Hamed Ali and Others Vs. Kabbalegowda and Others

Hamed Ali and Others Vs. Kabbalegowda and Others

SooperKanoon Citation : sooperkanoon.com/1177340

Court : Karnataka

Decided On : Dec-18-2015

Judge : Anand Byrareddy

Appeal No. : Criminal Petition No. 7274 of 2012 connected with Criminal Petition Nos. 4380 of 2012 & 4696 of 2013 & Writ Petition Nos. 26555-26650 of 2012 (GM-RES) & Writ Petition Nos. 26705-26706 of 2012 (GM-RES)

Appellant : Hamed Ali and Others

Respondent : Kabbalegowda and Others

Advocate for Pet/Ap. : Shri. L.M.Chidanandayya, Shri. M.S.Bhagwath

Judgement :

(Prayers: This Criminal Petition filed under Section 482 Code of Criminal Procedure, 1973, praying to quash the P.C.R.No.11/2012 on the file of the 23rd Additional City Civil and Special Judge, Bangalore City and all consequential proceedings thereon, in so far this petitioner (accused no.4) is concerned (Annexure-A).)

This Criminal Petition filed under Section 482 Code of Criminal Procedure, 1973, praying to quash the entire criminal proceedings in Spl.C.C.No.137/2012 pending on the file of the XXIII Additional City Civil and Special Judge for Prevention of Corruption Act, Bangalore City as against the petitioner.

This Criminal Petition filed under Section 482 Code of Criminal Procedure, 1973, praying to quash the complaint PCR No.10 and 11/2012 on the file of the XXIII Additional City and Civil and Sessions Judge, and Special Judge, Bangalore and order dated 7.3.2012 referring the said complaint under sub Section (3) of Section 156 of Criminal Procedure code for investigation by the Lokayukta Police and Consequent registration of case against the petitioner in Crime No.26/12.

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, praying to call for the records in matter bearing Spl.C.C.No.137/2012 pending on the file of the Hon'ble Court of XXIII Additional City Civil and Sessions Judge, Bangalore City, at Bangalore and Designated Special Judge and under Chapter II of the Prevention of Corruption Act 1988 and quash the order dated 7.3.2012 in PCR No.10 and 11/2012 passed by the Hon'ble Court of XXIII Additional City Civil and Sessions Judge, Bangalore City, at Bangalore and Designated Special Judge under Chapter II of the Prevention of Corruption Act, 1988 vide Annexure-A and A1 and etc;

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to quash the Private Complaint in PCR No.11/12 and PCR.No.10/12 filed by the second respondent before the learned XXIII Additional Sessions Judge and Special Judge for Prevention of Corruption Act, Bangalore vide Annexure-A and B and etc;)

1. These petitions are heard together and are disposed of by this common order. The petitioners are the accused in a pending criminal case. The relief sought for is common, all of them are seeking that the proceedings initiated against them, respectively, be quashed.

2. The facts leading up to these cases is said to be as follows:

One, T.J. Abraham is said to have filed a private complaint before the XXIII Additional City Civil and Sessions Judge and Designated Special Judge under the Prevention of Corruption Act, 1988 (Hereinafter referred to as the 'PC Act', for brevity), as on 5.3.2012, numbered as PCR no.10/2012, against D.K. Shivakumar, the petitioner in the writ petition in WP 26555/2012.

On 6.3.2012, yet another complaint is said to have been filed by one Kabbalegowda, before the very same court, against B.S.Yeddyurappa, who is the petitioner in WP no.26705-706/2012, D.K. Shivakumar, Ramegowda, who is the petitioner in Criminal Petition no.4696/2013, Hameed Ali, who is the petitioner in Criminal Petition no.7274/2012 and two others.

Abraham, the complainant in PCR 10/2012, has stated that he is a social worker. It was alleged that land measuring 5.11 acres (in land bearing survey no. 50/2 of Benaganahalli, Krishnarajapuram Hobli, Bangalore East taluk) was said to have been purchased by one B.K.Srinivasan on 10.5.1962. An extent of 4.20 acres was said to have been converted from agricultural user to industrial use, the conversion certificate is said to have been issued in the year 1962.

The land was said to have been notified for acquisition under the provisions of the Bangalore Development Authority Act, 1976 (Hereinafter referred to as the 'BDA Act', for brevity). The notice under Section 17 was issued on 26.5.1984 and the notice under Section 19 was issued on 18.12.1986 for the formation of a residential layout called, "East of NGEF layout". And that, D.K.Shivakumar, after assuming office as the Minister for Urban Development in the Government of Karnataka, with effect from, 17.12.2001, and with the full knowledge that the land was notified for acquisition, is said to have purchased the above said land from Srinivasan, who was then aged 82, as on 18.12.2003, for a sum of Rs.1.62 crore. This according to the complainant, was in contravention of Section 13(1)(c) and (d) of the PC Act.

That the purchase was in violation of Section 3 of the Karnataka Restriction of Transfer of Land Act, 1991 (Hereinafter referred to as the 'KRTL Act', for brevity), which prohibits sale of land, which is notified for acquisition. After having purchased the same, D.K.Shivakumar is said to have made a personal representation, dated 17.2.2004, seeking conversion of an extent of 4.20 acres of land for residential purposes. Ramegowda, above named, was said to be the then Special Deputy Commissioner, who, according to the complainant, actively colluded with the accused to illegally grant sanction for conversion, subject to the State withdrawing from the acquisition.

It is further stated that Shivakumar had then entered into a joint development agreement in respect of the land (with M/s Prudential Housing Ltd., a developer, represented by Girish Purvankara, the Petitioner in Criminal Petition no.4380/2012) even before the land could be de-reserved. It is further stated that he had submitted an application in the name of B.K.Srinivasan, who was dead by then, seeking that the land in question be de-notified and that the State withdraw from acquisition in respect of the land.

It was alleged that the accused thus used his official position as an MLA and as a leader of the Congress party to persuade the then Chief Minister, B.S.Yeddiyurappa to accord sanction for the withdrawal from acquisition in respect of the land. The sanction was said to have been duly issued by the said Chief Minister as on 13.5.2010. The value of the land in question had grown manifold in value over the years and was estimated at over Rs.29 Crore, as on the date of complaint.

It was thus alleged that D.K.Shivakumar had committed criminal offences punishable under Section 13(1)(c), 13(1)(e) and Section 13(2) of the PC Act, under Section 3 of the KRTL Act and Sections 417, 419, 465 and 468 of the Indian Penal Code, 1860 (Hereinafter referred to as the 'IPC', for brevity).

In the complaint by Kabbalegowda, PCR no.11/2012, it was said that the complainant was a social worker. And that his intention was to expose corruption in high places.

It is stated that as on 25.5.2008, B.S.Yeddiyurappa was elected as an MLA, belonging to the Bharatiya Janata Party (BJP) . He was named the Chief Minister and held office from 30.5.2008 to 31.7.2011. He had to step down on account of a series of criminal cases against him.

D.K.Shivakumar was also elected as MLA, belonging to the Congress party.

Dr.Ramegowda was a Special Deputy Commissioner, Bangalore District, in the year 2004.

Hameed Ali was discharging duties as a Senior Sub- Registrar in the office of the Sub-Registrar, Krishnarajapuram, Bangalore, during the year 2003.

One, Deepak Kumar was said to be the Director of a company and the son of one Lehar Singh. He was said to be a close confidant of Yeddiyurappa, and was said to have been nominated as a member of the Legislative Council, at the instance of Yeddiyurappa, the then Chief Minister.

The complaint then goes on to reiterate the circumstances pertaining to the land purchased by D.K.Shivakumar and the subsequent events leading upto the fact of the State having withdrawn from the acquisition proceedings at the instance of D.K.Shivakumar, as has been narrated by T.J.Abraham in his complaint.

It is further alleged that as on the date of purchase of the land by D.K.Shivakumar, he was a Minister for Urban Development Department. Hameed Ali, the Senior Sub- Registrar, who ought to have refused to register the sale deed, as the land was subject matter of acquisition proceedings and was so reflected even in the Revenue Records, had registered the document in violation of Section 8 of the KLRT Act.

It is also alleged that within two months from the date of purchase, D.K.Shivakumar had approached - Ramegowda, the Special Deputy Commissioner seeking conversion of a major extent of the land, from industrial user to residential use. The said Ramegowda, having willfully granted sanction, in the face of the glaring circumstance that the land was already notified for acquisition.

On obtaining such order of conversion dated 7.10.2014, D.K.Shivakumar had made three representations dated 21.9.2005, 11.5.2009 and 1.3.2010. It is stated that the tone and tenor of the said representations - was as if he was acting in the capacity of a public figure making out a case for B.K.Srinivasan, who was no more by then and who had sold the land to D.K.Shivakumar, which was indeed the subject matter of the representations, seeking expeditious withdrawal from the acquisition in respect of the said land. The representations mischievously suppressed the fact he was in fact, the owner of the land.

It is alleged that the then Chief Minister, Yeddiyurappa, overlooking the legal position and the guidelines in place to consider cases where the State would seek to withdraw from acquisition proceedings, he had directly obtained the file and had ordered that the land in question be dropped from the acquisition proceedings based on the representations of D.K.Shivakumar. It is emphasized that a matter which had lain dormant for several years had been brought to a head immediately on Yeddiyurappa assuming office as the Chief Minister. This according to the complainant was in consideration of having received illegal gratification through the medium of Deepak Kumar and Lehar Singh, whose company is said to have purchased certain property through the father of D.K.Shivakumar for a throw away price, when compared to similarly situated properties.

The complainant had, on the above and other allegations, sought the prosecution of the named persons in the complaint.

In so far as the complaint in PCR 10/2012 was concerned, the complainant had appeared before the court and sought the inclusion of Ramegowda and B.S.Yeddiyurappa as accused persons along with D. K.Shivakumar. The court had by an order dated 7.3.2012, briefly referred to the contents of the complaint and directed investigation by the Superintendent of Police, Lokayuktha, Bangalore Urban.

Similarly, in PCR 11/2012, investigation was ordered by the very Superintendent of Police, Lokayuktha. While specifically mentioning in a foot note to the Order, dated 7.3.2012, that there be a common investigation in the two complaints, PCR 10 and PCR 11 of 2012, to avoid duplication, as the complaints did contain common allegations.

The Lokayuktha Police had registered a First information report, FIR no.26/2012, as on 27.3.2012. After investigation, a Final Report is said to have been submitted, as on 21.6.2012, indicting D.K.Shivakumar, N.Hanumanth, S.Chandrashekaraiah, Doddahanumaiah and B.K.Srinivas. As on 30.5.2013, an additional charge sheet was filed against Hameed Ali. In so far as Ramegowda was concerned, sanction to prosecute him was awaited.

The complainant in PCR 11/2012, who was represented by counsel is said to have filed a protest memo, in so far as the deletion of B.S.Yeddiyurappa and two others named by him in the complaint.

The court below referring to the role of the accused who were indicted in the final report of the police has opined that the land in question having been notified for acquisition was not available for sale, but it was sold in favour of D.K. Shivakumar. Further, that an application for conversion of the land having been rejected, at a point of time when the said D. K. Shivkumar was a minister in the Government of Karnataka. That, Ramegowda had however, passed an order dated 7.10.2004, granting conversion, in suppression of the earlier rejection by his predecessor in office.

And that the change in the Revenue records reflecting the sale transaction was done with unusual speed by the concerned. An opinion is formed that the erstwhile owner of the land, B.K.Srinivas, ceased to be the owner of the land, upon the same being notified for acquisition. Further, as the said Srinivas had died as on 1.7.2004, no application could have been filed in his name, seeking that the land be de-notified.

It is opined by the Court below that though there was a recommendation by an official that the file be placed before a De-notification Committee, to consider the request, B.S.Yeddiyurappa, the then Chief Minister, had thought it fit to pass an order, dropping the land from the acquisition proceedings.

And further, that D.K.Shivkumar had entered into a joint development agreement in respect of the land with M/s Prudential Housing and Infrastructure Development Limited, as on 10.5.2004, which, according to the court below, was in violation of the KRTL Act.

In so far as the allegations against Deepak Kumar and Lehar Singh is concerned, the court has found that there were no materials to support the allegations, of having acted as agents for B.S.Yeddiyurappa, by receiving money on his behalf - in a sham sale transaction with the father of D.K.Shivakumar. But the court found that B.S.Yeddiyurappa had acted unlawfully in having de-notified land that had vested in the State. Therefore, the court was of the view that he should be proceeded against. So also the developer with whom the joint development agreement was entered into, represented by Girish Puravankara.

The court thus took cognizance of offences alleged against the following :

D. K. Shivakumar - Accused no.1 B.S. Yeddiyurappa - Accused no. 2 N. Hanumanth - Accused no.3 K. S. Chandrashekaraiah- Accused no. 4 Dr. Hanumaiah - Accused no. 5 and Prudential Housing Ltd., represented by Girish Purvankara - Accused no.6.

A case was registered for offences punishable under Section 13(1)(c), 13(1)(d), read with Section 13(2) of the PC Act, Section 3 of the KLRT Act and Sections 120(B), 169, 177 and 465 IPC and the case was numbered as Spl.CC no.137/2012, as on 25.7.2012.

Immediately thereafter the writ petition in WP 26555/2012 was filed by Accused no.1 - D.K.Shivakumar. On 1.8.2012, this court had issued notices to the respondents and stayed further proceedings before the court below. The said interim order was extended from time to time, till it was vacated by an order dated 15.4.2013.

The said Order having been challenged before the Apex Court, the further proceedings before the court below were stayed and the present petition is directed to be heard finally by this court, as per order dated 14.9.2015.

3. The learned Senior Advocate Shri B.V.Acharya, appearing for the counsel for Accused no.1 - D.K. Shivakumar, (WP no.26555/2012) would contend that the Special Judge could not have taken cognizance unless the complaint disclosed, prima facie, the commission of an offence under the provisions of the PC Act. It is pointed out that the provisions invoked are Section 13(1)(c) and (d) of the PC Act, both the said provisions are not at all attracted - given the allegations made against the petitioner. Allegations with regard to any offence punishable under the KRTL Act or under the provisions of the IPC would not afford jurisdiction to the Special Court under the PC Act.

It is pointed out that the learned Special Judge has proceeded on the following fundamental erroneous findings : a. That upon the issuance of a notification under Section 19(1) of the BDA Act, the erstwhile owner of the land in question had ceased to be the owner thereof and could not have sold the same to the petitioner.

b. Upon issuance of the notification under Section 19(1) of the BDA Act, the land stood vested in the State.

c. Even though the BDA had not utilized the land to implement the Scheme of forming the East of NGEF Layout, the land stood vested in the State and was available for other public purposes.

d. That the Order withdrawing from the acquisition passed by Accused no.2- B.S.Yeddiyurappa, was illegal.

The above assumptions are clearly opposed to the legal position. Hence if the above premises on which it is opined that the land was public property and that Accused no. 1 had illegally usurped the same, are eschewed, no offence punishable under the PC Act, is capable of being sustained.

The petitioner has not dishonestly or fraudulently misappropriated the property or converted for his own use, any property entrusted to him as a public servant- in order to attract an offence punishable under Section 13(1)(c).

It is contended that from the allegations and materials gathered at the investigation, it cannot be said that the petitioner has by corrupt means obtained for himself any valuable thing or advantage- by abusing his position as a public servant.

4. The learned Senior Advocate, Shri Ashok Harnahalli, appearing for the learned counsel for the petitioner in the petitions in WP 26705-706/2012, filed on behalf of B.S.Yeddiyurappa - Accused no. 2, would contend, that the land in question was indeed the subject matter of acquisition under a preliminary and final notifications issued under the provisions of the BDA Act, dated 28.5.1984 and 23.10.1986. However, a perusal of the notes of the Special Deputy Commissioner- Land Acquisition Officer and the Engineering Member, BDA, which are part of the

material gathered at the investigation by the Lok Ayuktha police, indicates that a joint inspection of the land was carried out on 8.4.1988 and that as per the report, there was a foundry on the land, which was an ancillary industry for the NGEF Ltd., that a portion of the land, measuring 25 guntas was required for formation of road for the layout, out of the total extent of 5.11 acres. Hence, on 20.2.1990, an award was said to have been passed in respect of 25 guntas of land and possession was also taken in respect of the same. There was no further proceedings in respect of the remaining extent of 4.20 acres, which was the subject matter of sale.

That five years had elapsed from the date of final notification, as on 23.10.1991, the BDA had not taken any further steps to take possession of the land and hence by operation of Section 27 of the BDA Act , the acquisition lapsed. It is seen that in so far as the action of the petitioner in having passed an order to drop the subject land from the acquisition proceedings are concerned, there was a letter as early as on 4.7.2009, by the BDA to the Urban Development Department (UDD) stating that the land in Survey no.50/2 to the extent measuring 4.20 acres could be dropped from the acquisition proceedings, as it was not utilized for the formation of the layout. There after, the representation is said to have been placed before the De-notification Committee, which was ratified by the Secretary, BDA, the Joint Secretary, UDD and Chief Secretary, UDD and finally placed before the then Chief Ministerr,the petitioner. The Order passed by him, to drop the land from the proceedings, was hence neither illegal or irregular.

It is contended that the Lokayuktha Police had, in fact, found the above sequence of events to be borne out by the record and they had hence opined that no case was made out against the petitioner. However, the Special Judge has chosen to take cognizance of the offence alleged against the petitioner on a clearly erroneous reasoning.

It is contended that there is no prima facie material placed on record to indicate that the petitioner-Accused no.2 had received any pecuniary advantage or other valuable thing in respect of the above proceedings. On the other hand, the allegation that he had received illegal gratification through a sham sale transaction in respect of property sold by the father of Accused no.1 in favour of Deepak Kumar and Lehar Singh, who were alleged to be the agents of the petitioner, has been negated by the very Special judge and the said Kumar and Singh were dropped from the array of the accused.

It is also pointed out that there was no allegation at all against the petitioner in the complaint in PCR 10/2012, but still he was included as an accused merely on the basis of a memo filed by the complainant.

5. The learned counsel Shri L.M.Chidanandayya, appearing for the petitioner, Ramegowda, in Criminal Petition 4696/2013, would contend that the petitioner was posted as the Special Deputy Commissioner, Bangalore Urban District as on 9.7.2004. It is sought to be pointed out with reference to the proceedings initiated, the role of the present petitioner in the sequence of events.

Accused no.1, D.K. Shivakumar had made an application to the Office of the Special Deputy Commissioner as on 17.2.2004, seeking conversion of the subject land for residential purposes and on the basis of the same, a report was sought from the BDA by the then Special Deputy Commissioner regarding the status of the acquisition to consider the application. It transpires there was no response.

The note sheet in the concerned file, dated 31.3.2004, contains an approval as regards the proposal that the application filed by Accused no.1 be kept pending till the report of the BDA .

The above noting was in the face of Section 95(5) of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as the 'KLR Act', for brevity), which contemplates a deemed approval of conversion, if the application is not rejected.

The petitioner was posted as the Special Deputy Commissioner, Bangalore Urban District, much after the application would be deemed to have been granted. Hence, as on 7.10.2004, the petitioner had passed a conditional order permitting the use of the land for residential purposes on receipt of conversion fees. The conditions were that the conversion would enure to the benefit of accused no.1, only if the land was de-notified. That the conversion would stand cancelled if the land is required for any public purpose. That the land would be used only for residential purposes.

It is contended that the application for grant of conversion was a statutory duty cast on the Special Deputy Commissioner under Section 95 and 97 of the KLR Act. The filing of the complaint and receipt of the same by the court without prior sanction under Section 19 of the PC Act and Section 197 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the 'Cr PC', for brevity) was without jurisdiction.

It is pointed out that the application for conversion having been rejected by the petitioner's predecessor in office and the petitioner thereafter having unilaterally considered the application and having granted the conversion, is not borne out by any material placed on record. The said assumption is on the basis of incorrect oral statements recorded. The above circumstance alleged, is neither found in the complaint, nor any other document placed on record. On the other hand, the petitioner has produced a note sheet endorsed by the predecessor in office of the petitioner who has approved the proposal by the Superintendent, to the effect that the application seeking conversion of the subject land be kept pending, awaiting a response from the BDA, as regards the status of the land.

The allegation that the land had already been converted from agricultural user to industrial use and was hence not capable of being further converted to residential use, it is contended, is not the correct legal position. It is pointed out that Section 95 read with Section 97 of the KLR Act does permit such conversion and the Deputy Commissioner is competent to grant the same.

6. The learned Senior Advocate Shri C.V.Nagesh, appearing for the counsel for Accused no.6, M/s Prudential Housing and Infrastructure Development Ltd., the petitioner in Criminal Petition 4380/2012, would contend- that the petitioner is a wholly owned subsidiary of M/s Purvankara Projects Private Limited, which is a well known builder with operations in Bangalore and other cities. It is not the allegation against the petitioner that it was involved in conversion of the user of the land or in the process of de-notifying the land. From the material on record, it is evident that Accused no.1 - D.K.Shivakumar has purchased the land in question

under a registered sale deed, dated 18.12.2003, from one B.K.Srinivasan. It is seen that he has thereafter applied for conversion of the land, which appears to have been accorded on 7.10.2004.

Thereafter denotification of the land has been sought, which has been duly recommended by a hierarchy of officials, on the ground that the BDA had not taken possession and has not utilized the same for formation of the layout. The petitioner had entered into a joint development agreement with the said D.K.Shivakumar, later there was a fresh agreement with the parent company, M/s Purvankara Projects Limited dated 29.3.2011. The Bruhat Bangalore Mahanagara Palike (BBMP) had sanctioned plans for the construction of a multi storied complex on the land in question. Accordingly, there is no illegality in the transaction as far as the petitioner is concerned. It is an incorrect assumption that the petitioner had purchased 73% of the land. Pursuant to the initial joint development agreement dated 10.5.2004, there were no transactions in respect of the land. It is only after the process of conversion and de-notification was completed that there was a fresh agreement dated 29.3.2011, as already stated and the project execution had commenced only thereafter. The entitlement to any share in the property is only after the development is completed.

It is pointed out that the court below has suspected the petitioner of being involved in the transaction which is in violation of Section 3 of the KRTL Act. The said provision only prohibits a person from transferring any land that has been notified for compulsory acquisition by the State. This may at best apply to the late B.K.Srinivasan, it is not clear as to how the petitioner is sought to be accused of having committed any offence. In any event, the acquisition of the land was dropped and hence there was no illegality whatsoever.

In so far as the allegations of commission of offences punishable under the provisions of the PC Act are concerned, there is no relevance in so far as the petitioner is concerned. There is no conspiracy that can be discerned as between the petitioner and Accused no.1 - D. K. Shivakumar. The petitioner has entered into a legitimate joint development agreement with him and the same cannot be characterized as being in furtherance of any crime.

It is pointed out from the Order of the court below, by which cognizance was taken of the offences alleged, that the court had taken exception by the alleged statement of a representative of the petitioner company, to the effect that he was not aware of the provisions of the KRTL Act. And this had provoked the learned judge to implicate the petitioner as an accused - and hence was not sustainable.

It is contended that it was also an erroneous presumption that the petitioner had become a beneficiary of the property by purchasing 73% of the land. There was no sale of the property and any benefit would accrue to the petitioner's group only on completion of the project.

7. The learned counsel Shri M.S.Bhagwath, appearing for the petitioner in Criminal Petition 7274/2012, Hameed Ali, who was arrayed as Accused no.4 in the complaint in PCR 11/2012. It is contended that a bare reading of the entire complaint would indicate that there are no allegations of having committed any crime by the petitioner, except that while the petitioner was discharging duties as a Senior Sub-Registrar, Krishnarajapuram, Bangalore, during the year 2003, he had illegally permitted registration of the sale deed executed by B.K.Srinivasan in favour of D.K.Shivakumar, Accused no.1.

In the final report submitted by the Lokayuktha police after completion of the investigation process, the court below had taken cognizance of the offences alleged against other accused, but as against the petitioner and another, the court below had not taken cognizance for want of sanction for prosecution under Section 19 of the PC Act.

It is pointed out that the petitioner has registered the sale deed dated 18.12.2003 in favour of D.K.Shivakumar. He had proceeded to do so on a scrutiny of the relevant documents produced along with the sale deed, such as the Khatha certificate, Conversion of land user certificate, receipt for having paid betterment charges. This was in accordance with Section 35 of the Registration Act,1908 read with Rule 73 of the Karnataka Registration Rules, 1965.

The allegation is that the petitioner had registered the sale deed in violation of the provisions of the KLRT Act. The said allegation, however, would not constitute any offence under the provisions of the PC Act. Even in respect of the violation of the KLRT Act, it is pointed out that Sections 3 and 4 thereof only contemplate that the seller can be punished if the transfer takes place pertaining to land, which is subject matter of compulsory acquisition proceedings.

It is contended that Section 9 of the KLRT Act, provides that a registering officer who is required to register a document under Section 17 of the Registration Act, shall refuse to register a document of transfer as is referred to in Section 4 of the KLRT Act, without written permission of the competent authority. In this regard, it is stated that though the land was notified for acquisition, it is not on record that copies of the notification was sent to the office of the concerned Sub- Registrar.

It is also pointed out that a Division Bench of this court, in the case of Sudha S. Patil v. State of Karnataka, 2009(5) KLJ 266, had issued directions that as soon as a notification is issued for the compulsory acquisition of land, a copy of the notification should be sent to the concerned Sub-Registrar, who should enter the information in a book maintained as per Section 51 of the Registration Act, the said judgment was rendered on 24.4.2009. The petitioner has produced an endorsement issued by the concerned office, dated 1.8.2012, to state that the notification issued in respect of acquisition of the subject land was never sent to the concerned Sub-Registrar.

It is thus asserted that the petitioner cannot be accused of any crime or of being a conspirator or accomplice in having actively supported or assisted in the commission of any crime.

Shri Venkatesh P.Dalwai, the learned counsel appearing for respondent no.1, the Lokayuktha Police, opposing the petitions would contend as follows:

That the acts of the several accused as demonstrated, prima facie, by the material on record completely justifies the impugned order of the court below. Elaborating on the same, it is pointed out that D.K.Shivakumar, Accused no. 1 was the Minister for Urban Development during the period 20.6.2002 to 13.5.2004. The land in question having been notified for acquisition under the provisions of the BDA Act was well with in his knowledge. He had purchased the said land from one

B.K.Srinivas under a sale deed, dated 18.12.2003, for a sum of Rs.1.62 crore. Thereafter, within a span of two days, the Khatha, pahani and mutation were made out in his name. This was accomplished without the prescribed procedure of calling for objections and without waiting for the period of 30 days, as mandated. The investigation by the police had revealed that all revenue records, including the register of encumbrances indicated the name of BDA, in view of the acquisition proceedings that had been initiated as early as 1984.

The said accused having filed an application seeking conversion of the land from industrial user to residential use, the Special Deputy Commissioner had closed the file by an order dated 2.4.2004, with a noting that the further process of the file shall be after receiving an opinion, as to the status of the land from BDA.

The said accused had entered into a joint development agreement with M/s Prudential Housing and Infrastructure Development Limited, under which 73% of the interest in the land was to be conveyed in favour of the said developer, the accused retained 27%.

On 7.10.2014, Ramegowda, the Special Deputy Commissioner, who had succeeded the earlier officer who had kept the application for conversion of land user filed by the accused in abeyance, had taken up the matter suo motu, and in variance with the opinion expressed by his predecessor had proceeded to pass an Order granting conversion of land user, with a condition that it is subject to the land in question being de-notified.

It is also asserted that B.K.Srinivas, the erstwhile owner of the subject land died on 11.7.2004, he had never made an application seeking conversion of land user, during his life time. But the accused had, without revealing that he was the present owner of the land had made a representation to the Government, dated 21.9.2005, seeking denotification of the land in question. No orders were passed. He is said to have repeated a further representation on 11.5.2009, again it was not disclosed that he was the owner. There was no response. On 21.9.2005, the accused no.1 had again made another representation to the Commissioner, BDA, seeking de-notification. It is thereafter that the matter had been considered and an order dropping the land from acquisition had been passed by Accused no.2, the then

Chief Minister, as per Order dated 13.5.2010, in favour of the erstwhile owner B.K.Srinivas, who was dead.

It is therefore sought to be asserted that the above sequence of events would indicate that the said Accused no. 1 had exercised influence on every single authority concerned, to purchase land earmarked for acquisition, got the revenue records transferred in his favour, literally, overnight. Secured an Order of conversion of the land from industrial user to residential use and thereafter in gross suppression of his ownership of the land had made repeated representations as a public figure, to have the land de-notified.

It is contended, that in so far as the role of B.S.Yeddiyurappa, Accused no.2, the former Chief Minister, is concerned, he held the said office from the year 2008 to July 2011. It is seen from the record that even though an Under Secretary to the Government had recommended that the proposal of de-notification be placed before the designated De- notification Committee, the said accused had not done so and had chosen to unilaterally fritter away property acquired for formation of a residential layout, to illegally benefit Accused no.1. And ignoring the fact that even if the BDA had not utilized the land, it could be used for some other public purpose.

In so far as the company, M/s Prudential Housing and Infrastructure Development Limited and its role is concerned, the fact that it had entered into a development agreement in respect of the land at a point of time that it was notified for acquisition and that the land was actually de-notified six years after such de-notification was found to be in active aid of illegal activity.

As regards the role of Hameed Ali, the Senior Sub- Registrar, who had registered the sale deed dated 18.12.2003, in favour of D.K.Shivakumar, he was fully conscious of the fact that as on the date of sale, the mutation entries and the pahani pertaining to the subject land, was acquired and stood in the name of the BDA. However, in order to favour the purchaser and in gross violation of the law and in active connivance with the said accused, had registered the sale deed. It is stated that the offences committed by the said petitioner are punishable under Section 13(1)(d) read with Section 13(2) of the PC Act and Section 120-B and

Section 465 of the IPC. He is not accused of any offence under the KRLT Act, as incorrectly presumed. The petitioner has willfully suppressed the fact that an additional charge sheet dated 30.5.2015 has been filed against him in this regard. The act of registration of the document is in contravention of the law and is an official favour done to benefit Accused no.1 .

It is contended that in so far as Ramegowda is concerned, he was the Special Deputy Commissioner, Bangalore Urban District, as on the date of the complaint. As seen from the record, his predecessor in office had closed the file pertaining to the application of D.K.Shivakumar seeking conversion of land use, temporarily, as the opinion of the BDA as regards the status of the subject land was awaited. However, the said Ramegowda had, without any written request being made for a consideration of the said application, and without any information from the BDA , had unilaterally taken up the file for consideration and had passed an order, dated 7.10.2004, granting conversion as sought. This was in the full knowledge that the land was subject matter of acquisition proceedings, it was hence evident that he was acting in conspiracy with Accused no.1 in passing such an illegal order.

It is contended by the learned counsel Shri Dalwai, that Sections 3 and 4 of the KRTL Act, prohibits all types of transactions from the date of notification of lands for compulsory acquisition, including under the provisions of the BDA Act. In the instant case, the final notification under Section 19 of the BDA Act was published in the year 1986. The KRTL Act came into force in the year 1991. It does not allow any exceptions, such as lapsing of a Scheme formulated by the BDA, or otherwise. There was no declaration by any Court as to the Scheme having lapsed. Nor was there any order by the State, withdrawing from the acquisition. Hence, the offences committed by the several officials involved would have to be viewed as providing official favours to overcome statutory prohibitions and to enable the Accused no.1 to benefit. It is also contended that the scope of these proceedings are limited to addressing the validity or otherwise of the impugned order. In the absence of the competent parties and appropriate pleadings, it would be irregular to pronounce upon the alleged lapsing of the Scheme framed by the BDA with reference to Section 27 of the BDA Act.

The institution of the criminal proceedings for acts which are patently illegal is entirely independent of any claim urging the lapsing of the acquisition proceedings. The criminal law would have to take its course. In any event, the self proclamation of the alleged lapsing of the Scheme is impermissible.

It is contended that from a reading of the impugned order, it is clear that the learned judge of the court below, has applied his mind to the facts of the case and has prima facie, found that there is substance in the allegations having regard to the material gathered after investigation by the Police and after assigning good reasons, has taken cognizance of the offences, as against each of the accused and has independently held that others involved would also have to be named as the accused. It is contended that the proceedings would have to run its course. The accused would have ample opportunity to seek discharge, if at all, at the appropriate stage and hence there was no warrant for consideration of the present petitions. It is a premature stage and the depth of enquiry being wider in scope at the stage of hearing before charge, the petitioners should be left to their remedy before the trial court.

8. The learned counsel Shri Nitin R., appearing for the complainant in PCR 11/2012 would contend , that the existence of criminal conspiracy under Section 120-B of the IPC having been made out, cognizance has been taken of the said offence. It is this offence that links all the accused in the case, even if every single provision may not apply to each of the accused in the same measure and manner. Each one has contributed to the totality of the scheme of conspiracy, with the knowledge of the purpose of the scheme and the end in view.

It is contended that the gravamen of the charges against the accused - public servants involved, is the violation of Section 13(1)(d) of the PC Act, more particularly Section 13(1)(d)(iii) of the said Act, which states that while holding office as a public servant, such persons should not obtain for any person any valuable thing or pecuniary advantage without public interest. The criminal conspiracy to commit other illegal acts ultimately revolve around this particular provision of the PC Act. And it is this which confers jurisdiction on the Special Court to take cognizance.

It is contended that the Scheme drawn by BDA having lapsed and the accused no.1 being enabled to deal with the property - is not tenable. It is asserted that the Scheme is drawn in respect of the entire acquisition and not for individual properties. Hence, the Scheme cannot be said to have lapsed for the accused or his vendor. Further, the lapsing of a Scheme can be construed only if the same had not been substantially implemented. The question whether it has been substantially implemented is a question of fact to be judicially determined and cannot be a presumption of law. And it is also relevant that the Scheme should have failed due to the dereliction of duty or negligence on the part of BDA and not mere delay in execution of the Scheme with justification.

It is pointed out that the justification in the BDA not having taken possession of the land in question was the representation said to have been made by the erstwhile owner of the land, B.K.Srinivasan, who was operating a foundry on the land and as an ancillary industry to the NGEF, a government of Karnataka undertaking. An inspection having been carried out by the concerned officials, a report had been submitted recommending the deletion of the land from acquisition. However, no formal order been made. Therefore, it could not be assumed that the Scheme framed by the BDA had lapsed on account of any negligence on its part.

It is contended that in so far as the violation of the KRLT Act is concerned, Section 19(1) notification under the BDA Act, was in operation in respect of the property is not in dispute. The transfer by Srinivasan was hence a direct violation of Section 4 of the KRLT Act. Similarly, the joint development agreement between Accused no.1 and M/s Prudential Housing etc., is also a direct violation of the said Act.

It is urged that the property in question was converted from agricultural user to industrial use in the year 1962. The land was within the jurisdiction of the BDA. This being so, there was no land for conversion in the said extent, when the Special Deputy Commissioner, Ramegowda, made the Order converting the land from agricultural to residential. This was an illegality in terms of Section 13 of the PC Act that bars public servants from rendering pecuniary advantage to any person through illegal or corrupt means or acting against public interest. It is further pointed out that with the conversion in the first instance from agricultural user to industrial use, the land was within the jurisdiction of the planning authority and no longer remained in the jurisdiction of the Revenue Department. Hence the justification that the Special Deputy Commissioner was acting under Section 97 of the KLR Act, which is again subject to Section 14(2) of the Karnataka Town and Country Planning Act, 1961, (Hereinafter referred to as the 'KTCP Act', for brevity) is irrelevant.

It is asserted that there was a clear violation of the law by Hameed Ali, the Senior Sub-Registrar in having registered the sale deed in respect of the subject property, in the face of Section 8 of the KRTL Act. This was especially so, when all the revenue documents indicated that the BDA had notified the lands for acquisition. This act on the part of the said officer would clearly fall within the mischief of Section 13 of the PC Act.

It is contended that the change of entries from the name of BDA into the name of Accused no.1, directly, even prior to the de-notification, indicates the complicity of the accused from the Revenue Department. The Khatha was transferred within two days, which is in total violation of the Rule, which requires a mandatory thirty days' notice before changing the mutation entries. This act of the concerned is not only in violation of the Rule, but would directly fall within the mischief of Section 13 of the PC Act. Significantly, the entire file pertaining to orders on mutation and the RTC entries is missing, according to the police investigation report, which fortifies the case against the accused of conspiracy.

It is contended that the observations of the trial judge in the course of the order taking cognizance, even if found to be erroneous, would not render the Order liable for quashing as there is no strict expectation from law as to assign elaborate reasons while taking cognizance or issuing summonses. Reliance is place on Bhushan Kumar v. NCT Delhi, (2012) 5 SCC 424.

9. In the light of the above contentions and on a perusal of the record, this court proceeds to consider whether the trial court was justified in taking cognizance of the offences alleged against some of the petitioners and whether a case for prosecution of offences against the other accused has been made out, on a prima facie test.

We may therefore examine the role of each of the petitioners as alleged in the complaints and as disclosed in the final report filed by the Lokayuktha Police, with reference to the material gathered at the investigation.

The trial court has opined that from a perusal of the material on record, it could be said that there was substance to take cognizance of the offences alleged against the prime accused, D. K.Shivakumar.

The first of the illegalities committed by him, according to the trial court, is an illegal purchase of the subject land, which was notified for acquisition under the provisions of the BDA Act. Admittedly, possession of the land had not been taken of the land pursuant to the final notification under Section 19 of the BDA Act. It would follow that the land had not vested in the acquiring authority. The owner of the land would not cease to be the owner. There is no provision of law prohibiting a sale of the land. Any such sale, however, would not affect the acquisition proceedings. The purchaser may not be in a position to set up any right against the acquiring authority on the basis of such sale, except for a claim to compensation. The risk is entirely of the purchaser. There is no illegality on the part of the purchaser. The trial court was hence in error on this primary aspect in proceeding on the basis that the original owner was divested of ownership on issuance of the final notification and hence could not sell the property. A further presumption that it was public property and could not have been purchased by Accused no.1 appears to have prompted the trial court to take a serious view of the transaction.

In so far as the KRTL Act is concerned, Sections 3 and 4 thereof make the transferor of land notified for acquisition punishable. It does not contemplate punishment of a purchaser. The transaction was private in nature and not by virtue of holding the office of a Cabinet Minister or an MLA. It could not be said that the above circumstance would attract the rigour of Section 13(1)(c) or Section 13(1)(d) of the PC Act. D.K.Shivakumar is not seen to have dishonestly or fraudulently misappropriated any property or has converted any property for his own use, any property entrusted to him as a public servant. It cannot also be said to purchase the property by offering legal tender, he had abused his position as a public servant and obtained a pecuniary advantage.

The second illegality which is held against the said accused, D.K.Shivakumar, is that he may have exercised his influence by abusing his position as a Cabinet minister and in conspiracy with revenue officials had got the mutation entries in respect of the land effected in his favour within a period of two days, when the rule prescribes a mandatory waiting period of 30 days. This may at best be characterized as a procedural irregularity, but certainly cannot be construed as an act of criminal conspiracy. This could even be attributed to the revenue officials bending over backwards to please the Minister at the instance of his representatives who may have been instrumental in galvanizing the process, even if the accused did not use any influence.

The fact that the petitioner had entered in to a joint development agreement in respect of the land with a developer, arrayed as accused no.6 and the allegation that it was an illegal transaction - cannot be traced to any provision of law. There was no conveyance of any interest in the land under the said agreement. It was not prohibited in law.

The further allegation against accused no.1 that he had abused his office in obtaining conversion of the land, which had been converted from agricultural user to industrial use, as early as in the year 1962, to residential use, in conspiracy with the Special Deputy Commissioner, Ramegowda, is again on certain presumptions which are not borne out by the record. In that, the presumption was that an application filed by the accused seeking conversion of the user of the land as aforesaid had been rejected by one Krishne Gowda, the predecessor in office of Ramegowda, and hence the said file having been reopened and an order of conversion having been passed, was indicative of an unholy nexus between Accused no. 1 and the said Ramegowda. This is, in fact, incorrect. It is, on the other hand, found that there was a note sheet endorsed by the erstwhile Special Deputy Commissioner, approving the suggestion of a superintendent that the file be kept in abeyance awaiting a status report of the land in question, from the BDA.

The application is said to have been submitted on 17.2.2004 and there was no order of rejection. The law contemplates a deemed conversion, vide Sections 95 and Section 97 of the KLR Act. Therefore, Ramegowda, the Special Deputy Commissioner having passed an order without there being any application or other representation and in the absence of the report which was awaited from the BDA, ought not to be viewed with suspicion as the officer may have routinely disposed of the file pending in his office. It cannot be said that he was acting without jurisdiction nor has committed a criminal act in conspiracy with the accused. There is no material available to lead to such a suspicion.

The further allegation against Accused no.1, of which the court below has taken cognizance, is the circumstance that the then Chief Minister, Yeddiyurappa, had passed an order withdrawing from the acquisition proceedings in so far as the subject land is concerned in undue haste and had not chosen to heed the advice of an Under Secretary to the Government, recommending that the matter be referred to the De-notification Committee, which was the competent body to examine the case, for eventual approval or rejection. It is also highlighted that the Accused no.1 had made three representations in his capacity as a Minister, suppressing the fact that he was indeed the owner of the very land, in respect of which he was making the representations, as if endorsing the genuineness of a claim for such de-notification, made by him - in the name of his deceased vendor, Srinivasan.

Though it is found that the said Accused no.1 has, in fact, suppressed the fact that he had purchased the land in question while making the several representations, pitching for an order by the State withdrawing from the acquisition proceedings, it would only indicate that he did not seek a special favour on the footing that he was the owner of the property, and since on record, the acquisition proceedings would proceed only against the original owner in whose name the land is notified, and since the State was not bound to consider the claim of a purchaser subsequent to the Final Notification, the act of the Accused in making those representations as if he was not the owner is not a criminal act. In any event, it is not evident that it was on the basis of those representations that the Chief Minister had passed the order of de-notification. Those representations were made several years apart and were not made immediately preceding the Order of de-notification. And if the Accused No.1 had suppressed the fact that the he was the that a theory of criminal conspiracy between the Accused no.1 and Accused no.2, the former Chief Minister.

Hence, it cannot be said that the court below was justified in taking cognizance of any offence committed by the said Accused no. 1, D. K.Shivakumar.

In so far as the allegations against B.S.Yeddiyurappa, the former Chief Minister of having acted in conspiracy with Accused no.1, in passing an order on behalf of the Government, withdrawing from acquisition in so far as the land in question is concerned, is seen to be in the following background. After the Final notification dated 23.10.1986, it is seen from the record, that a joint inspection conducted by the Special Land Acquisition Officer and the Engineering member, BDA, as on 8.4.1988, it is opined that out of 5.11 acres of the subject land, 25 guntas would have to be utilized for formation of road. And as the other portion of the land was found to consist of a foundry, which was an ancillary industry for NGEF, a government of Karnataka undertaking, the remaining extent was recommended for being dropped from the acquisition. Accordingly, 25 guntas of land was the subject matter of an award dated 27.2.1990, and the said extent had been taken possession of by the Engineering department of the BDA. The remaining extent of 4.20 acres was left untouched with no further progress in the acquisition proceedings, as far as the said land was concerned. As five years had elapsed from the date of final notification without any steps being taken in respect of the land. It is thereafter on the file having been processed as regards the status of the land by the officials of the BDA and the Urban Development Department, that the same had been placed before the then Chief Minister for his decision and accordingly, an Order had been passed, which was duly published in the Karnataka Gazette as on 13.5.2010. It would appear that the said Accused - B.S. Yeddiyurappa, has acted in his official capacity and on the advice of competent officials having due regard to the legal position in so far as the land in question was concerned. And apparently without a clue that the land had been purchased by Accused no.1.

The allegation that there was a suggestion by an Under Secretary to the Government, where in the course of processing the file, to place the file before the

Denotification Committee, which measure was by-passed by the then Chief Minister, thereby indicating a mala fide intention etc., may not be characterized as a lapse indicating an intention to have acted in criminal conspiracy with Accused no.1, who in fact, belonged to an opposition party, and there was no apparent affinity between the two. The formation of a De-notification Committee, was not by any legal compulsion but was only to aid the government in forming opinions from time to time as regards lands which could be earmarked for being dropped from acquisition proceedings. The Chief Minister was not precluded from exercising his discretion, in choosing not to seek the assistance of the said Committee. This need not have created any suspicion.

Further, it is significant that the theory of the said accused having received illegal gratification by an involved transaction, whereby the father of D.K.Shivakumar having sold certain valuable property at a throw away price to a father - son duo, Lehar Singh and his son, who in turn, were said to be a close confidantes of the then Chief Minister, has been disbelieved by the trial court itself, in the absence of any material to support the allegation. Therefore, the very basis for the said accused to have shown any official favour to D.K.Shivakumar is absent. Hence, it cannot be said that cognizance could have been taken on the basis of the allegations and the material available as against B.S.Yeddiyurappa.

Though the Police, in their final report, had not found any illegality in the joint development agreement entered into with the company M/s Prudential Housing and Infrastructure Development Ltd, the trial court has taken exception, against the said agreement - again on the premise, as the purchase of the land in the first place was illegal, any subsequent transaction was also tainted and hence the company has been named as an accused. This is not tenable. There was no apparent illegality involved. There was not even any transfer of interest in the land involved at that point of time. The trial could not have taken cognizance of any offence against the said company or its officers.

In so far as the accusations against Ramegowda, when he was holding the office of Special Deputy Commissioner, Bangalore Urban District, of having acted in conspiracy with D.K.Shivakumar and having proceeded to reopen a file that had been closed and that he had granted conversion of land user from industrial user to residential use, of the subject land- at the instance of the said accused and this was in the face of an order already made by his predecessor in office etc., are not wholly accurate. The deduction that there was already an order rejecting the request for conversion on the basis that the land was earmarked for acquisition by the BDA, is not borne out by the record. What is evident is that Krishne Gowda, the predecessor in office of the said accused had endorsed an opinion of an office superintendent that the opinion of the BDA as to the status of the land be awaited before further processing of the file. As the request was not rejected, the law contemplates a deemed conversion on expiry of the prescribed period before which there should have been a rejection. Be that as it may, Ramegowda having routinely passed a conditional order of conversion, subject to the land being de-notified from the acquisition proceedings, was a reality even without any such formal order of conversion. The order has not armed the accused no.1 with any great advantage, which had already accrued to him. More importantly, there is no material available to indicate that Ramegowda and D.K.Shivakumar had conspired to bring about any state of affairs. It is a theory propounded. In any event, the court had not taken cognizance against the said accused, Ramegowda for want of sanction. However, the very initiation of proceedings against him is baseless and cannot be sustained.

In so far as the accusations against Hamed Ali, that while working as the Senior Sub-Registrar, Bangalore South Taluk, had illegally registered the sale deed in respect of the subject land in favour of D.K.Shivakumar and thereby was guilty of having committed the alleged offences etc., is concerned, the indiscretion on his part in having registered a sale deed in respect of land that was subject matter of acquisition proceedings may bring his act within the mischief of Section 8 of the KRTL Act, which places an embargo on a registering officer from registering any land that is subject matter of acquisition proceedings. However, there is no punishment prescribed for a violation thereof. In the absence of any material to indicate that there was a nexus between this accused and D.K.Shivakumar, it is difficult to pin the said Hamed Ali to have committed any offence in criminal conspiracy with the said D. K.Shivakumar.

The very basis of the case being ill founded the proceedings initiated against other accused persons, who are not before this court, but who are accused of a minor role in having allegedly facilitated D.K. Shivakumar to have achieved certain alleged illegal ends, cannot also be sustained.

Hence, in the opinion of this court, the trial court was not justified in taking cognizance of the offences alleged against the accused or in having sustained the proceedings against the other accused, in respect of whom sanction was awaited.

The petitions are allowed and the proceedings in the case in Spl.CC no.137/2012 pending on the file of the XXIII Additional City Civil and Sessions Judge and Designated Special Judge, under the Prevention of Corruption Act, 1988, are hereby quashed.