications in the FWA read with the relevant portion of the PTR will have to be examined. There is no room for giving liberal meaning to the stipulations and specifications which would inevitably defeat and frustrate the underlying objective of the Project - of orderly development of Bangalore City and to address the ever-increasing urbanisation problems.

42. Be it noted that the FWA executed between the State and the Project Proponents delineates the nature of contract and the scope of work to be carried out by the Project Proponents, as per the terms and conditions specified therein. It is an integrated project not only for construction and management of Expressway, but also creation of Townships at the demarcated location(s) as per the specifications and area earmarked therefor. The “Infrastructure Corridor” has been defined as having the same meaning as set forth in the recital (4th WHEREAS clause) of the FWA. It means, collectively, the Land, the Toll Road, the Townships, the Power Plants, the Telecommunication Facilities,

Water Supply Facilities and the Waste Water Treatment Facilities and other developments, and the acquisition, design, construction, engineering, financing and implementation thereof, as referred to in the PTR. “Townships” is, therefore, an identified and well-defined component of the “Infrastructure Corridor Project”. It has been defined as follows: -

“**Townships**” means the townships described as Townships 1, 2, 4, 5 and 7 in the Infrastructure Corridor Project Technical Report which will be developed by the Company and/or the Project Companies for the industrial and commercial growth and other development of the Infrastructure Corridor, and the provision of roads, supply of water and electricity, street lighting, sewage, conservancy and such other conveniences and socio-economic infrastructure, inter alia comprising of housing schools, hospitals, shopping complexes, parks and open spaces as set forth in Schedule 4 attached hereto.”

From this definition, it is amply clear that only five Townships (each having different purpose – such as Corporate Centre, Industrial Centre, Ecotourism Centre, Heritage Centre and Commercial Centre) have been envisaged in the Infrastructure Corridor Project. The location(s) of these five Townships have been identified in the PTR. Besides the location(s), the extent of area to be utilised for creation of each Township has also been specified in the PTR, which applies *proprio vigore* to the expression “Townships” in the FWA. The term “Townships”, no

doubt, includes housing, but a standalone group housing scheme cannot be regarded as a Township as such. The Townships would, however, comprise of not only housing, but also schools, hospitals, shopping complexes, parks and open spaces, as noted in Schedule 4, which reads thus: -

“SCHEDULE 4

Bangalore-Mysore Infrastructure Corridor Possible
Business and Services

1. Power
Generation & Transmission
Distribution & Metering
2. Water
Purification & Transmission
Distribution
Reservoirs
3. Sewage
Collection & Treatment
Recycling & Selling the water
Selling by product
4. Tele-communication
Transmission & Switching
Distribution in township
5. Expressway toll facilities
6. Restaurants and Gas Pumps
7. Interchange Plazas
8. Hospitals
9. Schools
Primary and High Schools
Colleges
10. Hotels & Motels (Townships)
11. Real Estate

- Commercial
 - Industrial
 - Housing
 - Municipal
 - Rental
12. Garbage
 13. Cable TV
 14. Parking Authority
 15. Entertainment
 - Golf Course
 - Movie Theatres
 - Bars
 - Amusement Park
 16. Marriage Mandaps
 17. Temples and religious activities
 18. Convention and Exhibition Centres
 19. Land Management
 20. Industrial Plants
 21. Any other such business area which may emerge from time to time as permitted by law.”

Besides Schedule 4, it may be appropriate to advert to Schedule 1, which deals with the total Land to be used for the Infrastructure Corridor Project. The bifurcation of the extent of land to be used for different activities, such as Toll Road and Township areas township-wise, is also specified. Schedule 1 reads thus: -

“SCHEDULE 1

Land

	TOTAL	TOTA
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			L
	GOVT	PVT	(Acres)
Toll Road	1,499	5,500	6,999
Township 1	328	2,447	2,775
Township 2	614	1,222	1,836
Township 4	684	931	1,615
Township 5	2,592	90	2,682
Township 7	1,239	3,047	4,286
TOTAL	6,956	13,237	20,193

The figures noted above are approximates.”

To put it differently, the Project Proponents are obliged to construct the five Townships at the demarcated location(s) only and to the extent of land specified therefor. Any other proposal of the Project Proponents would be nothing short of deviation from the FWA in particular. It is not necessary for us to dilate on the essential specifications and components to constitute a Township. Suffice it to observe that the Project Proponents are obliged to construct housing in the area demarcated for Townships and ensure that the other socio-economic infrastructure components such as schools, hospitals, shopping complexes, parks and open spaces etc. are also provided for within the Townships. The construction of the essential components including housing, as expressly provided in the FWA, must also comply with the municipal laws governing such constructions. For, Schedule 2 of the FWA reads as follows:-

“SCHEDULE 2**Approvals**

The Company shall have received the required permissions, approval, sanctions and/or licences under the following acts and rules of GOI and GOK:

1. Environment (Protection) Act, 1986 – Section 3(1) and Section 3(2)(v).
2. Environment (Protection) Rules, 1986 – Rule 5(3)(a);
3. Water (Prevention and Control of Pollution) Act, 1974 – Section 25.
4. Air (Prevention and Control of Pollution) Act, 1981-Section 21.
5. Clearance and confirmation from GOK that the Land does not contain reserve forest under the Forest (Conservation) Act, 1980 – Section 44 and Section 28.
6. Exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 for holding land in the site falling within the Urban Agglomerations.
7. Declaration by GOK under the appropriate Act and formation of Greenbelt.
8. Karnataka Stamp Act, 1957 – Section 9 in respect of stamp duty payable on the amounts secured any by mortgage deeds executed in connection with the Infrastructure Corridor Project.
9. Electricity (Supply) Act, 1948.
10. Consent of the Telegraph Authority under Section 4 of the Indian Telegraph Act, 1985 and Part V of the Indian Telegraph Rules for the provision of telecommunication facilities.
11. Permissions approvals under the Foreign Exchange Regulation Act, 1973 for,
 - Offshore borrowings and debt servicing.
 - Appointment of and payment to the foreign contractors.
 - Purchase or lease of equipment supplies from abroad.
 - Appointment of and payment to non-resident/foreign consultants, advisors and experts.

- Consent to remit dividends to non-resident shareholders.
 - Consent for remittance to non-resident directors.
 - Permission for creation of securities in favour of non-resident lenders.
12. Exemption under Section 9 of Karnataka Stamp Act for purchase of the Land.
 13. Rural Development and Panchayat Raj.
 14. Applicable rules of the Irrigation Department of GOK.
 15. Town & Country Planning Act, 1961.
 16. Karnataka Land Revenue Act and Rules, 1964 and 1965.”

43. Indeed, while planning for the development of Townships, it is open to the Project Proponents to deviate from the PTR within the defined norms to the extent such deviation is required to enable the parties to realise the full benefits intended from development of the Project. But, that is required to be done only with prior written approval of the State. This is made amply clear by Article 7.1 of the FWA itself. Article 7 reads thus: -

“ARTICLE 7. TOWNSHIPS.

7.1 Development. Each of GOK and the Company acknowledges and agrees that the industrial and commercial development of the Townships by the Company is an integral part of the Infrastructure Corridor Project and its goal of increasing and promoting industry, trade, commerce and tourism in Bangalore, Mysore and the Infrastructure Corridor. Accordingly, GOK will assist the Company in the manner contemplated herein so that the Company may develop the Townships in the manner described in the Infrastructure Corridor Project Technical Report and as

authorised in the Government Order. **The Company may deviate from the Infrastructure Corridor Project Technical Report in the development of the Townships within the applicable law to the extent such deviation is required to enable the Parties to realize the full benefits intended from development of the Infrastructure Corridor Project and with prior written approval of GOK which approval shall not be unreasonably withheld by GOK.**

7.2. Operation and Maintenance. GOK and the Company agree that the Company shall have the right to operate the Townships. The Company and GOK shall enter into an agreement negotiated in good faith by each for the operation and maintenance and in accordance with applicable laws. **Notwithstanding the previous sentence on the first anniversary of the Township Completion Date, the Company shall transfer to GOK the assets relating to the Townships set forth in Schedule 5 and the right of way over the Land that may be required with respect to such assets, but not including any ownership interest in any part of the Land (the "Transferred Township Assets") and shall assign the administration of such Townships to GOK or a GOK Governmental Instrumentality designated by GOK, GOK shall pay to the Company the sum of Rs.1 for such Transferred Township Assets and shall assume all obligations relating thereto and to the administration of the Townships.** GOK shall contract with the Company to provide to the Townships after such assumption the utilities and amenities theretofore provided by the Company or its Affiliates or to be thereafter provided for which the Company shall receive reasonable compensation agreed to by the Parties in good faith negotiation. GOK will indemnify and hold harmless the Company and its Affiliates and each of its and their respective directors, managers, officers, employees and agents from any and all expense, loss or claim relating to the Townships (or any assets or part thereof) and the administration, management and operation thereof arising in respect of any date on or after the date of such possession and assumption.

7.2.1 *Deliveries Upon Transfer.* Each Party shall deliver to the other Party all documents and things necessary to effect the transfer set forth above, including **(i) the delivery by the Company**

of an agreement assigning and transferring the Transferred Township Assets, (ii) the delivery by GOK of an agreement in which GOK assumes all obligations of the Company relating to the Transferred Township Assets and the administration, management, operation and maintenance of the Townships after the date of such assumption and releases in full the Company and its Affiliates from all liability relating to the Transferred Township Assets and such administration, management, operation and maintenance after such date and (iii) the delivery by GOK to the Company of Rs.1.

7.2.2 *Maintenance.* In connection with the transfer contemplated by this Paragraph 7.2, GOK will offer to the Company the right to provide all utilities and amenities to the Townships on terms mutually agreed upon by the Parties. The failure of the Parties to mutually agree to the provision of any such utilities or amenities will entitle GOK to contract the provision of such utilities or amenities with a third party, GOK or a GOK Governmental Instrumentality on terms no more favourable than those offered by GOK to the Company.

7.3 Construction Responsibilities. The Company shall assure that its construction, development and maintenance obligations in relation to each Township shall be performed in accordance with the provisions of this Agreement.

7.4. Completion of the Townships. **Within 30 days of the completion of the full industrial, commercial and other development, including the services and businesses contemplated in Schedule 4, of the Townships (including sale by the Company of those parts of the Townships intended to be sold as part of the development of the Townships), the Company shall deliver a notice in writing to GOK with regard to such completion (The "Township Completion Notice").** The Company shall specify in such Township Completion Notice the date on which full development of the Townships was completed (the "Township Completion Date"). The parties understand that the Company will

develop the Infrastructure Corridor Project in a coordinated manner in accordance with the terms of this Agreement and that work at anytime may be conducted on all or any part of the Land with respect to the Toll Road, the Townships, the Water Supply Facilities, the Telecommunication Facilities, the Power Plants and the utilities and other supports ancillary thereto in furtherance of the Infrastructure Corridor Project. **The basic infrastructure for the Townships will be substantially completed (i.e. minimal reasonable facilities that enable some people to be able to live in the Townships shall have been completed) within twelve (12) years from the date of the Toll Road Completion Notice. The Township Completion Date in no event shall be later than the date which is thirty (30) years from the date the Toll Road Completion Notice as or should or would have been delivered pursuant to the provisions of Paragraph 6.6.2 and clause (iii) of Paragraph 6.6.3.**

7.5 Warranties. The Company warrants to GOK that:

7.5.1 The Company will industrially and commercially develop the townships so as to promote the industry, trade, commerce and tourism in such Townships as intended by the Infrastructure Corridor Project Technical Report;

7.5.2 all the skill and care to be expected of a professionally qualified and competent designer experienced in work of similar nature and scope as that required in connection with the development of the Townships will be exercised in the design of the Townships;

7.5.3 the developments in the Townships will, when completed, comply in all material respects with all applicable Laws of India;

7.5.4 the Townships will be developed using proven up-to-date good practices which are consistent with applicable Laws of India;

7.5.5 no goods or materials generally known to be deleterious or otherwise not in accordance with good engineering practice will be specified or selected by the Company or any one acting on its behalf and no goods or materials which, after their specification or selection by or on behalf of the

Company but before being incorporated into the developments of the Townships, become generally known to be deleterious or otherwise not in accordance with good engineering practice, will be incorporated into the development of the Townships; and

7.5.6 it will obtain all necessary approvals from an appropriate GOK Governmental Instrumentality with regard to the Technical Requirements for the Townships.

7.6 Execution of Documentation. GOK and the Company shall execute such agreements, Certificates, instruments and other documentation in order to give effect to the purposes of this Article 7.”

(emphasis supplied)

44. Article 3 deals with the obligations of the State for implementation of the Project referred to in the FWA. Much emphasis has been placed on Article 3.2.3, which postulates that the State will not restrict the use of the land in any way and the Project Proponents shall have full freedom and discretion to industrially and commercially develop and use the land. Article 3 reads thus: -

“ARTICLE 3. OBLIGATIONS OF GOK

GOK covenants, agrees and undertakes that it shall perform, and shall cause its Governmental Instrumentalities to perform, each of the following obligations:

3.1. Approvals.

3.1.1 GOK shall use its best efforts to grant, and cause its Governmental Instrumentalities, GOI and GOI governmental Instrumentalities to grant, all Approvals required in connection with the Infrastructure

Corridor Project, including all Approvals listed on Schedule 2.

3.1.2 GOK shall use its best efforts to dispose of, resist and resolve any obstacles or impediments created or placed by any Person to thwart or challenge any part of the Infrastructure Corridor Project.

3.2 Land

3.2.1 GOK shall use its best efforts to, and cause its Governmental Instrumentalities to, promulgate, facilitate, initiate, advocate and/or amend to the full extent possible under the Laws of India any and all enactments, acts and legislation necessary or desirable to enable GOK or any GOK Governmental Instrumentality to obtain, procure and/or transfer the Land to the Company for the purposes set forth in this Agreement.

3.2.2. GOK shall authorise and take whatever other action that may be necessary for the use of any part of the Land and/or any other tract of land reasonably requested by the Company as a waste dump/disposal site for the waste generated by any of the Components of the Infrastructure Corridor Project during construction and development of the Infrastructure Corridor Project, all in accordance with applicable law.

3.2.3 GOK covenants that it will not restrict the use of the Land in any way and that the Company shall have full freedom and discretion to industrially and commercially develop and use the Land, as generally contemplated by this Agreement except that GOK shall zone and rezone, and shall cause to be zoned and rezoned, all Land in a manner consistent with its intended use in the Infrastructure Corridor Project as contemplated by this Agreement or as reasonably requested by the Company, all in accordance with applicable law.

3.2.4 GOK covenants that upon transfer of the Land as contemplated hereby, the Company will have good, valid, clear and marketable title to the Land and all buildings, structures and other improvements thereon, free of any Encumbrances, GOK will indemnify and hold harmless and the Company and its Affiliates and their respective directors, managers, officers, employees and agents from any and all expenses, losses or claims relating to the use or ownership of such Land by the

Company or any project Company in the manner contemplated herein.

3.2.5 Company shall request and GOK shall use its best efforts to cause GOK Instrumentalities to, remove in the most expeditious manner possible any person that trespasses or encroaches on any part of the Land or any right of the Company hereunder and shall take all other action reasonably requested by the Company to permit the Company to fully enjoy its rights thereon or thereto and to develop the Land in the manner contemplated in this Agreement.

3.2.6 GOK covenants that it shall provide all assistance reasonably requested by the Company with respect to clearance and preparation of the Land for development in the manner contemplated herein.

.....”

(emphasis supplied)

Considering the fact that the State is obliged to facilitate the Project Proponents to deviate from the PTR specifications adopted in the FWA for the development of Townships, that does not mean that the Project Proponents will set up housing complex at location(s) other than those demarcated for five Townships including not providing for other components of Townships in the proposal or limit the proposal only to one component, such as housing and excluding the other mandatory components - schools, hospitals, shopping complexes, parks and open spaces etc. Such interpretation cannot be countenanced and if accepted, it would inevitably defeat the very purpose of the well-defined project intended to address the increasing urbanisation

problems and for orderly development of Bangalore City including smooth and accident-free traffic between Bangalore and Mysore Expressway.

45. The next question is: whether the stipulations and specifications in the FWA regarding the scope of work and the application of both parties stood modified or altered due to supplementary agreements dated 6.10.1999 and 31.3.2000? Even on a fair reading of these agreements, we find that there is no express clause therein which would alter the scope of work and the obligations of both parties regarding the setting up of five self-sustaining Townships only at the demarcated location(s). The supplementary agreements, however, deal with other aspects with which we are not concerned nor are the same relevant to decide the matters in issue. Similarly, the Tripartite Agreement dated 9.8.2002 between the State, NICE and NECE also does not alter or modify the stipulations and specifications for setting up of five self-sustaining Townships only at the demarcated locations. The High Court has placed emphasis on clause 1.1.3 of the Tripartite Agreement, which reads thus: -

- “1.1.3 Stage 1 of the Infrastructure Corridor shall mean
(a) Toll road (Section -A)

(b) Acquisition of the land and such rights, title and interests therein as may be necessary for the above-mentioned roads and development and sale of land.

(c) Basic development and sale of land, including that at ten (10) interchanges and Township-1”

We fail to understand as to how this clause can be construed to mean that the original stipulations and specifications regarding the five designated Townships in the FWA stood modified or altered in any manner. This clause only deals with the meaning of “Stage 1 of the Infrastructure Corridor”. Indeed, clause (c) thereof refers to Township-1, but that reference is in the context of basic development and sale of land, and by no stretch of imagination, can be construed to mean that Township-1 (Corporate Centre) could be set up at any other location much less at intersections demarcated in the PTR. The purpose of intersections is to provide for free flow of traffic across the area. All the five Townships referred to in the PTR are indisputably far away from intersections. Despite that, the Project Proponents have proposed for group housing scheme in Section A of the Project at intersections 5/7 thereat on the peripheral road. This is notwithstanding the fact that even the Tripartite Agreement

does not modify the location(s) and specifications for the Townships referred to in the PTR, which forms part of the FWA.

46. The thrust of the argument of the Project Proponents is that housing is a permitted usage, in terms of the ODP/Master Plan. For, the area for which the proposal for group housing scheme had been submitted is within yellow zone/residential zone. The question is: whether the Project Proponents can rely solely on ODP/Master Plan, notified by the Planning Authority in exercise of statutory function as a Planning Authority (for the entire area including the Project area)? The ODP/Master Plan, no doubt, would apply and must be reckoned if any building proposal/plan is submitted to the Planning Authority. However, the Project Proponents are obliged to develop the Project only in the manner provided for in the FWA. For, the right to develop the Project bestowed on the Project Proponents flows, primarily, from the FWA and the supplementary agreements in that regard. Unless the FWA enables the Project Proponents to set up Townships at location(s) other than location(s) for five Townships demarcated in the FWA read with PTR and as standalone group housing scheme, the question of Project Proponents unilaterally using the

allotted land for construction of a group housing scheme spread over in 42 acres and 30 guntas, that too at location(s) other than demarcated for five Townships, cannot be countenanced. Only upon grant of prior permission by the State in that regard, the stipulations in the FWA (about the location(s) of the Townships/group housing scheme), would stand relaxed and modified and the Project Proponents would then be entitled to pursue such proposal with the Planning Authority. The State can do so in terms of Article 3.2.3 and the Project Proponents can request the State in that regard by invoking the enabling provision in Article 7.1 (both of the FWA).

47. To put it differently, the zone specified in the ODP/Master Plan *per se* is not enough to allow the Project Proponents to unilaterally use the land made over to them after acquisition from private land owners for the Project, for purpose and manner other than specified in the FWA and the PTR.

48. Much emphasis was placed on the order dated 3.11.2009 passed by this Court in Contempt Petition (C) No. 144/2006 and connected contempt petitions in Civil Appeal Nos. 3492-3494/2005 and connected appeals to contend that the Planning

Authority and the State were obliged to allow the Project Proponents to complete the Project and also permit them to use the land allotted to them, as per the alignment specified in the ODP/Master Plan dated 12.2.2004. The said order dated 3.11.2009 reads thus: -

“We have heard the learned counsel for the parties on the Contempt Application.

After hearing the learned counsel for the parties and after going through the materials on record and the application for Contempt, we are of the view that pending final disposal of the Contempt proceeding, the following order may be passed: -

By a final Judgment, this Court directed the State/respondents to implement the Bangalore-Mysore 1 Infrastructure Corridor Project. Unfortunately, the said project has not yet been implemented by the State/respondents. On 4th of February, 2009, when this Contempt proceeding was taken up for hearing by this Court, Mr. G. E. Vahanvati, learned Solicitor General of India (as he then was) appearing for the State, stated before the Court that the State Government has decided to implement the Judgment of the High Court of Karnataka, as upheld by this Court, and needs time for implementation of the decision. Unfortunately, in spite of such submission made by the learned Solicitor General of India (as he then was), we are informed that the project has not yet been implemented. While some argument was advanced by the learned counsel for the parties and the Advocate General of the State, who is present today in Court, who submitted before us that the State has already taken all steps to implement the project and in fact, some lands have already been allotted to the applicants. Since the learned Advocate General of the State submitted that all possible steps have been taken to implement the project and to act in compliance with the Judgment of this Court, we direct that the 2 State Government shall constitute a Committee to be headed by the Chief Minister of Karnataka for the purpose of implementation of the project in question, which will submit a report by 22nd of November, 2009 **as to**

allotment and possession of lands for completion of the project and such steps can be taken within the time that may be mentioned in the report and the project shall be allowed to be completed as per the alignment specified in the Outline Development Plan dated 12th of February, 2004 issued by the Bangalore Mysore Infrastructure Corridor Area Planning Authority as per the Town and Country Planning Act.

Let this matter be placed for further orders on 26th of November, 2009 at 3.30 PM.”

(emphasis supplied)

Indisputably, these contempt petitions were in reference to the order passed by this Court on 20.4.2006 in Civil Appeal Nos. 3492-3494/2005 and connected appeals. Those appeals were against the decision of the High Court, which had considered two questions posed before it, as noted in paragraph 21 of the reported judgment in **All India Manufacturers Organisation** (supra). The same reads thus: -

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

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

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

The High Court allowed the writ petitions and directed the State and all its instrumentalities, including the KIADB to execute the

Project as conceived originally and to implement the FWA in its letter and spirit. That direction was the subject matter of assail by the State on the ground that the direction amounted to mandamus to specifically perform the FWA, which is extremely complex contract. At the same time, the State had contended that the Project was vitiated by fraud, misrepresentation and mala fide. However, the latter plea was given up before this Court as noted in paragraph 24 of the reported judgment.

49. The fact remains that the original proceedings in the form of writ petitions were filed as public interest litigation before the High Court, challenging the Project in question, the stipulations in the FWA and because in the garb of the Project, acquisition of excess land was resorted to by the State, which would eventually result in undue profiteering by Project Proponents. In our opinion, neither the judgment rendered in appeal by this Court in ***All India Manufacturers Organisation*** (supra) nor the observation found in the order dated 3.11.2009 will be of any avail to the Project Proponents. For, the Court was not called upon to adjudicate the question even indirectly, as to whether the subject proposal for setting up of group housing scheme could be

proceeded directly before the Planning Authority just because it is in conformity with the ODP/Master Plan and even though it is proposed at a location different than the demarcated location(s) for the five Townships in the FWA read with the PTR. No such plea was raised by the Project Proponents. In other words, none of the Court orders referred to by the Project Proponents had examined the questions/issues involved in these appeals.

50. Admittedly, in the present case, the modified proposal submitted by the Project Proponents on 5.5.2012 for developing 42 acres 30 guntas of land as group housing scheme, pertained to Survey Nos. 17(P), 18, 19, 20/1, 20/3, 21/1(P), 21/2A2(P), 21/2B(P), 21/2C(P), 21/2D(P) and 21/2E(P) at village Kommagatta, Kengeri Hobli, Bangalore South Taluk (at intersection 5/7, Section A of the Project on the peripheral road). It was not for setting up of Township as such. Neither the PTR nor the FWA envisages construction of standalone group housing scheme, that too at a location other than demarcated location(s) for five Townships. Thus, it was a clear case of deviation from the stipulations and specification contained in the FWA read with the PTR; and to relax or modify the same, prior permission of the

State is made mandatory in terms of the Article 7.1. For that reason, the Planning Authority had informed the Managing Director, NECE vide letter dated 28.5.2012 to obtain NOC from the concerned authorities. The same reads thus: -

“BANGALORE MYSORE INFRASTRUCTURE CORRIDOR
LOCAL AREA PLANNING AUTHORITY
OFFICE OF THE DIRECTOR FOR TOWN PLANNING, P.B.
NO.5257 M.S. BUILDING, GATE NO.4,
DR. B.R. AMBEDKAR VEEDHI, BANGALORE 560001

No. BMICAPA/339/ProaPraPa/541/2011-12
28.05.2012

Dated:

The Managing Director
M/s Nandi Economic Corridor Enterprises Limited
Midford House. Midford Garden,
M.G. Road, Bangalore-540001.

Sir,

Sub: Regarding approval for construction of Group housing in the land measuring 53 acres 05 guntas in Sy. No.17 Part, 18, 19, 20/1, 20/3, 20/4, 21/1 part, 21/2A1 part, 21/2A2 Part, 21/2B part, 21/2C Part, 21/2D part and 21/2E Part of Kommaghatta Village, Kengeri Hobli, Bangalore South Taluk.

Ref.: Your request date: NECE/05/170 dated 05.05.2012 with reference to the above subject, on verification of the proposal submitted in the letter at reference above, the following defects are noticed.

1. Submit Survey sketch Prepared by the taluk Surveyor and certified by the Tahsildar showing the proposed land, existing road connection, adjacent survey numbers, Karab land.
2. Submit No Objection Certificate from the Project Co-Ordinal or – BMICP, KIADB (BMICP), P.W.D. with regard to Provision for this proposal as per the FWA' entered into between Government and NICEL.
3. Submit No Objection Certificate from KSPCB, BWSSB, Environment Pollution Department and BESCO relating to the proposed lands.

4. Submit Detailed Project Report relating to the proposed lands.

5. Submit No objection Certificates from Fire Department, Airport Department and BSNL relating to the proposed lands.

6. Submit on affidavit stating therein that no disputes or cases relating to the proposed lands are pending in the courts.

The above documents have to be submitted within 7 days of receipt of the above letter, failing which your representation will be rejected and will be kept in abeyance.

Yours faithfully,
Sd/-
Additional Director for Town
And Country Planning and
Member Secretary BMICAPA
Bangalore.”

In response to the above noted communication, the NECE vide letter dated 6.6.2012, wrote to the Member Secretary of the Planning Authority. The said letter reads thus: -

“NANDI ECONOMIC CORRIDOR ENTERPRISES LIMITED
Registered Office: 1, Midford House, Midford Garden, Off.
M.G. Road, Bangalore – 560001, INDIA

Telephone: (80) 2555 9819, 2559 5252 Fax: (80) 2555 9998

Email : nandi@nicelimited.com

Ref: NECE/06/211
Dated: June 6, 2012
Without Prejudice

The Member Secretary,
Bangalore Mysore Infrastructure
Corridor Area Fanning Authority,
Office of the Director of Town and Country Planning,
P.B. No. 5257, Gate No.4, M.S. Building,
Dr. B.R. Ambedkar Veedhi,
Bangalore-560 001

Sir,

Sub: Approval for Group Housing Scheme in 42-08G in Sy. Nos. 17(P), 18, 19, 20/1, 20/3, 21/1(P), 21/2A1(P), 21/2A2(P), 21/2B(P), 21/2C(P), 21/2D(P) and 21/2E(P) of Kimmaghatta Village, Kengeri Hobli, Bangalore South Taluk.

Ref.:1) Your Letter No. BMICAPA/339/Pra.Pra / 1541/2011-12 dt. 28th May 2012

2) Our Letter No. NECE/05/170, dated 5th May 2012.

With reference to your above letter, we furnish the following clarifications/documents to the queries raised by you therein:

1. We are submitting an original survey sketch prepared by the Taluk Surveyor and duly attested and authenticated by the Tahsildar, Bangalore South Taluk. The survey sketch clearly shows the existing bridge, road, kharab land and the relevant survey numbers surrounds, the land for which your approval is now sought.

2. Your second query requesting us to provide "No Objection Certificate" from the Authorities referred above would be once against breach of terms of understanding of the Framework Agreement since it can be clearly seen from the sale deeds executed by the KIADB transferring title of the above survey numbers, photocopy of which have already been submitted to you, we are, the absolute owners of the land in question without any restrictions/limitations on the use of the land. This is in conformity with the FWA where under the State Government has agreed that it will not restrict use of land in any manner and we shall be fully entitled at our discretion to industrially and commercially develop the land. We reproduce below for your ready reference clauses 3.2.3 and 3.8.3 of the FWA which read as follows:

3.2.3 GOK, covenants that will not restrict the use of the Land in any way and that the Company shall have full freedom and discretion to industrially and commercially develop and use the land as generally contemplated by this Agreement except that GOK shall come and rezone, and shall cause to be zoned and rezoned, all Land in a manner consistent with its

intended use in the Infrastructure Corridor Project as contemplated by this Agreement or as reasonably requested by the Company, all in accordance with applicable law.

3.8.3 GOK understands that each of the components of the Infrastructure Corridor Project is an integral part of the Industrial and commercial development of the Infrastructure Corridor in a manner designed and calculated to maximize the full industrial and commercial growth, potential and quality of life in such corridor. Accordingly, GOK shall use its best efforts to cause land of appropriate width from the outer boundaries of the entry and exit points (rampways interchanges) of the Toll Road to the outer boundaries of each of the Townships, each as identified by the Company, not to be rezoned for use other than for farming (such area being called herein the "Greenbelt"). The appropriate width referred to in the immediately preceding sentence shall be determined by the appropriate Local Planning Authority. In the event an area to be included in the Greenbelt is on the date hereof already developed, GOK shall not be required to rezone such land for the Greenbelt, GOK acknowledges and agrees that the Greenbelt will protect and buffer the Toll Road and the Townships from unfettered and uncontrolled development which would cause irreparable harm to the Toll Road and the Townships and undermine the goals and purposes of the infrastructure Corridor Project contemplated hereby and that in the event of breach of this Paragraph 3.8.3 no adequate remedy, namely, would exist and damages would be difficult to measure and accordingly, the Company shall be entitled to Injunctive relief for specific performance pending resolution of any Dispute involving the provisions of this Paragraph 3.8.3. In the event any Person attempts to use the land designated for the Greenbelt for purposes other than farming, the Company may in its sole discretion take any and all steps it deems necessary or required, including the initiation of legal action against such Person, to stop or prevent such unauthorized use. GOK shall support to the full

extent possible under applicable law such efforts of the Company to stop and prevent such unauthorized use. However, violation of the Greenbelt by third parties shall not constitute a GOK Event of Default.

As you are aware, FWA has been upheld by the Hon'ble High Court of Karnataka in its judgments dated 21.09.1998 and 03.05.2005 and the Hon'ble Supreme Court in its judgment dated 20.04.2006 has affirmed the judgment dated 03.05.2005 passed by the Hon'ble High Court of Karnataka.

The legal position emerging from the reading of FWA and the rulings of the Hon'ble High Court of Karnataka and the Hon'ble Supreme Court of India clearly shows that our Company has absolute and full power and authority to develop the land, commercially and industrially, subject, however, to the ODP and the zoning regulations. As such, the question of obtaining No Objection Certificate (NOC) or any other form of consent from the State Government would not arise.

3. The NOC's obtained from BSNL, Airport and BWSSB and the acknowledgments for having applied to KSPCB, BESCO and Fire Force and enclosed herewith.

4. The NOC's from KSPCB, BESCO and Fire Force will be submitted immediately after their receipt.

5. The detailed Project Report is enclosed.

6. You have requested to submit an Affidavit Stating that "no law suits" are pending in any of the courts with regard to the subject lands. We would like to state that we have already submitted the original copy of the Affidavit along with the letter cited at reference (ii) copy of which is enclosed.

In addition to this, a true copy of the learned Advocate General's opinion dated 24.12.2011 furnished by in to the Planning Authority in response to the reference in this behalf obtained by us under the provisions of the Right to Information Act is enclosed for your ready reference.

This is for your kind information and further needful action in the matter.

Thanking you

Your faithfully,
For Nandi Economic Corridor Enterprises Limited,
Sd/-
Authorised Signatory”

51. Notably, even the State had intimated the Planning Authority vide letter dated 19.12.2013 sent by the Principal Secretary, Public Works, Ports and Inland Water Transport Department, that in respect of change in land use and approval of residential developments, prior decision of the Empowered Committee should be obtained. The said communication reads thus: -

“LoE 114 CRM 2013

Secretariat, Government of Karnataka
Vikasa Soudha
Bangalore, Dated 19th December, 2013

From
Principal Secretary Government of Karnataka
Public Works, Ports and Inland Water Transport
Department Bangalore.

To
Member Secretary
Bangalore-Mysore Infrastructure Corridor Area Planning
Authority, Multi-storeyed Building,
Bangalore-1

Sir,

Sub: Re: Furnishing of documents and opinion as sought for by the authority with respect to the BMICP project.

- Ref:** 1. Your letter No. BMICAPA: 339:PraPra P:1541:2011-12 dated 17.07.2012
2. Your letter No.BMICAPA:145:Bhu.U.B:519:2011-12 dated 18.08.2011 and 12.04.2012
3. Your letter No.BMICAPA:371:Design:1629:2010-11 dated 12.08.2011 and 12.04.2012
4. Your letter No.BMICAPA:81:Bhu.U.B:422:2011-12 dated 12.08.2011, 07.09.2011 and 09.04.2012
5. Your letter No.BMICAPA:80:Residential Plan:421:2011-12 dated 12.08.2011, 04.11.2011 and 14.12.2011
6. Your letter No.BMICAPA:79:Residential Design:420:2011-12 dated 12.08.2011
7. Letter No.BMICAPA:Yo Sa:29:Information:2013-14 dated 23.09.2013 of Shri B. Mahendra, Member Secretary, BMICAPA, Bangalore.

The Cabinet in its meeting on 30.08.2007 with respect to the subject matter as mentioned above while referring to Article 1.1.3 of the Tripartite Agreement entered into between M/s. NICE, M/s. NECEL and the Government of Karnataka on 09.08.2002 while referring to clauses in the said agreement namely (c) basic development and sale of land including that at ten (10) interchanges and Township 1 as follows-

(iii) NICEL or anyone who is implementing the BMICP shall not be entitled to sell/alienate any portion of the land in the interchanges/road portion of the BMICP. Necessary steps be taken by the concerned department to cancel the agreement dated 09.08.2002 between NICE and the Government of Karnataka insofar as it introduces clause for sale of land in Para 1.1.3 or elsewhere in the agreement.

Apart from that, the judgments rendered in the context of implementation of the project by the High Court of Karnataka and Supreme Court mandate execute the project as conceived originally and upheld in Somashekar Reddy's case and to implement the FWA in letter and spirit. The clauses in the Tripartite Agreement dated 09.08.2002 which are in contradiction with the FWA are

to be ignored. Further, the agreement dated 09.08.2002 is to be limited to assignment only.

The PTR submitted by M/s NICE is a prominent part of the FWA and the project will have to be implemented in accordance with the Technical Report. As per the definition of Toll Road and Township in the FWA which is reproduced below, the Toll Road is to be specifically restricted to Toll Road as defined. Further, for the residential and commercial development, Township has been separately provided for and in such Township, different commercial and residential plans being provided, the same are to be implemented in accordance with the rules.

“Toll Road” means the portion of the infrastructure corridor project consisting of Phase I Road, Phase II Road, Phase III Road, Phase IV Road, Phase V Road, Phase VI Road, the Bangalore Feeder, the Mysore Feeder, Link Road and the Outer Peripheral Road collectively;

“Townships” means the townships described as Township 1, 2, 4, 5 and 7 in the Infrastructure Corridor Project Technical Report which will be developed by the company and/or project companies for the industrial and commercial growth and other development of the infrastructure corridor and the provision of roads, supply of water, and electricity, street lighting, sewage, conservancy, and such other conveniences and socio-economic infrastructure, inter alia, comprising of housing, schools, hospitals, shopping complexes, parks and open spaces as set forth in Schedule 4 attached hereto.

M/s. NICE has completed the Peripheral Road and Link Road. However, with respect to the facilities that are necessary for drivers of vehicles being plied on such road, such as petrol bunks, service stations, and truck terminals, it is noticed that till date none of these facilities have been provided for.

In the light of the above points, before any decision is taken with respect to change in land use and approval of residential developments, the pros and cons will have to be placed before the Empowered Committee constituted under the FWA and decision be obtained

from it. I have been directed to inform you accordingly.

Approved by the Principal Secretary PWD

Yours sincerely,

Sd/-

N. Mahalakshamma

Project Coordinator (BMICP), Public Works,
Ports and Inland Water Transport Department”

(emphasis supplied)

52. The fact remains that Article 7.1 of the FWA obliges the Project Proponents to submit proposal to the State for approval in case of any deviation. No such proposal was submitted to the State. Instead, the Project Proponents pursued the matter directly with the Planning Authority. In that sense, prior approval of the State for deviating from the FWA and in particular constructing housing complex at location other than demarcated for Townships, is not forthcoming. Admittedly, no such approval was taken. If such proposal was to be submitted to the State, it would be open to the State to examine the same on its own or refer the matter to the Empowered Committee constituted for resolving such issues, as envisaged in Article 4 of the FWA. Article 4 reads thus: -

“ARTICLE 4 EMPOWERED COMMITTEE

4.1 Empowered Committee.

4.1.1 Composition and Actions of Empowered Committee GOK represents and warrants that it has established a committee (the “Empowered Committee”) which consists of Chief Secretary and other members whose postings and titles are as set forth in Schedule 6 attached hereto. In the event of a vacancy on the Empowered Committee, GOK shall fill such vacancy with a similarly titled person from the same GOK governmental Instrumentality. The Empowered Committee shall meet only after convening a duly called meeting and providing seven (7) Days prior written notice to the Company so that the Company may make available to such Committee a Company representative to answer any questions that the Empowered Committee may have and to update the Company on actions taken by such Committee.

4.1.2 Committee Determinations Do Not Modify Rights or Obligations. The Parties acknowledge and agree that the rights and obligations of the Parties to this Agreement and the parties to any Project Contract shall be as set forth in this Agreement and such Project Contract and the Empowered Committee shall not have the authority to modify or alter such rights and obligations other than through a written agreement between the Parties hereto or the parties thereto. Subject to the foregoing, the Empowered Committee shall be the mechanism by which GOK will coordinate (with any necessary assistance from the Company) performance of its obligations under this Agreement, including to:

4.1.2.1 **facilitate and expedite all Approvals required in connection with the Infrastructure Corridor Project at the state and local level**; specifically, as the Empowered Committee consists of high level members from each of the affected ministries of GOK, it will act as the **“single window co-ordination centre” with respect to the required clearance and permits**; such committee shall also assist the Company in all means possible with regard to obtaining any and all Approvals required from GOK or any GOI Governmental Instrumentality;

4.1.2.2 oversee GOK Governmental Instrumentalities compliance with the provisions of this Agreement.

4.1.2.3 serve as the information centre and clearinghouse for assembling and disseminating information with respect to the Infrastructure Corridor Project to GOK and the GOK Governmental Instrumentalities and the public at large; and 4.1.2.4 serve as the primary intermediary on behalf of GOK and GOI and any Governmental Instrumentality thereof in connection with dealings between GOK and the Company.

4.1.3 Committee Pronouncements and Decisions. GOK, on behalf of itself and the GOK Governmental Instrumentalities, covenants that the Company may rely on the pronouncements and decisions of the Empowered Committee as pronouncements and decisions of GOK or the relevant GOK Governmental Instrumentality in connection with the Infrastructure Corridor Project and that such pronouncements and decisions shall be made by GOK or such GOK Governmental Instrumentalities in an expeditious and timely manner. GOK understands and agrees that this is one of the primary purposes of setting up such Empowered Committee and that it will facilitate and expedite the realisation of the goals of the Infrastructure Corridor Project.

4.1.4 Committee Rights of Observation. GOK shall have the right, upon reasonable prior notice to the Company, through the Empowered Committee, to observe the progress of Infrastructure Corridor Project. The company shall assist GOK in arranging such visits. All persons visiting the Infrastructure Corridor Project site on behalf of GOK shall comply with all reasonable instructions, directions and safety requirements as prescribed by the Company or its contractors from time to time. GOK shall cause all such persons to comply with the Company Rules and Regulations regarding site safety and access, and in the event any such GOK employee or representative fails to comply with any reasonable requirements of the Company, GOK shall be exclusively liable for and shall indemnify, defend and hold harmless the Company against any and all damages, costs, claims, expenses and consequences arising out of such failure. Unless otherwise provided herein, such rights of GOK to visit the Infrastructure Corridor Project shall not be construed directly or indirectly as a contractual right of GOK to review, advise, recommend, approve or require changes.”

(emphasis supplied)

Indeed, the Empowered Committee is not a statutory committee, but it can be so constituted in terms of Article 4 read with Schedule 6, consisting of high officials of the concerned departments. This is only to facilitate quick processing of the proposals and implementation of the Infrastructure Corridor Project with mutual understanding and due consultation wherever necessary. We may assume that the Empowered Committee may not agree with the proposal, as it may be of the view that the deviation is quite substantial and would disrupt the core objective of the Integrated Infrastructure Corridor (the Project), which has been designed with purpose of holistic and orderly development of the region as a whole. In that eventuality, the Project Proponents would be required to resort to mechanism of resolution of disputes envisaged in Article 18 of the FWA, which reads thus: -

“ARTICLE 18. RESOLUTION OF DISPUTES

18.1 Mutual Discussions. In the event of a Dispute, the Parties shall endeavour to resolve such Dispute by discussion in good faith in the first instance within thirty (30) days of Notice of such Dispute.

18.2 Referral to the Expert. If any Dispute cannot be settled within such thirty (30) Day period and the Parties mutually agree in writing, such Dispute shall be referred to the Expert. If the Expert does not arrive at a decision within sixty (60) days or if either Party does not accept the decision of the Expert, then either Party may, upon giving Notice to the other Party, refer the Dispute

immediately for arbitration in accordance with Paragraph
18.3.
.....”

53. A priori, it must necessarily follow that the Project Proponents cannot and ought not to have directly approached the Planning Authority for grant of stated permission in reference to the provisions in the KTCP Act or ODP/Master Plan. As aforesaid, if the proposal to be submitted by the Project Proponents was compliant with the stipulations and specifications given in the FWA read with the PTR, only then the Project Proponents could justifiably approach the Planning Authority directly for grant of permission as per the extant regulations and municipal laws applicable in that regard, to construct buildings and structures for establishing a Township. In other words, the proposal/application of the Project Proponents would be a valid proposal/application to the Planning Authority only if it was to be in strict compliance with the land use specified in the FWA read with the PTR. In case of any deviation therefrom, it ought to accompany a formal prior approval of the State or the Empowered Committee, as the case may be, so that it can be processed further by the Planning Authority.

54. Much emphasis was placed on the fact that the appellants had permitted the Project Proponents to construct housing complex at a location outside the demarcated area for the five Townships referred to in the FWA. Similarly, as the stated location was falling in yellow zone being residential, the other neighbouring private land owners were permitted to develop their property for housing complex. This argument does not take the matter any further for the Project Proponents, inasmuch as the land in question has been allotted to the Project Proponents by the State after acquiring it from private land owners for implementation of the Project. For that reason, the use of the land should be strictly in conformity with the FWA and the applicable stipulations in the PTR. It is not open to the Project Proponents to contend that they can unilaterally develop the land allotted to them by the State in the manner other than specified in the FWA, being bound by the contractual obligations flowing from the FWA.

55. Notably, the State had granted prior permission to the Project Proponents to construct housing units at location(s) other than the five Townships. That was to accommodate the

concerned land losers in connection with the same Project as per the policy of the State. Besides, the stated housing complex is not spread over in 42 acres and 30 guntas of land, so as to disrupt the holistic development envisaged in the FWA/PTR. In any case, that could be done only after obtaining prior approval of the State in that regard. As regards permission given to the private land owners, as aforesaid, that was given by the Planning Authority as per the applicable town planning regulations and in particular the use specified in the ODP/Master Plan. For, their lands did not form part of the Project and also because they are not bound by the stipulations in FWA in particular, unlike the Project Proponents.

56. Reverting to the factum of assurance given by the Planning Authority in the earlier round of writ petition(s) that the modified proposal/application dated 5.5.2012 will be considered in accordance with law and also that the State was party to that petition, in our view, it does not entail in acquiescence or waiver of the jurisdictional issue by the State (regarding necessity of seeking prior approval of Empowered Committee and No Objection (Certificate)/approval from the concerned State

authorities). In that, the assurance given by the Planning Authority cannot come in the way of the State to urge that in law, the Project Proponents had no authority to develop the lands in question except as per the stipulations and specifications prescribed in the FWA read with the relevant clauses of the PTR. As a matter of fact, the earlier writ petitions were not decided on merits, but came to be disposed of leaving all contentions open, in lieu of the assurance given by the Planning Authority that it would consider the modified application as per law. In the present writ petitions, therefore, the State in the larger public interest is duty-bound to take a legal plea regarding jurisdictional issue including the extent of right of the writ petitioners (Project Proponents) being limited to stipulations in the FWA. Thus, neither the unilateral assurance given by the Planning Authority nor the fact that such specific reason has not been recorded by the Planning Authority in the impugned communication or that the State was party to the said writ petitions, would denude the State from raising the legal question regarding the scope of the FWA disentitling the Project Proponents for grant of any relief in the subject writ petitions. Further, the High Court in the guise of issuing mandamus to the Planning Authority for issuing the

Commencement Certificate, in effect, has prevented the State from calling upon the Project Proponents to strictly abide by the stipulations in the FWA. That cannot be countenanced.

57. It is urged that this Court had held that it would be open to the Project Proponents to carry on construction work of housing on lands which are not falling within the Townships area, if the same were otherwise permissible under the ODP/Master Plan and the town planning regulations. This submission is founded on complete misreading of the observations in the decision of this Court in ***All India Manufacturers Organisation*** (supra). As noticed earlier, the *lis* before this Court including review petition(s) had arisen on account of the challenge to the FWA and also the acquisition of land for the purpose of the corridor project being excessive. Neither the High Court nor this Court was called upon to answer the issue now raised by the Project Proponents that it was free to construct standalone group housing scheme and at location(s) outside the demarcated five Townships (in the FWA/PTR).

58. Thus understood, the argument of the Project Proponents that the plea taken by the State is hit by *res judicata* and in any

case, by principles of constructive *res judicata*, cannot be countenanced. As a matter of fact, the Project Proponents did not pursue the plea of *res judicata* or of constructive *res judicata* before the High Court, as is evident from the points for consideration formulated by the High Court in paragraph 9 reproduced in the earlier part of this judgment (in paragraph 22). Even if it can be considered as a question of law, in our opinion, the same does not arise in the fact situation of the present case.

59. The Project Proponents had also placed reliance on the dictum of the High Court in **S.M. Mohan Rao Nadgir vs. State of Karnataka & Ors.**²², which, in our opinion has no bearing on the question that arises for our consideration. Paragraph 10 of the said decision as reproduced in the written submission filed by the Project Proponents, in fact merely sets out the factual matrix of that case and is certainly not an opinion of the Court answering the plea required to be adjudicated in the present appeals. Even the observation in **Dakshinamurthy vs. B.K. Das, IAS & Ors.**²³, being an order passed in Contempt Petitions filed in Civil Appeal Nos. 3492-3494/2005 and connected appeals

22 Decided by the High Court on 28.2.2005 in Writ Appeal No. 72/2004 and connected writ appeals

23 (2010) 1 SCC 64

[decided on 20.4.2006, as reported in **All India Manufacturers Organisation** (supra)] will be of no avail to the Project Proponents. The fact recorded that the Project shall be allowed to be completed as per the alignment specified in the ODP/Master Plan, as noted therein, has no bearing on the questions dealt with in the present appeals.

60. Be it noted that the Project can be taken forward by the Project Proponents only in conformity with the stipulations and specifications in the FWA and the PTR. Additionally, the Project Proponents are also obliged to ensure compliance of ODP/Master Plan and if so complied, the Planning Authority cannot create any impediment. If the State accords approval to the deviation in terms of the FWA itself, the Project Proponents may be competent to carry on such a work. To put it differently, prior approval of the State for deviation from the stipulations and specifications in the FWA is the quintessence. We do not wish to burden this judgment with the argument about attitude of the concerned authorities in creating obstructions in completion of the Project because no official has been named in the writ petitions filed by the Project Proponents being responsible for that situation.

61. The argument of the Project Proponents that the housing complexes can be constructed even at intersections by placing reliance on the observations in **All India Manufacturers Organisation** (supra), is begging the question. The issue is: whether it is open to the Project Proponents to deviate from the stipulations and specifications of the FWA, in particular, in respect of Townships without prior approval of the State? The issue considered in the earlier rounds of litigation by this Court was on the basis of stand taken by the State to defend the Project, the FWA and the acquisition of land for the purpose of the project. In the present appeals, the matter is required to be examined in the context of the stand of the Project Proponents that they are free to carry on construction of housing scheme at any location of their choice even outside the demarcated location(s) for five Townships, stretched over about 140 kilometres of the expressway, in the FWA and the PTR.

62. Reverting to the dictum in **M. Nagabhusana** (supra), the same will also be of no avail to the Project Proponents as it does not militate against the Planning Authority and State, in particular. As already noted, the State is competent to maintain

its stand that the legal right of Project Proponents flows only from the terms and conditions specified in the FWA read with the PTR. That is a just plea available to the State and must be taken by it in the larger public interest to ensure that the objective of the Integrated Corridor Project (the Project) is not marginalised, undermined or frustrated in any manner. If development as desired by the Project Proponents on the stretch of 140 kilometres of the expressway is allowed, it would result in development in manner other than the one planned and conceived in the FWA and the PTR, the objective of which is to provide for holistic and orderly development of the self-sustaining Townships with all basic infrastructure and civic facilities and to ensure smooth and accident-free traffic between Bangalore and Mysore; population dispersal as per the National/State policy; to create new job opportunities for the residents in and around the Infrastructure Corridor; promote tourism; and decongest traffic etc.

63. It is not necessary for us to dilate on other aspects regarding the efficacy of the FWA and the PTR or the other agreements executed between the parties, having held that it is

for the State to consider the proposal for allowing the Project Proponents to deviate from the stipulations and specifications of the FWA and the PTR and until that decision is taken by the State or its instrumentalities including the Empowered Committee constituted in terms of the FWA, the Planning Authority cannot process the proposal/application directly submitted to it by the Project Proponents. Further, such non-compliant proposal/application submitted by the Project Proponents directly to the Planning Authority must be regarded as infirm, invalid and *non-est* in law.

64. The next question is: whether the findings recorded by the High Court for setting aside the reasons given by the Planning Authority in the impugned communication dated 7.2.2015, can be said to be the just approach of the High Court? In view of the conclusion reached by us hitherto, it is not necessary for us to dilate on the correctness of the view taken by the High Court in that regard.

65. Suffice it to observe that assuming the High Court was right in taking the view as it did to set aside the communication dated 7.2.2015, it was certainly not right in issuing mandamus to the

Planning Authority to straightaway grant Commencement Certificate in respect of the modified proposal. The appropriate order that could have been passed by the High Court in such a situation after setting aside the communication dated 7.2.2015, would have been to relegate the Project Proponents before the Planning Authority for proceeding with this proposal in accordance with law and applicable regulations expeditiously after considering the other issues/points raised by the State. The Project Proponents would, however, rely on the exposition in paragraph 27 of the decision of this Court in ***Badrinath vs.***

Government of Tamil Nadu & Ors.²⁴, which reads thus: -

“27. This flows from the general principle applicable to “consequential orders”. Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime – like the recommendation of the State and by the UPSC and the action taken thereon – would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings equally applicable to administrative orders. In other words, where an order is passed by an authority and its validity is being reconsidered by a superior authority (like the Governor in this case) and if before the superior authority has given its decision, some further action has been taken on the basis of the initial order of the primary authority, then such further action will fall to the ground the moment the superior authority has set aside the primary order.”_

Reliance is also placed on Section 15 of the KTCP Act, in particular, proviso thereto, which reads thus: -

24 (2000) 8 SCC 395

“15 - Permission for development of building or land.-

(1) On receipt of the application for permission under section 14, the Planning Authority shall furnish to the applicant a written acknowledgment of its receipt and after such inquiry as may be necessary either grant or refuse a commencement certificate:

Provided that such certificate may be granted subject to such general or special conditions as the State Government may, by order made in this behalf, direct.

(2) If the Planning Authority does not communicate its decision to the applicant within three months from the date of such acknowledgment, such certificate shall be deemed to have been granted to the applicant.

Provided that the land use, change in land use or the development for which permission was sought for is in conformity with the outline development plan and the regulation finally approved under sub-section (3) of section 13.

(3) Subject to the provisions of section 16, no compensation shall be payable for the refusal of or the insertion or imposition of conditions in the commencement certificate.

(4) If any person does any work on, or makes any use of, any property in contravention of section 14 or of sub-section (1) of this section, the Planning Authority may direct such person by notice in writing, to stop any such work in progress or discontinue any such use; and may, after making an inquiry in the prescribed manner, remove or pull down any such work and restore the land to its original condition or, as the case may be, take any measure to stop such use.

(5) Any expenses incurred by the Planning Authority under sub-section (4) shall be a sum due to such Authority under this Act from the person in default or from the owner of the land.

Explanation. -The power to grant necessary permission under this section for a change of user of land shall include the power to grant permission for the retention on land of any building or work constructed or carried out thereon before the date of the publication of the declaration of intention to prepare an outline development plan under sub-section (1) of section 10 or for the continuance of any use of land instituted before the said date.

(6) Any person aggrieved by the decision of the Planning Authority under sub-section (1) or sub-section (4) may, within thirty days from the date of such decision, appeal to such authority as may be prescribed.

(7) The prescribed authority may, after giving a reasonable opportunity of being heard to the appellant and the Planning Authority, pass such orders as it deems fit, as far as may be, within four months from the date of receipt of the appeal.”

(emphasis supplied)

We are not impressed by this submission. The reported decision pressed into service does not go to the extent of justifying the direction issued by the High Court vide impugned judgment to issue Commencement Certificate. Indisputably, the question of issuing Commencement Certificate would arise only if the Planning Authority was fully satisfied that the proposal/plan submitted by the Project Proponents is compliant in all respects in reference to the extant town planning rules and regulations. Moreso, because it is not a case where the Project Proponents were invoking the provision regarding deemed approval of the modified plan submitted on 5.5.2012.

66. As a result, we have no hesitation in taking view that the direction issued by the High Court in the impugned judgment, in any case, cannot be countenanced in law. But this question, if we may say so, has become academic for the view that we have

already taken that the Project Proponents could not have directly approached the Planning Authority for approval of modified proposal, which was replete with deviations from the stipulations and specifications in the FWA read with the PTR. This is so because the right in favour of the Project Proponents to carry on development work on the lands referred to in the FWA and the PTR would enure only in conformity with the stipulations and specifications in the stated documents. It is not open to the Project Proponents to develop the land in any other manner, unless permitted by the State.

67. Taking overall view of the matter, we have no hesitation in allowing the present appeals filed by the Planning Authority and the State of Karnataka and thereby setting aside the impugned judgment of the High Court with liberty to the Project Proponents to first approach the State (under Article 7 of the FWA) for its prior permission to allow them to deviate from the stipulations and specifications in the FWA and the PTR. Upon consideration of such proposal, the competent authority of the State may take appropriate decision in the matter and if need be, obtain prior opinion of the Empowered Committee. However, this process

must be completed in right earnest and no later than six months from the date of submission of the proposal to the competent authority of the State. If the decision is adverse to the Project Proponents, it would be open to them to take recourse to the disputes resolution mechanism in terms of Article 18 of the FWA, if so advised. Only after prior permission is granted by the State regarding the proposed deviations, the Project Proponents may then apply to the Planning Authority for permission to construct buildings/structures as per the applicable town planning regulations, which be considered on its own merits in accordance with law uninfluenced by its earlier communication dated 7.2.2015.

68. We leave all other contentions available to concerned parties open to be considered by the concerned forum/Court on their own merits in accordance with law.

69. Accordingly, the impugned judgment and order is quashed and set aside and the stated writ petitions filed by the Project Proponents stand dismissed with liberty to the Project Proponents, as aforesaid. The appeals are allowed in the above

terms. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

.....**J.**
(A.M. Khanwilkar)

.....**J.**
(Dinesh Maheshwari)

New Delhi;
May 19, 2020.