



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.179 OF 2013

1) Mr. Kiran Anandrao Pawar,
Age: 37, Occ : Business,
B Ward, Mirajkar Tikti,
Mangalwar Peth, Kolhapur-416012.

2) Mr. Chandramohan Gangaram Patil,
Age:56, Occ:Retired,
R/o 1470 B Ward, Sangar Gali,
Mangalwar Peth, Kolhapur-416012.

..Petitioners

-Versus-

1) Chief General Manager,
M/s. IRB Kolhapur Integrated Road
Development Company Pvt.Ltd.,
a company incorporated under the
Provisions of the Companies Act, 1956,
having its registered office at
IRB Complex, Chandivli Farm,
Chandivli Village, Andheri(E),
Mumbai-400 072.

2) Virendra Mhaiskar,
Director of M/s. IRB Kolhapur
Integrated Road Development Company Pvt.Ltd.,
having office at IRB Complex, Chandivli Farm,
Chandivli Village, Andheri(E),
Mumbai-400 072.

3) Maharashtra State Road Development
Corporation Ltd. (MSRDC)
through its Vice Chairman &
Managing Director, having its
office at Nepean Sea Road,
Pridyarthani Park, Mumbai-400 006.

4) Kolhapur Municipal Corporation
Through its Commissioner,
having its officer at
Main Building, Shivaji Chowk,
C-Ward, Kolhapur-416002.

5) The Collector of Kolhapur,
Collector Office Kolhapur,
Swarajya Bhavan, Nagala Park,
Kolhapur-416003.

6) State of Maharashtra,
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-400 032.

7) SOWIL Pvt. Ltd.,
Having its office at 689/E Ward,
AK Complex, 1st Floor, Opp.Kudalkar
Hospital, Shahupuri, 2nd Lane,
Kolhapur-416001.

..Respondents

**WITH
PUBLIC INTEREST LITIGATION NO.216 OF 2013**

1) Subhash Popatrao Wani
Occupation: Retired employee,
residing at 'E' Ward, Plot No.27, D.R.
Bhosalenagar, Rajendra Nagar Road,
Kolhapur-416004.

2) Amar alias Jaisingh Pandurang Naik,
age: 48, Occ: Advocate,
residing at 857/2, Randive Colony,
Kadamwadi Road, Kasba Bawda,
Kolhapur-416006.

3) Shivajirao Prabhakar Parulekar,
age:58, Occ: retired teacher,

residing at A-1, Chavan Colony,
House No.857/1/1 Salokhe Nagar,
Kalamba Road, Kolhapur-416007.

..Petitioners

-Versus-

- 1) State of Maharashtra, through the
Government Pleader, High Court of
Bombay.
- 2) Maharashtra State Road Development
Corporation (a Government of Maharashtra
Undertaking), Priyadarshni Park,
Nepean Sea Road, Mumbai.
- 3) Municipal Commissioner,
Kolhapur Municipal Corporation,
Bhausingji Road, Kolhapur.
- 4) M/s. IRB Kolhapur Integrated Road
Development Company Pvt.Ltd.,
a company incorporated under the
Provisions of the Companies Act, 1956,
having its registered office at
IRB Complex, Chandivli Farm,
Chandivli Village, Andheri(E),
Mumbai-400 072.
- 5) SOWIL Pvt. Ltd.,
Having its office at 689/E Ward,
AK Complex, 1st Floor, Opp.Kudalkar
Hospital, Shahupuri, 2nd Lane,
Kolhapur-416 001.

..Respondents

**WITH
WRIT PETITION NO.6646 OF 2013**

- 1) M/s. IRB Kolhapur Integrated Road
Development Company Pvt.Ltd.,
a company incorporated under the
Provisions of the Companies Act, 1956,

having its registered office at
IRB Complex, Chandivli Farm,
Chandivli Village, Andheri(E),
Mumbai-400 072.

- 2) Virendra Mhaiskar,
Director of M/s. IRB Kolhapur
Integrated Road Development Company Pvt.Ltd.,
having office at IRB Complex, Chandivli Farm,
Chandivli Village, Andheri(E),
Mumbai-400 072. ..Petitioners

Versus

- 1) State of Maharashtra through the
Principal Secretary, UD-II,
Urban Development, Chief Secretary
and the Secretary, Home Ministry,
Government of Maharashtra
all having their office at Mantralaya,
Mumbai-400 032.
- 2) Maharashtra State Road Development
Corporation Ltd. (MSRDC) through its
Vice Chairman & Managing Director,
having its office at Nepean Sea Road,
Priyadarshani Park, Mumbai-400 006.
- 3) Kolhapur Municipal Corporation
Through its Commissioner,
having its officer at
Main Building, Shivaji Chowk,
C-Ward, Kolhapur-416002.
- 4) The Collector of Kolhapur,
Collector Office Kolhapur,
Swarajya Bhavan, Nagala Park,
Kolhapur-416003.
- 5) The Superintendent of Police,
Office of the Superintendent of Police,

Bhausinghji Road, Laxmi Pari,
Kolhapur-416 002.

6) The Director General of Police
Maharashtra, Maharashtra Police
Headquarters, S. B. Singh Road,
Opp. Regal Cinema, Colaba,
Mumbai-400039.

7) Special Inspector General of Police
Range (Law & Order), Kolhapur,
Kolhapur Parikshaktra, Kasba-
Bhawda, Maharashtra-416008.

8) Maharashtra State Security Corporation,
30/B, World Trade Centre, Ground Floor,
Prakash Pethe Marg, Cuffe Parade,
Mumbai-400005.

..Respondents

**WITH
WRIT PETITION NO.10407 OF 2013**

1) Shri Shahaji Hindurao Patil,
Age: Adult, Occ: Agriculturist,
Residing at : Aarle, Taluka: Karvir,
District-Kolhapur.

2) Shri Padmakar Dattatrya Patil,
Age: Adult, Occ: Agriculturist,
Residing at 2942-C, Shaniwar Peth,
Kolhapur.

..Petitioners

Versus

1) The State of Maharashtra,
[Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order
XXVII, Rule 4, of the Code of Civil
Procedure, 1908].

- 2) The Secretary Urban Development,
Department Government of
Maharashtra, Mantralaya,
Mumbai-400 032.
- 3) Maharashtra State Road Development
Corporation Ltd. (MSRDC)
through its Vice Chairman &
Managing Director, having its
office at Nepean Sea Road,
Pridyarthani Park, Mumbai-400 006.
- 4) Kolhapur Municipal Corporation,
[Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order
XXVII, Rule 4, of the Code of Civil
Procedure, 1908].
- 5) Kolhapur Integrated Road Development
Company Pvt. Ltd.,
Having its office at : IRB Complex,
Chandiwali Farm, Chandiwali Village,
Andheri-(East), Mumbai-400 072. ..Respondents

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Mr. Yuvraj P. Narvankar for the Petitioner in PIL No. 179/2013.
Mr. Abhay Nevagi with Sandesh R. Shukla and Mr. Omkar Nevagi i/b.
Abhay Nevagi & Asso. For the Petitioner in PIL No.216/2013.
Mr. A. B. Vagyan, Govt. Pleader with Mr. P. G. Savant, AGP for the
Respondent-State.
Mr. J.P. Cama, Senior Counsel, with Mr. Abhijit Adagule for the
Respondent-Kolhapur Municipal Corporation.
Mr. Janak Dwarkadas, Senior Counsel with Mr. Sharan Jagtiani & Mr.
Virendra Pereira & Ms.Teresa i/b. Divya Shah & Asso. For the Respondent-
IRB Kolhapur Integrated Development Co. P. Ltd. and for Petitioner in
WPN0.6646/2013.
Mr. P.P. Chavan, Ms. R. J. Nathani with Mr.Arun Sivach, Mr. Vikas Kumar
Jha i/b. Amarchand & Mangaldas & S.A. Shroff & Co. for the Respondent-
MSRDC.

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**CORAM: S.C. DHARMADHIKARI
AND
A. K. MENON, JJ.
RESERVED ON : 30th SEPTERMBER, 2014
PRONOUNCED ON : 14th OCTOBER,2014**

J U D G M E N T (PER S. C. DHARMADHIKARI, J.)

1] At the outset we feel compelled to make certain observations not only in relation to these two P.I.'s but in general about such litigation. We have been observing and noting that citizens claiming to be public spirited and concerned with social, environmental, administrative and planning issues approach this Court complaining about either inaction or deliberate act of omission and commission on the part of the executive. The Hon'ble Supreme Court in the case of *Ayaaubkhan Noorkhan Pathan V/s. State of Maharashtra and Ors. reported in AIR 2013 Supreme Court 58* held as under:-

“7. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceedings, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons.

Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body,

using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: *State of Orissa v. Madan Gopal Rungta*, AIR 1952 SC 12; *Saghir Ahmad & Anr. v. State of U. P.*, AIR 1954 SC 728; *Calcutta Gas Company (proprietary) Ltd. v. State of West Bengal & Ors.*, AIR 1962 SC 1044; *Rajendra Singh v. State of Madhya Pradesh*, AIR 1996 SC 2736: (1996) AIR SCW 3424); and *Tamil Nadu Mercantile Bank Shareholders Welfare Association (2) v. S. C. Sekar & Ors.*, (2009) 2 SCC 784).

8. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: *Shanti Kumar R. Chanji v. Home Insurance Co. of New York*, AIR 1974 SC 1719; and *State of Rajasthan & Ors. v. Union of India & Ors.*, AIR 1977 SC 1361).

12. This court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, “ordinarily meddlesome bystanders are not granted a Visa”. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: *P. S. R. Sadhanantham v. Arunachalam & Anr.*, AIR 1980 SC 856; *Dalip*

Singh v. State of U. P. & Ors. (2010) 2 SCC 114: (AIR 2010 SC (Supp) 116 : 2010 AIR SCW 50); State of Uttaranchal v. Balwant Singh Chauhal & Ors., (2010) 3 SCC 402 : (AIR 2010 SC 2550 : 2010 AIR SCW 1029) and Amar Singh v. Union of India & Ors., (2010) 7 SCC 69 : (2011 AIR SCW 3297).

15. *In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.*

21. *In Vinoy Kumar v. State of U. P., AIR 2001 SC 1739 : (2001 AIR SCW 1641), this Court held:*

“Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief.”

22. *Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus-standi to raise any grievance whatsoever. However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the Court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the Court, then the Court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, but the issue raised by him, in the opinion of the Court, requires consideration, the Court may proceed suo motu, in such respect.”*

2] When litigants file such applications and claim that they are public interest litigations they ought to realize that as alert and vigilant citizens they are expected also to be very reasonable and responsible. It is clear that the legal system has to operate with a view to promote justice and on

the basis of equal opportunity. It is further apparent that the guarantee is of justice to all and that is enshrined in Article 21 and 39A of the Constitution of India and for that purpose there is a mechanism and system in place. Those approaching the Courts of law ought to be aware and must note that they have approached it because they have faith in and respect for it. They know the worth of its independence and impartiality. The fact that they approach the highest court in the State complaining about the illegal acts, misdeeds and mal-administration or inaction of the executive demonstrates that they repose trust and confidence in a Court of law. They repose such trust and faith because they are of the view that an impartial and independent adjudicator will take note of their grievances and complaints and try to redress them within the frame work of law. Thus, immense hope and trust in the legal system and the courts enables them to approach the same.

3] If this is how they have understood the guarantee of impartial and independent justice and forming part of the basic structure of the constitution, then, they ought not overlook that the preamble to the constitution of India, the constitutional articles and provisions referred above, have to be read and construed together with their fundamental duties as citizens of India and set out in Article 51A. Article 51A (a) states

that it shall be the duty of every citizen of India to abide by the constitution and respect its ideals and institutions, the national flag and the national anthem. It is also the duty of every citizen of India to safeguard public property and to abjure violence. (See Article 51A(i)). Further the citizen of India is duty bound to strive towards excellence in all spheres of individual and collective activity so that nation consistently rises to higher levels of endeavour or achievement. (See Article 51A(j)). If the institutions created and established under the constitution of India include the judiciary, then, respect and regard for the judicial system is expected from citizens and when they claim to be public spirited.

4] In these two Petitions, and which claim to espouse the grievance and complaint of residents of Kolhapur, we have noticed that the residents of Kolhapur having approached this Court failed to abide by its highest traditions, practices and by their conduct demonstrated and proved that they are not worthy of the corresponding trust that the Judges of this Court repose in them. Unfortunately, when matters are to be brought before this Court and in relation to legality and validity of levy, recovery and collection of toll, then, when they are brought and thereafter the residents ought not to have taken law in their hands. There is a constitutional duty to abjure violence. The word “abjure” means

renounce. The word renounce means to abandon. It appears that the Petitioners have completely lost sight of this legal and constitutional duty. Rather they have acted contrary to it. There is extensive reference to the conduct of the residents of Kolhapur and those residing in the vicinity of that city and which reflects their irresponsible and violent behaviour. It is not only the complaint of the contractor/entrepreneur, but of a public body like Maharashtra State Road Development Corporation as well that residents of the city attacked toll booths and destroyed them as also caused injuries to those manning them. If matters are pending before this Court and it is seized of it, then, residents should have not indulged in such acts. They have caused destruction of property. They have created a situation where their fellow citizens do not feel safe and secure. A human being does not attack a fellow human being merely because he does not agree with his views or opinions. Just as residents are human beings, officials and employees of public bodies, statutory corporations, Police Officers and private entities are equally human beings. There is no reason, therefore, to threaten, challenge or attack them. If one human being threatens another with dire consequences, then, it results in breach of peace. There is, then, no harmony and brotherhood. We must learn to accept and respect differing or dissenting opinions and views. All men and women do not think alike. They have freedom to express themselves

differently. If the foundation of a democratic system of governance is peaceful and non-violent protest and difference of opinion, freedom of debate, discussion and exchange of ideas and suggestions, then, such conduct cannot but be deprecated. We would have been justified in throwing out these petitions without any adjudication because such acts of people, citizens and residents reflect that they have no faith and trust in anybody be it executive or the judiciary. We would have been further justified in not only throwing out these petitions without adjudication but penalizing the Petitioners with heavy costs. We have been experiencing that now-a-days, the executive decisions and powers are challenged by more than one means. While, protests, demonstrations, morchas, dharnas, meetings on issues which are subjudice, in a given case could have been ignored by us but that does not mean that we permit or allow such a course.

5] No parallel adjudication of legal disputes can be permitted much less on streets. A mob, unruly and indisciplined, cannot be allowed to assume control or take charge of legal proceedings. Any such attempt besides interfering with the administration of Justice and with Court proceedings and, therefore, contemptuous also defaces and defiles, defames a Court of law. It is subversive to the maintenance of a just and

orderly society. We would expect the citizens and residents to show restraint and wait for the outcome of legal proceedings. There may be delay in delivering the final verdicts therein. That may at times cause frustration but people of India and particularly those residing in a progressive and peace loving area like the State of Maharashtra have over a passage of time developed a temper and habit of tolerance and patience. Ordinarily, they do not react hastily and irresponsibly. If educated people react and respond violently, then, less said the better about others. If education, social and family values have taught people the virtues noted above, then, they must be reflected in their conduct and behaviour. They should realize that when they approach a court of law and that court of law is bound to hear arguments and submissions of both sides, consider the entire documentary and other material placed by both sides after which alone it can render a definitive judgment, then, this process may be time consuming but it is the only one which ensures accountability and answerability of every other organ of the State which is a litigant before the Court and through it to the entire public. The foundation of a sovereign, socialist, democratic republic is laid after tremendous sacrifices and only on attaining Independence and freedom from foreign Rule. We cannot give up all this just because a few amongst us are impatient, intolerant, insensitive. They should not instigate others and in furtherance

of their ulterior motive of causing disturbance and disorder in the society. By the acts that few residents of the city of Kolhapur have indulged in, they have only assisted and helped such elements and tarnished not only their image but of the entire city. That city which has a great historical and cultural heritage, which is known for great social reformers and reformist movements has also few residents who are bent on destroying its homogeneous and all pervasive culture. If this is emulated by other residents of the State, we will be leading towards anarchy. We cannot at any cost allow our rich social, cultural and democratic heritage to be destroyed just because some few are bent on doing so. We expect a better and disciplined response not only from the residents of the city of Kolhapur but others in the State. While we warn all litigants that if there are such acts of taking law in their hands and brought to our notice and even in pending cases, they would be viewed strictly and would result in non-suiting them, we do not adopt that course in this case in the fond hope that these remarks and observations will bring a positive change in the attitude. It is our pain and anguish which makes us record these observations.

6] We have referred to extensively the conduct of the residents of the City particularly because they should have been aware of the fact that at

their request, the Chief Secretary of the State intervened and stopped the recovery of toll temporarily. The stay to such recovery was raised after a meeting of all experts and representatives was convened by the Chief Secretary at which there were detailed discussions and deliberations on the progress reports submitted by the independent experts. Being satisfied with the progress and quality of the work and by imposing additional condition of furnishing a bank guarantee of Rs.25 crores by the contractor that the stay order was vacated. Thereafter there were violent attacks and recovery of toll was disrupted by the residents. They caused obstruction in peaceful and legal recovery of toll by the contractor and because of their disruptive and illegal activities, the contractor sought police protection for which he filed a Writ Petition being Writ Petition No.6646 of 2013. An order was passed therein on 28th August, 2013 by this Court. That Writ Petition is pending. In the two P.I.L's initially an order was passed by this Court granting interim stay of recovery of toll. That order dated 27th February, 2014 was challenged in the Hon'ble Supreme Court of India. By the order dated 5th May, 2014 passed by the Hon'ble Supreme Court of India, this interim order of the High Court was set aside and IRB was permitted to resume toll collection. It is in these circumstances and when noticing that even thereafter the obstruction and disruption by violent means continued which has compelled us to make above observations.

7] We have further found that repeated petitions and styled as Public Interest Litigations are causing more harm than serving the purpose. A P.I.L as the Hon'ble Supreme Court holds is not a usual litigation. It ought to be exceptional. If one P.I.L is pending we see no reason or justification for a second P.I.L and from the same place and espousing the same cause and of same residents or citizens. In this case, this is a second round, rather a third round. Two P.I.L Nos.68 and 82 of 2011 were filed on the same subject. While disposing them off, this Court granted limited liberty. Yet, in this round, same points and grounds and more or less covered by earlier orders of this Court are raised and argued. It was strictly not open to raise them once they are have been given up or argued and considered in the earlier P.I.L's. The principles of resjudicata and constructive resjudicata ought to have been present to the Petitioners and if not to them, their counsel or Advocates. A counsel's duty to Court is put on the highest pedestal. They ought to be aware of the legal consequences of the earlier orders. However, we were surprised that unmindful of the earlier P.I.L's disposal on merits, these matters were argued on same points. In this regard, the observations of the Hon'ble Supreme Court in the case of *State of Rajasthan V/s. Surendra Mohnot reported in AIR 2014 SC 2925* are eloquent enough (see para 29 and 30 at page 2935). Earlier in the case of *Smt. Poonam V/s. Sumit Tanwar reported in AIR 2010*

Supreme Court 1384, the Role of Advocates, their duty and their conduct is underlined in the following words:-

“In Thakur Sukhpal Singh V/s. Thakur Kalyan Singh & Anr., AIR 1963 SC 146, this Court has held that in absence of proper assistance to the Court by the lawyer, there is no obligation on the part of the Court to decide the case, for the simple reason that unless the lawyer renders the proper assistance to the Court, the Court is not able to decide the case. It is not for the Court itself to decide the controversy. The counsel cannot just raise the issues in his petition and leave it to the Court to give its decision on those points after going through the record and determining the correctness thereof. It is not for the Court itself to find out what the points for determination can be and then proceed to give a decision on those points.

In T.C. Mathai & Anr. V/s. District & Sessions Judge, Thiruvananthapuram AIR 1999 SC 1385 : (1999 AIR SCW 1062), this Court observed:

“The work in a Court of law is a serious and responsible function. The primary duty of a..... Court is to administer..... justice. Any lax or wayward approach, if adopted; towards the issues involved in the case, can cause serious consequences for the parties concerned.... In the adversary system which is now being following in India, both in civil and criminal litigation, it is very necessary that the Court gets proper assistance from both sides..... Efficacies discharge of judicial process very often depends upon the valuable services rendered by the legal profession.”

In D. P. Chadha V/s. Triyugi Narain Mishra & Ors., AIR 2001 SC 457, this Court has observed as under:-

“.....Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the Court, as they are called — and rightly, the counsel have an overall obligation of assisting the Courts in a just and proper manner in the just and proper administration of justice.”

Thus, in view of the above, law can be summarised to

the effect that, in case, the counsel for the party is not able to render any assistance, the Court may decline to entertain the petition.

There is another aspect of the matter. In case, Petitioner's counsel is not able to raise a factual or legal issue, though such a point may have a good merit, the Court should not decide the same as the opposite counsel does not "have a fair opportunity to answer the line of reasoning adopted" in this behalf. Such a judgment may be violative of principles of natural justice. (vide New Delhi Municipal Committee V/s. State of Punjab AIR 1997 SC 2847) : (1997 AIR SCW 2851).

While dealing with a similar issue, this Court in Re: Sanjiv Datta (1995) 3 SCC 619 : (1995 AIR SCW 2203) observed as under:-

"Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service they render both to the litigant-public and to the Courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings – many times even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system..... The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society."

(Emphasis added)

8] As if one is not enough, other one is brought and that is only to seek publicity for persons and parties to the cause. More the merrier cannot be the rule that can be applied to such issues and matters. Public causes and which are to be brought forward and presented in a serious manner by a studied and organized approach will alone serve the purpose of PIL. If it is a private interest or a publicity interest litigation then it is not PIL. We have also noticed that the two Petitions are styled as PIL have been argued with contradictory stands. We will refer to them but this itself raises doubts about the genuine nature of the cause. They have been filed only after the unlawful acts in the city were highlighted in Writ Petition No.6646 of 2013 and a judicial order was passed therein on 26th August, 2013. Thus, the timing of institution is important. If the intent is to knock out money, to exploit or blackmail, to harass, to threaten, to malign someone merely because he is performing a public duty and holds a public office, then, it is not PIL but something else. Now a days, statements like “I will drag you to Court” “I will see you in court” reflect the true intent and purpose of approaching a court of law. A court of law is not meant to settle private scores or teach a lesson to anybody. It is not an arena or place for power politics or to show one's might or money power. Equally a court of law is not a place to gain publicity and that too cheaply. It is not a column or a page in the newspaper nor is it a television show or serial.

It is a very solemn proceeding or matter and one has to substantiate and to prove every allegation and statement which is made on oath. Every citizen of this country has taken a oath to uphold and maintain the rule of law. He cannot, therefore, use and utilize the legal platform or a court proceeding to achieve anything of the nature stated above. There should be a change not only in the language of litigants but their approach and mindset. All the more, if they claim to be well informed and well educated, it is time we ring this warning bell or else the edifice of a strong and independent judiciary built on the sacrifice of our freedom fighters and constitution makers will collapse. If it collapses then none will come forward to save and protect us and our lives and property. We are not obliged or duty bound to hear the cases and matters of the citizens and people whose conduct is bereft of decency, decorum and dignity. They should remember that they cannot indulge in hooliganism, acts of nuisance and mischief and then expect mercy and sympathy from Court, which is termed as Temple of justice.

9] These two Public Interest Litigations have been filed by the Petitioners claiming to be residents of city of Kolhapur and they are seeking the following reliefs:-

Prayers and averments in PIL No. 216 of 2013:

“(a) The Court be pleased to issue writ of mandamus or any other appropriate writ as deem fit, declaring that Notification No.KMC/1707/303/CR-209/07/UD-25 dated 24/01/2008 is ultra vires and void.

(b) The Court be pleased to issue any other appropriate writ, order or direction under Article 226 directing that State and Respondent No.3 has no power to impose toll on municipal roads.

(c) The Court be pleased to issue writ, order declaring that section 20(1A) of Bombay Motor Vehicles Tax Act is ultra vires of constitution as State cannot collect toll under the act brought into effect basically to consolidate and amend law relating to taxation of motor vehicles.

(d) The Court be pleased to issue appropriate writ, order declaring that Concession Agreement dated 10th July, 2008 is ultra vires of constitution, non-est and is violative of fundamental right of citizens of Kolhapur.

(e) The Court be pleased to issue appropriate writ or directions declaring that act of Respondent No.1, 2 and 3 in giving land reserved for sports complex as a part of funding of project without transparency and ascertaining real value is arbitrary and therefore, illegal.

(f) The Court may be pleased to issue directions for State as well as all the local authorities not to give any land of the Corporation without ascertaining valuation and calling for bids. The Court may further issue directions that no land

owned by Corporation should be given in violation Maharashtra Municipal Corporation Act.”

10] These reliefs are sought in the following factual background:-

The Petitioners are residing at Kolhapur and have their place of business and residence in the City of Kolhapur. The Petitioners are paying the Corporation every year Road Tax along with Municipal Tax. All household and commercial properties are required to pay Road Tax to the Municipal Corporation. Government of Maharashtra issued a Notification on 26th August, 2003 under the Integrated Road Development Project (IRDP) Kolhapur Scheme. The Government of Maharashtra decided to develop roads in the city under the said Scheme. The Government also proposed collection of toll under section 20 of the Bombay Motor Vehicles Tax Act, 1958. The Government gave power to the Respondent No.2 to collect the toll.

11] The Petitioners state that thereafter, the Respondent No.3 passed Resolution No.180 dated 31st March, 2006 and process for development of internal roads in the city was started. The Government of Maharashtra proposed to create 9 toll booths at various locations. The Government also decided to impose toll while entering into municipal limits and while

going out of municipal limits. The residents of Kolhapur, right from the beginning, started opposing toll. The Petitioners state that no objections were called from the public at any point of time.

12] The Petitioners state that the Government of Maharashtra issued a revised GR for development of roads on 31st March, 2006 on Build Operate Transfer (BOT) basis. The first tender was published on 12th May, 2007. The bids and tenders were invited again on 29th October, 2007. Thereafter, M/s. IRB Infrastructure Developers Ltd. along with Modern Road Makers Pvt. Ltd. and ATR Infrastructure Pvt. Ltd. submitted their bid in consortium. The bid of the consortium was accepted on 27th March, 2008 with a condition that Concession Agreement should be executed within 30 days.

13] The Petitioners further state that pursuant to the sanction of their bid, a Concession Agreement was executed on 10th July, 2008 amongst the Respondent Nos.2, 3 and 4. Though the Concession Agreement was signed, there were differences of opinion between the Respondent Nos.2 and 3. Therefore, the Agreement dated 10th July, 2008 was never acted upon. Thereafter, work order was issued on 9th January, 2009. The Respondent No.2 approached the Respondent No.3 and informed the

latter that in order to breach the viability gap, the developer should be provided 30,000 sq. mt. land on a nominal rent of Re.1 per sq. mt. per year. The Respondent No.3 passed a Resolution and decided to hand over a piece of land, initially acquired for timber market and subsequently reserved for playground, to the Respondent No.2. The said Resolution was passed on 20th April, 2007. The Respondent No.3 decided to give land on the conditions but which are contrary to the decision of Respondent No.1 of development of roads on BOT basis. They were against the interests of Respondent No.3.

14] The Petitioners further state that the Respondent No. 3 decided to handover the land acquired for timber market to the Respondent No. 2. The land was originally acquired for a timber market. However, the said reservation was changed to 'sports ground'. The said reservation was changed to commercial with an intention to give the land to the Respondent No. 4. While passing the resolution on 20th April, 2007, financial implications of the IRDP project were considered by Respondent No. 3.

15] The Petitioners further submit that pursuant to the Resolution dated 20th April, 2007, an agreement was executed between Respondent No. 2

and 3 on 10th July, 2008. The said agreement inter alia provides for execution of the IRDP Kolhapur through private sector entrepreneur on BOT basis with financing by such an entrepreneur and with viability gap funding by the Respondent No. 3, if any so required. The said agreement also provided for funding arrangement of the project. The parties also agreed for constitution of steering committee under the chairmanship of the Vice-Chairman and Managing Director of the Respondent No. 2 and Commissioner and City Engineer of the Respondent No. 3.

16] The Petitioners further submit that the Maharashtra State Road Development Corporation (for short the MSRDC), accepted the bid of the consortium comprising of IRB Infrastructure Developers Ltd., Modern Road Private Limited and ATR Infrastructure Private Limited and issued letter of acceptance dated 27th March, 2008 to the said consortium requiring execution of the consortium agreement within 30 days of issue. The eligibility criteria for the bidders and particularly financial criteria as per tender document was as under:

I. Eligibility Criteria

Sr. No.	Criteria	Individual Company	Consortium
1	Minimum equity stake	51%	26% for the Lead Member

2	Net worth as per the latest audited balance sheet for the period ending not earlier than 31 st March, 2006	Rs.72 crores	Rs.72 crores for all Consortium Member taken together. Additionally, minimum Net Worth of each Consortium Member shall be proposed equity holding (%) of the Consortium Member (as provided in MOU) X Rs.72 crores.
3	Net Profit After Tax (average of last three years as per audited balance sheet not earlier than 31 st March, 2006	Rs.11 crores	Rs.11 crores for all Consortium Member taken together. Additionally, minimum Net Profit After Tax of each Consortium Member shall be proposed equity holding (%) of the Consortium Member (as provided in MOU) X Rs.11 crores.

II. Technical Criteria:

(i) Individual Company Consortium should have constructed one ROB/Flyover/Bridge costing Rs.7 crores(minimum). such a bridge should have been commissioned after 31st March, 2001.

(ii) Individual Company or Consortium Member should have constructed after 31st March, 2001 a 4-lane road minimum 15 k.m. or 2-lane road of minimum 25 k.m. length.

In the above cases, individual Company or Consortium should have built a minimum of 5 k.m. road in Municipal areas.

Individual Company or Lead Member should have experience of a BOT project.

Details of financial technical and other liability criteria are available in the RPF document.

17] The Petitioners further state that on 20th May, 2008, Respondent No. 4 requested Respondent No. 2 to accept the Respondent No. 4 as a party and accordingly Concession Agreement between Respondent No. 2, Respondent No. 3 and Respondent No. 4 was signed on 10th July, 2008. The Petitioners state that record available with the Registrar of Companies, Pune, show that Respondent No. 4 is promoted by the Consortium as a subsidiary company and a subsidiary company of IRB Limited, IRB Infrastructure Developers Ltd. The Company came into existence in April, 2008, and, therefore, there is no question of Respondent No. 4 meeting the eligibility criteria stated hereinabove.

18] The Petitioners state that the said Concession Agreement authorized the Respondent No. 4 to construct roads within the limits of the Municipal Corporation and also authorized the said Respondent to collect toll from the users of the said project.

19] The Petitioners further state that the Concession Agreement dated 10th July, 2008 is against the provisions of BPMC Act, 1949 and, more

particularly, Section 73 of the said Act. The Petitioners state that as per the said provision, the Commissioner, Municipal Corporation, While entering into any contract on behalf of the Corporation, has to affix the Common Seal of the Corporation in the presence of two Members of the Standing Committee upon such a contract and further such a contract should be signed by two Members of the Standing Committee. The said provision is mandatory and failure to comply with the said provision, prima facie, discloses that the Respondents were in a hurry to give contract without complying with legal provisions.

20] The Petitioners further state that as a part of the Concession Agreement, Respondent Nos. 1 to 3 in collusion with each other and in violation of the provisions of the now Maharashtra Provincial Municipal Act (“MMCA”) and, more particularly, Section 79 decided to give 30,000 sq. meters under the guise of bridging the viability gap so that the project period can be curtailed.

21] The Petitioners state that first tender was called on 12th May, 2007. Re-tender was published on 29th October, 2007. However, there was no response to the said tender. The Petitioners state that in the first tender of 12th May, 2007 and in the re-tender of 29th October, 2007 there was no

proposal to offer any land to bridge the gap. However, strangely, before even floating of the first tender on 12th May, 2007, the Kolhapur Municipal Corporation passed Resolution No. 559 dated 20th April, 2007 deciding to give 30,000 sq. meters prime land to the developer. In the said Resolution, it was mentioned that the land will generate an income of Rs.65 lacs per month. Therefore, in order to bridge viability gap, the Kolhapur Municipal Corporation agreed to offer 30,000 sq. meters land acquired for initially a timber market and subsequently reserved for playground.

22] The Petitioners state that as per Section 79 of MMC Act, any immovable property belonging to the Corporation, cannot be sold, leased or otherwise transferred for less than the market value of such premium rent or consideration.

23] The Petitioners state that the Bombay High Court in the judgment reported in **AIR 2004 BOM 129** in the matter of **Vijay Keshav Kumbhar vs. The Collector and Ors.** held that it would not be proper for the Corporation to execute lease for a period of 30 years at a time and without calling for tenders.

24] The Petitioners state that if it was the intention of the Corporation to offer land on lease to bridge viability gap, the Corporation should have called for tenders for development of the property and should not have offered property directly to the developer without ascertaining the value of the property or less than the value decided by the Corporation in its resolution.

25] The Petitioners further state that 30,000 sq. meters land was offered by Respondent No. 3 without ascertaining the market value or the premium. If the estimated Rs.65 lacs revenue per month as an income is considered, as per the Resolution, the viability gap can be bridged much earlier. There is no need to give land on 99 years lease. The Petitioners state that if Rs.65 lacs per month is considered as an income, for 99 years, the amount would be Rs.77,220 lacs, which is far more than the project cost of Rs.191.56 crores. Therefore, there would be no reason to pay any further toll.

26] The Petitioners have, then, given a comparison of the figures estimated by Respondent No.2 and Indian Road Builders, a parent company of Respondent No.4. The figures are contained in a chart at para 8.24 with comments of the Petitioners thereon. Thereafter in para 8.25,

the allegations based on examination of the balance sheet of Respondent No.4 for the financial year ending 31st March, 2013 are set out.

27] In para 8.28 of the Writ Petition this is what is alleged:-

“The Petitioners further state that the 30,000 sq. meters land given to the Respondent No. 4 was further subleased by the Respondent No. 4 to another company promoted by the promoters of the Respondent No. 4. The sub-lease was registered with the Sub Registrar, Kolhapur on 3rd July, 2010. The sub-lease is registered by showing consideration price as Rs.2,67,30,000/- and Stamp Duty of Rs.13,20,000/- is paid”

28] The Petitioners state that in Maharashtra Stamp Duty on transfer, inter alia, of immovable properties is governed by the provisions of Maharashtra Stamp Act, 1958. Article 36 of the said Act stipulates the Stamp Duty payable on lease/sub-lease and any agreement to let or sublet or any renewable lease provides for Stamp Duty as under:

Period of lease	Stamp Duty payable
No exceeding 5 years value	5% calculated on 5% of the market value of the property.
Exceeds 5 years but not exceeding 10 years with renewal clause	5% calculated on 25% of the market value of the property.
Exceeds 10 years but not exceeding 29 years with renewal clause	5% calculated on 50% of the market value of the property.
Exceeds 29 years or in perpetuity	5% calculated on 90% of the market value of the property.

The market value is to be determined as per the ready reckoner. However, strangely, the Respondent No. 4, while executing the sub-lease, has paid Stamp Duty of Rs.13,20,000/- though the land is sub-leased for a period of 99 years. Annexure-D is a copy of the sub-lease deed based on which the above allegations are made.

29] In para 8.29, it is asserted that the Respondent No.4 has proposed recovery of toll on the ground that 95% of the work is complete but Respondent No.3 has admitted that construction to this extent is not completed.

30] Thereafter a reference is made to the report of the consultant (Respondent No.5) and it is alleged that the project is provisionally declared fit for entering into commercial operation. It is alleged that the quality of the road work is poor. The citizens constituted informal group of 15 persons comprising of architects and civil engineers. They have inspected 5 roads and their condition can be revealed from their findings. They are referred to in para 8.32. Thereafter, further allegations with regard to shifting of utilities and in terms of the Concession Agreement are made and the correspondence in that behalf is referred. It is alleged in para 12, 13 and 14 of the Petition as under:-

“12. The Petitioners state that in August 2010 the Respondent No. 3 informed Respondent No. 2 about non-shifting of utilities and even annexed the copies of the Concession Agreement. Prior to this Respondent No. 3 also informed the Respondent No. 2 that as per Clause 7.2 of the Concession Agreement it is the responsibility of Respondent No. 2 to ensure that the project is implemented and therefore, informed the Respondent No. 2 to force Respondent No. 4 to complete shifting of utilities. Hereto annexed and marked as **Exhibit 'H'** collectively are the copies of the said letter.

13. The Petitioners state that the said issue appears to be resolved at the cost of fundamental rights of the Petitioners as well as citizens of Kolhapur and at the intervention of politicians and short cut benefiting the Respondent No. 4 was adopted. The Petitioners state that Corporation is duty bound to provide clean drinking water. The Corporation had rejected the earlier proposal of the Respondent No. 4 of providing key junctions so that water pipelines can be repaired. The Petitioners state that as per Concession Agreement provision was made for shifting of existing utilities more particularly drainage lines and drinking water lines with the intention of providing easy repairs and avoid contamination of water. The cost of shifting of utilities was considered as a part of project cost. The Respondent No. 4 while constructing road and save money decided to put concrete road on the utilities without shifting.

14. The Petitioners state that strangely the Respondent Nos. 2 and 3 kept on insisting on shifting of utilities repeatedly. The Respondent No. 5 also supported Respondent Nos. 2 and 3 on this count. However, strangely short cut of providing 'T' Junctions was adopted which is not in the interest of any of the Parties and is beneficiary to the Respondent No. 4. The said option is in violation of the Concession Agreement.”

31] By referring to a letter dated 12th April, 2013 addressed by the Corporation to the Principal Secretary, Department of Urban Development,

Government of Maharashtra, it has been held that recovery of toll cannot be permitted and in the given facts and circumstances.

32] Paras 16 to 24, 24A to 24C contain averments with regard to legality and validity of the provisions enabling levy and collection of toll.

33] Thereafter in para 25 and 26, this is what is alleged:

“25. The Petitioners state that the entire project right from its inception smacks of corruption and violation of fundamental rights of citizens of Kolhapur. It appears that the entire project is conceived, designed, modified and implemented to accommodate the Promoters of Respondent No. 4. The Petitioners state that the land offered along with project was never put as a part of tender document. The project cost is different. The vehicle count is different. The obligations of the Respondent No. 4 are not enforced and deviated to accommodate the Respondent No. 4. The project is not completed but all are in hurry to impose toll and police protection is sought from the Hon'ble High Court. The Petitioners therefore state that all the acts are in violation of the Article 14 and 19 of the Constitution.

26. The Petitioners state that act of the Respondent Nos. 1 and 2 in collusion with Respondent No. 3 to allow Respondent No. 4 to build road by ignoring legal obligation of Respondent No. 3 is arbitrary and is in violation of Article 14 of the Constitution. The Petitioners further state that neither Respondent No. 1 nor Respondent No. 3 has legal right to impose toll under the relevant provisions of the Bombay Motor Vehicles Tax Act, 1958 on the development of the roads within municipal limits. Therefore, the imposition of toll is arbitrary and violative of fundamental right of Petitioners and other residence of Kolhapur and therefore, the imposition of toll requires to be quashed and set aside.”

34] In the grounds, there is an elaboration of the above allegations and averments. The essential being that as per section 73 of the Bombay Provincial Municipal Corporation Act, 1949 (now the Maharashtra Municipal Corporations Act) the Commissioner of Municipal Corporation while entering into any contract on behalf of the Corporation has to ensure that the Corporation is not put to loss or prejudiced. Its interests cannot be prejudiced by any Act of the Commissioner or the Corporation particularly when it deprives the Municipal Corporation of any valuable rights in the immovable property and which is held by it as trustee of the public. The act of the Respondent Nos.1 to 3 in giving and allotting 30,000 sq. mts. of prime land, acquired initially for timber market and subsequently reserved for playground to Respondent No.4 on 99 year term lease under the guise of bridging the viability gap of the Integrated Road Development Project is in violation of section 79 of the said Act. The Corporation should have called for the tenders if this land or portion thereof was to be offered or granted on lease. It could not have offered it directly to the developer in this case. More so, without ascertaining the market value or the premium. Even if there was no term or condition to that effect in the Concession Agreement still the Corporation was obliged to ensure maximum returns or income for this valuable and prime immovable property. The 99 years lease of this property is nothing but

giving away the same permanently and for no benefit. For these reasons, as well, the reliefs as prayed and reproduced in the foregoing paragraphs be granted.

35] It is surprising that this Petition is also filed as a PIL and when an earlier Petition being PIL No.179 of 2013 was already filed in this Court. There also the Petitioners proclaim to be public spirited citizens and have approached this Court urging that they reside in the city of Kolhapur. They have filed this Writ Petition so as to protect the interest of residents of Kolhapur. They went to espouse their cause so that the city of Kolhapur gets quality roads.

36] After referring to the State Government Notification dated 24th January, 2008 for undertaking the Kolhapur Integrated Road Development Project and appointment of Maharashtra State Road Development Corporation as developer, the agreements between the Kolhapur Municipal Corporation and MSRDC have been extensively referred. The facts regarding invitation of bids and eventual allotment of the project to Respondent No.1 therein IRB Infrastructure have been, then, set out. It is stated that the letter of acceptance was issued on 27th March, 2008. The work started on 1st September, 2009. A Provisional Completion

Certificate was issued on 10th October, 2011 certifying 95% completion of the 7 km roads. A Toll Collection Notification was issued on 17th December, 2011. Thereafter there was a notification issued on 5th January, 2012 staying the collection of toll and independent committee was appointed for technical assessment and status of the project in March 2012. Then, reference is made in the list of dates and events to another committee of the Collector, and Commissioner of the Municipal Corporation for the assessment of the project and its report submitted on 30th January, 2013. It is alleged that there was a meeting convened by the Chief Secretary of the State in which these two reports were deliberated and discussed. A fresh survey was directed to be conducted on account of the variance between the two reports. However, the fresh survey proposal was rejected by the Contractor. Thereafter, there is an allegation that the State lifted or vacated the stay granted to collection of toll on 13th May, 2013. After reference to a prior Writ Petition being Writ Petition no.6646 of 2013 filed by the Respondent No.1, it is stated that present PIL was filed on 5th September, 2013.

37] What is interesting to further note is that though both Petitions are styled as Public Interest Litigation, there were divergent and contrary stand taken in both. Mr. Narvankar appearing for the Petitioners in PIL

Petition No.179 of 2013 submitted that the challenge therein is restricted to the Concession Agreement dated 10th July, 2008. He also submits that the challenge is raised to the tripartite agreement and the toll collection notification dated 17th December, 2011. He submits that the toll is a tax of compensatory nature. It is not comparable with other taxes. He submits that the amendment by introduction of section 20 in the Maharashtra Motor Vehicles Tax Act, 1958 would denote that there is authority and power to levy toll on vehicles. That power was not there earlier in the statute. The power to levy assess and collect toll on the roads and the power to levy assess and collect toll on the vehicles passing and using roads is now combined into this provision. Mr. Narvankar has invited our attention to this section in extenso to submit that though there is such a power that could not have been exercised presently because of the obligations under the Concession Agreement. The Contractor had to fulfill these obligations and only, then, he is authorized to collect toll. There is an in-built responsibility and corresponding duty in that behalf and in the Concession Agreement. Mr. Narvankar has invited our attention to the Concession Agreement and its various clauses but prior thereto, he invites our attention to the Government Resolution dated 24th January, 2008 which sets out the decision of development of integrated roads for the Kolhapur city. This is a revised decision and refers to all

prior resolutions. The Government of Maharashtra has decided that roads worth Rs.220 crores have to be developed by private participation and on BOT basis. For implementation of this project, the Department of Urban Development of the Government of Maharashtra is nominated as the implementing agency whereas MSRDC is the developer. The clauses of this Government Resolution have been referred by Mr. Narvankar in some details. He invites our attention to clause (16) and (23) to urge that toll can be collected only after project work is completed to the extent of 95%. Further, this resolution also sets out the decision to grant on lease 30,000 sq. mts. of land within the municipal limits of Kolhapur city and styled as timber market for 99 years. This would be given to the contractor/agency nominated for development and maintenance on toll roads. This is only on a nominal rent of Re.1/-. However, what the clause sets out is that the possession of this land or portion to the above extent shall be handed over to the contractor/agency only on the said agency or contractor incurring Rs.60 crores on the project work. Thereafter there are certain conditions for utilization of this land, imposed on the contractors/agency. Mr. Narvankar submits that insofar as the Concession Agreement is concerned, even thereunder there are reciprocal obligations.

38] He refers to the same in some details so as to support his argument

that there are terms which are expressly defined. In that regard, he invites our attention to the definition of the term “Project Completion Schedule”. He urges that by clause 15.1, the parties agreed that the project shall be deemed to be complete when the completion certificate is issued under the provisions of Article 14, whereas the Commercial Operation date of the project shall be the date on which the provisional certificate is issued. There is no dispute about these clauses and the fact that the term “fee” as defined in the agreement refers to nothing but toll and the toll notification. However, he submits that the law, namely, section 20 of the Maharashtra Motor Vehicles Tax Act, 1958 contains an exception to sub-section (1) thereof. The sub-section (1) is in absolute terms and, namely, that after the Bombay Motor Vehicles Tax Act, 1958, came into effect, no toll shall be levied and collected on any Motor Vehicle by any other local authority. The exception is by sub-section (1-A). That was substituted by Maharashtra Act 7 of 2000. That enables levy and collection of tolls on motor vehicles and trailers drawn by such vehicles. But sub-sections (1-A), (1-B), (1-C) and (1-D) would demonstrate that unless and until, the facilities are augmented, the toll cannot be levied and collected. In the present case, the Petitioners have demonstrated as to how the recovery of toll is not in accordance with law. In that regard, Mr. Narvankar has relied upon the allegations and averments in the Writ

Petition. He has also submitted that the legal provisions have been misinterpreted and mis-read by the authorities. Even the Toll Notification dated 17th December, 2011 is not in consonance with section 20 of the above Act. In that regard, he submits that the notification states that all the newly constructed bridges, roads, railway fly-overs etc. will be deemed to be 'single unit' for the purposes of section 20, whereas section 20(1-D) provides as follows:-

“(1-D) Where any additional bridge or tunnel, being the bridge or tunnel on or below the same stream, river or creek or road or rail-track including any approach road thereto is constructed as augmentation of the facility of the use of the existing bridge, tunnel or road, as the case may be, then, the net work of such bridges or tunnels including approach roads thereto shall be deemed to be one single entity for the purpose of levy of toll, so however, that not more than the capital outlay of such additional bridge or tunnel including any approach road hereto and the expenses of collection of toll shall be recovered.... .”

Thus, it can be seen that the augmentation of the facility of use of the existing structure and network of such bridges or tunnels including approach roads thereto shall be deemed to be one single entity. In the present case, though the roads are built/repared at several and different places, they are treated as 'single integrated unit' and notwithstanding treating them as single unit, tolls are charged at several places/toll nakas. Further the Petitioners and others would, therefore, be made to pay for the entire capital outlay at each one of the collection centre and thereby

the total amount recovered by the Respondent No.1 would far exceed the actual cost incurred for the said project. It is unconscionable that the toll amount that is sought to be recovered at such several places is uniform/identical though the expenses incurred for the building/repair for different roads/pavements would be obviously different. In fact, in the case of small and intra-city roads, it would be virtually impossible to apply the scheme of section 20 and the same is only meant for application for larger projects like High-Ways and Fly-Overs. Therefore, the basic applicability of the BOT project to the city like Kolhapur is being assailed by the Petitioners. There was total non-application of mind as to the said model of revenue-collection and the same is challenged hereby.

39] Mr. Narvankar submits that, alternatively, there is no justification, whatsoever, for fixation of the toll amount. It is pertinent to note that toll seeks to recover the cost of capital outlay which includes for the purposes of this section, the anticipated cost of certain essential on goings or imminent works, like improvements, strengthening, widening, structural repairs, maintenance, and also, interest on such outlay at such rate as the State Government may fix. However, in the present case all the costs which Municipal Corporation could not afford like cost of land acquisition, cost of shifting service lines etc. have been added to the Cost of Project

thereby making it swollen figure. The said Cost of Project, then, would be recovered from the residents of Kolhapur in the form of toll. The said action would be impermissible as the residents have already been paying taxes regularly and this levy of toll may amount to double-taxation. Thus, the Petitioners reiterate that the BOT basis is unsuitable for the cities like Kolhapur and would make the entire project financially unviable for the common man. Also there is no clarity in the minds of the residents as to what is the basis for recovery of toll and the justification thereof. It is also pertinent to note that the poor and needy villagers around the city of Kolhapur may have to visit the centre town frequently and they cannot be burdened with such unjust levy.

40] Mr. Narvankar submits that toll is compensatory tax but the scheme is to recover costs incurred on the toll roads which are complete, constructed, reconstructed and maintained. However, the certificate of completion as relied upon is only provisional. Mr. Narvankar has relied upon the clause 10.3.5 in the agreement to urge that the obligation of the concessionaire (Respondent No.1) to complete the work and the consequences of not abiding by the schedule are provided in this clause. Mr. Narvankar also invited our attention to the cost estimate to submit that the same is road-wise. Mr. Narvankar, then, submits that the

provisional certificate also stipulated that the punch list has not been complied with. There are certain tests included in this certificate which have not been carried out. Thereafter there have been certain items which are pointed out and those are stated to be incomplete and/or deficient. They are specified in the punch list. In such circumstances, the expert has recommended that the nature and extent of incomplete work is such that the Commercial operation of the project should be withheld. He, then, relies upon the letter at Exhibit-P page 303 which has been addressed by the MSRDC to the Chief General Manager of Respondent No.1 intimating that the Respondent No.1 is not eligible for commercial operation.

41] Our attention is also invited by Mr. Narvankar to the communication from MSRDC to one Pravin Indulkar informing him that tests and inspection by independent architect would be carried out. In such circumstances, and when these facts are confirmed in the affidavit of the Municipal Corporation that Mr. Narvankar submits that the Writ Petition be allowed and the relief be granted. Mr. Narvankar has specifically relied upon the affidavit of the Municipal Corporation in Public Interest Litigation No.68 of 2011 which is Annexure-B collectively to the affidavit filed by the Corporation in this Writ Petition. Thus, there is no compliance with the terms and conditions of the agreement. For these reasons, he

submits that the petition be allowed.

42] Mr. Narvankar and Mr. Nevagi had relied upon the following judgments:-

1) AIR 2000 Supreme Court 961

State of U.P. and others V/s. Devi Dayal Singh;

2) AIR 2011 Supreme Court 2979

M/s. MSK Projects (I) (JV) Ltd. V/s. State of Rajasthan & Anr.; and

3) AIR 2012 Supreme Court 3408

Delhi Race Club Ltd. V/s. Union of India and Others.

43] Mr. Dwarkadas, learned senior counsel, appearing for IRD, Kolhapur, Respondent No.1 in the PIL and the Petitioner in Writ Petition No.6646 of 2013 submitted that the background facts have to be noted. He submits that the State Legislature had amended section 20 of the Bombay Motor Vehicles Tax Act and the definition of the term “Capital Outlay” is wide and comprehensive. By this amendment, State Government also inserted a provision for carrying out of infrastructure projects on built, operate and transfer basis by entering into agreements with private entrepreneurs who were permitted under the new regime to collect and retain the toll so collected. He has taken us through the scheme of section 20 as amended so also the reasons therefor. Mr.

Dwarkadas submits that the State Government through Public Works Department issued a resolution for implementation of the Kolhapur City Integrated Road Development Scheme. That is issued on 26th August, 2003. That is for improving the traffic situation in and around city of Kolhapur which would benefit the public using the four state highways, namely, state highway No.174, state highway No.115 and state highway no.132 and one national highway, namely, national highway no.4 passing through city of Kolhapur, that will also benefit the public using internal Kolhapur municipal roads. The Maharashtra State Road Development Corporation was appointed as a developer/entrepreneur for the project. The project construction cost was approved. The project was on BOT basis. The toll recovery period was 30 years to be finally determined by Government after financial analysis and the toll recovery would begin after spending 25% of project cost on substantial work. The project cost was to be shared between MSRDC and Kolhapur Municipal Corporation.

44] As this approved cost was financially unviable for the Kolhapur Municipal Corporation, it had passed a resolution No.180 dated 31st March, 2006 whereby project cost was to be borne entirely by a private party on BOT basis. After financial analysis MSRDC was of the opinion that the project was financially viable and, therefore, its construction cost

should be increased. The land should be offered to the private parties/BOT contractor for commercial exploitation. Mr. Dwarkadas relies upon these events of March, April, 2006 and later on of April 2007 whereunder a resolution was passed by the Kolhapur Municipal Corporation following the suggestion of MSRDC. The piece of land admeasuring 30,000 sq. mtrs. which though reserved for timber market and later for playground was not utilized since 1986. It was to be given to the BOT Contractor to make this project viable/feasible and adequately compensate him.

45] The State Government's Urban Development Department issued a revised proposal based on above factors for the implementation of this project for 49.9 kms of road. The project construction cost was approved at Rs.220 crores. Mr. Dwarkadas submits that the sequence of events with dates has been set out in the affidavit in reply of the Respondent No.4 Contractor in PIL No.216 of 2013 and there is no denial thereof. Mr. Dwarkadas submits that in pursuance of the notification dated 24th January, 2008 an agreement was executed between the MSRDC and KMC whereafter MSRDC invited tenders/bids in an open tender process. The MSRDC's proposal in that behalf was responded by the Respondent No.4 and later on due consideration of its offer and bid took place. The

Respondent No.4 was awarded the contract and the appointment is from dated 27th March, 2008.

46] Mr. Dwarkadas has relied upon the Concession Agreement dated 10th July, 2008 and some of the clauses therein. They are Article 6.2 (viii), Article 10.3.2, Article 10.3.5, Article 10.4 and Article 14.2. We shall wherever necessary reproduce them or refer to them in details so as to appreciate the rival contentions.

47] Mr. Dwarkadas has laid heavy emphasis on certain other clauses of the agreement so as to urge that an independent consultant SOWIL Pvt. Ltd. was appointed for supervision, inspecting the project works and regular tests were to be conducted by it so as to confirm the compliance with the terms and conditions of the Concession agreement and/or any approved variations thereof. He submits that as per the contract, the appointed date was determined. For the purpose of Article 10.3.5 the appointed date was 9th January, 2009. Mr. Dwarkadas submits that the entire land was not handed over as is claimed by the Petitioner and there are claims by the Respondent No.4 that the land stated to have been handed over was fully encumbered. It was not as per the terms and conditions of the Concession Agreement. Within 90 days from the

appointed date only 7.35 km of land was handed over to IRB. The balance land/right of way in various stages after removing the encumbrances came to be handed over between April, August 2009. At the end of this period and prior to the provisional completion certificate, in all, 45 kms of unencumbered land was handed over and IRB carried out the project work on these lands. There is a separate Handing Over and Taking Over Note duly signed by the Concessionaire and Kolhapur Municipal Corporation.

48] Mr. Dwarkadas has laid great emphasis on the PIL No.68 of 2011 being filed in this Court on 29th June, 2011 and a reply thereto by IRB. Mr. Dwarkadas submits that this Petition was disposed of as the Petitioners informed the Court that the Government had appointed an independent committee of technical experts and the toll collection notification has been stayed. This Writ Petition was disposed of with limited liberty, namely, to file a petition only if the Petitioners are aggrieved by technical committee report.

49] Then, another PIL was filed being PIL No.82 of 2011 alleging that contrary to the terms of the concession agreement IRB has not shifted all the utility lines within the entire city of Kolhapur and still they are

permitted by the State Government and MSRDC to continue with the work.

50] Mr. Dwarkadas placed reliance upon the order passed by this Court on this Writ Petition and which according to him clarifies that by the Concession Agreement the IRB is to shift only those utility lines which obstruct the carrying out of the project work. The Court also observed that the foundation on which the Writ Petition was filed is entirely erroneous. Thereafter, he has invited our attention to the pleadings in Writ Petition No.6646 of 2013.

51] Mr. Dwarkadas submits that there is an opinion sought from a retired Secretary in the Department of Public Works, Government of Maharashtra, Shri M. V. Patil on parameters for issuance of the Provisional Completion Certificate. Mr. Dwarkadas submits that the independent consultant has issued the Provisional Completion Certificate after taking into consideration the recommendations of Shri Patil. There is no discrepancy between the Provisional Completion Certificate and opinion of Shri Patil. Mr. Dwarkadas asserts that IRB has completed successfully 95% of the project work upon lands handed over under Article 14.2 of the concession agreement and, therefore, applied for the Provisional

Completion Certificate in accordance with Article 10.3.5 and 14.2 of this agreement. Mr. Dwarkadas submits that not only IRB completed 95% of the work of construction of road to the extent of 7.35 kms but has also completed substantial work on the land handed over till the date of the application, namely, 45.485 kms. He relies upon the contents of the application dated 19th August, 2011. Mr. Dwarkadas submits that since the project was nearing completion and realizing that IRB will be commencing collection of toll, Toll Virodhi Kruti Samiti, which is an unorganized group of Kolhapur residents and anti social elements opposed the collection of toll and sought stay thereof. They protested violently and made it impossible for the IRB to continue with the project work. However, it is pertinent to note that these residents or groups were never protesting or complaining when the construction was going on and to their knowledge from 2008 onwards till 2011. Only on realizing that the toll collection will begin that such motivated protests started and therefore, there is no substance in any of these complaints.

52] Mr. Dwarkadas also submits that independent experts and even the retired Public Works Department Secretary opined that there are definite parameters to measure the work and, then, to record a satisfaction about issuance of Provisional Completion Certificate. He relied upon the

contents of the certificates in that behalf and another document styled as punch list. Mr. Dwarkadas submits that a Provisional Completion Certificate issued by the consultant was accepted by MSRDC and Kolhapur Municipal Corporation. That is how the toll collection notification was issued.

53] Mr. Dwarkadas submits that the toll collection notification and the steps taken have been justified in the affidavit in reply dated 25th February, 2014 of the State Government. Mr. Dwarkadas submits that the net effect of the issuance of such notifications is that the IRB is authorized to levy and collect toll from 20th December, 2011 to 31st March, 2039. He, then, pointed out as to how the toll collection began but there were violent protests and police protection was not provided though sought. Mr. Dwarkadas submits that there is a provision in the Tolls Act, 1851 empowering all Police Officers to assist the parties like IRB and equally the State and local authority to collect toll. In that regard, he placed reliance upon section 5 of (The Indian) Tolls Act, 1851. Mr. Dwarkadas submits that there was absolutely no justification for staying the collection of toll. This was only because of political pressure and in the light of violent agitation by a unregistered association called Toll Virodhi Kruti Samiti and agitating section of the society. The State Government constituted a

committee of technical experts to ascertain the percentage completion and quality of project works. This committee consisted of Secretary in the Department of Public Works, Head of Civil Engineering Department, Indian Institute of Technology, Bombay, and Head of Civil Engineering Department of VJTI (Veer Jeejeebhoy Technical Institute). Apart there from, there is a report of the independent consultant dated 21st May, 2012 which is styled as a progress report certificate which demonstrates that 95.61% of work over all lands/roads handed over till then has been completed.

54] Mr. Dwarkadas relies upon the findings of the committee appointed by the Chief Secretary of the State and which records that there was failure to hand over the project land/roads prior to commencement of work. The same was not done and even upon roads/land handed over, the actual development plan width available for work was far less than what was stipulated in the Concession Agreement, therefore, with the approval of all parties, modifications were done. This was on the basis of availability of land. Mr. Dwarkadas heavily relies upon the conclusion in this report that carriageway work is more than 95% complete and for footpath and drain the area of land which was necessary, and out of which only 75% land was made available, the entire work is complete.

Mr. Dwarkadas submits that with regard to quality of work, the committee expressed its satisfaction and held that the same is good and even the standard for to and fro movement on both types of pavement is good. The committee suggested certain remedial measures or minor works and which have been carried out by the IRB.

55] Mr. Dwarkadas submits that after the Committee's report, the IRB pointed out to the State and other authorities that grave and serious loss and prejudice has been caused as IRB has invested Rs.420 crores into the project till date out of which Rs.258 crores was debt from a consortium of public sector banks. There would be unnecessary increase in expenses if the stay was not lifted or raised. He relies upon the project progress report/certificate dated 30th January, 2013 and points out that as regards roads handed over till that date, namely, 46.22 kms. the work was complete to the extent of 96.88%. Later on, there was a meeting and held by the Chief Secretary of the State with high powered officials and Mr. Dwarkadas relies upon the minutes of that meeting held on 1st February, 2013. Mr. Dwarkadas submits that without prejudice to the legal rights and contentions, the IRB submitted bank guarantee of Rs.25 crores as security for completion of balance work.

56] Mr. Dwarkadas submits that the Kolhapur Municipal Corporation itself has not been able to point out nor has it pointed out that the balance work over the entire 49 kms. of road would be more than Rs.24.50 crores. Therefore, that was entirely covered by the bank guarantee. Mr. Dwarkadas submits that after these steps and measures, the Chief Secretary of the State was satisfied that the stay deserves to be lifted. That was lifted subject to the condition of submission of bank guarantee as above. Mr. Dwarkadas submits that these bank guarantees have been submitted and after the same the Collector of the District directed the Superintendent of Police to provide police protection for completing the balance works. Still this protection was not provided. That is how the IRB has filed Writ Petition No.6646 of 2013. Mr. Dwarkadas has relied upon the order passed by this Court in the Writ Petition No.6646 of 2013 dated 28th August, 2013 in that behalf. He submits that toll collection has commenced after the police protection was made available. It is in these circumstances, that some of the Petitions have been filed after the police protection was granted and with ulterior motive. Mr. Dwarkadas submits that in the light of all this, there is absolutely no substance in the PIL Petitions and they deserve to be dismissed.

57] Mr. Dwarkadas has relied upon the following decisions in support of

the above contentions:-

- 1) *(2005) 4 Supreme Court Cases 214 in the case of Gujarat Ambuja Cements Ltd. and Another V/s. Union of India and Another;*
- 2) *AIR 1962 Supreme Court 1406 in the case of Automobile Transport (Rajasthan) Ltd. etc. V/s. State of Rajasthan and others;*
- 3) *(1975) 1 Supreme Court Cases 375 in the case of G. K. Krishnan and others V/s. State of Tamil Nadu and others; and*
- 4) *(2006) 7 Supreme Court Cases 241 in the case of Jindal Stainless Ltd. (2) and another V/s. State of Haryana and others.*

58] Mr. Dwarkadas was supported in his submissions by the other advocates representing the State Government and MSRDC. Mr. Chavan, learned counsel, appearing for the MSRDC clarified that the allotment of 30,000 sq. mts. of land is in terms of the decision taken by the State way back on 26th August, 2003. The terms and conditions of such allotment would demonstrate that this is not a one sided bargain or is not a largess given to the Contractor. The allotment is not without any corresponding benefit and to the State and the Public. In such circumstances, he submits that even this objection has no merit.

59] Mr. Cama, learned senior counsel, appearing for the Kolhapur Municipal Corporation, however, submits that the Kolhapur Municipal Corporation is disputing the factual position about 95% of the project

being complete. He submits that this is a case where a joint survey was suggested. However, Respondent No.4 has refused to participate in the joint survey. He relies upon the evaluation of the work by Commissioner of Kolhapur Municipal Corporation and the Collector. He submits that the affidavit filed in Writ Petition No.6646 of 2013 on 26th September, 2013 and the affidavit dated 22nd October, 2013 of the civil engineer filed in PIL No.216 of 2013 would demonstrate that there is a serious dispute about completion of the work. He justified, however, the grant of 30,000 sq. mts. of land to the Respondent No.4. He, therefore, submits that appropriate orders be passed by this Court so as to allow a joint survey.

60] With the assistance of the advocates appearing for the parties, we have perused both PILs, the affidavits in reply, rejoinder and all the documents. We have also perused the Annexures to the Petitions and the affidavits wherever necessary. We have also perused relevant statutory provisions and the decision brought to our notice.

61] In matters involving challenge to taxing provisions or a law imposing taxes the principles which have been evolved are well settled. The legality and validity of the toll is an issue, though given up by the Petitioners. They ought to be reminded of the above principles. In a

recent decision reported in **AIR 2012 Supreme Court 2351**, the Hon'ble Supreme Court (**State of M.P. v/s. Rakesh Kohli**) held as under:-

“13. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.”

14. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds, namely (i), that the appropriate Legislature does not have competency to make the law and (ii), that it does not take away or abridge any of the fundamental rights enumerated in Part – III of the Constitution or any other constitutional provisions.

25. In Hamdard Dawakhana, the Court also followed the statement of law in Mahant Moti Das and the two earlier decisions, namely, Charanjit Lal Chowdhury V/s. Union of India and others and The State of Bombay and another V/s. F. N. Balsara and reiterated the principle that presumption was always in favour of constitutionality of an enactment.

27. A well-known principle that in the field of taxation, the Legislature enjoys a greater latitude for classification, has been noted by this Court in long line of cases. Some of these decisions are : M/s. Steelworth Limited V/s. State of Assam; Gopal Narain V/s. State of Uttar Pradesh and another; Ganga Sugar Corporation Limited V/s. State of Uttar Pradesh and others, R.K. Garg V/s. Union of India and others and State of W.B. and another V/s. E.I.T.A. India Limited and others.

28. In R. K. Garg, the Constitution Bench of this Court stated that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc.

29. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the Court must have regard to the following principles : (i), there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature (ii), no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found (iii), the Court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as the Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence (iv), hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law and (v), in the field of taxation, the Legislature enjoys greater latitude for classification.”

62] Before proceeding further, we would reproduce section 20 of the Maharashtra Motor Vehicles Tax Act, 1958. That reads as under:-

“20. Bar to levy tolls, etc. on motor vehicles.- (1) Except as provided in the Bombay Ferries and Inland Vessels Act, 1868 (Bom.II of 1868) or that Act as applied to the Kutch area of the State of Bombay, or the Hyderabad Ferries Act, (Hyd. Act No.II of 1314-F) or the Northern India Ferries Act, 1878 (XII of 1878) (and subject to the provisions of sub-section (1-A), (1-B), (1-C) and (1-D) on and after the commencement of this Act, no tolls shall be levied and collected –

(a) on any vehicle, animal or person by the State Government or by any local board,

(b) on any motor vehicle, by any other local authority:

(1-A) Notwithstanding anything contained in sub-section (1), but subject to the provisions of sub-sections (1-B, 1-C and 1-D), the State Government may levy and collect tolls on motor vehicles and trailers drawn by such vehicles –

(i) passing over any bridge or through any tunnel including an approach road thereto or any section of

road or any by-pass described hereunder in clauses (a) and (b), or

(ii) passing over or through any portion or a part of any such bridges or tunnels including the approach roads thereto or sections of roads or by-passes, the cluster of which is situated in a well defined zone and declared by the State Government under the said clause (a) as one single entity, including the motor vehicles and trailers drawn by such vehicles benefiting directly or indirectly by the augmentation of the facilities in the use of such bridges, tunnels or approach roads thereto or any sections of roads or any by-passes, although while enjoying benefit of such augmentation of facilities, such vehicles may not be required to pass over or through the entire cluster of such single entity –

(a) toll may be levied and collected in respect of a bridge or tunnel including an approach road thereto or any section or road or any by-pass or a cluster of such bridges or tunnels including approach roads thereto or section of roads or by-passes situated in a well defined zone and declared by the State Government, by a notification in the Official Gazette, as one single entity, which is newly constructed, reconstructed, improved or repaired as the case may be, after the commencement of the Bombay Motor Vehicles Tax (Amendment) Act, 1987, at the expense of the State Government or at the expense of any person or body or association of individuals whether incorporated or not at the expense of both, that is to say, the State Government and any such person or body or association (or by private entrepreneur or an agent appointed by the State Government or the State Public Enterprise authorised by the State Government in this behalf, by entering into an agreement with such entrepreneur or agent under the Build, Operate and Transfer (B.O.T.) Projects) and the total capital outlay of which construction, reconstruction, improvement or repairs, as the case may be, is not less than ten lakhs of rupees; or

(b) in respect of a bridge or tunnel including approach

road thereto or section of road or by-pass which, in the opinion of the State Government, is of special service to the public.

Explanation – For the purposes of this section, the expression “Capital Outlay” shall include the anticipated cost of certain essential on goings or imminent works like improvements, strengthening, widening, structural repairs, maintenance, management, operation, reasonable returns and interest on such outlay at such rates as the State Government may fix until the full amount of such outlay is recovered.

(4) The toll levied under sub-section (1-A) shall be levied at such rate and for such period as the State Government may, from time to time, by notification in the Official Gazette, declare.

(B) The State Government shall, while determining the rate of toll and the period for which such toll shall be levied, have regard to the total capital outlay, the likely collection of toll, the expenses of collection of toll, and the terms and conditions of the agreement, if any, entered into with the private person, body or association of person (incorporated or not), or agent or entrepreneur by the Government or, as the case may be, the State Public Enterprise, relating to the period of collection and retention of the amount of toll by such person, body, agent or entrepreneur, stipulated in the agreement, including grant of reasonable reward in cash or in any other form as an incentive for the early completion of the project, than the period for completion stipulated in the agreement :

Provided that, the person or body or association of individuals (whether incorporated or not) or the private entrepreneur or agent with whom the Government or the State Public Enterprise has entered into an agreement under the B.O.T. Project or otherwise, for the construction, reconstruction, improvement or repairs, etc. of any road, by-pass, bridge, tunnel, R.O.B., R.U.B., including any approach road thereto or any by-pass etc. as provided in sub-section (1-A) shall be deemed to be the agent entitled to collect and retain the whole or part of the amount of such toll for the services and benefits rendered by such person, as the State Government may, by notification in Official Gazette, specify, having regard to the provisions of clause (B).

(1-C) The State Government may itself or through its agent collect the toll levied under sub-section (1-B) and, where such collection is made through agent, “or his sub-agents” shall be deemed to be persons empowered to collect tolls under this Act :

Provided that, not more than the capital outlay and expenses of collection of toll shall be collected under this Section.

(1-D) Where any additional bridge or tunnel, being the bridge or tunnel on or below the same stream, river or creek or road or rail-track including any approach road thereto is constructed as augmentation of the facility of the use of the existing bridge, tunnel or road, as the case may be, then the net work of such bridges or tunnels including approach roads thereto shall be deemed to be one single entity for the purpose of levy of toll, so however, that not more than the capital outlay of such additional bridge or tunnel including any approach road thereto and the expenses of collection of toll shall be recovered. [having regard to the Provisions made in clause (B) of sub-section (1-B)].

(1-E) The State Government may, by a notification in the Official Gazette, in the public interest, exempt any vehicle or class of vehicles from levy of toll under this section.

(2) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of [sub-section (1), (1-A), (1-B), (1-C) and (1-D)] and this sub-section, no local authority shall, after the commencement of this Act impose or increase any taxes on motor vehicles :

Provided that –

- (a) any taxes, other than tolls, on motor vehicles which immediately before the commencement of this Act were being lawfully levied by any local authority, may continue to be levied and collected until provisions to the contrary is made by the Legislature by law;
- (b) nothing in this sub-section shall affect the power of any local authority to impose, increase or recover in respect of motor vehicles a tax falling under entry 52 in list II in the Seventh Schedule to the Constitution.”

63] A perusal thereof would indicate that sub-section (1-A) was substituted by Maharashtra Act 7 of 2000. That is to take care of the prohibition contained in sub-section (1). Sub-section (1) prohibits levy and collection of toll on any vehicle, animal or person by the State Government or by any local board and on any motor vehicle by any other local authority. By sub-section (1-A) the State Government is empowered and has a discretion to levy and collect tolls on motor vehicles and trailers drawn by such vehicles which may pass over any bridge or through any tunnel including a bridge thereto or any section of road or any by-pass described in clauses (a) and (b) of sub-section (1-A). Levy and collection of toll on motor vehicles and trailers drawn by such vehicles is also permissible. Similarly, if any such vehicles and trailers drawn by them are passing over through any portion or a part of any of such bridges or tunnels including the approach roads thereto or sections of roads or by-passes, the cluster of which is situated in a well defined zone and declared by the State Government under the said clause (a) as one single entity, the toll could be levied and collected thereon. It can also be levied on the motor vehicles and trailers drawn by such vehicles benefiting directly or indirectly by the augmentation of the facilities in the use of such bridges, tunnels or approach roads thereto or any sections of roads or by-passes, although while enjoying benefit of such augmentation of facilities, such

vehicles may not be required to pass over or through the entire cluster of such single entity. Thus, there is not only a power conferred to levy and collect toll on motor vehicles and trailers drawn carried by such vehicles but that could be levied and collected as above.

64] The argument of Mr. Narvankar that the toll could be levied and collected only in respect of a bridge or tunnel or including the approach road or any sections of road or any by-pass or cluster thereof in a well defined zone is difficult to accept because section 20(1-A)(i) and (ii) are separated by the word “or”. Therefore the State Government may levy and collect tolls on motor vehicles and trailers drawn by such vehicles passing over any bridge or through any tunnel including an approach road thereto or any section of road or any by-pass described in clauses (a) and (b) or on motor vehicles and trailers drawn by them passing over the approach road or bridges or tunnels and part of a cluster which is situated in a well defined zone and declared by the State Government under the said clause (a) as one single entity. It is not necessary that the vehicles must pass over or through every portion or part of any such bridges or tunnels including the approach roads thereto or sections of road or by-passes of the cluster in a well defined zone and constituting a single entity. The toll could be levied on motor vehicles and trailers drawn by such

vehicles benefiting directly or indirectly by the augmentation of the facilities in the use of such bridges, tunnels or approach roads thereto or any sections of roads or any by-passes, although while enjoying benefit of such augmentation of facilities, such vehicles may not be required to pass over or through the entire cluster of such single entity. The argument is that there is no benefit of the bridges, tunnels or approach roads or any sections of roads or any by-passes because the vehicle owners or the trailer owners are not required to pass over or through the entire cluster of such single entity. Even if there is any direct or indirect benefit by the augmentation of facilities a toll can be levied and collected. In other words, it can be levied and collected on motor vehicles and trailers drawn by such vehicles and falling in and covered by section 20(1-A) (ii) and it can also be levied on such motor vehicles or trailers drawn by such vehicles deriving benefit either directly or indirectly by augmentation of the facilities in the use of such bridges, tunnels or approach roads thereto or any sections of roads or any by-passes though they may not be required to pass over or through the entire cluster of such single entity. Then, a construction, improvement or repair can be made of such roads at the expenses of the State Government or by expenses of any person or any association of persons whether incorporated or not or at expenses of both, or by a private entrepreneur or an agent appointed by the State

Government or the State Public Enterprise authorized by the State Government in this behalf by entering into an agreement with such entrepreneur or agent under BOT basis. It could be a BOT project and which is newly constructing, reconstructing, improving or repairing the bridge or tunnel including an approach road thereto or any section or road or any by-pass or a cluster of which is situated in a well defined zone and declared by the State Government as one single entity. Provided the total capital outlay of such construction, reconstruction, improvement or repairs as the case may be should not be less than 10 lakhs of rupees. Therefore, there could not be any challenge to the power of the State Government to issue a Government notification or Resolution notifying the toll roads in this case and even within the municipal limits of city of Kolhapur. They could be very well within the municipal limits but the power of the State Government in terms of this provision being wide enough, such roads are also covered thereunder. There is no substance in the contention that the toll is levied at multiple locations to benefit the contractor. The argument besides being vague overlooks the statutory scheme. The statute permits the recovery so as to cover the costs and expenses and its recovery is for a specified period. That also envisages reasonable reward for the contractor. Thus, a balance is struck and benefit for the public is obtained by augmentation of facilities. Similarly, the State Government could have

nominated MSRDC as a developer and further that developer together with the State Government or otherwise with the Kolhapur Municipal Corporation can enter into an agreement with the private entrepreneur. That is clear from section 20(1-A)(a). The State is also empowered to carry out such exercise in respect of the bridge or tunnel including approach road or section of road or by-pass which in the opinion of the State Government is of special service to the public.

65] The explanation to this sub-section defines the expression “capital outlay” to include anticipated cost and interest on such outlay at such rates as the State Government may fix until the full amount of outlay is recovered so as to not to give any scope for an arbitrary determination or computation of the capital outlay. That can include anticipated cost of certain essential on goings or imminent works and which are included within the purview of the explanation. In such circumstances, to argue that the term capital outlay must be understood in a particular way and as desired by Mr. Narvankar cannot be accepted. This explanation has been inserted so that the State Government will have the power to fix the toll rate or the quantum of toll and so as to enable it to recover full amount of such outlay. Therefore the capital outlay can include the anticipated cost. That has been defined so as to facilitate the exercise contemplated by

section 20 (1-B). That is inserted by Maharashtra Act 17 of 2001. The determination of the rate of toll and the period for which it can be levied will be, with due regard to the matters provided in this clause (1-B).

66] Pertinently before us, there is no challenge to the competency of the State Legislature in enacting this provision and in a composite manner. Further, it is not the case of the Petitioners that toll cannot be levied and collected in so far as the roads within the municipal limits of the city of Kolhapur. Their challenge is that the roads having not been completed and in terms of the obligations on the contractor the recovery of toll should not be permitted. Secondly, the understanding appears to be that only when construction of entire set of roads is complete that the recovery of toll can commence.

67] Both these contentions suffer from a complete lack of understanding of the mechanism of toll.

68] To begin with, there is in field The Indian Tolls Act, 1851. That is Act to levy tolls on public roads and bridges. It is a very short Act containing Eight (8) sections. Section 2 of the said Act empowers levy of tolls on roads and bridges within certain rates and to appoint Collectors so

also their responsibilities. Hence, it is not a correct understanding of the law. The can be levied and collected on any road or bridge which has been, or which after the Toll Act is made or repaired at the expense of the Central or the State Government. It can be so levied and recovered by placing the toll collection under the management of such person as may appear to the Central Government, proper. Then, section 3 thereof sets out the power of recovery of toll. Section 4 of this Act provides for exemption from payment of toll and by section 5 the Police Officers are bound to assist the toll Collectors, when required, in the execution of the Tolls Act and for that purpose shall have the same powers which they have in the exercise of their common police duties. Other sections enable levy of penalty for offences under the Act and exhibition of table of tolls and statement of penalties.

69] In 1864, there has been an amendment to this Act and there are certain powers under the 1851 Act which have been conferred in relation to some parts of India. The Hon'ble Supreme Court in the case of *M/s. MSK Projects (I) (JV) Ltd. V/s. State of Rajasthan and Another reported in AIR 2011 SC 2979* referred to the law and concept of toll. The Hon'ble Supreme Court in that regard held as under:-

“25. Determination of the aforesaid three issues brings us

to the entitlement of the private appellant.

The Court is not oblivious to the fact that the State authorities cannot be permitted to use the collection of toll fee as augmenting the State revenues. In *State of U.P. & Ors. V/s. Devi Dayal Singh*, AIR 2000 SC 961 : (2000 AIR SCW 617), this Court defined 'toll' as a sum of money taken in respect of a benefit arising out of the temporary use of land. It implies some consideration moving to the public either in the form of a liberty, privilege or service. In other words, for the valid imposition of a toll, there must be a corresponding benefit. The Court further held:

“Although the section has empowered the State Government to levy rates of tolls “as it thinks fit”, having regard to the compensatory nature of the levy, the rate of toll must bear a reasonable relationship to the providing of benefit. No doubt, by virtue of section 8 of the Act, the tolls collected are part of the public revenue and may be absorbed in the general revenue of the State, nevertheless by definition a toll cannot be used for otherwise augmenting the State's revenue.”

26. In fact, the toll fee under the Tolls Act, 1851 is of compensatory in nature wherein the Government can reimburse itself the amount which it had spend on construction of road/bridge etc.

Clause IV(a) of the statutory notification dated 10.2.1997 which entitled the government to give present road on toll is reproduced below:

“IV(a)- The toll of any of the aforesaid facilities/constructions shall be levied only for so long as the total cost of its construction and maintenance including interest thereupon, and the total expenditure in realisation of toll has not been realised in full or for a period of 30 years.”

(Emphasis added)

It is evident that Clause IV(a) of th Notification dated 10.02.1997 envisages that toll can only be collected as long as total cost of construction and maintenance including interest thereupon is recovered. A person is debarred by law and statutory inhibition as contained in

Clause IV(a) of the notification from collection of toll beyond the recovery of cost of construction.

27. Thus, from the above referred provisions, it is evident that toll fee is compensatory in nature and can be collected by the State to reimburse itself the amount it has been spent on construction of the road/bridge etc. The State is competent to levy/collect the toll fee only for the period stipulated under the Statute or till the actual cost of the project with interest etc. is recovered. However, it cannot be a source of revenue for the State.”

70] Even in the earlier judgments of the Hon'ble Supreme Court and which have been referred to, namely, State of U.P. and Others V/s. Devidayal Singh reported in AIR 2000 SC 961, this aspect has been considered and the understanding there also was that the toll can be collected only to meet the cost of the construction of the bridge or its approach road. It can also be levied to meet any extra-ordinary repair which it is necessary to carry out in order to maintain the stability of the bridge or the road as the case may be.

71] In the light of the above if one peruses section 20 and with its amendments it will be evident that not only the legislature has by insertion of the sub-sections enabled levy and collection of tolls on motor vehicles and trailers drawn by such vehicles but has also set out the mode and manner in which it is to be levied and collected. It has also taken into

consideration the fact that the roads and bridges will now have to be constructed with the participation of private entities and to enable them to do so the agreements with the entrepreneur or agents under the Build, Operate and Transfer basis will have to be executed. The contractors or agents or entrepreneurs would have to be permitted to reimburse themselves the expenses of construction, improvement, maintenance, management, repairs and operation of the toll road. The roads or bridges or approach roads would have to be stipulated and bearing the capital outlay the likely duration of collection of toll, the expenses and the terms and conditions of the agreement all have a bearing on the determination of the rate of the toll. The period for which the same can be levied and collected would have to be determined so as to gauge the likely period within which the costs and expenses can be reimbursed or recovered. The period of collection and retention of the amount is also to be stipulated so as to reasonably reward in cash or any other form the contractor/private entity for completion of the project earlier than the period stipulated in the agreement. It is in these circumstances that in Maharashtra, the legislature has stepped in and made a composite as also comprehensive legislation. It is too late in the day to urge that the agent or the contractor in this case could not have been allowed to collect the toll. It is also clear that the law has provided for relief and benefit so that

after the commencement of the amended Act, the local authority cannot impose or increase any tax on motor vehicles except as permitted by sub-section (2) of section 20.

72] We are not with Mr. Narvankar on the aspect of levy and collection of tolls. His argument that the toll should not be permitted to be collected unless all the roads are completed, is difficult to accept. It does not take into consideration any of the averments in the Writ Petition and the allegations. The Writ Petition does not contain any argument with regard to the interpretation of the provisions but it being a Public Interest Litigation and since a argument to the effect has been canvassed that we are dealing with the same.

73] The argument overlooks the fact that by the notification at Annexure-A to the memo of PIL No.179/2013 the Urban Development Department of the State of Maharashtra issued a GR dated 24th January, 2008 and in furtherance of the GR dated 26th August, 2003 of the Public Works Department of the State, the Resolution of the general body of the Kolhapur Municipal Corporation dated 31st March, 2006 and the letter of the Kolhapur Municipal Corporation dated 5th January, 2006 all of which are referred. In the preamble to the 2008 G.R., historical and cultural

features or otherwise of the city of Kolhapur and their significance have been referred. It has been observed that Kolhapur is an important city in Western Maharashtra and having a historical and cultural setting. It is also industrially advanced. Therefore, the State undertook a study and found that there are about 5 or 6 important temples in the city. Similarly, near Kolhapur there are temples of Jyotiba, Katyayani Devi, Narsinghwadi. Further, there are forts of Panhalgadh and Vishalgadh located nearby. There are other historical and cultural places within the city of Kolhapur including those frequented by Public for their beauty and architecture. There is Kolhapur Ratnagiri State Highway No.204, Kolhapur Gaganbawda State Highway No.115, Kolhapur Radhanagari State Highway No.130, and Kolhapur Gargoti State Highway No.132 passing through the city. Thus, these are roads linking Kolhapur city to the Kokan Region and also the western and southern parts of the District itself. These roads are busy roads. Further, there is a road which is outside the city on Eastern side and which is the National Highway No.4, Pune Bangalore. This road is now part of the National Highway quadrangle or project of roads in the Prime Ministers link India Scheme. Since there is heavy traffic from other parts of the District and Konkan which passes through the city towards Pune, Sangli, Bangalore that puts additional pressure on the existing traffic. That results in traffic Jam and congestion

of vehicles because of reduction of speed. That endangers the security of the pedestrians as well. For all these reasons, it was envisaged that there should be an integrated road development project. The Scheme of such road development was approved by the Public Works Department of the State of Maharashtra. However, some aspects in that Government resolution were unacceptable to the Kolhapur Municipal Corporation. That is why it passed a resolution No.180 in its General Body meeting on 31st March, 2006. In the light of this, the earlier GR of 26th August, 2003 was cancelled and the further decision was taken.

74] The decision is to incur about Rs.220 crores for the above project and the project has to be implemented by BOT mode. The implementing agency is the Urban Development Department of the State and the Maharashtra State Road Development Corporation was designated as a developer so as to improve the conditions of the road and the management of the traffic as a whole. This developer has been empowered to carry out the works by inviting interested parties by a open tender process. The scope of the work is as envisaged by Annexure-I to this GR. Since the project was to be implemented on BOT basis all ancillary and incidental powers were also vested in the MSRDC. These powers are set out in clause (i) and (ii) of this GR. By clause (iii) of this

GR all the maintenance work, repair and reconstruction will have to be carried out by the agency or the contractor who has been termed in the GR as entrepreneur. He has also to perform all the duties and particularly of cleaning, removal of debris, clearing of the drainage systems and operation of service lines cables etc. The work of acquisition of land has to be carried out by the Kolhapur Municipal Corporation and it will be the responsibility of that Corporation so as to make available the land required for repairing and construction of the roads. For that purpose it must remove all encroachments and undertake rehabilitation projects and schemes so that the land is made available free of encroachment. There are about 9 toll booths which can be erected for purposes of collection of toll. Then, to recover all the costs and as above, a piece or parcel of land, for commercial development on lease for 99 years be allotted to the entrepreneur. That is the scheme and the rates of toll, the conditions and exemptions therefrom as prevailing earlier have been set out and further the scheme or project is specifically stated to be covered by section 20 of the Act. Therefore, we cannot accept the arguments of Mr. Narvankar to the contrary. The project as a whole being integrated is, therefore, beyond any doubt. Further, there is a power given to collect the toll and on the roads which are to be specified in terms of the notifications to be issued. The collection of tolls is a right conferred on MSRDC and which could be

delegated to the entrepreneur. Clause (16) clearly states that once the project work is completed to the extent of 95%, then, the toll collection can commence and that is approved.

75] Then, there are stipulations about constitution and composition of the Steering Committee and which involves the Commissioner of the Kolhapur Municipal Corporation. The Police authorities were also involved and they were to co-operate with the Committee so as to smoothen the traffic flow. The other stipulations and provisions may not be relevant except clause 23 which enables handing over 30,000 sq. mtrs. of land in the timber market limit to the contractor/ entrepreneur. There are conditions imposed with regard to use and utilization on this plot of land for commercial purpose. That is to be in accordance with the DC Regulations and approved development plan. The income from the said Commercial exploitation has to be shared and it must be apportioned in the ratio of '50:50'. The entrepreneur was to bear the project cost. From the remaining 50%, 10% will be handed over to the MSRDC for administrative expenses and 40% will be given to the Kolhapur Municipal Corporation. The entrepreneur will have to obtain prior permissions for such commercial use from the concerned department. If there are additional benefits and advantages on account of changes in the rules

such as DC Rules and Regulations resulting in more FSI, then, the quantum or figure of the income resulting therefrom shall be determined by referring to the ready reckoner. Further, a comparative analysis of the then prevailing market rates would also determine the amount to be apportioned and shared in the above proportions. The higher of the rates would be taken into consideration for this determination. Further, if the additional income could be generated at all by the entrepreneur or contractor and by usage and exploitation as above shall be solely decided by the MSRDC. The whole intent appears to be to bridge the viability gap and for that purpose suitable provisions can be made in the agreement. Upon perusal of all these clauses, we do not think that any special benefit or advantage has been conferred on the contractor. The argument of Mr. Nevagi that a largesse has been distributed in the form of allotment of land cannot be accepted if all the clauses of the agreement and particularly clause 23, 24 and 34 are read together. It is to bridge the viability gap and to ensure that the project reaches early completion that this portion has been handed over. There is no violation of the mandate of Article 14 of the Constitution of India. The complaint of Mr. Nevagi, learned counsel, appearing for the Petitioners in one of the PIL is that 99 years duration of the lease amounts to virtual sale of this land in favour of the entrepreneur/contractor IRB. That has been done without inviting

bids or tenders from the public by a public advertisement or notice. Mr. Nevagi submits that public property cannot be disposed of privately. It must be disposed of by inviting bids and offers from the public and that is by inserting a notice in that behalf in the leading newspapers published in and around the locality so also within the State. By this process anybody can bid for this property and it will fetch a higher price or value. That could be the market price. It is a huge tract of land admeasuring 30,000 sq. mts. and in a prime area or locality. It is an open plot. Therefore, in the garb of bridging the project viability gap, this land could not have been disposed of in this manner and in favour of the IRB.

76] In this regard, we have carefully considered the rival contentions and perused the pleadings including affidavits. We find enough justification for the course adopted by the authorities. Mr. Dwarkadas has pointed out as to how there was huge gap and the project could not have been viable. The difference of opinion between statutory authorities regarding meeting and sharing the expenses on the project led to the entrepreneur/contractor bearing all the costs. Now, the costs and which ordinarily would have to be borne by this public body will be borne by the contractor/ entrepreneur. Mr. Dwarkadas has pointed out that the project cost was financially unviable for the Kolhapur Municipal

Corporation. It passed a resolution No.180 dated 31st March, 2006 whereby the project cost was to be borne entirely by a private party on BOT basis. After financial analysis the MSRDC was of the opinion that the project was financially viable and, therefore, its construction cost should be increased. That is how the land came to be offered to the contractor for commercial exploitation. The events as referred by Mr. Dwarkadas from March, April, 2006 and later on of April 2007 would indicate that it is not to favour the IRB that this decision was taken. The decision was taken much prior to execution of the Concessionaire agreement and other events. It is not that this land has been sold as claimed by Mr. Nevagi. His arguments overlook the contents of the Government Resolution and to which we have made detailed reference in the foregoing paragraphs. The commercial exploitation by the contractor/ IRB is to bridge the gap and make the project financially viable. Ultimately a private entrepreneur would not bear the costs of huge projects and of laying and constructing roads to the extent of 49.99 kms unless there is a reasonable profit and benefit. It cannot be accepted and in such cases, all the time that contractors complete the works and the project as a whole on borrowed moneys or investments. To bridge the gap of the income generated from investments and other sources by the contractor and of its own so also the burden of interest and repayment of installments of borrowed moneys, till

the same is covered by the collection of toll, that the decision was taken to allot or hand over this land and on lease. Therefore, in larger public interest and to ensure completion of the project work in time that the decision was taken by the public body. It being taken more than 6 years back, no useful purpose will be served by now interfering with the same and on the grounds urged by Mr. Nevagi. The public interest having not been surrendered or sacrificed but to obtain benefits eventually for the public that this decision is taken. Pertinently, there are no allegations of malafides or any ulterior motives. There are no particulars forthcoming to substantiate the allegations of favouritism and nepotism either. In these circumstances, we are of the opinion that handing over this plot to the contractor does not harm or contravene the public interest rather it is subserving the same. Mr. Nevagi does not dispute that the clauses or paras of the Government Resolution dated 24th January, 2008 and the Concessionaire Agreement have to be read together and harmoniously. They postulate that the land or portion cannot be used and exploited by the entrepreneur as if he is the owner thereof or has absolute title to the same. Its use will be in accordance with the D.C. Rules. The entrepreneur will have to obtain prior permissions from statutory Authorities for commercial use. The entire income from such user also does not go to the entrepreneur. He can retain only 50% from the same and utilize it for

meeting the project cost and expenses. He will have to hand over the balance to MSRDC and substantially (40%) to the Kolhapur Municipal Corporation. If there was a sale of the land, then, all these benefits could never have been obtained by the Public bodies. The surplus income, its quantum and how it should be apportioned also has to be determined by the public bodies and their officials. If there is divesting of title, then, nothing of this nature is possible.

77] We are of the opinion that to such cases the exception carved out in the decision of the Hon'ble Supreme Court in the case of *Akhil Bhartiya Upbhokta Congress V/s. State of Madhya Pradesh & Ors. reported in AIR 2011 SC 1834* will apply. If the decision of allotment of public property in favour of an individual has been taken in an exceptional case and there is no total disposal or sale of the property belonging to the public, then, the arguments to the contrary canvassed by Mr. Nevagi and Mr. Narvankar cannot be accepted.

78] Additionally, we called upon Mr. Dwarkadas to take instructions as to why in larger public interest, we cannot impose a further condition on the entrepreneur/contractor. We put it to Mr. Dwarkadas that why a open plot of land which was earlier reserved in the development plan for use as

timber market and later as playground should be commercially exploited to such a extent as to deprive the residents of Kolhapur of open and green spaces completely. We shared our anxiety with Mr. Dwarkadas and suggested to him as to why the entrepreneur/contractor cannot make available to the public open space in the form of a playground so as to ensure playing area for the children and equally for the residents and senior citizens. Mr. Dwarkadas submitted that he is not averse to the course suggested by us. Upon taking instructions, Mr. Dwarkadas has stated that the contractor/entrepreneur will construct and lay a playground of a substantial size and area and hand it over to the Kolhapur Municipal Corporation. He submits that till the playground is laid and constructed, the contractor/entrepreneur will not commercially exploit the area or portion carved out for use as a playground. We direct accordingly. This area shall be made available and handed over to the Kolhapur Municipal Corporation within a period of four months from the date of receipt of copy of this order. The Kolhapur Municipal Corporation shall ensure that the playground area after it is handed over to the Kolhapur Municipal Corporation shall be used only as a playground and kept open to the sky. No construction activity shall be permitted therein. This to our mind would additionally ensure that the public is not deprived of open spaces and which are very vital for human existence and orderly and

proper growth and development of children and youth. Even the elderly and senior residents who are inhabitants of the city would be benefited by making available additional open space.

79] Now, we have to deal with the arguments of both Mr. Nevagi and Mr. Narvankar about the project not being completed and in terms of the clauses of the Concession Agreement. In that regard, we have perused that agreement in its entirety. If all the clauses of this agreement are read together and harmoniously it would be clear that the same does not contemplate levy and collection of toll only after full completion of the project work. The recovery of toll can commence provided the work is completed to the extent indicated in these clauses and the cost as stipulated therein is incurred on the project. With regard to the satisfactory completion of the project work, there are inbuilt checks and safeguards in the agreement. The presence of high powered statutory officials and responsible public bodies together with independent consultant ensure that the toll recovery does not commence abruptly or without compliance with the terms and conditions imposed on the entrepreneur. These authorities and the committees comprising of experts from independent institutions assure the public that roads laid meet the required standards. They are fit for being used by the vehicles and the

public. Such roads together with the pavements and the utilities and services represent a complete and integrated picture of the project. The public body, senior citizens and residents are expected to approach these independent committees or public officials with grievances and complaint and bring to their notice any shortcomings, defects, deficiencies in the project work. They can request these public officials and equally their representatives to monitor the project and take care of their complaints and grievances by issuing timely directions to the entrepreneur. This mechanism is devised in the agreement and in the law itself so that such mega and huge projects are undertaken and implemented with public participation. There is a representation given to the public on these committees and it is by appointing senior officials, independent experts from reputed engineering and technology institutes such as IIT (Indian Institute of Technology) and Veer Jeejeebhoy Technical Institute. Even the elected representatives can involve themselves by forwarding to the implementing agencies and authorities the complaints and grievances, suggestions and views of the public. In this case, we have found that on being not fully satisfied with the consultants report, the matter was referred to the senior official of the Public Works Department and which official had served in high capacity earlier. He had retired from service and was chosen for his competence and impartiality. He also inspected

the site and evaluated the project work independently. He has arrived at a satisfaction and it is recorded and contained in his report. The copies of the relevant documents, progress reports are available for inspection and scrutiny by the members of the public. The highest executive official of the State, namely, Chief Secretary, convened a meeting of the officials connected and associated with the project work and sought clarifications from them and gave directions including staying of the recovery of toll. We see considerable force in the argument of Mr. Dwarkadas and Mr. Chavan that the project work has been completed and the progress is as certified in the same. The contents of these reports having not been disputed that we are of the opinion that we cannot sit in judgment over the conclusions therein. The observations, remarks and views in such reports of experts deserve due regard and respect by this Court. If the standing, reputation, integrity, experience and expertise of the members of such committees cannot be doubted in the light of their credentials, then, all the more, it will be difficult to accept the vague complaints of the so called public interest litigants.

80] We see considerable substance in the contentions of Mr. Dwarkadas that the belated challenge to the project, the complaints and grievances at the fag end are raised so as to stall the recovery of toll. The toll recovery

was to commence and when that would have affected these residents that they come forward to question the entire project.

81] In this regard, it would be proper to refer to the affidavit in reply of the Respondent No.1 dated 28th November, 2013. In that the reference is made to the earlier PIL No.68 of 2011 which has been disposed of. In that PIL two orders are passed by this Court on 12th April, 2012 and 12th July, 2012. The relevant part of those orders read as under:-

“4. Mr. Dada, the learned counsel for the Respondent No.2 has not disputed that the Provisional Certificate dated 7th October, 2011 has already been issued by the Respondent No.5 which demonstrates that 95% work of the project has been completed and it is open for the Respondent No.4 to undertake commercial operations. Similarly, the Notification dated 17th December, 2011 has been issued under the Bombay Motor Vehicles Act authorising collection of toll on the specified Nakas.

5. Counsel for the Petitioners has submitted that the Hon'ble Chief Minister has taken cognizance of the issue and constituted a Committee to consider whether the work of Project undertaken by the Respondent No.2 was carried out strictly in compliance with the terms and conditions of the contract. The issue is pending before the Committee for decision and submission of the report to the Hon'ble Chief Minister has already stayed the collection of toll by the Respondent No.4 vide order dated 5.1.2012. The learned counsel for the Petitioners in the above referred facts and circumstances seeks some time to obtain instructions from the Petitioners.”

82] On 12th July, 2012, the following order came to be passed:-

“Counsel for the Petitioners is absent.

Ms Misra appears for the Respondent No.4.

2. The learned counsel for the Respondent No.4 has brought to our notice the order dated 12.4.2012 passed in the present proceedings. Perusal of the same shows that for the reasons stated in the said order, the learned counsel for the Petitioners sought time to obtain instructions from the Petitioners to withdraw the Petition with liberty to keep option open, if the grievance of the Petitioners subsists after the submission of the report by the Committee to the Chief Minister. It is contended that though the matter was listed thereafter on a few occasions, it could not be heard by this Court. The counsel for the Respondent No.4, in the circumstances, has prayed that the petition may be disposed of accordingly.

3. On the back-drop of the above referred facts and in view of the order dated 12.4.2012, we dispose of the PIL accordingly with liberty as prayed for.”

The events after this order and development have been, then, set out in this affidavit. Paras 7, 8, 9, 10 reads as under:-

“7. Notwithstanding the same, not only have the Petitioners failed to substantiate their allegations with regard to the alleged defective execution and/or non-completion of the Project works but the Petitioners have deliberately and/or negligently failed to disclose to this Court that there are several mechanisms of checks and balances built within the said Concession Agreement to ensure that the Project Works are carried out in conformance with the terms of the Concession Agreement and permitted variations thereof.

a) I state that there is a Steering Committee appointed under the said Project consisting of representatives of Respondent Nos.1, 2, 3 and 4 and the VC&MD of Respondent No.3 is the Chairman of the Committee. I state that this Steering Committee looks into the execution of the project works and in case of any dispute arising out of

and/or in relation to the said Concession Agreement, the order of VC&MD of Respondent No.3 is final and finding.

b) The Respondent No.1 has under Article 9 of the Concession Agreement provided a Performance Bank Guarantee of Rs.11 Crores and a Bank Guarantee of Rs.5 Crores is to be provided for Maintenance of Project Works as per the Concession Agreement. The said Concession Agreement also provides that if the Concessionaire is unable to complete the project works for its own fault and/or fails to rectify any defective work then the Respondent No.3 can complete and/or rectify the said work by an independent contractor and the Concessionaire would be liable to pay the costs incurred thereto. Further, it is also pertinent to note that apart from all the securities provided under the said Concession Agreement, the Respondent No.1 has also given additional Bank Guarantees to the tune of Rs.25 Crores for ensuring that all the Project works shall be completed as per the Concession Agreement, provided land is handed over to the Concessionaire. Annexed hereto and marked Exhibit "C" is a copy of the said letter dated 15th May, 2013 and 8th June, 2013 of Respondent No.1 forwarding the additional bank guarantees.

8. Furthermore Respondent No.7 has been appointed as the Independent Consultant for the said Project who periodically scrutinizes the project works and issues reports thereto. The Respondent No.1 is required to comply with all such reports as per the directions issued by the Steering Committee. I state that it is pertinent to note that while the Petitioners have annexed some of the said Reports of the Respondent No.7 they have malafidely and/or deliberately failed to annex other reports of Respondent No.7 which would show that as per the directions of Respondent No.7 and the Steering Committee, the defects in the project works have been rectified by Respondent No.1 from time to time. Further as per Article 13 of the Concession Agreement the Respondent No.1 has submitted monthly progress reports with regard to the said project which also contain photographs of the project site and work done thereon. I state that these reports are verified by Respondent No.7 and

Respondent No.3 by on site visit. Annexed hereto and marked as Exhibit "D-Colly" are copies of the photographs which form part of the monthly progress reports. I crave leave to refer to and rely upon the said monthly progress reports and replies to the Independent Consultant's Reports showing compliance thereof, as and when so required.

9. I state that another contention of the Petitioners regarding the Project Works and/or another ground for challenge to the right of the Respondents to collect toll, is that allegedly the said Provisional Completion Certificate is fraudulent and/or that Petitioners have not completed 95% of the project works and/or the same are not of good quality and/or that when there are several punch list items to be completed then collection of toll should not have been permitted.

9.1 I state that such contention of the Petitioners is based upon the erroneous surmise that even though the project contemplates a total of 49.99 km of road to be developed, the Respondent No.1 has developed only 7.3 km of roads (which is not 95% of project work) and still they have been considered as eligible to collect toll.

9.2 I state that the Petitioners fail to comprehend that vide the said certificate Respondent No.7 certified that upon the lands handed over to the Respondent No.1 within 90 days of the Appointed date the Respondent No.1 had at the time of issue of the said Provisional Completion Certificate completed 95% of the project works. However, the Respondent No.1 was still carrying on work upon the remaining lands which were handed over to the Respondent No.1 in phases, after expiry of the mandatory period of 90 days from the appointed date.

9.3 I state that a perusal of Article 10.3.5 and Article 14.2 of the Concession Agreement the Concessionaire (Respondent No.1) would show that the Respondent completed its mandatory obligation and thereafter was entitled to begin the collection of toll. However, that did not excuse the respondent No.1 from completing the work on the remaining

land. The relevant clause are:

“Article 10.3.5 – Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the construction works thereon within a reasonable period to be determined by the Independent Consultant in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that construction works on all land of the appointed date shall be completed before the Project Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected construction works shall subsist so long as MSRDC continues to pay the damages after giving 60 (sixty) days notice thereof to the Concessionaire, the obligation of the concessionaire to complete such works on such part of the site shall cease forthwith.

9.4 *The Petitioners are fraudulently portraying that the works listed therein to be completed are of great magnitude and/or proportion, though a perusal of the punch list items with regard to the said 3 roads (7.3 km) clearly shows that these works constitute a small portion. It is also pertinent to note that most of the punch list items are regarding work being carried out upon the remaining land handed over to the respondent in phases at that the relevant time period.*

9.5 *I state that in fact despite the resistance from the Toll Virodhi Kruti Samiti and despite delayed handing over of land by Respondent No.4 and the prevalent law and order situation, the Respondent No.1 continued to carry out the project works as and when possible. The Respondent No.1's work has been periodically scrutinized and certificates of percentage completion of the project work has been periodically issued. I state that by 29th January, 2013 the respondent completed 96.66% of the Project work upon 46.66 km of land handed over to the Respondent No.1 by then. I state that still 2 km (approx) land is still to be*

handed over to the Respondent No.1. I crave leave to refer to and rely upon Exhibit L to the Writ Petition No.6646 of 2013 which contains a copy of the Progress report of the project submitted by Respondent No.3 to Respondent No.4 and certified by Respondent No.7. Therefore, the Respondent is legally contractually and bonafidely entitled to collect toll upon the said roads.

10. *Notwithstanding the aforesaid, I state that apart from the internal checks and balances and the said provisional completion certificate, even the technical committee of Experts appointed by the Chief Secretary vide Notification dated 13th March, 2012, has certified that the quality and percentage of project works is good and it is pursuant thereto that the Chief Secretary has lifted the stay on the Toll Collection Notification dated 17th December, 2011. I state that the Technical Committee conducted an on-site survey and test of the project for all the project roads and found the same to be of good quality. I state that the Petitioners have distorted and/or misrepresented the statements recorded in the minutes of meeting held on 1st February, 2013 (Exhibit U to the Petition) during which the Report of the Technical Committee of Experts was discussed. I stat that during the said meeting the Technical Committee categorically stated that the quality of Project Works and the percentage of completion thereof is good. However, it is due to the unfounded objections of the representatives of the said Toll Virodhi Kruti Samiti and Respondent No.4 (KMC) that the Chief Secretary wrongly and/or without application of mind and/or solely under duress sought another Technical Committee to be appointed. I state that as Respondent No.1 was not willing to give into the unreasonable and/or baseless demands of the said Samiti and KMC, Respondent No.1 did not accept appointment of another technical committee and addressed a letter dated 15th February, 2013 recording the same. In the said letter the Respondent No.1 called upon the concerned Respondents to lift the illegal stay upon the Toll Collection Notification. Thereafter, the Respondent No.6 lifted the said stay upon the operation of the said Toll Collection Notification dated 17th December,*

2011. Annexed hereto and marked as Exhibit “E” is the office translation of the minutes of the meeting held on 1st February, 2013 in English language.”

Thus, the project work has been completed in conformity with the Concession Agreement.

83] In paragraph 25 of this affidavit, this is what is stated:-

“25. With reference to paragraph 17, I repeat, reiterate and confirm all that is stated by me at paragraphs 6(b), 8, 9 and 10 above and deny all that is contrary to and inconsistent therewith. I state that the Petitioners are malafidely portraying that allegedly Respondent No.7 (Independent Consultant) has fraudulently issued the Provisional Completion Certificate and/or that the said certificate has been issued in contravention of the terms of the said Concession Agreement. I state that the Petitioners are aware that the Provisional Certificate has been issued in accordance with Article 14.2 of the Concession Agreement. The said Article 14.2 is reproduced herein below:

“14.2 Provisional Certificate

The independent Consultant may at the request of the Concessionaire, issue a provisional certificate of 95% completion in the form set forth in Schedule-J (the “Provisional Certificate”). If the test are successful and the project can be safely and reliably placed in commercial operation even though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list, of outstanding items signed jointly by the independent Consultant and the Concessionaire (the “Punch List”) provided

that the Independent Consultant shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to MSRDC.”

I state that a perusal of Article 10.3.5 and Article 14.2 makes it abundantly clear that the said Provisional Completion Certificate is in compliance with the terms of the Concession Agreement and has been issued after conducting appropriate tests and therefore there is no arbitrariness, malafides, unreasonableness and/or biasness in issue of the same. The Concessionaire (Respondent No.1 herein) is entitled to commence the collection of toll upon the entire project once the Provisional Completion Certificate is issued and hence all the Respondents have acted in compliance with the terms of the said Concession Agreement. I state that admittedly it is the Respondent No.4 which was obligated to provide land/project site to the Respondent No.1 (Concessionaire) for the said project, however KMC delayed in providing the said land. I crave leave to refer to any rely upon relevant correspondence and Minutes of Steering Committee Meeting in this regard.”

84] We, therefore, find that such repeated complaints and to question independent consultant's findings and conclusions is not a bonafide attempt on the part of the Petitioners. A mere differing or divergent view of another so called expert would not suffice. We cannot disturb or substitute the mechanism devised in a agreement solemnly executed by public bodies and the private entrepreneur way back on 10th July, 2008 by any other agency or body. The agreement cannot be challenged now. Barring the issue of levy, collection and recovery of toll all stipulations in

the agreement remain undisputed or unchallenged. The agreement is not violative of public policy. All this demonstrates as to how PIL Petitioners do not wish to pay the amount of toll. The toll notification is issued on 17th December, 2011. That has been issued after the State was satisfied with the progress of the project. The recovery of toll was stayed temporarily so as to enable the independent experts and under the supervision of the Chief Secretary or Chief Minister to assess the project work again. Their assessment and appraisal having been documented and based upon which the contractor was called upon to give a bank guarantee to the tune of Rs.25 crores enables us to hold that there is no substance in the complaints of the Petitioner. We have also perused the affidavit of the Maharashtra State Road Development Corporation. Narendra Raghunath Bhambure, the Deputy Engineer, filed this affidavit in reply on 16th December, 2013. In that affidavit, the deponent has stated as under:-

“It is submitted that the Resolution/Notification in respect of Integrated Road Development Project for Kolhapur was issued on 24.01.2008 and the Concession Agreement has been entered into on 10.07.2008. The work of IRDP Kolhapur was commenced by Respondent No.1 on or about 09.01.2009. The Petitioners have sought to challenge the same said notification and the said Concession Agreement after almost five (5) years have passed and after more than 95% of the work has been carried out by the Concessionaire as per the said Agreement. Thus, the present challenge is nothing but an afterthought at the stage when toll collection in respect of the said project was

to be commenced. Thus, a challenge to the said Notification and the said concession agreement after almost a period of five (5) years and after completion of more than 95% of the work is hopelessly barred by delay and laches on the part of the Petitioners. I say that the Notification dated 17.12.2011 has been issued for imposing toll as more than 95% of the work was completed by the Concessionaire and its merely a consequence as per the terms and conditions of the Concession Agreement. The challenge to the said Notification after almost a period of two (2) years is also barred by delay and laches on the part of the Petitioners. I therefore say and submit that on this ground alone the above Petition deserves to be dismissed with costs.”

The wisdom of the State and public officials in undertaking such project and implementing it through a private entrepreneur being fully permissible in law, it cannot be questioned belatedly and all the more because that is not contrary to law. The decision is not arbitrary or malafide either. It is for the benefit of the public. In this affidavit, this deponent further states as under:-

“I say that MSRDC invited bids for the IRDP Kolhapur on BOT basis. I say that the Respondent No.1 being the successful bidder, a Concession Agreement dated 10.07.2008 was entered into between the MSRDC as the Developer, KMC as the confirming party and IRB Kolhapur Integrated Road Development Company Pvt. Ltd. as the Concessionaire to the said Agreement for the implementation of the project of IRDP Kolhapur. I say that under the said agreement Respondent No.1 was required to carry out the project work and undertake the entire project cost, maintain the project roads for a period of 30 years and in view of the same the Respondent No.1 was entitled to collect toll for the entire period of 30 years including the construction period (concession period) more particularly detailed in the said agreement. I say that the rights and obligations of the parties

have been provided in the said agreement. I say that the obligations of MSRDC are detailed under Article 6 of the said concession agreement. Similarly, the obligations of the KMC are also detailed under Article 6 of the said Agreement.

I say that an independent consultant namely SOWIL Pvt. Ltd., Respondent No.7, were appointed by MSRDC for supervising/overseeing the project work carried out by the Respondent No.1 so as to maintain the quality as well as for ensuring that the work is being carried out as per the terms and conditions of the Concession Agreement.

On 5.2.2011, 9th meeting of the Steering Committee was held in respect of issuance of the provisional completion certificate of the Kolhapur IRDP to the Respondent No.1.

The Independent Consultant after conducting all the specified and required tests vide letter dated 10.10.2011 issued a provisional completion certificate and certified that the Respondent No.1 had duly completed 95% of the work of the IRDP Kolhapur as per the Articles 14.2 and 15.1 of the said Concession Agreement. I say that pursuant thereto a toll notification dated 17.12.2011 was issued by the State Government in respect of IRDP Kolhapur detailing the rates of toll and the corresponding period for which the toll was to be collected.

I say that there was opposition/agitation from residents of Kolhapur for payment of toll on the ground that the quality of work carried out by the Respondent No.1 was not as per standard and also that 95% of the work was not completed by the Respondent No.1. I say that therefore on 5.1.2012, the operation of the said Toll Collection of the IRDP Kolhapur was temporarily stayed pursuant to the directions of the State Government. The work of IRDP Kolhapur could not be smoothly carried out by the Respondent No.1 due to opposition and agitation of the residents of Kolhapur.

On 13.3.2012, the Government of Maharashtra considering the agitation of the residents of Kolhapur for collection of toll by the Respondent No.1, constituted a committee of technical experts to ascertain whether the Respondent No.1 had completed 95% of the project work and

also to give the report regarding quality and standard of work as per the Concession Agreement dated 10.7.2008.

On 12.4.2012, the Technical Committee under the Chairmanship of Shri Pramod Beri, Indian Institute of Architecture (Division Kolhapur), Kolhapur, was appointed by Urban Development Department, Government of Maharashtra to inspect and verify that the Kolhapur IRDP project was completed to the extent of 95%.

I say that on receipt of the report from the Technical Committee in the month of May 2013, the State Government intimated the Collector, Kolhapur, to get the remaining work of the project completed through the concessionaire i.e. the Respondent No.1 herein by taking bank guarantees of Rs.25 crores for performance of the remaining work. The State Government also lifted the stay granted to the collection of toll. I say that pursuant to the said decision the Petitioners furnished the bank guarantees of Rs.25 crores on or about 15.5.2013.

I say that MSRDC vide letter dated 24.5.2013 requested the Superintendent of Police, Kolhapur, to provide safety and security for the project and to the staff of the Respondent No.1 involved in the IRDP Kolhapur and to provide full co-operation and support to the Respondent No.1 considering the agitation and opposition made by the agitators in respect of collection of toll of IRDP Kolhapur.

On 18.6.2013, the MSRDC informed the District Collector, Kolhapur that the commercial operation of the said project was approved by the Government on and from 20.12.2011 and that the Respondent No.1 intends to commence toll collection/ the commercial operation of the above project from 22.6.2013. The said letter requested the Collector to make necessary arrangement for safety and security of the above project to commence toll collection/commercial operation.

Further at page 1010 of P.I.L. Petition No.179/2013, the deponent points out how the public is benefited and in the following manner:

“I say that after detail financial analysis of the project duly

vetted by Consulting Engineering Services Ltd., Mumbai, the Consultant appointed for submission of the project report in the year 2006, the concession period of 30 years for the project cost of Rs.220 crores was approved by the Cabinet Committee of Infrastructure in its meeting held on 4.5.2007. I say that the State Government took the decision to implement the IRDP Kolhapur which included widening of 49.49 kilometer roads, construction of ROB at Temblai Naka and major bridge of Jayanti Nala, widening/construction of eight (8) minor bridges, fifty four (54) C.D. Works/slap drains, eighteen (18) improvements, ten (10) traffic islands, nineteen (19) bus stops, landscaping, street light poles etc. I say that this was for the purpose of improving the safety and speedy movement of the traffic on the roads across the city which would obviously benefit the general public. I say that the details in respect of the same have also been mentioned in the Government Resolution dated 24.1.2008.”

85] Lastly, in para 7.16 of this affidavit running page 1015 and 1016, the deponent states further that :-

“With reference to the contentions raised in Paragraph 38 of the Petition, I say that Urban Development Department Government of Maharashtra vide GR. No.KMC/2011/683/CR-171/UD-19 dated 17.12.2011 has issued Notification declaring that the toll shall be levied on specified vehicles stated therein. The said notification was temporarily stayed vide GR. No.2011/683/CR-171/Part-2/UD-19 dated 13.5.2013. But Respondent No.1 faced difficult situation for collection of toll, there were frequent violent attacks on toll booths. Further Respondent No.1 filed Writ Petition No.6646 of 2013 for providing Police protection and this Court ordered dated 26.9.2013 directed police to provide the protection.”

86] In view of this overwhelming material and nothing contrary having

been brought on record except bare denials in a rejoinder affidavit dated 10th December, 2013, that we are of the firm view that public interest will not be subserved by owe interference with the project or in recovery of toll. None of the positive assertions in the Affidavit in reply have been denied. The contents of the documents cannot be disputed now after the certificate, reports and Minutes of the Meetings are on record for several months. The inspection and meetings at site could have been attended by the Petitioners. The averments and allegations in the memo of PIL and the Affidavit in rejoinder do not indicate that the Petitioners made any attempt to participate and give suggestions and views to the experts, independent consultants or public bodies. The PIL Petitions appear to be an afterthought and a counter-blast to the entrepreneur's Petition. Mr. Nevagi also does not dispute that a P.I.L Petition No.82 of 2011 (Amit Algive and another V/s. State of Maharashtra & Others) was filed in this Court on the issue of shifting of utilities by the Contractor. On that P.I.L. Petition a order was passed on merits, dismissing it. That order passed on 22nd February, 2013 is reproduced in the affidavit in reply of Respondent No.4 to P.I.L. Petition No.216/2013, Shri Rahul Joshi, the Deponent quotes this order at page 351 of the paper-book in that P.I.L. We do not see how the same issue can be raised again and again and without pointing out any changed circumstances. It is pointed out in the affidavit of the MSRDC

also that shifting of utilities essential for the project has been done by the Contractor or Entrepreneur. The utilities have to be shifted only after the public body laying it (for example Municipal drains, sewers, pipe lines) is made aware of it and fixes or determines an alternate location. Hence, the vague assertion of the P.I.L. Petitioners without specific details cannot be accepted. Apart therefrom, there is no rejoinder affidavit on record to dispute the factual data provided by the contractors of MSRDC in their reply. We cannot decide a factual and technical dispute in our limited jurisdiction. The written arguments tendered on 24th February, 2014 also do not contain any new material. Thus, there is no substance in this objection as well. The above three objections or submissions are the only one raised before us. We find no basis or foundation for the complaints made by the Petitioners.

87] Before parting, we would deal with the decisions cited by Mr. Nevagi. In support of his contention that even in cases where a public body enters into the contract with a private person and for development of infrastructure including roads, this Court can in writ jurisdiction interfere with the decisions of public bodies or with the terms and conditions of the contract. This can be done even in a public interest litigation in his contention.

88] He places reliance upon the judgment of the Hon'ble Supreme Court in the case of *Noble Resources Ltd. V/s. State of Orissa & Another in Civil Appeal No.4108 of 2006* decided on 13th September, 2006 [**2006 (10) SCC 236**].

89] There is no dispute about the legal principle as the conduct of a State in all fields including a contract is expected to be fair and reasonable. It cannot act arbitrarily, capriciously or whimsically. In other words, it should not act contrary to the mandate of Article 14 of the Constitution of India. A Writ Petition under Article 226 of the Constitution of India is maintainable only in such cases and that is how the Hon'ble Supreme Court has proceeded (see para 14 and 15 in *Noble Resources* (supra) as well). In the present case, we have not found anything arbitrary or violative of Article 14 of the Constitution of India in the terms and conditions of the contract. We have not found that the conduct of any public body is unfair or unreasonable. It is not contrary to public interest either. In these circumstances, no assistance can be derived from this judgment by Mr. Nevagi.

90] We have also perused the compilation of documents which has been filed so as to assist the Court by Mr. Nevagi. There is nothing that we

have omitted therefrom and which could be said to be germane for our purpose. It is not necessary to refer to each and every judgment which has been cited by Mr. Dwarkadas. We have applied the very principle and which is set out in *Jindal Stainless Ltd. and Another V/s. State of Haryana reported in (2006) 7 Supreme Court Cases 241*. Even if toll is compensatory tax and found to be closer to the concept of a fee still, on the basis of the overwhelming corresponding benefit that is derived in this case by the residents and citizens, the levy of toll cannot be said to be violative of the mandate of Article 14 and 265 of the Constitution of India. That does not violate the mandate of Article 301 of the Constitution of India as well. Once this view of the Hon'ble Supreme Court is noticed, then, the other judgment cited by Mr. Dwarkadas need not be referred.

91] As a result of the above discussion, both the PIL's fail. They are dismissed. For the reasons recorded above, we pass the following order:-

(A) PIL Nos.179 of 2013 and 216 of 2013 are dismissed.

(B) Rule is discharged therein.

(C) In the circumstances of the case, there will be no orders as to costs.

(D) As far as Writ Petition No.6646 of 2013 is concerned, we direct that the order passed by this Court on 28th August, 2013 and

26th September, 2013 and in terms of the substantive prayer seeking police assistance and protection shall continue and the same be provided as and when necessary and in the circumstances narrated in the said order. As we find that an affidavit as sought by this Court seeking complete compliance therewith has not been filed, that Writ Petition shall be placed for compliance of the earlier orders and this order and direction after eight weeks.

(E) As far as Writ Petition No.10407 of 2013 is concerned, the same will not survive in the light of our conclusions and final order in the two PIL Nos.179 of 2013 and 216 of 2013.

(A. K. MENON, J.)

(S.C. DHARMADHIKARI, J.)

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