IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

WRIT PETITION NO.29046 OF 2017(GM-RES)

BETWEEN:

SHRI B S YEDDYURAPPA
S/O LATE SIDDALINGAPPA
AGED ABOUT 75 YEARS
NO.381, 6TH CROSS
80 FEET ROAD, RMV II STAGE
DOLLARS COLONY
BANGALORE-560094

...PETITIONER

(BY SRI:C.V. NAGESH, SR. ADVOCATE A/W
SMT: SWAMINI GANESH MOHANAMBAL, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY THE INSPECTOR OF POLICE
BANGALORE CITY DISTRICT
KARNATAKA LOKAYUKTA POLICE STATION
BANGALORE-560001

2. SRI JAYAKUMAR HIREMATH
NO.889/A, "JENUGUDU"
ITI LAYOUT, PAPAREDDY PALYA

NAGARBHAVI 2ND STAGE
BENGALURU-560072

...RESPONDENTS

(BY SRI: VENKATESH S ARABATTI, SPL.PP FOR R1;
SRI: ASHOK HARANAHALLI, SR. ADVOCATE A/W
SRI: R. SHASHIDHARA, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 & 227 OF CONSTITUTION OF INDIA R/W. SECTION 482 CR.P.C., PRAYING TO QUASH THE COMPLAINT DATED 30.4.2015 FILED BEFORE THE R-1 AT ANNEX-A; AND QUASH THE FIR DATED 5.5.2015 IN CRIME NO.27/2015 REGISTERED BY R-1 AND CONSEQUENTLY ALL FURTHER PROCEEDINGS PENDING ON THE FILE XXIII ADDITIONAL CITY CIVIL & SESSIONS JUDGE AND SPECIAL JUDGE FOR LOKAYUKTA CASES, BENGALURU AT ANNEX-B.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.12.2020 AND COMING ON FOR PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCE, THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

The petitioner claiming to be one of the prominent political leaders of the State of Karnataka and the State President of BJP and Chief Minister of the State has filed this petition under Article 226 and 227 of the Constitution of India r/w section 482 of Cr.P.C. seeking to quash the complaint dated 30.04.2015(Annexure-A) and FIR dated 05.05.2015 registered against him in Cr.No.27/2015 for the alleged offences punishable under section 13(1)(c), 13(1) (d) r/w 13(2) of Prevention of Corruption Act, 1988 (for short 'P.C. Act') and sections 409, 413, 420, 120(b) r/w 34 IPC and sections 3 and 4 of The Karnataka Land (Restriction on Transfer) Act, 1991.

2. The brief facts of the case are as follows:-

Respondent No.2 Sri. Jaykumar Hiremath filed a complaint before the Superintendent of Police, Karnataka Lokayukta (respondent No.1) on 30.04.2015 based on which, FIR in Cr.No.27/2015 was registered against the petitioner Sri. B.S. Yeddyurappa (former Chief Minister)

Sri. H.D. Kumaraswamy(Former Chief Minister), Smt. Vimala, Channappa, Sri. M. Rajashekaraiah and other officials. In the complaint, it was alleged that the land bearing Sy.Nos.7/1B, 7/1C and 7/1D each comprising 17 guntas totally measuring 1 acre 11 guntas of Gangenahalli village was acquired for extension of Matadahalli Layout vide preliminary notification dated 16.03.1976 under section 4(1) of Land Acquisition Act, 1984, published in Official gazette vide No.ALQ/LAI/PR122/75-76 dated 25.03.1976. Final notification under section 6(1) of the Land Acquisition Act dated 30.11.1977 was published on 08.12.1977. Section 5(A) proceedings were conducted and an award in respect of the above mentioned lands was passed and approved by the Special Deputy Commissioner on 04.11.1978. Possession of the land bearing Sy.No.7/1B and 7/1D was taken and handed over to engineer section on 18.01.1979. Possession of the land in Sy.No.7/1C was taken and handed over to engineer section on 06.03.1979, and notification under section 16(2) of Land Acquisition Act was published in Karnataka Gazette on 21.04.1988. One Thimmappa Reddy, T. Nagappa,

Muniswamappa were shown as owners and khatedhars of the above mentioned lands. Thus the acquisition proceedings were completed in respect of the lands vested with the Government free from all encumbrances, as such, it was not permissible to denotify these lands by any authorities including the Chief Ministers.

3. When position stood thus, one Rajashekaraiah made an application dated 28.02.2007 addressed to the Chief Minister seeking de-notification of the above lands claiming that he was in possession of the lands. Accused No.2 Sri. H.D. Kumaraswamy who happened to be the Chief Minister at that point of time directed his personal secretary to put up the file. Accordingly, file was put up. However, the concerned officials promptly reported that the land acquisition proceedings having already been completed and notification under section 16(2) of the Land Acquisition Act having been issued, the law do not permit de-notification of the lands. Inspite of the said notings, accused No.2 Sri. H.D. Kumaraswamy directed the authorities to enquire into the matter and ascertain whether actual possession was

taken or not. The then Joint secretary put up a note reiterating that the possession was already taken and notification under section 16(2) of the Land Acquisition Act has been published and this aspect be brought to the notice of the Governor and the matter be closed. In the mean-time, Sri. H.D. Kumaraswamy ceased to be the Chief Minister and the petitioner Sri. B.S. Yeddyurappa occupied the position of Chief Minister of Karnataka and file was put up before him and instantly, he passed an order directing to de-notify the lands in question. Following this order, the authorities published a notification dated 07.06.2010 de-notifying the lands vide notification in No.UDD/424/MNX/2007 dated 07.05.2010.

4. It was further averred in the complaint that soon after de-notification, Smt. Vimala(accused No.3) W/o Late T.C. Seetharam who is none other than the mother-in-law of Sri. H.D. Kumaraswamy-the Ex.Chief Minister claiming herself as Power of Attorney holder of the owners of the land executed sale deed in favour of her son Sri. T.S. Channappa. Rajashekaraiah claiming to be in possession of the land filed a civil suit in

O.S.No.6165/1994 claiming that he had acquired title to the properties from one Mr. Ameer Jan. Said suit came to be dismissed. Against the dismissal order, an appeal was filed and this Court allowed the appeal and set-aside the judgment and decree of the trial Court and remanded the matter for fresh disposal. According to the complainant, the above facts clearly reveal that Sri. H.D. Kumara Swamy, the Ex-Chief Minister of Karnataka conspired with all concerned such as M. Rajashekaraiah, B.S. Yeddiyurappa the then Chief Minister of Karnataka and Pri. Secretary, Government of Karnataka, Department of Housing and Urban Development, his mother-in-law Smt. Vimala and his own brother-in-law Channappa to knock off the valuable property belonging to the Government and adopted back door methods taking advantage of their official position. It was also alleged that though the properties were purchased by T.S. Channappa, they were actually purchases made for and on behalf of Sri. H.D. Kumaraswamy, the then Ex-Chief Minister of Government of Karnataka.

5. Sri. C.V. Nagesh, learned Senior counsel appearing for the petitioner at the outset submitted that the prosecution launched against the petitioner is illegal and an abuse of process of Court; that the allegations made in the complaint even if accepted on their face value do not constitute the ingredients of the offences insofar as the petitioner is concerned. The petitioner ordered for de-notification based on the notings put up by the officials pursuant to the powers vested in him under section 48 of the Land Acquisition Act and as such no illegalities or malafides could be imputed to the petitioner especially when the facts disclose that order was made in discharge of the official duties and the power vested with the petitioner.

6. Referring to the averments made in the complaint that a suit was filed by the aforesaid Rajashekariah claiming possession of the land in question, learned Senior counsel would submit that there being no material to show that the possession of the land was taken over by the Department and the land had vested with the Government, no fault could be found with the orders passed by the petitioner so as to fasten criminal liability on him. In

support of his submission, learned Senior Counsel has placed reliance on the decisions of the Hon'ble Supreme Court in *SPECIAL LAND ACQUISITION OFFICER, BOMBAY AND OTHERS v. M/S. GODREJ AND BOYCE, (1988) 1 SCC 50 and RAGHBIR SINGH SEHRAWAT v. STATE OF HARYANA AND OTHERS, (2012) 1 SCC 792* and the decision of this Court in *Crl.P.No.7274/2012* and connected matters dated 18.12.2015.

7. To bolster up his submission that the order of de-notification passed by the petitioner is an administrative order which by itself does not give rise to any criminal action, much less for an offence under section 409 IPC, learned Senior Counsel has placed reliance on the decision of the Hon'ble Apex Court in *COMMON CAUSE, A REGISTERED SOCIETY v. UNION OF INDIA AND OTHERS, (!999) 6 SCC 667*, while setting aside the observations made by the High Court that the Minister who is the executive head of the Department is elected by the people and is elevated to a position where he holds sacred trust on behalf of the people, the Hon'ble Apex Court in para 159 of the above judgment held that *it is only a philosophical concept and*

reflects the image of virtue in its highest conceivable perfection. This philosophy cannot be employed for determination of the offence of 'criminal breach of trust' which is defined in the Indian Penal Code. Whether the offence of 'criminal breach of trust' has been committed by a person has to be determined strictly on the basis of definition of that offence set out in the Penal Code.

8. The learned Senior Counsel has also pointed out that the "Doctrine of Public Trust", though enjoins upon the Government, to protect resources for the enjoyment of the general public and to permit their use for providing ownership or commercial purpose, but this Doctrine cannot be invoked to fasten criminal liability against the ministers and public servants entrusted with public duties. In other words, it is the submission of the learned Senior Counsel that in order to fix criminal liability, the whole matter will have to be decided on the principles of criminal jurisprudence and an offence could be said to have been committed only when the ingredients of that offence as defined in the statute are stated to have been satisfied. It is the submission of the learned Senior Counsel that

there being no material to show that by the act of de-notification, the petitioner has derived any pecuniary advantage, the basic ingredients constituting the offences under section 13(1) (c) and 13 (1) (d) of PC Act are not made out and therefore, initiation of criminal action against the petitioner is illegal, baseless and fraught with malafides and vindictiveness.

9. In support of the above submission, learned Senior Counsel has referred to the decision of the Hon'ble Supreme Court in *A. SUBAIR v. STATE OF KERALA, (2009) 6 SCC 587* to drive home the point that by the act of de-notified, the petitioner has acted in best interest of the public and the public revenue and therefore his decision cannot be faulted with.

10. On behalf of Respondent No.1 Sri. Venkatesh. S Arabatti, learned Spl. PP countered the above submissions pointing out that the complaint in question is demonstrative of abuse of power by two Chief Ministers who not only ignored the law and the legal principles, but also deliberately and with dishonest intention de-notified the lands which had been

acquired by the Government decades ago and which had vested with the State in terms of Land Acquisition Act, 1984. He pointed out that the de-notification order was made on the request of Rajashekariah who had no right to the lands. The de-notified lands were sold by the mother-in-law of Sri. H.D. Kumaraswamy to her own son and brother-in-law of Sri. H.D. Kumaraswamy based on the de-notified ordered by the petitioner which smacks of a well designed conspiracy to make unlawful gain. Even though the aforesaid Rajashekaraiah had no title whatsoever to the lands in question, he filed a civil suit showing one Ameer Jan as the land owner. But the said Ameer Jan had earlier made an application for de-notification which was rejected by the concerned authorities. After such rejection, Rajashekariah made an application showing Ameer Jan as the owner in connivance with Sri. H.D. Kumaraswamy and members of his family and managed to de-notify the lands in collusion with the petitioner which squarely attract the offence under section 13(1) (c), 13(1) (d) r/w 13(2) of PC Act and sections 409, 418, 420, 120(b) and section 24 of IPC. During the course of arguments learned

Spl.PP for respondent No.1 has made available the copies of the note sheets in UDD No.424/2007 and copies of the orders in Misc. No.472/98, O.S.No.6163/1994 and MFA No. 5835/2005.

11. On behalf of respondent No.2, initially a statement of objections was filed, strongly opposing the petition interalia contending that the petition is not at all maintainable either under law or on facts of the case, and the same is filed with the sole intention of protracting and stalling the proceedings. Respondent No.1 took up a plea that the acquisition proceedings in relation to the lands in question were completed on 21.04.1988 and the land had vested with the State Government. A person by name Sri. Ameer Jan claiming to have purchased the same from the original owners had made application seeking de-notification of the said lands. Said application was rejected on the ground that the lands had been acquired by the State in accordance with the provisions of Land Acquisition Act, 1894 and therefore there was no scope to de-notify the same after publishing the notification under section 16(2) of the Land Acquisition Act, 1894.

12. In his objection statement, respondent No.2 elaborately narrated the sequence of events leading to de-notification of the lands based on the application filed by accused No.5 Sri. Rajashekaraiah and contended that the above events clearly disclosed cognisable offences and therefore the FIR was rightly registered in accordance with the law laid down by the Hon'ble Supreme Court in the case of *LALITHA KUMARI v. GOVERNMENT OF UTTAR PRADESH AND OTHERS, AIR 2014 SC 187* and further contending that the grounds urged by the petitioner do not fall within any of the categories specified by the Hon'ble Supreme Court in *STATE OF HARYANA AND OTHERS V. BHAJAN LAL AND OTHERS, AIR 1992 SC 604,* justifying quashment of the proceedings, sought for dismissal of the petition.

13. When the matter was listed for hearing, learned Senior Counsel for petitioner moved an application seeking amendment of the petition so as to urge a further ground to quash the criminal proceedings in view of the insertion of section

17A to the PC Act. The respondent No.1 opposed the application contending that section 17A of the amended PC Act was not applicable to the facts of the case since the case was registered much prior to the amended PC Act came into force. However, after hearing the parties, the amendment was allowed and the petitioner was permitted to urge additional ground based on the amended provision of section 17A of the PC Act and accordingly amended petition was filed.

14. On the heel of filing the amended petition, learned counsel for respondent No.2 came up with a memo dated 09.12.2020 seeking leave to withdraw the petition on the ground that in view of the insertion of section 17A of the PC Act, respondent No.2 is left with no other option than to concur with the claim of the petitioner that the investigation/inquiry/ enquiry cannot be undertaken in the absence of an appropriate permission / approval / sanction / consent by the appropriate authority as the subject matter relates to an order passed by the public servant in discharge of his duties as a public servant. Further in the memo, he asserted that *"The respondent No.2*

who has been able to lay his hands upon the documents relating to the subject matter in question which event happened subsequent to the filing of the complaint do demonstrably indicated that the petitioner has acted on the basis of the recommendations which came to be made by the Officers concerned."

15. Since the averments made in the Memo were obviously contrary to the allegations found in the complaint and the second respondent being only an informant having no locus standi whatsoever to withdraw the criminal prosecution launched against the petitioner, he was directed to appear before the Court to explain the circumstances of filing the said memo. In response to this order, respondent No.2 engaged Senior Counsel Sri.Ashok Haranahalli and filed an affidavit reiterating the averments made in the memo and further asserted that as on the date of filing the complaint, he was not having materials as were necessary that would connect the accused with commission of the offence and that subsequently, he was able to advert to the relevant documents which had come on record in the course

of investigation of the crime to prima facie establish the offence said to have been committed by the accused and that the documents that were looked into by the second respondent related to de-notification of 17 guntas of land in each of Sy.Nos.7/1B, 7/1C and 7/1D of Gangenahalli village, Kasaba hobli, Bengaluru North Taluk. He further stated that,

> *"As is evident from the case file maintained by the State relating to the de-notified of the aforementioned lands, it is apparently evident that on 01.10.2007, Sri.H.D.Kumaraswamy has directed those who are concerned in the matter to examine the issue with regard to the Bangalore Development Authority having really taken possession of the aforementioned lands in view of the law laid down not only by this Hon'ble Court but also by the Apex court and to submit a report therefrom."*

Further, in para 8 of the affidavit, respondent No.2 averred thus:

> ***"I respectfully submit that a careful examination of the record of the case would reveal that the petitioner while placing reliance on the notings put up by the officials concerned in the matter, which in a nutshell, indicated that the Bangalore Development Authority has not been able to have the advantage of the possession of the notified lands and that fact of taking possession of the lands has remained only on paper though not actually taking of physical possession of the said lands and***

that a private layout has also been formed and that number of unauthorized structures have also come into existence over the lands notified for acquisition etc., has ordered de-notified of the said lands."

16. The contents of the above affidavit, I may hasten to add, when compared with the facts and events narrated by respondent No.2 in the compiaint lodged by him in the year 2015, make it evident that an ingenious attempt has been made to bail out the petitioner and other accused persons named in the FIR. Though respondent No.2 has no legal right or locus-standi to seek withdrawal of the complaint or to enter into composition with accused, yet, the hidden motive of respondent No.2 is glaringly evident from the manner in which he has made audacious statements in the affidavit contrary to the records which he claimed to have been "able to advert' and "which had come on record in the course of investigation" and sought to justify them by engaging a Senior counsel on his behalf. It is really preposterous and disgusting to note that in his eagerness to justify the acts of the petitioner, he has even gone to the extent of taking upon himself the role of an investigator,

prosecutor and the Judge, making a grand declaration on oath that "a careful examination of the record of the case" indicated to him that "possession of the land has remained only on paper" and that "number of un-authorised structures have also come into existence over the lands notified for acquisition etc". If so, it is not explained by him as to why accused No.3 claiming to be the power of attorney of fictitious owners would execute registered sale deeds in favour of accused No.4 and deliver physical possession to him immediately after de-notification ordered by the petitioner, if infact the "acquired land" was in the possession of encroachers as contended by respondent No.2 in his affidavit.

17. From the reading of the above affidavit and the memo, one can readily draw an inference that respondent No.2 has either fallen a prey to the allurements or has yielded to the pressure of the petitioner or other accused persons named in the FIR, as it is evident that at the instance of the petitioner, petition was amended solely with a view to create a ruse for respondent No.2 to seek withdrawal of the complaint. There is much to be

said about the dubious conduct of respondent No.2, but it may not be appropriate for me to discuss in detail the falsity of the assertions made on oath by respondent No.2 at this stage, as the matter is still under investigation and therefore I refrain from discussing the matter further except to direct the investigating agency as well as the trial Court which is seized of the matter, to take note of the unscrupulous, immoral and unholy nexus between the petitioner and respondent No.2 and other offenders and take suitable action as per law at appropriate stage.

18. Insofar as the locus-standi of respondent No.2 to intermeddle with the course of criminal justice by entering into illegal composition with accused No.2 is concerned, suffice it to note that the Apex Court in *GIAN SINGH v. STATE OF PUNJAB, (2012) 10 SCC 303, has cautioned that; "in respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the*

settlement between offender and victim can have no legal sanction at all."

19. In *STATE OF MADHYA PRADESH v. LAXMI NARAYAN AND OTHERS, (2019) 5 SCC 688,* the Hon'ble Supreme Court has further observed thus:-

> *"Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc., cannot provide for any basis for quashing criminal proceedings involving such offences."*

20. In the light of this legal and factual position, the memo filed by respondent No.2 seeking to withdraw the complaint is rejected.

21. Now coming to the central issue, it is relevant to note that the petitioner has approached this Court seeking quashment of the proceedings at the initial stage of commencement of investigation. Law is now well settled that the inherent powers

under section 482 of Cr.P.C. can be exercised to give effect to an order under the Code to prevent abuse of process of the court or to otherwise secure the ends of justice. Though the petitioner has also invoked Article 226 and 227 of the Constitution of India, the reliefs claimed in the petition fell within the ambit of section 482 Cr.P.C and the inherent powers under this section cannot be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without full material.

22. In RISHIPAL SINGH v. STATE OF UTTAR PRADESH AND ANOTHER, (2014) 7 SCC 215, it is held by the Hon'ble Apex Court as under:-

> "*What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by*

the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact."

23. Tested on the touchstone of the above principles, the allegations made in the complaint and the material produced in support thereof, in my view, prima facie disclose the ingredients of the offences alleged against the petitioner warranting a thorough investigation.

24. Learned Senior Counsel appearing for petitioner does not dispute the fact that acquisition proceedings initiated in respect of the lands bearing Sy.Nos.7/1B, 7/1C and 7/1D of Gangenahalli village, Kasaba hobli, Bengaluru North Taluk, measuring 1 acre 11 guntas along with surrounding properties had reached finality and final notification under section 6(2) of the Land Acquisition Act, 1894 was published on 8.12.1977. The only contention set up by the petitioner is that possession of the land was not taken and handed over to the Engineering Section of Bangalore Development Authority and therefore the petitioner was empowered to de-notify the lands in terms of Section 48 of the Land Acquisition Act. But a perusal of the case file clearly discloses that the file was reopened by accused No.2 – Sri.H.D.Kumaraswamy after he became the Chief Minister. The Joint Secretary of Urban Development Department after summarising the details of all the earlier proceedings in para 17 has recorded thus:-

> *17. ಮುಂದುವರಿದು ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ಈಗಾಗಲೇ ಪ್ರಾಧಿಕಾರದಿಂದ ವರದಿಯಾದಂತೆ 16 (2)ರ ಪ್ರಕ್ರಿಯೆಯು ಮುಗಿದಿರುವುದರಿಂದ ಮತ್ತು*

ಈಗಾಗಲೇ ಬೆಂಗಳೂರು ಅಭಿವೃದ್ಧಿ ಪ್ರಾದಿಕಾರವು ಭೂ ಸ್ವಾದೀನಪಡಿಸಿಕೊಂಡ ಜಮೀನುಗಳನ್ನು ಕೈ ಬಿಡುವ ಬಗ್ಗೆ ಪರಿಶೀಲಿಸಲು ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿಗಳ ಅಧ್ಯಕ್ಷತೆಯಲ್ಲಿ ರಚಿಡಲಾಗಿರುವ ಡಿ–ನೋಟಿಪಿಕೇಷನ್ ಸಮಿತಿ ಸಭೆಯಲ್ಲಿಯೂ ಕೂಡಾ 16(2) ಪ್ರಕ್ರಿಯೆ ಪೂರ್ಣಗೊಂಡಿರುವಂತಹ ಪ್ರಕರಣಗಳನ್ನು ಪರಿಗಣಿಸುವ ಪ್ರಶ್ನೆಯೇ ಉದ್ಭವಿಸುವುದಿಲ್ಲವೆಂದು ಸ್ಪಷ್ಟಪಡಿಸಿರುವ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಹಾಗೂ 16(2) ಪ್ರಕ್ರಿಯೆ ಮುಗಿದ ನಂತರ ಪ್ರಾಯಶ: ಮೇಲ್ಮನವಿಯನ್ನು ಪರಿಗಣಿಸಲು ನಿಯಮಾವಳಿಗಳಲ್ಲಿ ಅವಕಾಶವಿಲ್ಲದ ಕಾರಣ ಈ ರೀತಿ ಪ್ರಕರಣವನ್ನು ಅಲಿಸುವುದು (Hearing) ಸಮರ್ಥನೀಯವಲ್ಲ. ಮುಂದೆ ಈ ರೀತಿಯ ಅಡಹಾಕ್ ವ್ಯವಸ್ಥೆಯು ಖಾಯಂ ಆಗಿ ಪರಿವರ್ತನೆಗೊಂಡು ಎಲ್ಲಾ ಪ್ರಕರಣಗಳನ್ನೂ ಈ ರೀತಿ ಹಿಯರಿಂಗ್ ನಡೆಸಬೇಕಾಗುವ ಸಂಭವವು ಸೃಷ್ಟಿಯಾಗುವ ಸಾಧ್ಯತೆಯನ್ನು ಅಲ್ಲಗಳೆಯುವಂತಿಲ್ಲ. ಪ್ರಸ್ತುತ ಪ್ರಕರಣದಲ್ಲಿಯೂ ಕೂಡಾ ಈಗಾಗಲೇ 16(2) ಪ್ರಕ್ರಿಯೆಯು ಪೂರ್ಣಗೊಂಡಿರುವುದರಿಂದ ಸದರಿ ವಿಷಯವನ್ನು ಮಾನ್ಯ ರಾಜ್ಯಪಾಲರ ಸಲಹೆಗಾರರ ಅವಗಾಹನೆಗೆ ಮಂಡಿಸಿ ಈ ವಿಷಯವನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸಬಹುದು.

Sd/-

(ಎಂ.ಡಿ. ರವೀಂದ್ರನಾಥ್)
ಸರ್ಕಾರದ ಜಂಟಿ ಕಾರ್ಯದರ್ಶಿ
ನಗರಾಬಿವೃದ್ಧಿ ಇಲಾಖೆ

ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿಯವರು} The High Court order dated 17.7.07 in Writ Petition No.3415 of 2005 may please be perused. In the High Court order Para "A" of its page 11 may please be perused.

19. ಕಂಡಿಕೆ–17 ರಲ್ಲಿ ವಿವರಿಸಲಾದಂತೆ ಪ್ರಶ್ನಿತ ಜಮೀನಿಗೆ ಭೂ ಸ್ವಾದೀನ ಪ್ರಕ್ರಿಯೇ ಪೂರ್ಣಗೊಂಡಿರುವ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಕಡತ ಮುಕ್ತಾಯಗೊಳಿಸುವ ಬಗ್ಗೆ ಆದೇಶ ಕೋರಿ ಮಾಡಿಸಿದೆ.

Sd/-
07.01.2009

ಅ. ಕಾ

ಜಂ.ಕಾ.

20. ಕಂಡಿಕೆ 18 abdrupt ಅಗಿ ಕೊನೆಗೊಳ್ಳುವುದು. ಈ ಕಡತ ಶಾಖಾಗೆ ಹೇಗೆ ಬಂತು?

Sd/-
03.02

21. ಕಡತವನ್ನು ಕಳ್ಳೆದ ವರ್ಷ ಮಾನ್ಯ ರಾಜ್ಯಪಾಲರ ಸಲಹೆಗಾರರಿಗೆ ಸಲ್ಲಿಸಲಾಗಿತ್ತು. ಕಂಡಿಕೆ–18 ರಲ್ಲಿ ಪ್ರ.ಕಾ. ರವರ ಸಹಿ ಇಲ್ಲದೆ ಕಡತವನ್ನು ಶಾಖೆಗೆ ಹಿಂದಿರುಗಿಸಲಾಗಿರುತ್ತದೆ.

Sd/-
06.02

ಜಂ.ಕಾ.

22. ಕಂಡಿಕೆ 17ರ 'ಅ' ಭಾಗದಂತೆ ಈ ಕಡತವನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸಬಹುದು.

Sd/-
13.02

23. ಕಂಡಿಕೆ 22ರಂತೆ ಕಡತವನ್ನು 'ಸಿ' ವರ್ಗದಲ್ಲಿ ಮುಕ್ತಾಯಗೊಳಿಸಬಹುದು.

Sd/-
02.03.09

From the above notings, it is clear that De-notification Committee had rejected the proposal for de-notification and the

issue had come to an end as back as in 1988 and it was ultimately reported by the concerned officials that there was no scope for reopening the file or to de-notify the lands.

25. It is also pertinent to note that eventhough learned Senior Counsel has vehemently argued that the civil litigations initiated by one Sri.Rajashekaraiah indicated that possession of the subject properties was still with the land owners and unauthorized structures had come in the said properties and therefore, the petitioner in his capacity as Chief Minister was well within his powers to denotify the lands in respect of which possession was not obtained by the Government is falsified from the following notings at para 27, 28, 29 which read as under:-

27. ಉಪ ಆಯುಕ್ತರು (ಭೂ. ಸ್ವಾ), ಬೆಂಗಳೂರು ಅಬಿವೃದ್ದಿ ಪ್ರಾದಿಕಾರ, ಬೆಂಗಳೂರು ಇವರು ದಿನಾಂಕ: 7-5-2010 ರಂದು ಸರ್ಕಾರಕ್ಕೆ ಸಲ್ಲಿಸಿರುವ ವರದಿಯಲ್ಲಿ ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಗಂಗೇನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.7/1ಬಿ, 7/1ಸಿ ಮತ್ತು 7/1ಡಿ ರಲ್ಲಿ ತಲಾ 17 ಗುಂಟೆಯಂತೆ ಒಟ್ಟು 1 ಎಕರೆ 11 ಗುಂಟೆ ಜಮೀನನ್ನು ಮತದಹಳ್ಳಿ ಮುಂದುವರಿದ ಬಡಾವಣೆಗಾಗಿ ದಿನಾಂಕ: 30-11-1977 ರಂದು ಅಂತಿಮ ಅದಿಸೂಚನೆ ಹೊರಡಿಸಲಾಗಿರುತ್ತದೆ. ಸದರಿ ಜಮೀನುಗಳಿಗೆ ಐತೀರ್ಪು, ರಚಿಸಿ, ಭೂಮಿಯ ಸ್ವಾದೀನವನ್ನು ಕ್ರಮವಾಗಿ ದಿನಾಂಕ: 18-1-1979, 6-3-1982 ಮತ್ತು 18-1-1983ರಂದು ತಾಂತ್ರಿಕ ವಿಭಾಗಕ್ಕೆ ವಹಿಸಿಕೊಡಲಾಗಿದೆ. ಭೂಸ್ವಾದೀನ ಕಾಯ್ದೆ ಕಲಂ

16(2)ರ ಅದಿಸೂಚನೆಯನ್ನು ದಿನಾಂಕ: 21–4–1988 ರಂದು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಪ್ರಚುರ ಪಡಿಸಲಾಗಿರುತ್ತದೆ.

28. ಸರ್ವೆ ನಂ.7/1ಬಿ ರಲ್ಲಿನ 17 ಗುಂಟೆ ಜಮೀನಿಗೆ ಶ್ರೀ. ಜಿ. ತಿಮ್ಮರೆಡ್ಡಿ, 7/1ಸಿ ರಲ್ಲಿನ 17 ಗುಂಟೆ ಜಮೀನಿಗೆ ಶ್ರೀ. ಟಿ. ನಾಗಪ್ಪ ಮತ್ತು ಮುನಶಾಮಪ್ಪ ಮತ್ತು 7/1ಡಿ ರಲ್ಲಿನ 17 ಗುಂಟೆ ಜಮೀನಿಗೆ ಶ್ರೀ. ಮುನಶಾಮಪ ನವರು ನೋಟಿಫೈಡ್ ಖಾತೆದಾರರಾಗಿರುತ್ತಾರೆ. ಭೂಮಾಪಕರ ಸ್ಥಳ ತನಿಖೆ ವರದಿಯಂತೆ ಈ ಜಮೀನನಲ್ಲಿ ಚದುರಿದಂತೆ ಅನದಿಕೃತ ಕಟ್ಟಡಗಳಿದ್ದು, ಪಶ್ಚಿಮ ಭಾಗದಲ್ಲಿ ದೊಡ್ಡದಾದ ಒಳಚರಂಡಿ ಮತ್ತು ಗ್ರಾಮಠಾಣ ಪ್ರದೇಶವಾಗಿದ್ದು, ಉಳಿದಂತೆ ಈ ಜಮೀನಿಗೆ ಹೊಂದಿಕೊಂಡಂತೆ ರೆವಿನ್ಯೂ ಖಾಸಗಿ ಬಡಾವಣೆ ರಚನೆಯಾಗಿದ್ದು, ಈ ಜಮೀನು ಹಾಲಿ ಭೂಮಾಲೀಕರಗಳು ಅನದಿಕೃತವಾಗಿ ಸ್ವಾದೀನಾನುಭವದಲಿರುವುದು ಕಂಡು ಬಂದಿದ್ದು ಮತ್ತು ಅಕ್ಕಪಕ್ಕ ಪ್ರಾದಿಕಾರದಿಂದ ಬಡಾವಣೆ ರಚನೆಯಾಗಿರುವುದು ಕಂಡು ಬರುವುದಿಲ್ಲ.

29. ದಿನಾಂಕ: 13.6.2005 ರಲ್ಲಿ ನೀಡಿರುವ ಆದೇಶದ ಪ್ರಕರಣ ಸಂಖ್ಯೆ: Misc 472/1998ಗೆ ಸಂಬಂಧಪಟ್ಟಿದ್ದು, ಈ ಪ್ರಕರಣದಲ್ಲಿ ಭೂಮಾಲೀಕರುಗಳು ಅರ್ಜಿದಾರರಾಗಿದ್ದು, ನ್ಯಾಯಾಲಯದ ಆದೇಶದಂತೆ ಈ ಜಮೀನಿನಲ್ಲಿರುವ ಕಟ್ಟಡಗಳನ್ನು ನೆಲಸಮಗೊಳಿಸಬಾರದೆಂದು ಮತ್ತು ಭೂ ಮಾಲೀಕರುಗಳ ಸ್ವಾದೀನಾನುಭವವನ್ನು ಅಡ್ಡಿ ಪಡಿಸಬಾರದೆಂದು ಪ್ರಾದಿಕಾರಕ್ಕೆ ಸೂಚಿಸಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಈ ಆದೇಶದ ವಿರುದ್ಧ ಬೆಂಗಳೂರು ಅಬಿವೃದ್ಧಿ ಪ್ರಾದಿಕಾರವು MFA 5835/05 ರಂತೆ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಮೇಲ್ಮನವಿಯನ್ನು ಭೂಗಶ: ಪುರಸ್ಕರಿಸಿ Misc 472/1998ಗೆ ದಿನಾಂಕ: 13.6.2005ರ ಆದೇಶವನ್ನು ವಜಾಕರಿಸಿ ಭೂಮಾಲೀಕರ ಲಿಖಿತ ಮನವಿಯನ್ನು ಪಡೆಯದೆ ಆದೇಶಿಸಿರುವ ಪ್ರಕರಣ ಸಂಖ್ಯೆ: ಓ.ಎಸ್. 6163/94, ದಿನಾಂಕ: 31-3-1994, ದಿನಾಂಕ: 31-3-1998ರ ನ್ಯಾಯಾಲಯದ ಆದೇಶವನ್ನು ವಜಾಕರಿಸಿ ಈ ಪ್ರಕರಣವನ್ನು ಹೊಸದಾಗಿ ಮುಂದುವರಿಸಲು ಆದೇಶಿಸಿರುವುದು ಕಂಡು ಬರುತ್ತದೆ. ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯದ ಪ್ರಕರಣ ಸಂಖ್ಯೆ: ಓ.ಎಸ್. 6163/94ರ ಹಾಲೀ ವಸ್ತು ಸ್ಥಿತಿಯನ್ನು ನೀಡಲು ಪ್ರಾದಿಕಾರದ ಕಾನೂನು ಅದಿಕಾರಿಗಳಿಗೆ ಕೋರಿದ್ದು, ಅದರಂತೆ ದಿನಾಂಕ: 4-5-2010ರ ಕಾನೂನು ಅದಿಕಾರಿಗಳ ವರದಿ ಈ ಕೆಳಕಂಡಂತೆ ಇರುತ್ತದೆ.

26. These facts clearly disclose that there was no challenge to the acquisition proceedings and no orders were passed by any

Court setting aside the acquisition that had attained finality in 1988.

What is relevant to be noted is that respondent No.2 who claims to have obtained copy of the proceedings through R.T.I. did not produce two pages of the file which contained the notings made by the concerned officials immediately preceding the order made by the petitioner. They are extracted herebelow:

33. ಪುಟ 32 ರಲ್ಲಿ ಪ್ರಾಧಿಕಾರವು ಪ್ರಶ್ನಿತ ಜಮೀನಿಗೆ ಆವಾರ್ಡ್ ರಚಿಸಿ, ಭೂಮಿಯ ಸ್ವಾಧೀನವನ್ನು ದಿನಾಂಕ 18–1–1979, 6–3–1982 ಮತ್ತು 18–1–1983ರಲ್ಲಿ ವಿವಿಧ ದಿನಾಂಕಗಳಂದು ಸ್ವಾಧೀನಕ್ಕೆ ತೆಗೆದುಕೊಂಡು ತಾಂತ್ರಿಕ ವಿಭಾಗಕ್ಕೆ ವಹಿಸಿ ಕೊಡಲಾಗಿದೆ ಎಂದು ಹಾಗೂ ಭೂಸ್ವಾಧೀನ ಕಾಯ್ದೆ ಸೆಕ್ಷನ್. 16(2)ರ ಅಧಿಸೂಚನೆಯನ್ನು ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರದಲ್ಲಿ ದಿನಾಂಕ. 21.4.1988ರಂದು ಪ್ರಚುರಪಡಿಸಲಾಗಿದೆ ಎಂದು ವರದಿ ನೀಡಲಾಗಿರುವ ಹಿನ್ನೆಲೆಯಲ್ಲಿ, ಪ್ರಶ್ನಿತ ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಗಂಗೇನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.2/1ಬಿ, 1ಸಿ, 1ಡಿ ರಲ್ಲಿನ ಒಟ್ಟು 1 ಎಕರೆ 11 ಗುಂಟೆ ಜಮೀನನ್ನು ಭೂಸ್ವಾಧೀನದಿಂದ ಕೈಬಿಡಲು ಕಾನೂನಿನ ಅಡಚಣೆ ಇರುತ್ತದೆ. ಪ್ರಾಧಿಕಾರದ ಉಪ ಆಯುಕ್ತರು ತಮ್ಮ ವರದಿಯಲ್ಲಿ ಈ ಜಮೀನಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಭೂಮಾಲೀಕರು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಅರ್ಜಿ ಸಂಖ್ಯೆ Misc.472/1998ನ್ನು ಸಲ್ಲಿಸಿದ್ದು, ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ಪ್ರಶ್ನಿತ ಪ್ರದೇಶದಲ್ಲಿರುವ ಕಟ್ಟಡಗಳನ್ನು ನೆಲಸಮಗೊಳಿಸಬಾರದೆಂದು ಮತ್ತು ಭೂಮಾಲೀಕರ ಸ್ವಾಧೀನ ಅನುಭವವನ್ನು ಅಡ್ಡಪಡಿಸಬಾರದೆಂದು ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಸೂಚಿಸಿರುವುದಾಗಿ ತಿಳಿಸುತ್ತಾ, ಈ ಆದೇಶದ ವಿರುದ್ದ ಪ್ರಾಧಿಕಾರವು MFA.5835/05ನ್ನು ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಲಯದಲ್ಲಿ ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸಿದ್ದು, ದಿನಾಂಕ. 3–8–2005ರಲ್ಲಿ ನ್ಯಾಯಾಲಯವು ಮೇಲ್ಮನವಿಯನ್ನು ಭಾಗಶ: ಪುರಸ್ಕರಿಸಿ, ಅರ್ಜಿದಾರರ Misc.472/1998ಕ್ಕೆ ಅನುಗುಣವಾಗಿ ದಿನಾಂಕ. 13–6–2005ರಂದು ನೀಡಿದ್ದ ಆದೇಶವನ್ನು ವಜಾ ಮಾಡಿ ಭೂಮಾಲೀಕರ ಲಿಖಿತ ಮನವಿಯನ್ನು ಪಡೆಯದೆ ಆದೇಶಿಸಲಾಗಿರುವ ಪ್ರಕರಣ ಸಂಖ್ಯೆ. O.S.6163/1994 ದಿನಾಂಕ. 31–3–1994 ಹಾಗೂ ದಿನಾಂಕ. 31–3–1998ರ ನ್ಯಾಯಾಲಯದ ಆದೇಶವನ್ನು ವಜಾಗೊಳಿಸಿ, ಈ ಪ್ರಕರಣವನ್ನು ಹೊಸದಾಗಿ ಮುಂದುವರೆಸಲು ಆದೇಶಿಸಿರುವುದಾಗಿ ತಿಳಿಸಿರುತ್ತಾರೆ. ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯದ ಪ್ರಕರಣ ಸಂಖ್ಯೆ. O.S.6163/1994ರ ಹಾಲಿ ವಸ್ತುಸ್ಥಿತಿ ಬಗ್ಗೆ ವಿವರಣೆ ನೀಡಲು ಪ್ರಾಧಿಕಾರದ ಕಾನೂನು ಅಧಿಕಾರಿಗಳನ್ನು ಕೋರಲಾಗಿ, ದಿನಾಂಕ. 4–5–2010 ರಂದು ಕಾನೂನು ಅಧಿಕಾರಿಗಳು ಈ ಕೆಳಕಂಡಂತೆ ವರದಿ ನೀಡಿರುವುದಾಗಿ ತಿಳಿಸಿರುತ್ತಾರೆ:–

MFA 5835/05 was disposed on 03-08-2005 allowing the appeal in part, and impugned order in IA III in Misc. 478 was set aside the suit O.S.6163/94 was restored. There is an order to be effected that in the meanwhile authority shall not demolish the construction if any in the suit schedule property nor shall interfere with the possession of the respondents pending disposal of the suit. The suit is pending.

34. ಈ ಜಮೀನನ್ನು ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ. ನಅಇ 576 ಬೆಂಭೂಸ್ವಾ 98, ದಿನಾಂಕ. 8–10–1999ರಂದು ಸಮೂಹ ವಸತಿ ಯೋಜನೆಯಡಿ ಅಭಿವೃದ್ಧಿಪಡಿಸಲು ಆದೇಶಿಸಲಾಗಿದ್ದು, ಈ ಆದೇಶವನ್ನು ತಿರಸ್ಕರಿಸಿ ಅರ್ಜಿದಾರರಾದ ಶ್ರೀ ಅಮೀರ್ ಜಾನ್ ರವರಿಗೆ ದಿನಾಂಕ. 12–7–2001ರಂದು ಹಿಂಬರಹ ನೀಡಲಾಗದ್ದು, ಈ ಬಗ್ಗೆ ದಿನಾಂಕ. 23–12–2005ರಲ್ಲಿ ಸರ್ಕಾರಕ್ಕೆ ಪತ್ರ ಬರೆಯಲಾಗಿರುತ್ತದೆ ಎಂದು ತಿಳಿಸುತ್ತಾ, ಮೇಲಿನ ವಾಸ್ತವಾಂಶಗಳನ್ನು ಸರ್ಕಾರದ ಅವಗಾಹನೆಗೆ ತಂದಿರುತ್ತಾರೆ.

35. ಮೇಲಿನ ಕಂಡಿಕೆಗಳಲ್ಲಿ ತಿಳಿಸಿರುವಂತೆ ಸಮೂಹ ವಸತಿ ಯೋಜನೆಗಾಗಿ ಅಭಿವೃದ್ಧಿಪಡಿಸಲು ಹೊರಡಿಸಿರುವ ಆದೇಶದ ಬಗ್ಗೆ ಪರಿಶೀಲಿಸಲಾಗಿ, ಸರ್ಕಾರದಲ್ಲಿ ಸದರಿ ಆದೇಶಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಸಂಬಂಧಪಟ್ಟ ಕಡತವು 'ಸಿ' ವರ್ಗದಲ್ಲಿ 16–7–2001ನೇ ಸಾಲಿನಲ್ಲಿ ಮುಕ್ತಾಯಗೊಳಿಸಲಾಗಿದ್ದು, ಕಡತ ಲಭ್ಯವಿರುವ ಸಾಧ್ಯತೆ ಇರುವುದಿಲ್ಲ.

36. ಪುಟ. 27ರಲ್ಲಿ ನಿರ್ದೇಶಿಸಿರುವಂತೆ ಮೇಲ್ಕಂಡ ವಾಸ್ತವಾಂಶದೊಂದಿಗೆ ಕಡತವನ್ನು ಮಾನ್ಯ ಮುಖ್ಯಮಂತ್ರಿಯವರ ಅವಗಾಹನೆ ಹಾಗೂ ಮುಂದಿನ ಆದೇಶಕ್ಕೆ ಸಲ್ಲಿಸಬಹುದಾಗಿದೆ.

Sd/- 13/5/10
ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ನಗರಾಭಿವೃದ್ಧಿ ಇಲಾಖೆ (ಬಿಡಿಎ & ಬೆಂ–1)
ಪ್ರೇಮ ಚಂದ್ರ

37. ಕಂಡಿಕೆ 33 ರಿಂದ 35 ರಲ್ಲಿ ವಿವರಿಸಿರುವ ಅಂಶಗಳನ್ನು ಮಾನ್ಯ ಮುಖ್ಯಮಂತ್ರಿಯವರ ಅವಗಾಹನೆಗೆ ತರಬಹುದು.

ಅಪರ ಮುಖ್ಯಕಾರ್ಯದರ್ಶಿ

Sd/-
1.6.2010
ಬಸವ ರಾಜು

38.

Sd/-

ಸುಬೀರ್ ಹರಿ ಸಿಂಗ್
ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ
ನಗರಾಭಿವೃದ್ಧಿ ಇಲಾಖೆ

ಮಾನ್ಯ ಮುಖ್ಯಮಂತ್ರಿಯವರು

39. ಭೂಸ್ವಾಧೀನದಿಂದ ಕೈಬಿಡಲು ಆದೇಶಿಸಿದೆ.

Sd/-

ಬಿ.ಎಸ್. ಯಡಿಯೂರಪ್ಪ
ಮುಖ್ಯಮಂತ್ರಿ

ಅಪರ ಮುಖ್ಯಕಾರ್ಯದರ್ಶಿ
(UDD)

27. In the light of the notings at paras 33 to 37, the petitioner could not have ordered for de-notification of the subject lands. The order at para 39 on the face of it is indefensible. There is nothing in para 39 to suggest that the petitioner had ordered for de-notification based on the notings put up by the officials in exercise of the power under section 48 of the Land Acquisition Act on satisfaction that the land has not vested with the Government as vehemently contended by the learned Senior Counsel for the petitioner. The question as to

whether the said order was passed by the petitioner by abuse of power or in furtherance of the common object of the conspiracy need to be ascertained only after a thorough investigation. Since the allegations made in the complaint and the documents produced in support thereof prima-facie disclose the ingredients of the alleged offences under P.C. Act as well as under IPC, the investigation therein cannot be stalled as sought for by the petitioner.

28. Amended Section 17A of the P.C. Act does not preclude respondent No.1 from investigating into the alleged offences as contended by the petitioner. The Co-ordinate Bench of this Court in the case of T.N. Bettaswamaiah v. State of Karnataka (W.P.No.29176/2019 (GM-RES)) dated 20.12.2019 has considered the application of Section 17A and section 19 of P.C. Act to the pending proceedings and by following the decisions of the Hon'ble Supreme Court, has held that section 17A is prospective in nature and therefore section 19 also is held as prospective. I am in respectful agreement with the view taken in the above decision. As a result, the contention urged by the

counsel for the petitioner based on Section 17A of P.C. Act also does not help the petitioner. Even otherwise, the order of de-notification passed by the petitioner in the circumstances discussed above, cannot be construed as "any recommendation made" or "decision taken" by the petitioner in discharge of his official duty so as to attract section 17A of the P.C.Act.

For all the above reasons, the petition is liable to be dismissed and is accordingly dismissed with cost of Rs.25,000/- (Rupees Twenty Five Thousand only).

Sd/-
JUDGE

Bss/mn/-