

(1992) 07 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 1754 of 1989 Along with Writ Petition No. 2085 of 1989

Bal Kalyani and others

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 09-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Land Disposal Rules — Rule 27, 28, 37
Maharashtra Government Rules of Business, 1975 — Rule 11(1), 12, 15
Maharashtra Land Revenue Code, 1966 — Section 276, 295

Citation : AIR 1993 Bom 10

Hon'ble Judges : K. Sukumaran, J;B.P. Saraf, J

Bench : Division Bench

Advocate : M.M. Vashi, for the Appellant; Miss Tarawalla and Miss P.D. Anklesharia, for the Respondent

Judgement

K. Sukumaran, J.—What the case is about:

Malabar Hill of Bombay is well-known all over the world and for very long time. Bombay's general transformation into a nineteenth century urban metropolis did not spoil it much. A guide-book of 1865 remarks :

"The drive from Malabar Hill to Chowpatty along the foot of the cliffs is very pretty. The steep banks are covered with foliage...."

Even by 1982, that area, by and large, preserved its earlier form. That was how someone who had taken pains to study the history and geography of Bombay felt. He stated :

"Today that, atleast, has not changed. There is still a shanty-town there, clinging tenaciously to some of the most valuable land in the world....".

(See, Gillian Tindall -- "City of gold", 1982, page 243)

2. This litigation concerns that most valuable land. "Rocky Hill" is an enclave in Malabar Hill. Some area is occupied by the flats constructed therein. They are inhabited by Judges and Ministers, mostly by Judges. The land has been in possession of the Public Works Department from 1909 onwards. In the prosaic of the Revenue Department, it is an area comprised in City Survey No. 211 of Malabar Hill Division.

3. There are two Writ Petitions, one on behalf of an applicant who runs a small school "Balkalyani" for young children in a plot in that very area (Writ Petition No. 2085 of 1989), and the other by "Save Bombay Committee" -- a public interest group (Writ Petition No. 1754 of 1989).

4. We shall, now, attempt a narration of the material facts and events, in their chronology.

A MERE NARRATIVE OF FACTS AND EVENTS :

5. The operations commence by the middle of the year 1986. Mr. V. Ranganathan, I.A.S., (in the Super Scale Class I Category) came to Revenue Department in its Relief and Rehabilitation Section. He had additional charge of Revenue from 1-9-1988 to 1-2-1989, when he was transferred to Rural Department. The first application for allotment was made by Mr. Ranganathan, Revenue Secretary and Promoter of a Co-operative Housing Society in formation, on 26-6-1986. It may be noted that without even registering a Society, scouting for a plot was started by a top official in the Revenue Department which is in charge of the allotment of land. (The Society comes into existence only two years later, on 5-9-1988.)

6. The application was for a different plot in Wodehouse Road. Even in 1985, the eminent Scientist, Dr. Raja Ramannah had made an application for a plot there for the Scientific community. That had been turned down. The application of the I.A.S. Officers had to share the same fate as regards that plot when this information was conveyed by the Collector to the Government.

7. The application for the present site was soon thereafter filed on 25th July 1986. It may be emphasised that the application was from V. Ranganathan, Chief Promoter, Proposed Co-operative Housing Society for Government servants, C/o. Secretary (Relief & Rehabilitation), Revenue and Forests Department. While the earlier application for land in Fort Area was for 2014 sq. metres, the area demanded in Malabar Hill was much more". Every member, under the G.R. was entitled to a maximum carpet area of 1076 sq. feet. The number of members, 19, mentioned in the application would not be sufficient for justifying the demand of the greater area. The Collector, solicitously enough, therefore, requested Mr. Ranganathan by his letter dated 5-8-1986 to forward the names of additional members so as to enable his office to take further action in the matter. A list was, with extreme despatch, forwarded by one Chandra Tyengar representing the Chief Promoter. The list was incomplete. Consequently, the letter assured :

"One membership in the reserved categories will be indicated subsequently."

(There is no indication in the files, of the furnishing of the information before the Collector proceeded further in the matter.) The Collector submitted his detailed report on 19-8-1986. The Collector pointed out that the property bearing C.S.No. 211 of Malabar Hill Division admeasured 19261.02 sq. metres, that it was in the possession of P.W.D. since 1909, and that the Society "had demanded a vacant portion from this land." He proceeded to state :

"Since, the land is in possession of the Executive Engineer, P.W.D. feasibility of making it available for the said Society is not known to this office. This office is also not aware of the present position regarding E.S.I. in balance."

The Collector suggested consultation with the P.W.D. and awaited further orders from Government. By letter dated 21-8-1986, the Collector sought from Mr. Ranganathan two more copies of the site plan showing the exact portion demanded in red boundary lines to enable his office to inform the Government the area demanded by the Society. Ranganathan promptly furnished to the Collector the additional site plans showing the exact portion, by his letter dated 22-8-1986. In the light of the fresh materials come by, the Collector addressed a communication to Government on 2-9-1986. It was, among other things, pointed out therein that the area of land demanded by the proposed society had not been mentioned in the earlier report, and that the area of the land demanded by the society was roughly calculated from the copies of the plans submitted by the Chief Promoter of the society on 22-8-1986 which approximately came to 3995.86 sq. metres or 4779 sq. yards. He added that the exact area of the land under demand will be determined after joint survey in case Government decides to grant this land to the said Society.

8. On 3-12-1986, a Joint Secretary of Revenue and Forests Department, sent a communication to the Collector, paragraph 2 of which reads :

"Secretary (Revenue) desires to have a complete list of the areas of Government land in Malabar Hill area showing the land which is under buildings and vacant land. The said list should be accompanied by a plan showing the location of each plot and the areas etc."

The Collector was directed to forward the list and the plan as decided by the Secretary, Revenue immediately. There appears to have been a lull in the activities and a pause in the correspondence.

9. On 15-7-1987, Mr. V. Ranganathan wrote to the Minister for Revenue. It received the immediate attention of the Minister. The marginal notings indicate swift action taken thereon. The pendency of the application, the advantages which the Officers will have by the allotment, and the benefit derived by the Government are all shown therein. The last two sentences are particularly significant :

"This would be possible with the blessings of Maharashtra Government in

allotting the plot of land. Incidentally, in terms of latest Government Resolution dated 27-10-1986, there is a preference for Co-operative Housing Societies of State Government employees and there is no need for public notice in respect of plot of land applied for by our Co-operative Housing Society."

The above representation to the Minister is accompanied by a letter from Ranganathan dated 6-7-1987 to Shri Kanga, who is then described as Secretary for Revenue and Forest Department. Therein, there is a reference to some more Officers showing interest in joining their Society and forwarding of additional names to the Collector. Ranganathan stated :

"We understand that the Collector of Bombay had recommended our case and the same is now with the Revenue and Forest Department for a final decision."

A note was appended along with the letter to enable the Revenue Department to take a decision.

10. Paragraph (II) of the note, inasmuch as it tenders his advice to the Revenue Secretary, is particularly relevant :

"A later G.R. came into effect on 27-10-1986 (No. LCS-1085/845/CR-696/G-4) which made explicit the procedure for disposal of Govt. lands, except where one or two plots are available for disposal, in isolation. It is submitted that in our case it may not be physically feasible to sub-divide this plot any further, since a substantial area is already under residential accommodation for Judges and compulsory open spaces. The topography of this area is such that from the total land that is available, at the very most 2 plots could be carved out. In view of this, we had requested the Government for one piece of vacant land of about 3000 sq. mtrs."

Ranganathan renewed the request to the Minister, by his communication addressed to the Minister on 26-7-1987. The file is then shifted to the Secretariat which commences with a discussion, and ends with a note of Kanga on 7-7-1987, i.e. on the very next day after Ranganathan's communication dated 6-7-1987 (See at page 133). There is no independent discussion about the various possible aspects which have to be considered in the grant. The person who prepared the note made the following suggestions :

"Suggested that -- if the land is more than 2508 sq. metres, it is required to prepare a lay out, excluding 15% area for recreation as per the DC Rules. If Government decides to grant land, it is necessary to prepare lay-out make sub-divisions. Such lay-out will have to be submitted to Bombay Municipal Corporation for approval. The lay-out will have to be prepared by the PWD. If Government principally agrees to allot the land, the valuation will have to be done by the Collector of Bombay.

It is stated that the whole plot (CS 211) is not vacant but out of an area of 14,009.75 which is available for construction. 3000 sq. metres may be allotted to V. Ranganathan's Society and required land to Mane's Society. Orders in this

regard may be issued."

It referred to the fact that P.W.D. had not furnished plans as demanded by the Department. However, an addendum is added about the plan, which does not appear to be necessary. There was a suggestion by the Joint Secretary for a discussion with Special Secretary (Revenue) with Secretary, PWD. Then it is noted that Special Secretary, Revenue and Forest Department discussed the matter with Tripathi and Gopal. The direction then was :

"Please process case early".

No minutes of the discussion are available in the file.

11. The views of the P.W.D. contemporaneously expressed, could also be recapitulated. Note No. 9 gives the reaction of the P.W.D. under the signature of the Secretary of P.W.D. on 27-10-1987. It would appear that there was a query by the Revenue Department as to how the P.W.D. proposed to utilise the particular plot. After giving the figures of amounts spent for construction of residential quarters of Government employees, the note stated :

"During the next two years, that is 1988-89 and 1989-90, it is difficult to estimate as to how much provision would be made."

It then indicated that two crores of Rupees would be required for two buildings of 16 storeys in that plot in accordance with the Master Plan. The note stated :--

"Having regard to the availability of funds, the PWD has no objection to make a portion of this plot available For the Co-operative Housing Society of Government Officers."

It is followed by another sentence :

"The picture about availability of funds during the 7th Five Year Plan as it emerged after the review, which was taken during the last month is not very good. With this background, the PWD is agreeable to make available a portion of this plot to the Revenue Department." .

An area of 2225 sq. metres, according to the note could be thus made available to the Society of Ranganathan. The Society would have approach Road from Bhagwan Indrajit Road. The note further preceded :--

"However, for this purpose the existing school and residential quarters for 6 employees, which are existing on this plot will have to be reconstructed elsewhere and the expenditure required for this purpose will have to be borne by the two Societies in the proportion of the areas to be allotted to them."

A consolidated note is thereafter prepared as on 17-12-1987. It mostly discussed about the membership of the Society which had applied for the land. Paragraph 10 contained a suggestion :--

"In view of the limited area available for allotment to the Co-operative Housing

Societies may be amalgamated and only those officers who satisfy the aforesaid norms should be considered for membership of the amalgamated co-operative housing society which may be allotted 3,725 sq. metres of land."

Kanga, as Revenue Secretary, then prepares a final note. He refers to a net addition to the housing stock with Government by the allotment of the plots. He added :--

"It is, therefore, in the interest of Government to allot such plots to Government Officers since due to financial constraints, new accommodation is not likely to come up on any substantial scale out of the State Budget."

The rest of the note is not relevant for consideration of the questions in the Writ Petition.

12. It is the above note which had been placed before the Minister. The Minister of Revenue noted on 1-2-1988; "Please discuss." Here again, the minutes of the discussion are not available. There is no indication about the topics of discussion or the views which ultimately emerged in the light of the discussion. On 21-1-1988, the Minister for Revenue made the following note :--

"The proposal alone is for allotment of plot to the Co-operative Society of IAS and other officers. We have already allotted many plots to such type of Societies. Some of the deserving officers have been left out. I propose that this plot may be allotted to this Society as proposed."

13. The matter was put up with a further note of the Assistant Secretary and Deputy Secretary, both dated 18-7-1988. It was signed by the Minister of State for Revenue on 30-7-1988 and by the Chief Minister on 30-8-1988. There is absolutely no further indication of views by the Minister for Revenue, or the Chief Minister. On 31-8-1988. Minister of State, Revenue, directed : "Necessary orders may be issued." The further processing was done and a note was prepared on 28-9-1988. The last sentence therein reads :

"Finance Department may please see for concurrence."

The Deputy Secretary, Finance Department stated :

"It would have been appropriate to Show this file to Finance Department before the same was submitted to Government. The Finance Department however has no objection to the issue of the proposed orders."

The Special Secretary, Finance, simply signed. The Assistant Secretary, Revenue, was then very assertive in his note dated 30-9-1988 :

"The Finance Department having concurred in the proposal, the Government Resolution pp. 165-168 correspondence may issue."

14. The above is the genesis of the impugned order.

15. The Letter of Intent was issued on 31-8-1988. In tune with the speedy pace

of the proceedings, other orders also have been passed by the Government, such as permitting new members of the Society to come in, allowing alteration in the user of the building and the like.

15A. The petitioners raise a basic question about a disposal of Government land to a Co-operative Society mainly consisting of the members of the Indian Administrative Service. The stability of these orders is dependent upon the strength of the basic foundation order evidenced by the Government Resolution resulting in the Letter of Intent dated 31-3-1988. The superstructure will doubtless collapse, if the foundation is shaky, and is shaken.

Constitutional Perspective :

16. Time was when the monarch could deal with what all he surveyed in any manner he liked. Some of them thought that waves would stop, if only commanded. King Canute attempted it earlier; another King of Cambodia performed a similar feat sometime in the close of 18th Century. He too was disillusioned. (See My Royal Clients -- by Paoley.) In a constitutional set-up no one has such unbridled or absolute power. The Rule of Law subordinates every other functionary in our system, to its regulatory process. Even largesse cannot be doled out by those in powers, in any whimsical or fanciful manner. The classic passage containing the idea as crystallised in the International Airport Authority's case *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , has been subjected to reiteration firmly and recurringly, and for that reason, we refrain from referring to or extracting from that and subsequent decisions.

We have felt it necessary to remind ourselves, and to remind the Respondents, about this basic position in our approach and attitude, some of which appear to have clouded the applicant and the ultimate decision making authority.

The Relevant Legal Provisions :

17. The special provisions of the local law dealing with disposal of the Government land, will have to be understood in the background furnished by constitutional position, conventions and perception.

18. As for the State of Maharashtra, the provisions are simple and not so numerous. The Land Revenue Code of 1966 is the main statute. Section 276 is the basic provision. It reads :

"It shall be lawful for the State Government to grant lands free of price and free of revenue, whether in perpetuity or for a term of years, and on such other terms and conditions (if any) as may be annexed to the grant."

19. The Governmental authorities are likely to be misguided by the apparently wide provisions as giving an absolute discretion to the Government, for disposal of the land. The anachronistic phrase, obtaining in its undisturbed form need the reading down to be in consonance with the basic constitutional system alluded to

above.

20. We shall now come straight to the other provisions dealing with the power of the Government for disposal of its land.

Section 295 of the Maharashtra Land Revenue Code is the relevant provision and it reads:--

"295. It shall be lawful for the Collector, with the sanction of the State Government, to dispose of any lands or foreshore vested in the State Government in such manner and subject to such conditions as he may deem fit, and in any such case, the land or foreshore so disposed of shall be held only in the manner, for the period and subject to the conditions so prescribed."

The following are the important aspects in that Section:--

(1) The Collector is the primary authority for disposal of the lands; and

(2) He can dispose of the lands only with the sanction of the Government. The manner of the disposal and the conditions of such disposal would be such as indicated by the Collector.

21. Land Disposal Rules have been framed under the Code. Rules 27, 28 and 37 are relevant among them. Rule 27, inter alia, permits grant of building plots to a cooperative housing society. One of the matters which could be taken note of in the case of a co-operative housing society, is the income of the members of the society. Rule 37 deals with disposal of small strips of land adjacent to an occupied unalienated building site, which could not, reasonably, be disposed of as a separate site. A strip of land could then be granted by the Collector to the holder of an occupied unalienated building site.

22. Various Government Resolutions deal with the policy of allotment of land in favour of co-operative housing societies. One was dated 12th November 1968. It was revised by the Government Resolution dated 15th July, 1978. The Government Resolution apparently favoured those societies whose members had a higher income, judged in the light of the condition which obtained then. The policy was revised by another Resolution dated 12th May 1983. Government employees were among the favoured groups. The comparative merits of various demands for the land, had to be examined by the Collector before forwarding the proposal for grant of land with a view to obtain Government orders. He had to discuss the particulars of other demands in his forwarding report. A provision, clause 10, was made for having members of Scheduled Caste/Scheduled Tribes and backward classes in the membership of co-operative housing society for giving representation. Clause 11 is very important, and would merit reading in full :

"The members of public who come to know about the availability of Government land for disposal apply for the same and only such applications are considered and processed and in the result, limited number of persons who come to know

about availability of land from Societies and approach Government get the benefit, while many deserving cases are left out for want of knowledge on their part. Government is, therefore, pleased to direct that, except where one or two plots are available for disposal in isolation, in all other cases, particularly, where a layout is prepared in accordance with the local development control rules and more plots become available for disposal, the Collectors should issue press note in the local newspapers informing the members of public regarding the availability of such plots and invite applications for their disposal within period to be stipulated in such press notes so that persons interested can form Societies and apply for grant of land within such stipulated period. The applications received accordingly should be scrutinised and proposals should be submitted for approval of the Competent Authority."

The Supreme Court succinctly stated the essence of the Clause :

"Paragraph 11 is really intended to protect public interest and to ensure that land is allotted after due publicity so that all persons interested may compete therefore and their relative merits assessed....."

(See *Foreshore Cooperative Housing Society Limited, Bombay Vs. Nivara Hakk Suraksha Samiti, Bombay and Others*, .

23. Why should there be this insistence on publicity? It is not merely to ensure the best price for the State, important though it be as a relevant consideration. There is a far more fundamental aspect involved that touches the very foundation of the existence of a democratic institution under a Constitutional scheme wedded to the Rule of Law. A case which came from Kerala, was instrumental for very pertinent observations, giving a thrust and focus on a salient aspect fundamental to the governance of the country. There was an exhaustive survey of judicial decisions in the years gone by. The succinct summary occurring in Paragraph 14 could be usefully extracted:

"The public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting tenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should undoubtedly act fairly. Their actions should be legitimate. Their dealings should be above board. Their transaction should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism. Ordinarily these factors would be absent if the matter is brought to public auction or sale by tenders. This is why the Court repeatedly stated and reiterated that the State owned properties are required to be disposed of publicly. But that is not the only rule. As O. Chinnappa Reddy, J. observed "that though that is the ordinary rule, it is not an invariable rule." There may be situations necessitating departure from the rule, but then such instances must be justified by compulsions and not by compromise. It must be justified by compelling reasons

and not by just convenience."

24. It is desirable here and now to emphasise some of the features which deserve reiteration, and which are revealed from an examination of the G. R.s issued from time to time, while considering the action of the authorities in the grant of lands.

(i) There was a practice, of persons possessed with information of the availability of Government lands making applications; others who were ignorant about the same, were left out, even when they had a better claim for allotment.

(ii) That unsatisfactory situation had to be remedied effectively.

(iii) As a generality, the greatest publicity should be given informing the public regarding availability of the plots; applications have to be invited and processed as indicated in that Rule.

(iv) The publication is to be of a wide character; it must be by press note in the local newspaper.

(v) There is an exception to the above general provisions. That relates to a case "where one or two plots are available for disposal in isolation."

25. When such press notes are issued, it could be legitimately expected that there would be healthy flow of applications from persons who belong to the eligible category. Then arises the Collector's duty to assess the merits of each of the applications, and put forward in writing, the reasons which, according to the Collector, determine the claim of priority of each one of the applicants.

26. The later stage relates to the manner in which the Government has to deal with it, when it is in seisin of the proposal of the Collector. That is dealt with by the Rules of Business and Instructions. The orders are to be passed only after consultation with Finance Department.

Points for decision

27. In the light of the pleadings and in the course of the arguments which helped eschewing incorrect positions and irrelevant details, four major heads of discussion were found to be necessary, for a satisfactory disposal of the writ petitions. They are :

(1) Was any isolated plot available for disposal/allotment?

(2) Was there prior consultation with the Finance Department? If not, what is the effect and impact on the decision taken by Government, in the peculiar circumstances of the case?

(3) Is the decision vitiated by mala fides, operating in the form of illegitimate influence of top I.A.S. Officers on the political masters?

(4) Is the decision bad for non-application of mind?

We have also thought it necessary to devote separate space and energy for discussing some of the points stressed by the learned Government Pleader with excessive enthusiasm. Then follows our conclusion.

I. Was there any isolated plot available for disposal/allotment?

28. There is not even a remote indication about the existence of any isolated plot in Malabar Hill area. Even the application of Ranganathan did not refer to the existence of such an area. His desire was only to get at some land and somehow. The Wodehouse plot was sought for but could not be got. He was in search of other areas. Rocky Hill was attractive. He applied; not because it was an isolated plot but because it was a piece of valuable Government land. It is difficult to treat this plot as an isolated plot. If that plot could be treated as an isolated plot, with equal facility, any area of vacant land anywhere could be treated so. The logic, would not spare any of the residential compounds including those at Land's End (where the Chief Justice's Bungalow is located). No area of the Bombay City would be safe, that way. Why not the Cross-Maidan? Why not the Oval? Why not the spacious areas of Raj Bhavan? We are clear in our mind that as regards the plot in question, no case of an isolated plot could be made out by any stretch of imagination. We may also stress that it is not enough that there is an isolated plot; there must be an isolated plot available for disposal.

29. The movements of files in the Secretariat, may be carefully noticed in this context. It is a case of *Res Ipsa Locquiter*. On 3-12-1986, the Joint Secretary asked the Collector to send a complete list of areas of Government land in Malabar Hill. Pages 119 to 124 contain the statement showing the present position of plot area, built-up area and balance plot area of various Government bungalows at Malabar Hill, Bombay. Item No. 20 is Rocky Hill. The plot area is 19,261.02. It has a balance area of 14009.75. There is a further endorsement :

"There are no open plots in Malabar Hill area."

In other words, it is difficult to posit a case of any isolated plot being available in Rocky Hill. It was, comparatively, a large site of land. If Government wanted that they may be subjected to an assignment process, it would have been open to the Government to do so, by complying with all necessary formalities including the publication. The area could not be dealt with, as an isolated plot, at all.

30. The next paper seen in the file is that a letter dated 17-4-1988 coming from V. Ranganathan described as Secretary, (Relief & Rehabilitation) addressed to the Minister for Revenue, stressing the necessity for early orders on the application for allotment. On page 129 is a communication from Ranganathan dated 15-7-1987, requesting for the allotment. There is no reference to this plot being isolated plot in this communication as well. Ranganathan addressed a communication again on 6-7-1987 to the Revenue Secretary Mr. Kanga. It refers to the application in C.T.S. 211 in Malabar Hill. There is a significant sentence reading:

"The latter location of Rocky Hill is suitable because some more officers had shown interest in joining our Society....".

Here again, a plea of availability of an isolated plot is not even shadowed. Along with that letter was forwarded a note chronicling the various events right from the issue of Government Resolution dated 12-5-1983. The following sentences are material:

"It is submitted that in our case, it may not be physically feasible to sub-divide this plot any further, since a substantial area is already under residential accommodation for Judges and compulsory open space. The topography of this area is such that from the total land that is available, at the very most 2 plots could be carved out. In view of this, we had requested the Government for one piece of vacant land of about 3000 sq. metres."

The note makes matters extremely clear. It establishes the fact that a future carving out of plots would be necessary, to make the plots available. This rules out the existence of an isolated plot already available for disposal.

31. On 26-7-1988, the Minister for Revenue was informed about christening of the Society as "Angaraki" and about B. S. Meena being the Chief Promoter of the new Society. Apart from 26 members who were members referred to, there was a waiting list of 7. On 3-9-1988, the Collector of Bombay passed an order which referred to a communication dated 31-8-1988 from the Government to Meena, Chief Promoter of "Angaraki" Cooperative Society about the Government's intention to grant plot bearing C. S. No. 211 (part) of Malabar Hill for the proposed Society. The Collector approved, under the communication, the names of the persons as members of the Society. Subsequent communications about the approval of the names of some more members are not of much relevance. The Collector intimated the Government about the registration of the Society on 5-9-1988 by his communication dated 7-9-1988. A communication dated 25-11-1988 from the Collector to the Secretary to Government, Revenue Department, refers to the Government according sanction to lease the plot in C. S. 211, and to the possession being handed over to the Society on 3-10-1988. Thereafter, it is stated that the joint survey of these two plots was carried out in the presence of the Secretary of Angaraki Cooperative Housing Society Limited with Deputy Engineer, Western Sub-Division.

32. It would thus appear that for the first time, a survey of this plot was done only in October 1988. When the application was made for allotment, no one had given a clear idea about the actual area of land available for allotment or other particulars.

33. We have been searching for a finding or a noting about the plot being an isolated plot. No official, high or low, has suggested or stated that the plot is an isolated plot. No minister has applied the mind to the question whether the plot is an isolated one or whether there was an isolated plot available for disposal and as a consequence thereof the mandatory requirement of publicity under the

Government Resolution, could be dispensed with.

34. All indications in the notings and the files would counter a view that it is an isolated plot. The views expressed by the P.W.D. Secretary, would clearly rule out that the area in question is an isolated plot.

35. A necessity for an extensive demolition of an existing school and residential quarters for six employees, would blast the case of an isolated plot, as assumed in the files. It would be the height of perversity to carve out an area, partly by demolition operation of existing buildings for facilitating the road and then to term it as an isolated plot. The fact that the demolition is in respect of a school for young children and the residential quarters of six employees, would not in any way alter the factual or legal position. It would indicate how the weaker sections are displaced and a noble purpose (education of children) is thwarted to benefit the top bureaucrats. The materials in our mind, would not justify a finding about the area being an isolated plot. If that is so, then the exercise for an allotment without publication would be totally without jurisdiction. The resultant order would be grossly illegal and invalid. A Constitutional Court is then obliged to declare its character of illegality and invalidity. We have no hesitation in making the above declaration and quashing the impugned Government Resolution on this ground itself.

Absence of consultation with Finance Department

36. Another serious contention urged to invalidate the Government Resolution, is a grievous breach of the Rules of Business, particularly 11(1)(a). We have already indicated in paragraph (supra), the material notings in the file which clearly establish that there was no prior consultation with the Finance Department before the issue of the Government Resolution. There is no controversy OK the factual position. However, it was submitted on behalf of the Government that a subsequent concurrence by the Finance Department, would be sufficient to salvage the Government Resolution.

37. Having regard to the facts of the case, including the manner in which the subsequent concurrence has been given, we are satisfied that there is a flagrant violation of the Rules of Business which cannot be cured or got over by the subsequent acquiescence of the Finance Department.

38. It is not a mere procedural rule that had been overlooked inadvertently. It is breach of a fundamental obligation on the part of the functionaries of the State.

39. The prime position of the Finance Department of a Governmental set-up, needs no reiteration nor elaboration. Finance is almost the spine of the system. Those who ignore its importance, would do so at their peril. An empty treasury tarnishes the glory of sovereignty. It is for this reason, that the Rules of business, which regulate the movement of the wheels of administration, provide for a well guarded and sophisticated operation at every stage and at every second. Rule 11(1)(a) shall be usefully read in full, and repeatedly read:

"(a) either immediately or by their repercussion, will affect the finance of the State, or which, in particular-

(i) involve any grant of land or assignment of revenue or concession, grant lease or licence of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession;"

40. In the present case, sub-rule 1(a) mandates previous consultation with the Finance Department before the order was issued. The other sub-rules, would indicate the importance of the Finance Department and the control it exercises in relation to the activities of every other Governmental Department.

"Instructions regarding the business of the Government," are supplementation of the Rules of Business, made by invoking the provision contained in Rule 15. A perusal of those instructions as a whole would establish the controlling voice and extensive power enjoyed by the Finance Department. Clause 45 deals with the function of the Finance Department. Sub-clause (f) is particularly apposite. It stipulates that the Finance Department shall be responsible for overseeing the proper operations as envisaged therein. Clause 48 reiterates the compulsive consultation with the Finance Department before issue of orders upon all proposals which affect the finance of the State. Clause 49 stipulates that the views of the Finance Department shall be brought to the permanent record of the Department to which the case belong and shall form part of the case.

41. Under Rule 11(2), a proposal which requires the previous consultation with the Finance Department in sub-rule (i) but where the Finance Department has not concurred, cannot be proceeded with unless a decision to that effect has been taken by the Council of Ministers. In the present case, no such decision to proceed with the proposal has been taken by the Council. We must emphasise that what is prohibited is the very "proceeding with the proposal". The exercises undertaken in the Department of PWD and Revenue Department, are proceedings which do not have the prior concurrence of the Finance Department nor the permission of the Council of Ministers. The proceedings were started illegally, continued illegally and ultimately culminated in an illegal order.

42. We have earlier stressed the fact that the PWD Secretary made many assessments, purely, based on conjectures and surmises. They could have been easily avoided, if only the Finance Department had been consulted. Having regard to the picture frame of the present case, an omission to consult the Finance Department, is not merely a technical infirmity, but a basic illegality.

43. Subsequent affirmation of the order by the Finance Department, would not do duty for a meaningful consultation before the order is passed. True, the consultation is not tantamount to concurrence. However, the consultation process is essential, and in the circumstances of the present case, even mandatory. 44. The concurrence given by the Finance Department is no concurrence at all in the eye of law. No reasons are indicated justifying the concurrence. The Finance Department, in a situation like the present, cannot just give a tick mark, in a

cryptic manner as done. Very many serious questions which called for detailed comments in support of the concurrence were needed in the present case. They were not posed, discussed or dealt with by the Finance Department. To all intents and purposes, there was neither prior consultation nor a meaningful concurrence.

45. In the emerging situation, the Government Resolution would be lifeless. The Court would be justified in declaring its invalidity, without any hesitation, in such circumstances. The impugned orders are liable to be quashed on this ground as well.

MALA FIDES

46. While considering the question of mala fides, as alleged against the Respondents, the distinctive features of the present case will have necessarily to be borne in mind. It will also be useful to have a general perspective about the bureaucrats, the ministers, and general administrative set up, in current times. This aspect is specially significant in the light of the positive averment in paragraph 15 of the Writ Petition that, "undue favours have been shown to the 2nd respondent Society by all departments just because the members of the Society happen to be all I.A.S. Officers and Senior bureaucrats working in Mantralaya."

47. There was a time when what Lloyd George described as the "steel frame of India", was in charge of the administrative apparatus. Its efficiency was never in dispute, even if the snobbery, and some times even the arrogance of the "heavenly born", had been irritating. We have plenteous literature about the roles played by them, by the biographies and autobiographies compiled and published over the last one century in particular.

48. The early history of the service is given by O'Malley in the book *The Indian Civil Service, 1601-1930*, published in 1931. There are other general books like "I.C.S." by E.A.H. Blunt; *The Men who Ruled India* by Philip Woodruff and the "Civil Service in India" by N. C. Ray, the last one being of the year 1958. The more recent studies are : "The Indian Civil Service" (1965) by G. P. Srivastava, *The Civil Servant in India* by K. L. Panjabi, "The District Administration in India" by S. S. Khare, and "Bureaucracy in India" by B. B. Misra. The last one in particular, gives the new trends arising out of unholy compromises between the bureaucrats and politicians. That is an aspect which is of greater relevance, in the context of the contentions in this case. The most recent study, covering the final phase of I.C.S. is by T. H. Beaglehole, "Rulers and servants".

49. N. B. Bonarjee had advantage of education, and living, in England and service in India, prior to and after independence. He rightly captioned his book : "Under Two Masters" (1970); "A Special India" by J. D. Shukla, and Humphrey Trevelyan's "The India we Left" (1972), and the autobiography of R. P. Naronha ICS, who retired as Chief Secretary of Madhya Pradesh -- to which inspired by Namier, he assigned the title "A Tale Told by Idiot" (1979), -- have also given us information on many aspects of bureaucratic functioning, some of which are

highlighted at appropriate places.

50. During the time of transaction and transfer of power, the bureaucrats did not enjoy much of a goodwill of political administrators. "I would have, any day, one technocrat for any four bureaucrats" said the first Prime Minister of India. (See *Outside the Archives*, by Y. D. Gundevia, page 199). The situation itself had undergone qualitative change. Earlier the collectors in the District were the centres of administration. That yielded place to a different set up, as observed in the authoritative compilation "The District Officer in India": "The District Officer would henceforth be required to work, for the elected ministers and to adjust to a station in which the art of political management would be as important as executive ability."

Unfortunately, when the political administrators assumed the Gadi, some of them did not have the equipments of educational enlightenment indispensable to guide the destiny of a democracy. Some, as it happened in Vindhya Pradesh, had, in their ignorant simplicity, instructed their executive officers to credit a portion of the revenue to the private account of the minister in office. Possibly, the necessity for such new administrators being initiated into the elementary lessons of democratic function, prompted the Prime Minister to address them periodically, general letters which are now collected and published by the Government of India. The deficiency in the equipments even in ministers of Central cabinet, had been somewhat strongly expressed by a great historian. Even some of the cabinet colleagues of Pandit Jawaharlal Nehru, were referred to by him as "eager subservient moldering masses who claim to be his colleagues". (See S. Gopal. *Jawaharlal Nehru*, Vol. 2, Page 304.)

51. The Indian administration, sad to say, started registering degeneration in many areas. One of the administrators, a member of the Civil Service, dealt with this aspect in some great detail. He noted :

"High Society crookedness always starts with social relations... .."

B. B. Mitra, as noted earlier, was at pains to point out the dangerous potentials arising from collaborative efforts between motivated politicians and corrupt executive. The situation had worsened to such a low level, that one of them had to devote substantial space by way of advice to the members of the service Ministers" is on specific topic, in the book. His advice to the Civil Servants was :

"Do not ask for favours... .."

There is always a price of some sort to be paid... .."

He was frank enough to express strongly, the feelings about the Ministers as well. His observation was : "circular orders prohibiting approach to a politician by Government servants were issued regularly but the first person to connive at their breach was usually a minister". (See "A Tale Told by an Idiot", page 64, 71 & 115). We do not intend to prolong the discussion on this topic to any unnecessary length. We cannot, at the same time, shut our eyes to hard

realities, -- of the top officials sometimes flirting with the political masters to please them illegitimately, some time to protect a position, some time to stave off an inconvenient dislocation and the like. We shall not be oblivious either, to the fact that, in return, some among the political administrators, accommodated the bureaucrats, and at least occasionally, to acquiesce in a serious lapse, conferring unjustified benefits to the bureaucrats. Fortunately, such cases are very, very rare indeed.

52. Counsel for the Petitioners submits that one such rare case is the present one. It would, therefore, require closers and more anxious scrutiny. Different considerations arise when a person or group of persons other than the bureaucrats make an application seeking governmental favours or privileges. In the ordinary cases, the bureaucrat will scrutinise the claim carefully and critically. However, in a situation where the same person wearing an applicants apparel places on a table papers seeking an allotment and virtually the self-same person but in the official garb, is to deal with them, objectively could be a casualty. If, added to that circumstance, independent critical application of mind on the part of the political minister is absent, it can result in a deflection of the course of justice.

53. Again, the plea of mala fides has been made in a pointed manner. The heavy burden in establishing mala fides is certainly to be reckoned by Courts in that connection. Helpful guides are available from leading judgments of the apex Court. We do bear in mind that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. Care is therefore taken, as cautioned by the Supreme Court, that dubious inferences are not drawn from incomplete facts (see *E.P. Royappa Vs. State of Tamil Nadu and Another*, . We also note that the charge of mala fides is more easily made than made out (see *Kedar Nath Bahl Vs. The State of Punjab and Others*, . It is to be ensured that the "plea of mala fides is not made "the last refuge of a losing litigant" as indicated in *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, .

54. While evaluating a plea of mala fides, quite often, the Government files would give helpful clues, about objective facts. A party, totally strange to the notings in the file and the processing of the papers, would not be in a position effectively to mention with precision the events which twisted a given trend of opinion. The files, therefore, would throw such light when the Court is confronted with allegations of one party and denial of the other. The Supreme Court has indicated that while moving along the track of Government's decision-making process, the Court should not be unduly swayed either by a feature like excessive speed or a flash pointed expeditious action. The following observations of Chandrachud J. speaking for the Supreme Court in *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, , are appropriate:

"The reasonableness of a decision, in any jurisdiction, does not depend upon the time which it takes. A delayed decision of the executive can also be bad as

offending against the provisions of the Constitution and it can be no defence to the charge of -- unconstitutionally that the decision was taken after the lapse of a long time. Conversely, decisions which are taken promptly, cannot be assumed to be bad because they are taken promptly. Every decision has to be examined on its own merits in order to determine whether it is arbitrary or unreasonable."

55. It may be difficult to obtain information and evidence of direct dialogues or such other activities carried on with foul motives. Inferences could, however, be drawn from proved circumstances. The actions of the Collector in addressing the letter dated 5-8-1986, as pointed out earlier, was a solicitous one, a gesture never extended to ordinary citizens. The prevalence of a pressure is easily noticeable and measurable from the sudden swing of the official needle.

56. In the reply of the Society, there was a promise to "indicate subsequently" membership in the reserved categories. There is no indication in the files, of the furnishing of the information before the Collector proceeded further in the matter. Without the promised information, ordinarily the Collector should not have handled the papers. Generally, the officialdom may not even hesitate to consign the file to records or "to close" them, in such situations. That however, was not the attitude of the Collector. It is reasonable to infer the operation of an extraneous influence as spurring the Collector to action in those circumstances. The Collector submitted his detailed report on 19-8-1986. Ranganathan promptly furnished to the Collector the additional site plans showing the exact portion, by his letter dated 22-8-1986. It was in the light of the fresh materials so obtained that the Collector addressed the communication dated 2-9-1986 to the Government.

57. It is seen that the Revenue Secretary was fishing for information regarding all the lands in Malabar Hill. The files do not reveal the nexus of his "desire" to any governmental necessity. He could have written, direct to the Collector if he "desired" so. That course was, for inferable reasons, avoided. The Joint Secretary was made to write the letter dated 3-12-1986, reading:

"Secretary (Revenue) desires to have a complete list of the areas of Government land in Malabar Hill area showing the land which is under buildings and vacant land. The said list should be accompanied by a plan showing the location of each plot and the areas etc."

It was patently for catering to extraneous desires of the applicant officers, the first among whom was the Revenue Secretary (Relief and Rehabilitation).

58. It is pertinent to point out in this connection that the P. W.D. had submitted its comments about the non-availability of this land for allotment altogether. The plot was not one within the possession of the Revenue. How could that Department then posit a case of an isolated plot available with it for allotment? This aspect had been slurred over on the ground that the State Government did not have finances ear-marked for the building programmes at that time. If financial crunch experienced by P.W.D. in relation to its building programme is

the criterion to surrender possession of the area in the custody of P.W.D., then no other Government plot can come in the cocoon with insulation against preying operations of other influential groups. We may observe that if the G. R. is put to such strained interpretation, it would even take it perilously near a danger one of Constitutional invalidity.

59. This is not an ordinary case where an agency outside the Government, had been putting forward its claim for assignment, and the Government machinery processing it with due care and caution. The Revenue Secretary (although only of the component of Relief and Rehabilitation of that Department), was the promoter and one of the prominent members of the Society which was then in formation, the applicant for allotment. It was his own subordinates and colleagues (the Collector and the then Joint Secretary being some among them) who were to scrutinise and process those papers at the Government level. It was the Collector working under him, who had to offer comments or furnish information. Theoretically, there is nothing wrong in a Society composed of Government Officers or the Government Officers themselves, making such an application; nor is there anything per se improper in the Government considering the same, and passing an order thereon, on a proper consideration of all aspects. However, the question whether there had been a proper consideration of all aspects will have to be examined with greater importance than in normal circumstances.

60. The movement of the files in the Secretariat, would indicate a standstill, when the papers were before the Revenue Minister on 2-1-1988. There was at that juncture a change in the Ministry. A new Ministry, we were told, assumed office in the place of the, old one. Without any thing more, the Minister who was about to quit office soon, passed the order on 21-6-1988. His reasons are :

- (1) "We have already allotted many such plots to such type of officers.
- (2) Some of the deserving officers are seen left out."

It is obvious that the questions -- the right questions -- had not even been posed, let alone considered or decided. The basic questions such as whether the plots were isolated ones, whether there was publication, and if not why not, whether there had been proper and satisfactory answers from the P.W.D. Department, whether there was the mandated prior consultation with the Finance Department -- all, all were missed, by the Minister. Kanga (who had by then became the Revenue Secretary) signally failed in bringing to focus these salient aspects before the Political masters, who could not for obvious reasons, delve deep into the files and carry on their heads a library of the relevant legal aspects. The Civil Servants involved in this case threw to the four winds their basic duties as Civil servants and led the political administration up the garden path, not disclosing the areas strewn with thickets and concealing the pit holes. It is said that Winchester in England is noted "for producing civil servants skilled in the art of drafting for their ministers answers to Parliamentary questions close

as possible to accuracy without actually telling the truth". (See "Our Age" by Noel Annan (1990) page 44). Kanga and his companies excelled the best products of Winchester.

61. There is no indication about the political administrators having applied their mind to the various questions, or having absorbed any principles. They did not, as they ought to have in the circumstances, consulted the Legal Department or had the advice of the Advocate General. By a simple signature, they passed the ultimate order. It may not be out of place, at this juncture, to recapitulate what an experienced political worker, a seasoned statesman and a reputed Speaker of England, said about such critical junctures. George Thomas, Vis Count Tony Pandy, in his Autobiography "Mr. Speaker," very pertinently observed about Civil Servants:

"Whenever a change in ministers occurs, they are at their strongest. They know that a minister has to learn many lessons before he can fairly claim to be on top of his job."

A similar situation did arise in this case. Ranganathan and others fully exploited it, abusing their official position.

62. True, there was a co-operative housing society. For that reasons, every other aspect cannot be overruled.

63. And ultimately, was it duly housing that was subserved by the allotment? Once the allotment was made, there was no difficulty for having a partial diversion of the purpose by switching on to a commercial purpose. Valuable Government land thus was in the hands of the top bureaucrats with facility for commercial exploitation. The whole series of transactions are vitiated by mala fides. The promoters of the Society, hardened and experienced bureaucrats, only knew too well, the favourable situation. The Ministers were not on the level ground soon after the assumption of the office; they were in a sense, at the very bottom. The bureaucrats knew how to present a facade and to strike when the iron was hot. They acted promptly and had the allotment in their favour. Ranganathan, the applicant, gave a note and the bureaucracy which Ranganathan controlled proximately and almost directly, winked its eye on that aspect. The political administration set to themselves a wrong direction and strayed along irrelevantly. The Ministers read on the radar screen the blips of other people's approval.

64. While evaluating a plea of mala fides, Court has to bear in mind that all the allegations are to be taken together and an inference to be drawn. (See observations in Hem Lall Bhandari Vs. State of Sikkim and Others, , Deepak Sibal Vs. Punjab University and Another, and Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, . We would consider all the allegations together; we will see whether the allegations are established; we will further consider the question whether, if such allegations are established, they are sufficient grounds to prove that malice has vitiated the impugned order. The

speed with which some of the proceedings have been conducted, are referred to as indicative of the existence of adventitious propellants giving the drive and momentum to an otherwise slow-operating machinery of the State. Take for instance, the manner in which the papers have been dealt with by the Collector. There has been an out of ordinary expedition in attempting to process the papers which had come to his office. To cite one instance of extra helpfulness : When matters virtually come to a close by the Collector's communication dated 19-8-1986, and when it was indicated that further action would be taken only after receipt of Government orders, the Collector is seen to have written to the Chief Promoter on 21-8-1986, requesting for two more copies of the site plan. There was no explanation for such a strange conduct on the part of the Collector, when it is clear that he had not by then received any Government communication in answer to the letter of 19-8-1986. This communication of the Collector, naturally enabled the Chief Promoter to submit his reply on the very next day i.e. 22-8-1986 furnishing the site plan as called for. Even the transmission of a letter to the despatch section is likely to take at least a few days ordinarily; and if it is communicated, ordinarily it must be by the normal process of postal service. That action would entail some delay. A party who receives it, may act with the greatest promptitude. Assume he has posted the letter instantaneously. Even then, it will result in some marginal delay for the postal transmission of that communication. In the present case, the Collector wrote on 21-8-1986 and the reply came like an echo on 22-8-1986. This is certainly something which was not normal. It would be fair to infer that the Collector was spurred to action when the Revenue Secretary, who swiftly pulled the poor subordinate functionary by the well known devices known to (oral instructions on telephonic messages and the like) and resorted to, by shrewd Administrative Officers.

65. In the light of the above conclusion, it is unnecessary to consider another contention that this most precious land in Bombay was parted with by the Government for a throwaway consideration. There is substance in that complaint. There was a submission on the part of the Government that the valuation on the basis of which the lease rent was calculated was the ruling price in force in 1976. This is, *prima facie*, arbitrary. The fragile excuse put forward for this assumption is that prices of land would be static with the implementation of Urban Land Ceiling Act, The ridiculous character of that assumption, is too patent to call for comment. The phenomenal rise in price of land, in the city of Bombay, is so shockingly felt that even judicial notice could be taken about it. The Government could not arbitrarily reduce to a mocking pittance what it is entitled to collect by way of reasonable rent, unless, there is a larger social purpose (such as rehabilitating the weakest sections, who have only their scanty apparel and starving stomachs). Allotment of Land to persons relatively well placed in life does not satisfy the element of a rational and sound policy of promotion of larger social justice. The State is deprived of its legitimate due unreasonably and irrationally. The self-denying decision of the State Government, is due to the

illegitimate intervention of the bureaucrats who have their finger in the pie.

Let us now note some earlier reactions of Judges. Though in the interlocutory stage, our learned Brother Pratap, J. had pointed out to some striking factors which, *prima facie*, warranted an inference of *mala fides*. The finding was reiterated by appellate Bench, by judgment dated 9-2-1990 of Jahagirdar and Sindhakar, JJ. said in paragraph 3 of the judgment :

"It is clear that neither on the date of the communication of the letter of intent nor on the date of the Government resolution approving the grant of two plots of land, there was any specified plot in Survey No. 211..... there was no plot at all....".

Paragraph 5 of the order emphasises City Survey No. 211 being a single plot of land. No sub-divisions were existing at the time of the decision of the Government to allot what came to be later called two plots of land to one Society. The fact that survey of the plot was made on 30-11-1988 long after the letter of allotment and Government Resolution was also stressed. It was the bounden duty of the Government to assess the priority in the disposal of its lands, some of the categories entitlement to higher priority being the freedom fighters, retired or serving members of the armed forces and the State Police and also families of members of the armed forces and the State Police who have been killed while on duty. There are further Societies of the categories mentioned above could only be ascertained if sufficient publicity is given. That was admittedly not given. The Bench further observed that the proximity of members of the Society "to the seats of power and the seats of decision making is not in dispute".

66. The Supreme Court had indicated in *Sriniketan Co-operative Group Housing Society Ltd. and Others Vs. Vikas Vihar Cooperative Group Housing Society Ltd. and Others*, , favouritism could be practised by artificially making available access to the decision making authorities. As regards the present case, according to the Division Bench,

"The availability of the plots in question was not made known to anyone. In fact, the plots were created pursuant to the initiative taken by the Secretary of the Revenue Department. Mr. Ranganathan, at one stage, advised the Government that it was not necessary to advertise the availability of the plots. This is incomprehensible except in the context of seeing that the plots should be available only for the members of the Society, The lack of *bona fides* in the allotment of the plots to the present society is. also apparent. The plots have been allotted in a surreptitious manner."

We do not find even a titles of evidence which would in any way destabilise any one of those factual findings. On the contrary, the materials that have come in, only go to consolidate such findings, with Un demolish able cement power and an unshakable binding process.

This is a case where, therefore, five of the Judges of this Court, on different occasions, after deep and detailed consideration of the factual details, have come to a definite and categorical conclusion about the operation of malice at the instance of highly placed I.A.S. Officials, leading to, resulting in, and vitiating the impugned Resolutions.

Is the Decision Bad for Non-application of Mind?

67. In a Full Bench decision of this Court, this Court stressed the necessity for the Government to have a proper application of its mind before a decision of great consequences is taken. Absent such indications of due process, or consideration of material and relevant factors, the decision is liable to be set at naught. (See *Ashwin Prafulla Pimpalwar and etc. Vs. State of Maharashtra and Others*,). What the Court needs is dawn, and not twilight.

68. The functioning of the various department would throw further light on the tainted processing that the bureaucrats attempted. The Public Works Department was in custody of the land. It expressed itself strongly about frittering away scarce land which was badly required for other building programmes of the State Government. It is necessary then to take judicial notice of the awful situation of many public offices, the Courts included, for want of adequate space or working area. The stock answer of the State Government is scarcity of the land. It cannot possibly plead paucity of funds, particularly in relation to the basic constitutional duty of maintaining law and order and administering justice. As noted earlier, it is unnecessary to speculate, when the P.W.D. spoke eloquently. The manner in which the objection of the P.W.D. was got over by the Government and the Revenue Department, by suffocating public orders and scuttling basic policy of the Government intended to preserve and promote public interest is distressing.

69. In relation to the various immediate administrative exercises, there has not been any application of mind of the authorities at the highest level. It was the Revenue Department, where V. Ranganathan whose presence and pressure had been duly felt, who was gearing the administrative mechanism. It was almost like a party in litigation himself preparing the pleadings, shaping the evidence, and pronouncing the ultimate order. Right from the beginning, it was a one sided show, where the real person concerned, -- the Government representing the public at large, -- had been betrayed.

70. The power, and in a sense the duty of a Revenue Minister to express his views when a matter comes before him, had been indicated though in a different context, by a decision of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, . Mudholkar, J, speaking for the Court, observed :

"As soon as the matter rests with him, the Revenue Minister could score out his remarks on minutes in the file and write fresh ones."

This is only to stress that till a final decision is taken and expressed in the name of the Governor with manner mandated by the Constitution, the thought process

can go on. Experience has taught us that initial reactions have yielded to saner conclusions later made. The trouble in the present case is that no thought processes on relevant aspects took place at all.

The Court also made a general observation :

"It is possible that after expressing one opinion about a particular matter at a particular stage, a Minister or the Council of Minister may express quite a different opinion, on which it may be completely opposed to the earlier opinion."

In the present case, what is disturbing is not a revision of the opinion, but the absence thereof. The Chief Minister did not express any opinion whatsoever. The opinion expressed by the Revenue Minister was, with great respect, on aspects, which were irrelevant in relation to the crucial question. The points on which the mind had to be applied and the opinion expressed, as noted earlier, had been totally missed. We are satisfied, having regard to the peculiar situation of this case, the order is irredeemably vitiated for non-application of mind as well.

"Foreshore case" Principles -- Distinguishable.

71. The Government Pleader, understandably, placed heavy reliance on the decision of this Court and of the Supreme Court, in upholding the allotment made by the State Government of a plot of land to a Society in which Judges of this Court, were members. If an allotment in similar pattern could be sustained as for Judges, why not the same attitude be taken in relation to the allotment for top bureaucrats?

72. In the Judge's case, despite the personal interview between the Chief Justice and the Chief Minister, the claims were subjected to prolonged and detailed examination. The ultimate conclusion reached by the Government then was about satisfaction of the basic contentions for allotment. The challenge against it was unsuccessful. The writ petitioner there could not make available to the Court, materials emphasised in the course of the judgment before the Supreme Court, over again. The Supreme Court observed as follows :

"Though learned counsel mentioned that allotment had been made to this Society as well as to a number of other Societies of a vast area of land known as "Queen's Barracks", no facts were placed on record before us or before High Court in support of this contention."

That is not the position in the present case. The High Court there emphasised time and again, that the allotment was basically only of two plots of land and an abutting strip of land. The Supreme Court observed that the allotment of the strip of land abutting thereon did not take the case out of the exception made in R. 11 of the guidelines. The following observations are particularly pertinent :

"We see no reason to interfere with this conclusion which is primarily on fact."

Again, the Supreme Court emphasises:

"Since the High Court has been satisfied that this was not a case of allotment of a large number of plots but only two or even three plots in isolation, its conclusion that there is substantial compliance with the terms of the guidelines, does not call for any interference."

73. The decision of the Supreme Court would clearly indicate that it found as a fact in that case, that there was an isolated plot. Whether in a given situation, an isolated plot is available or not, is a question of fact. On the facts and material available, the Bombay High Court and the Supreme Court entered the finding that an isolated plot was available in that case. Consistent with the finding, was the logical corollary, that no publication of press release was necessary. That is not the position in the case on hand. We have, as a fact, found that the application was not in respect of an isolated plot. No isolated plot as understood under the Government Resolution existed at the time of making the application, nor at the time of its consideration, nor even at the time of the allotment. The allotment was, therefore, totally without jurisdiction. Not being an allotment of an isolated plot, the Government was not justified in dispensing with the publication of the press release.

74. The learned Government Pleader was at pains to emphasize the limits of the judicial review, the impermissibility of the Courts entering areas of policy decisions, and the general attitude of the Courts in condoning violations of mere guidelines, and the absence of crucial averments in the pleadings. Pleadings are there; and these facts, it is a public interest litigation.

75. We are conscious of our limited authority and unlimited disabilities. We shall, therefore, not attempt in surmising on policy matters or issuing a direction compelling the State to act in any specified manner, such as by constituting a committee.

76. We do not intend to ignore the caution as given in *Asif Hameed and others v. State of Jammu and Kashmir and others*, reported in 1989 SC 1899. It is well known that in areas where guidelines amount merely to administrative instructions and do not confer legal rights, a breach of some or more of the guidelines may not be frowned upon with fury and force by the Constitutional Court. The exhaustive survey of the legal trend in India, England, Australia and America was attempted in *J.R. Raghupathy and Others Vs. State of A.P. and Others*, . In that case, a decision was taken regarding Mandal Headquarters. Doubtless, it is a question on which there can be as many views as there are persons. The Government of the day, within the prescribed power, have to take a decision. The Government appointed a Cabinet Sub-Committee to proffer its recommendation. That Committee had undertaken a strenuous exercise in reaching a conclusion after considering a large number of suggestions from local authorities and other interested persons and authorities which were deeply concerned and directly interested in the matter. In such circumstances, the ultimate decision of the Government was found to be sound though departing from some guidelines. The Court felt that the deviation from some of the

guidelines would not, by itself, lead to the invalidation of the Government decision. If the situation was as simple and as innocent, as the mere location of the Mandal Headquarters, large energy and much time to this Court would have been certainly spared. We are, however, concerned in the present case, with a far more basic issue, which would, among others, keep the cupboards of the State not merely without any skeletons therein, but in a clean, an impeccably clean, condition.

77. In another decision of the Supreme Court which originated in the State of Maharashtra, the Supreme Court, speaking through Eradi, J. made some significant observations in the context of a controversy which arose in a specialised field of education. (See Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others,) . The Court shall not make a pedantic and purely ideological approach to the problem isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences. It would be reluctant to substantiate its own views as to what is wise, prudent and proper in preference to those formulated by persons possessing technical expertise and rich experience of actual day-to-day working. We are not, in the present case, supplanting any policy decision, nor substituting our opinion for one which has been formed by the State Government. The observations do not, in any way, negate the existence of the power of judicial review conferred on the Court and explained through a catena of decisions, and exercised in very many situations.

78. When the Nation is facing a crisis in values, those who were entrusted in the solemn duty of preserving the State property and ensuring compliance with the legal provisions chose to throw to the winds all basic principles. A Revenue Secretary who should have functioned as a watch dog in keeping vigil over the assets of the State, engineered a decision of allotment of a valuable plot of Government land in favour of a group including himself. The Court cannot, consistent with its constitutional obligation, permit such actions to go unnoticed or unchecked. We have no hesitation, in the circumstances, to quash allotment of the land for the various reasons indicated above.

79. We allow Writ Petitions Nos. 1754 of 1989 and 2085 of 1989 and quash the letter of intent No. LBL-2586/7004/CR-168, G-8, dated 31-8-1988 and the Order of the Collector No. CSLR/REV-II/T-2/LND, dated 3-9-1988 and set aside the allotment of land bearing City Survey No. 211 of Malabar Hill Division to Angarki Co-operative Housing Society Ltd.; 2nd respondent in W.P. Nos. 1754 of 1989 and 2085 of 1989.

80. Rule is made absolute as above. There will be no order as to costs.

81. Immediately on the pronouncement of the Judgment, the learned Government Pleader on behalf of the 1st respondent and counsel for the 2nd respondent prayed for a certificate for appeal to the Supreme Court. We do not find any substantial question of law as to the interpretation of the Constitution or

any substantial question of law which in our Opinion needs to be decided by the Supreme Court. That prayer is, therefore, declined.

There was a prayer for stay of operation of Judgment and Order, according to the Counsel and the learned Government Pleader would generate irreversible consequences and therefore the Judgment and Order should be stayed. On a consideration of the entire circumstance, we feel that there is no ground for granting the stay. The prayer is, accordingly, declined.

Certified copy of the judgment would be furnished expeditiously.

82. Order accordingly.