
(2014) 01 GUJ CK 0038
In the Gujarat High Court

Case No : Writ Petition (PIL) No. 2 of 2012 with Writ Petition (PIL) No. 2 of 2013

Bhanubhai Nagabai Odedara

APPELLANT

Vs

State of Gujarat 3 and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 226 32

Citation : (2014) 01 GUJ CK 0038

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Yatin Oza with Mr. Apurva Kapadia and Vivek N. Mapara, for the Appellant; P.K. Jani, Government Pleader with Mr. Vandan K. Baxi, AGP for the Opponent(s) No. 1 and Mr. Mihir Joshi with Mr. Salil M. Thakore, Advocate for the Opponent(s) No. 2-3, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—These Public Interest Litigations were taken up together and are being disposed of by this common judgment as the subject matters involved are almost similar. By this writ application in the nature of a Public Interest Litigation, the petitioner seeks to challenge the allotment of land admeasuring 3,76,581 sq. mtrs. situated at Mouje Koba, Ta: Gandhinagar bearing Survey No. 237, 238, 242 and 270 of the Town Planning Scheme bearing Final Plot Nos. 4, 5, 6, 7, 8, 9 and 10 in favour of the respondent No. 4 M/s. K. Raheja Corporation Ltd., for the purpose of development of I.T. Park @ Rs. 470/- per sq.mtr.

2. According to the petitioner, such decision of the State Government is against the public interest. According to the petitioner, the natural resources belong to the people but the State legally owns them on behalf of its people and from that point of view, the natural resources are considered as national assets more so because the State benefits immensely from their value. It is alleged that in allotting huge parcels of land in favour of the respondent No. 4 on a mere application filed by it, the Government has failed to act in consonance with the

principles of equality and public trust.

3. The case made-out by the Petitioner may be summarized as under:

3.1 The petitioner of Writ Petition (PIL) No. 2/2012 is a resident of Porbandar and former Sarpanch of village Bhad, whereas the petitioner of Writ Petition (PIL) No. 2/2013 is a local resident of the City of Ahmedabad and is a former member of the Gujarat State Legislative Assembly.

3.2 According to the petitioners the State Government has allotted the land in question referred to above without inviting any tender or publishing any advertisement for the same @ Rs. 470/- per sq. meter for the development of the I.T. Park.

3.3 It is the case of the petitioners that the Government could not have made such a huge allotment of about 100 acres of land for the purpose of development of an I.T. Park, more particularly when there is no policy of the State Government for allotment of such lands for the purpose of I.T. Park. In the absence of such policy, the Government ought not to have allotted such a huge parcel of land on a mere application preferred by the respondent No. 4.

3.4 It is also the case of the petitioner that the land has been allotted in favour of the respondent No. 4 at a throwaway price of Rs. 470/- per sq.mtr., more particularly when the land allotted by the State Government to the Indian Air Force somewhere near the subject land was at a much higher price. It is alleged by the petitioners that the respondent No. 4, a private developer, in the guise of development of an I.T. Park would be selling residential as well as commercial units at the current market rates and thereby would be deriving huge profit out of the same. In such circumstances, it could not be said that the allotment of the land by the State Government in favour of the respondent No. 4 is for a public purpose as it is more of a charity to the respondent No. 4 rather than a planned rational decision on the part of the State Government.

3.5 In such circumstances referred to above, it has been prayed by the petitioners for issue of an appropriate writ, order or direction setting aside the order of allotment dated 5/6/2006 passed in favour of respondent No. 4 by the Collector, Gandhinagar.

4. Stance of the Respondent No. 4:

4.1 The project relates to an Information Technology Park at Village Koba in District Gandhinagar, and the same is in furtherance of the endeavour on the part of the Government to develop the knowledge economy and promote investment in the State to give an impetus to the overall growth, employment and infrastructure.

4.2 The said I.T. Park is being set up by the answering respondent which is an associate company of K. Raheja Corporation, one of the most reputed developers of the country. The K. Raheja Corporation group has many years of experience in

setting up IT/ITES SEZs/IT Parks and is one of the premier IT/ITES Park developers of India. The group has set up such Parks in different cities of India. This includes Mindspace, Cyberabad, (West Hyderabad), Mindspace, Malad in Mumbai, Mindspace, Airoli in Navi Mumbai and Commerzone in Pune. In addition to this, the group is developing other IT parks in East Hyderabad, Navi Mumbai, etc. This is in addition to the many other varied development projects that the group has successfully completed across the country.

4.3 In the IT Parks set up by the group, many reputed multinationals like Accenture, IBM, JP Morgan, Facebook have setup their offices.

4.4 The group has received a lot of recognition for its contribution in the development of IT infrastructure. In the year 2005, the "Maharashtra Information Technology Award" was conferred by the Government of Maharashtra for the "outstanding contribution to IT infrastructure". The Government of Andhra Pradesh (Information Technology and Communications Department) gave an award of excellence to Mindspace (West Hyderabad) as the finest IT Park of the State.

4.5 The IT Park/IT SEZ at village Koba is known as Mindspace Gandhinagar. The Park is a part of the Knowledge Corridor in Gujarat and is already operational and various companies/firms have set up their IT offices therein with many employees. It has already made substantial investment towards the development of the Park including construction of buildings, internal roads, landscaping, gardens, a two kilometer long public road, basic amenities, etc. as is evident from the photographs. The total investment till date comes to around Rs. 174 crore. The land on which the Park has been set up has been allotted by the State Government in furtherance of its objective of making the State a major Information Technology hub as crystallized in 2006 IT Policy and also the 2009 Industrial Policy. The land was allotted by the State Government after considering the antecedents of the respondent group and after following a detailed procedure and at a price fixed by the Government after a detailed study in that regard.

4.6 The respondent has paid the State a fair price for the land especially considering that the land was inaccessible, undeveloped and contained ravines, large pits, mounds etc. making substantial portion thereof highly unleveled.

4.7 In the year 2008, status of SEZ was granted by the Central Government for setting up IT/ITES SEZ as indicated in the notification issued by the Central Government. The Mindspace, Gandhinagar is already generating I.T. exports running into crores of rupees annually in spite of the ongoing slump in the I.T. industry past few years. The Park is expected to flourish even more and contribute a lot to the industrial development of the State. It is expected to become the largest IT SEZ of the State generating a lot of employment. The development of the Park has also resulted in the development of the surrounding area including on the side of the road built by the respondent.

4.8 The petitioner has filed this petition for political motives and has based his petition on false facts, misrepresentations and material suppressions. The petition is not filed in public interest and seeks to hit at a significant project which is in furtherance of a major policy decision of the State to promote the Information Technology industry in the State.

4.9 This petition has been filed after seven years from the date of the allotment to the respondent and suffers from gross delay and laches. It challenges an allotment which has been within the knowledge of the public, and which had been widely reported in several newspapers at the time of allotment and thereafter. The newspaper articles were published with respect to major companies setting up their IT offices in the Park. The petition has been filed after substantial development has already taken place on the land including construction of roads, buildings, amenities, landscaping, etc., after an expenditure of about Rs. 174 crore has been made by the respondent and at a time when about sixteen companies/firms have already set up their IT offices and are operating therefrom employing roughly 700 employees.

4.10 The petitioner was a Member of the Gujarat Legislative Assembly not only at the relevant time, but from 1998 till 2012. The allotment that the petitioner seeks to challenge is one of the allotments referred to in the Justice M.B. Shah Commission, which has been frequently reported in many newspapers and is publicly known. The petitioner who claims to be a vigilant and public spirited person has given no reason for filing this petition after such a long delay. In addition to that, the petitioner has himself stated in the petition that the Collector had given him the details regarding the allotment vide letter dated 7/10/2011. The petition is after about fifteen months from the Collector's said letter. The petition suffers from gross delay and deserves to be dismissed on such ground.

4.11 The petition has been filed with an oblique motive and not keeping public interest in mind. The petitioner is a politician who has been contesting elections since many years and was a member of the Legislative Assembly from 1998 until the recent elections of December, 2012. The petition was filed on 8/1/2013 i.e. just 2 days before the Vibrant Gujarat Global Investors business summit organized by the State Government was to begin. The matter was circulated for hearing before this Court on 10/1/2013 and the Court passed an order issuing notice. On the very next day i.e. 11/1/2013 i.e. the day on which the Vibrant Gujarat summit began, at least 6 newspapers published articles relating to this PIL. From the reports, it is obvious that a copy of the petition was supplied to the newspaper agencies as they refer to the statements made in the memo of the petition. One another PIL challenging a different allotment has been filed by the petitioner and was listed on the same day. The timing and manner of reporting in the news article produced on record is suggestive of the motives of the petitioner. The petitioner has assigned no reason to justify as to why the petition had to be filed just prior to the summit organized by the Government when the

allotment had been within the public knowledge since long and on the petitioner's own showing, he had obtained details of the allotment from the Collector about fifteen months ago.

4.12 The petitioner has alleged that land has been given at a throw away price and has repeated this allegation again and again. The petitioner has not explained as to on what basis he is asserting that the price of the land fixed is a throw away price. The petitioner has given no details about similar sale instances or about the Statement of Rates (SOR) prevailing at the relevant point of time issued by the Stamp authorities. The SOR as well as the sale instances of around the same time indicate that the price paid for the land was a fair price. The relevant extract of the then prevailing statement of rates at Koba (of 1999) makes it clear that the allegations with respect to the price are absolutely vague.

4.13 The petitioner has made false allegations with respect to the allotment procedure followed by the Government. The petition also contains misrepresentations with respect to the legal position qua allotment of land by the State. A procedure in accordance with the government resolutions and in accordance with the policy of the Government was followed prior to the said allotment after the respondent made a representation giving the general background of the group and also specific details showing its specialization in the development of Information Technology Parks and about its IT Parks in Maharashtra and Hyderabad and its other projects across India. The allotment in question was made by the government not only in furtherance of its Industrial Policy, 2003 but more particularly in furtherance of its intention of promoting the IT industry in the State.

4.14 Pursuant to the representation, a request was made by the State Government to the Chief Town Planner to assess the valuation of the land. Pursuant to that, the Chief Town Planner determined the value of the land at Rs. 470/- per square meter. Such valuation was confirmed by the State Level Price Committee consisting of Secretaries of the various departments. Such procedure was in accordance with the government resolutions and policy and the price arrived was a fair price. As the valuation was in excess of Rs. 50 lac, the matter was thereafter referred to the Council of Ministers for taking an appropriate decision. The Council of Ministers approved the decision of allotting the land. This finally culminated in the land being allotted vide formal allotment order dated 5/6/2006 issued by the Collector. There is nothing to indicate that the petitioner had made any efforts to find out about the procedure adopted by the government before taking the decision to allot the land. The true facts have not been brought to the notice of the Court.

4.15 The petition deserves to be dismissed as irreversible equities have already been created. The respondent has carried out substantial development on the land and has incurred expenditure to the tune of about Rs. 174 crore including the amount paid towards the land. Substantial efforts have gone into the development of the land so as to bring it to a usable stage. There was no access

to the land and therefore, the respondent constructed a 2 Kilometer long and a 30 meter wide public road.

5. Stance of the Respondent No. 1, State of Gujarat:

5.1 On behalf of the State Government, an affidavit-in-reply has been filed, duly affirmed by it's Under Secretary, Revenue Department. The relevant portion is reproduced below:--

1. I submit that the land bearing survey Nos. 237, 238, 242 and 270 admeasuring 3,76,581 sq.mtrs. were allotted to respondent No. 4 (erstwhile Messrs Aquiline Properties Private Limited) vide P.R.M. No. Koba/688/08/07 dated 6.11.2007. That the said allotment was done for the purpose of establishing an Information Technology Park and permission for construction for the said purpose was given to the respondent No. 4. That on 28.3.2008, the Special Economic Zone also granted the permission for construction/development, whereupon the construction and development has taken place. The construction/development of the said land has been done by way of constructing the building, service yard, parking, sales office, internal parking etc.

2. I submit that a panchnama was also carried out of the said land survey Nos. 237, 238, 242 and 270, wherein the current status of the said property has been brought on record.

3. I submit that as directed by the Court, photographs reflecting the current position are annexed herewith and marked as Annexure R-3. I submit that the construction has been done on the said land, which can be seen from the photographs.

4. I submit that as far as the valuation of the land in question with reference to the year 2006 is concerned, I submit that valuations applicable to village Koba, Dist.& Taluka Gandhinagar, in the year 2006 were as per Section 32(a) of the Mumbai Stamp Act, 1958. The said valuations which were in force during 2006, was as per Notification dated 1.1.1999. According to the notification, the rate applicable for the said survey numbers is Rs. 300 per square meter. The respondent has been granted land at the rate of Rs. 470/- which was higher than the jantri price.

5. Before embarking upon the Annual Statements of rates and the changes made after 1999, I think it is appropriate to state that the Gujarat Taxation Enquiry Commission was constituted by the State Government in the year 1998 in order to review the State Taxation under the Chairmanship of Dr. R.J. Chelliach.

6. The Commission had submitted its report in the year 1980 and the said commission has suggested for a levy of stamp duty on the basis of market value of the property involved in the instrument of conveyance and at the same time it was also suggested that the State may constitute a valuation department for determining valuation of properties in the cities and for land which are non agricultural properties particularly in the urban areas.

7. That based on the recommendations of the Committee, appropriate amendments were made in the Bombay Stamp Act, 1958. The Gujarat Stamp Act and the Rules framed there under in order to give effect to the recommendations of the Committee and accordingly, a complete mechanism has now been put in place to determine the market value and the stamp duty of the properties.

8. The said valuation department, was to be worked out "minimum values" for properties of all the cities and towns and thus "minimum values" would now be worked out conservatively with a scientific system as market value and such scientifically determined market value would be given to the registering officers for their appropriate reference.

9. The above stated Gujarat Taxation Inquiry Commission was constituted by the State of Gujarat in view of the backdrop of Santhanam Committee which was earlier constituted by the Government of India for prevention of corruption which had inter-alia made certain observation and recommendations which in general nature were that in order to buy and sale properties at prices much greater than registered in the conveyance, it had become a common method of cheating the Central Government of income tax and other taxation and the State Government of the Stamp Duty and it was also convenient method of transferring the black money. The said Santhanam Committee had also further observed that State Government or some Special Corporation established for that purpose can be empowered to stop and inquire into such property transactions at the stated values or even in under valuations it would be considered that the property has been deliberately under valued and if steps are taken against such transactions, it will strike a blow against the black money.

10. It was in this backdrop of transaction coming to the notice of the Central Government and the State Government which were ultimately all the cases of the properties being under value and hence, as a result the Central Government and the State Government undertook an exercise to that effect such measures were recommended and hence, the Gujarat Taxation Inquiry Committee was constituted which had suggested/recommended that the valuation department would work out "minimum values" for the properties of different kinds in different localities in all the cities and towns.

11. It was these minimum values which are now referred as annual statement of rates which is also properly known as Jantri rates.

12. That it was this Gujarat Taxation Inquiry Commission which had recommended that in order to increase/enhance the revenue income of the State of Gujarat it was recommended that the value of the properties had to be increased/enhanced and hence, a scientific method was recommended to be adopted by the said commission as per the recommendation of the Gujarat Taxation Inquiry Commission. The State of Gujarat determined the market value of all the properties/areas and also for all the districts on a scientific base.

13. That the said department declared market value by advance scientific

method or sanction vide order dated 16/6/1998 and at the same time it was also decided to reconsider the Annual Statement of Rates or Jantri values after a period of 1 year. Therefore, in the year 1999 the Superintendent of stamp with reference to the valuation of Jantri rates and the prevailing condition at the point of time had revised the Jantri rates vide letter dated 5/5/1999 based on such letters the State Government after, careful consideration had sanctioned the said revised Jantri rates as it was that in this manner the rates of Jantri have been given fact by the State of Gujarat vide Notification dated 30/10/1999. It is in this manner that the Jantri rates for the year 1999 had come into force.

14. That after the determination of Jantri rates in the year 1999, the same was applicable till which was further revised in the year 2007. That the State had decided to bring an increase in the Jantri rates and thus vide circular dated 8/2/2007 the Jantri rates were revised whereby, an increase of 50% was declared over the Jantri rates which were prevailing as per the 1999 norms and further it was decided that the said Jantri rates would be increased at the rate of 5% per year till the next Jantri rates are revised. The effect of such circular was in such nature that the rates which were prevailing in the year 1989 would stand increased up an extent 50% i.e. if the Jantri rates as per the year 1999 notification, it is Rs. 100/- as per 2007 circular, there would be a 50% increase would stand to Rs. 150/- and thereafter, for every year 5% increase over Rs. 150/- would be added every year till further revision of Jantri rates. That such an increase of 50% on the 1999 valuation and a subsequent 5% increase every year was to be given from 9/2/2007.

15. That vide Notification dated 31/3/2011 the Jantri rates were again revised and were made effective from 1/4/2011.

16. That in order to consider the residential requirements and different requirements of the citizens for a reasonable pricing and availability of properties to the citizens and also in order to protect the general interest of the farmers and keeping in view larger perspective with reference to the new Jantri rates of 2011. Considerable representation were received from different sections of the society and hence, in order to consider all the representations a committee was constituted which had considered the representation in view of the recommendation made by the said committee, 2011 Jantri rates were reduced by an extent of 50% in order to give relief and this is how till the year 2011 the Jantri rates have been fluctuated. The said reduction of 2011 Jantri rates was brought vide notification dated 31/3/2011.

17. That in view of the order dated 26/2/2013 copy of the Jantri rates applicable as per the year 2008 and 2011 (after 50% reduction as per notification dated 18/4/2011) are given in Annexure-R-IV.

18. That so far as the land in question is concerned, it is stated that the said land, which is a waste land, was full of uneven topography, and was allotted on 5/6/2006 and on the said date, the rates applicable were that as determined in

the year 1999 which were revised only in the year 2007.

19. That in the whole of Gujarat, the Annual Statement of Rates (Jantri Rates) as applicable from 30/8/1999, remained in operation till the year 2007 (as revised from time to time there onwards) and all the transactions were universally charged in the entire State of Gujarat based on the rates prevailing for the concerned area.

20. That in the State of Gujarat also there is a precise and scientific method which has been formulated by the State of Gujarat vide its notification date 15/1/1998 whereby a scientific method has been put in place for ascertaining/determining the valuation of land which is to be given for non-agricultural purpose. The said system has been so designed that the element of mistake/error in the process of evaluation by a single person is eliminated. In order to remove the risks associated with the evaluation being done by any single officer/authority, this new system was put in place wherein, a Multi Tier System of evaluation was put in place.

21. That in the said system a District Level Pricing Committee (DLPC in short) is constituted to look into the pricing as suggested by the Town Planner. The said DLPC is essentially constituted under the chairmanship of the Collector, with other members being District Development Officer, Town Planning Officer and Residence Deputy Collector. It is this particular committee which determines the price of the land. Based on the price determined by this committee and its members the price is finalized by the DLPC. In the present case the DLPC had determined the price for the land in question at Rs. 300/- per sq.mtr.

22. That if according to the valuations the pricing is more than Rs. 50 lac, the matter will be referred to the Chief Town Planner for his opinion regarding the valuation done by the DLPC. In the present case since the valuation came more than Rs. 50 lac, the price determined by the DLPC was referred to the Chief town Planner for his opinion and accordingly the Chief Town Planner had considered the same and had divided the whole piece of land into different plots and had priced them differently so to say for plot No., 6 and 7 the CTP had priced it at Rs. 360/- and for plot No. 5, 8, 9 and 10 the CTP had priced at Rs. 470/- per sq.mtr.

23. That after the CTP has determined the price the same will be forwarded/submitted to the State Level Pricing Committee (in short SLPC). The said SLPC comprises of Principal Secretaries of Revenue, Finance and Urban Development Departments. It is this SLPC which finalized the price which Chief Town Planner had suggested. In the present case the SLPC vide its report dated 20/4/2006 had finalized the price of Rs. 470/- per sq.mtr., for the complete piece of land.

24. That the State of Gujarat, through its Road and Building Department (R&B), had notified a policy Dated 29/6/1988 No. LND-1079/590/111/2, wherein it is stated that the first policy for allotment of land in Gandhinagar city was first notified on 13/1/1969 and thereafter, on receiving various applications from various public sector enterprise/Central government for land allotments, it was

thought fit by the State Government to issue the present notification for putting in place a policy for land allotment without auction. The said policy was notified on 29/6/1988 and is applicable for any allotments of land within the Gandhinagar City area falling under the jurisdiction of R&B Department.

25. That the Air Force had demanded a piece of land vide its application dated 29/8/1997. The Air Force had surveyed sites at Piplaj, Chala, and Koba along with a representative of the Collector. After the said survey, the Air Force had requested to allot the land at Koba.

26. That on receiving such application from the Air Force, the State of Gujarat, vide its Revenue Department, by order dated 4/2/1998, had sanctioned the allotment of land to the Air Force. By virtue of this order, the Air Force was sanctioned the land situated at Koba admeasuring 106 Acres and 25 gunthas i.e. Survey No. 242, at a nominal price of Rs. 75 per sq.mtrs. along with certain terms of use. The said land was sanctioned by the Revenue Department of the State of Gujarat as the land was situated in village Koba.

27. That in view of the quick sanction of Land by the State of Gujarat, at Koba to the Air Force, the Air Force had communicated to the Collector, vide its letter dated 5/2/1998 that the Air Force is yet to secure necessary sanction and release of fund from the Ministry of Defense, and had requested to grant the possession of the land and the payment shall be made as per the prescribed procedure.

28. That without wasting a single day, and keeping in view the national interest, the State of Gujarat had, vide order dated 5/2/1998 passed by the Collector, allotted the said parcel of land to the Air Force. By virtue of the order dated 5/2/1998, the Air Force was allotted the Survey No. 242 situated at Koba admeasuring 106 acre and 25 guntha at a nominal price of Rs. 75 per sq.mtrs. That the land was allotted by the Revenue Department as the land was situated in the rural area under the jurisdiction of the revenue department.

29. That after being allotted the said land i.e. Survey No. 242 being of the size of 106 acres and 25 gunthas, the Air Force itself did not pay the necessary amount to the State Government within the prescribed time. I state that necessary reminders were also communicated to the Air Force for making payments for the land which was allotted to them.

30. That in the year 2000 the Air Force itself, on its own sent a letter dated 2.2.2000 to the Revenue Department stating that the land which has been allotted to them on 5/2/1998, is inappropriate for the purpose of construction of Air Force Headquarters. Even at that point of time the Air Force had not raised any issue with regard to the pricing of Rs. 75/- per sq.mtrs. nor had it made any payment of Rs. 75/- per sq.mtrs. which was concessional in the first place itself. The Air Force had in the alternative requested for another piece of land. It is pertinent to note that when such application was made in the year 2000 the land which was previously allotted vide order dated 5/2/1998 i.e. Survey No. 242 admeasuring 106 acres and 25 gunthas of the land allotment was still in the

name of Air Force in spite of non-payment of necessary fees.

31. That vide its letter dated 19/12/2000, the Office of the Collector had brought to the notice of the Air Force that ever since the land has been allotted to the Air Force vide order dated 5/2/1998, the Air Force has neither made the payment nor has the Air Force communicated any thing and had requested to undertake necessary correspondence in furtherance of the land allotment.

32. In the year 2001 the Air Force vide its letters dated 4/5/2001 and 6/5/2001 communicated that the land which has been allotted to them in village Koba i.e. Survey No. 242 is inappropriate for their purpose and hence, they had on their own identified certain parcel of land and had requested the State Government for allotting them the land at village Lekawada and Palaj, which they have themselves identified as being useful for their purpose.

33. In the meantime, the State of Gujarat, vide its notification dated 26/8/2003, had revised the rate of development charge from Rs. 800 per sq.mtrs. to Rs. 900 per sq.mtrs, which was to be made applicable for allotment of land as per the policy dated 29/6/1988, whereafter on 6/9/2003, the General Administrative Department had communicated to the R & B Department that in view of the policy dated 29/6/1988, and the development charges being at Rs. 900 per sq.mtrs. an amount of Rs. 7200 i.e. development charges multiplied by 8, would be made applicable to the grant/allotment of land to Air Force.

34. It was in the year 2003, that vide order dated 3/10/2003, the land admeasuring 100 Acres (30 acres in the East and 70 acres in the West of river Sabarmati) situated in Lekavada -Palaj was sanctioned by the Road & Building Department to the Air Force at the rate of Rs. 7200/- per sq.mtrs. That the land which was allotted to the Air Force was as per the various requests of, and identification of land, by the Air Force itself.

35. On receiving requests from the Air Force for allotment of land at Lekawada-Palaj village, the State of Gujarat had attempted to seek a confirmation from the ministry of Defense (M.O.D.) whether the valuation of the land, was acceptable to the M.O.D., to which the State Government was surprised to be informed that Air Force has not sought for any sanctions/approvals from the M.O.D. It was at this stage that only an idea was mooted to be discussed as to whether the land available with the Ministry of Defense (which was not required for defense purpose) could be considered for exchange to reduce the financial burden.

36. It was in the year 2005 that the sanction which was made to the Indian Air Force i.e. sanction of allotment of survey No. 242 admeasuring 106 acres was set aside by the State Government, vide order dated 7/4/2005, because of the reason that the Air Force had not paid the price of the land, which was a concessional rate of Rs. 75/- per sq. mtr., since the year 1998 upto the year 2005 and in spite of this fact the allotment of land had remained in the name of Air Force for this area.

37. In view of the fact that the State of Gujarat had set aside the sanction of allotment of land, the Collector, vide its order dated 6/5/2005, cancelled and set aside the allotment of survey No. 242 admeasuring 106 acres because of the reason that the Air Force had not paid the price of the land, which was a concessional rate of Rs. 75/- per sq.mtr., since the year 1998 upto the year 2005 and in spite of this fact the allotment of land had remained in the name of Air Force for of this area. Since in the year 2003 the land situated at Lekavada-Palaj was already allotted to the Indian Air Force there was no further requirement of keeping the said allotment in the name of Indian Air Force and, therefore, the order of allotment of survey No. 242 was set aside by the Collector. The Collector had also informed the office of the Indian Air Force regarding the said decision.

38. It was only after a situation of non-payment of the amount by the Indian Air Force for almost 7 years i.e. from the allotment in 1998 to 2005, that the State of Gujarat had to cancel the allotment made in the year 1998. It is pertinent to note that such cancellation was made only after another land allotment was already sanctioned for Indian Air Force. Therefore, the interest of the Indian Air Force was never ignored or sidelined.

39. That meanwhile, as a result of the efforts made by State Government for creating IT/ITES infrastructure in Gujarat, it was only in the year 2006, that an application was received from the respondent No. 4 for allotment of land in Koba for the development of an IT/ITES park in Gandhinagar.

40. That on receiving such application from Respondent No. 4, the exercise of valuation of land was undertaken which has already been explained in detail vide affidavit dated 18/3/2013 from page No. 100 to 102.

41. In the mean time, the State of Gujarat, vide its notification dated 3/4/2006, had revised the rate of development charge from Rs. 900 per sq. mtrs. to Rs. 1100 per sq. mtrs., which was to be made applicable for allotment of land by the R & B Department as per the policy dated 29/6/1988.

42. That in view of the allotment being made to the Air Force in the year 2003, of the land situated at Lekavada - Palaj at a price of Rs. 7200/-, the Air Force had made certain representations wherein, the Air Force had requested to provide the land at a concessional rate.

43. It was in view of this request of the Air Force, the State Government was of the opinion that since the land situated at Bhavnagar and Devgadhi Baria was in the possession of the Indian Army and the same was not being utilized by the Indian Army for many years, the State Government thought it fit to make a proposal, that if the Indian Army returns the land situated at Bhavnagar and Devgadhi Baria back to the State Government, the State of Gujarat would provide the land to the Indian Air Force at a concessional rate of 1100/- per sq.mtr. This was done to reduce the price aspect for the Air Force.

44. It was in view of the valuation aspect of the land allotted to Air Force, a

cordial and effective meeting was held on 4/4/2006, between the representatives of the State of Gujarat and the Indian Army to discuss the valuation of the land and the proposed return of land situated at Bhavnagar and Devgadhi Baria to the State Government for appropriate reduction in the valuations.

45. That apropos the meeting held on 4/4/2006, the State Government had communicated vide letter dated 26/4/2006 to the Ministry of Defense that the Air Force has already been allotted 100 Acres of land vide Government Resolution dated 3/10/2003 by the R & B Department and also clarified that the valuations are determined as per the policy of the State Government dated 29/6/1988.

46. It is in this view of the matter that no arbitrariness or discretion or favouritism much less any nepotism has been undertaken by the State of Gujarat in any allotment of land to respondent No. 4 of the Indian Air Force. It is necessary to note that the parties have received the land for which they themselves had made an application and it cannot be said that the State of Gujarat had not granted any parcel of land which the Air Force had requested for.

47. The Indian economy was based on agricultural activities till 1950. That after independence, the development of the industries became a major important issue. The economy of the nation gets a boost only when the State provides atmosphere for industrial development. Only the industrial activities bring employment to the society, enhanced revenues in the terms of taxes to the State.

48. The development of the industries, not only help the individuals, who establishes the same, but it has the effect of giving benefit to the society and the State as a whole. The benefits arising out of industrial development are shared by the citizens as also by the society as a whole. That India is second biggest country in the world so far as population is concerned. The Country like China, having the highest population has progressed when industrial activities are the right way. Therefore, every State in the country comes out with an industry friendly atmosphere to attract industries.

49. The State of Gujarat therefore has an industrial policy to attract industrialists. The State of Gujarat is also arranging Vibrant Summit to invite national and global investors. It is because of such efforts made by the State Government that in the State of Gujarat there are better employment opportunities and a generation of income in terms of taxes to the State Government which is used for over all welfare of the people. Therefore, the State with a view to see that if citizens' lives are made better and better, the development of the industries and industrialization is one of the major factors which can be the solution to complex economic problem. With this object in mind, the State invites entrepreneurs with national and international reputes to establish industries in the State.

50. That in the present case, while giving the land the State was guided by the fact that a I.T. Park (Information Technology Park) is to be established. The respondent herein (I.T. Park) has generated employments which results into

demand of houses, consumable goods and services as a whole.

51. This is how a State is taken a path of economic development. In achieving this object if the State has decided to give the land to this particular respondent, it is for the above object for the good of the society and the said decision was taken.

52. Even the respondent herein was given the land at a higher price than Jantri price. The land given, is a waste land which was fallow land and if the land would not have been given then also it would remain as a fallow land.

6. Submissions on behalf of the Petitioner:

(Note: During course of the hearing of both the matters it was understood that the submissions canvassed by Mr. Oza, the learned Senior Advocate appearing for the petitioner of Writ Petition (PIL) No. 2/2013 would take care of Writ Petition (PIL) No. 2/2012.)

6.1 Mr. Y.N. Oza, the learned Senior Advocate appearing for the petitioner vehemently submitted that the allotment of land in the name of development of I.T. Park is nothing but a fraud on the people and therefore, the allotment should be cancelled and the State Government should be directed to resume the land.

6.2 Mr. Oza, placing strong reliance on the decision of the Supreme Court in the case of Centre for Public Interest Litigation and Others Vs. Union of India (UOI) and Others, submitted that the natural resources belong to the people and the State legally owns them on behalf of the people and, therefore, while distributing the natural resources, the State is bound to act in consonance with the principles of equality and ensure that no action is taken which may be detrimental to the public interest.

6.3 According to Mr. Oza although the State Government has tried to justify the allotment of the land in the name of development of I.T. Park, it has disposed of the land in favour of the respondent No. 4 @ Rs. 470/- per sq. mtr. which comes to around Rs. 17 crore and, therefore, such a transaction could be termed as good as an outright sale. According to Mr. Oza, the decision of the State Government to allot the land for such a project could not be termed as one in public interest as it would benefit only the private respondent.

6.4 Mr. Oza submitted that the Government ought not to have allotted the land on the strength of a simple application filed by the Respondent No. 4 with the State Government for allotment of such land, more particularly in the absence of any policy framed by the State Government for allotment of land for the purpose of development of I.T. Park.

6.5 Mr. Oza submitted that even if the allotment of the land is held to be justifiable, the rate at which the same has been allotted, smacks of complete non-application of mind on the part of the State Government, more particularly when other parcels of land somewhat adjoining the subject land, has been allotted by

the State Government in favour of the Indian Air Force at a price much higher than the price fixed for the subject land. Mr. Oza submitted that the State Government has not been able to justify the variation in the price of the land and more particularly when the land was required for the purpose of defence of this Country.

6.6 Mr. Oza submitted that if the State Government was interested in allotment of land for the purpose of development of an I.T. Park then in such circumstances it ought to have invited offers from various I.T. Companies operating in the country and the allotment should have been in favour of a company who would have offered the highest price for the land.

6.7 In short, according to Mr. Oza, the land should have been put to public auction so that maximum price could have been fetched by the State Government in public interest. Mr. Oza also submitted that the first order of allotment passed by the Collector contained various terms and conditions but no sooner had the respondent No. 4 felt that such conditions were not suitable, than they managed to get all those conditions modified for their own personal gain. Mr. Oza submitted that according to the terms and conditions of the allotment the respondent No. 4 was obliged to complete construction of about 4 Millions Sq.ft. within 2 years of the Date of approval of the plan. But the same also ultimately came to be modified by the State Government and as on today except two Towers constructed on the land admeasuring 3000 sq.mtrs., the balance land remains vacant land.

6.8 Thus, according to Mr. Oza, the project in no manner could be said to have benefited the State Government so as to justify the Stance that the decision of allotment of the land was in public interest. Mr. Oza, therefore, prays that there being merit in this PIL, the same deserves consideration and the order of allotment of land in favour of respondent No. 4 should be cancelled.

7. Submissions on behalf of the Respondent No. 4:

7.1 Mr. Mihir Joshi, the learned Senior Advocate assisted by Mr. Sahil Thakore appearing for the respondent No. 4 submitted that the petition could not be termed as a genuine public interest litigation. According to Mr. Joshi this petition is a gross abuse of the process of the Public Interest Litigation and deserves to be dismissed with costs.

7.2 Mr. Joshi submitted that one peculiar feature of this litigation which deserves to be noted is that the challenge is only to the grant of land by the Government but not to the project. The petitioner has not said a word so far as the project is concerned. There are no pleadings in that regard. Mr. Joshi submitted that the allegations leveled by the petitioner that the allotment of the land has been made in the absence of any policy framed by the State Government is without any merit since there is a policy of the State Government for allotment of land for the purpose of development of I.T. Park.

7.3 Mr. Joshi also submitted that the arguments canvassed on behalf of the petitioner as regards the price fixed for the allotment of land is also devoid of any merit since the price has been fixed after due deliberations at the end of the Committee constituted by the State Government. Mr. Joshi submitted that the petition deserves to be dismissed solely on the ground of delay and laches. According to Mr. Joshi, the allotment of the land was made way back in the year 2006 whereas the petition has been filed after a lapse of almost 7 years i.e. in 2013. During the interregnum period his client has invested around Rs. 174 crore in the project and as on today his client has already constructed two inter-connected 7 floor towers and the construction of the third tower is in progress.

7.4 Mr. Joshi submitted that his client has constructed a 2 kms. long and 30 meters wide public road for the purpose of ingress and egress to the land since the land contained many pits, mounds, etc. The work of leveling the land was also carried-out by his client to bring the land into a usable condition. Mr. Joshi submitted that 10 acres landscape garden has been made. According to Mr. Joshi, around 16 companies/firms have already set-up their IT/ITES Offices and are operating there from employing approximately 700 employees.

7.5 Mr. Joshi submitted that the petitioner deserves to be dismissed even on the ground of the suppression of material facts and false statements made on oath.

7.6 In such circumstances mentioned above, according to Mr. Joshi, there is no merit in this petition and the same deserves to be rejected with costs.

8. Submissions on behalf of the State Government:

8.1 Mr. P.K. Jani, the learned Government Pleader appearing on behalf of State Government submitted that there is absolutely no merit in the petition and the same has been preferred with an oblique motive to malign the State Government. According to Mr. Jani, the petitioner of Writ Petition (PIL) No. 2/2013 is a former Member of Legislative Assembly, affiliated with Indian National Congress and only with a view to gain political mileage, has preferred this petition after a period of almost 7 years from the date of allotment.

8.2 Mr. Jani submitted that the allegations of allotment of the land at a throw away price are absolutely baseless and there is cogent material on record to suggest that the price was fixed after taking into consideration all the relevant aspects of the land including the policy of the State Government.

8.3 Mr. Jani submitted that every decision taken by the State Government cannot be tested with an eye of suspicion, otherwise the administration of the State Government would come to a standstill. Mr. Jani submitted that taking into consideration the reputation and the ability of the respondent No. 4 in the field of development of I.T. Park a decision was taken by the State Government in good faith with good intentions and without any extraneous consideration for allotment of the land so that the same would generate revenue for the Government and would provide employment to thousands of I.T. Engineers and Graduates.

8.4 Mr. Jani further submitted that non-floating of tenders or absence of public auction or invitation alone would not be a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable. It is open to the State Government and the authority to take appropriate economic and management decision depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest.

8.5 Thus, according to Mr. Jani, the learned Government Pleader, there being no merit in both the petitions the same deserve to be rejected with costs.

9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our determination in this Public Interest Litigation.

(i) Whether the decision of the State Government to allot the land in favour of the respondent No. 4 for the purpose of setting up of IT Park could be termed as arbitrary, discriminatory and an act of favouritism and or nepotism violating the sole object of equality clause embodied in Article 14 of the Constitution of India?

(ii) Whether the State of Gujarat has any Industrial Policy for the purpose of promotion of IT and knowledge based industries, enhancing exports, development of small and service sector, technology upgradation programme, R&D, setting up of industrial parks, upgradation of infrastructure, support for environmental protection measures, etc?

(iii) Whether this petition deserves to be dismissed on the ground of delay and laches?

-:QUESTION 1:--

10. Ordinarily, the court would allow litigation in public interest if it is found:

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body or a meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

11. In the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, the Supreme Court observed as follows:--

Today public spirited litigants rush to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicion. Public Interest Litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is therefore necessary to lay down, clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest Litigation, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves Administrative and executive functions. This does not mean that traditional litigation should stay out. They have to be tackled by other effective methods, like decentralizing the judicial system and entrusting majority of traditional litigation to Village Courts and Lok Adalats without the usual populist stance and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases....

It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially the Supreme court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. It is necessary to have some self-imposed restraint on Public Interest Litigants.

12. In a recent pronouncement of the Hon'ble Supreme Court in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , the Supreme Court laid down the following guidelines relating to Public Interest Litigation:--

178. We must abundantly make it clear that we are not discouraging the Public Interest Litigation in any manner, what we are trying to curb is its misuse and abuse. According to us, this is a very important branch and, in a large number of PIL petitions, significant directions have been given by the Courts for improving ecology and environment, and the directions helped in preservation of forests, wildlife, marine life etc. It is the bounden duty and obligation of the Courts to encourage genuine bonafide PIL petitions and pass directions and orders in the public interest which are in consonance with the Constitution and the laws.

179. The Public Interest Litigation, which has been in existence in our country for more than four decades, has a glorious record. This Court and the High Courts by their judicial creativity and craftsmanship have passed a number of directions in the larger public interest in consonance with the inherent spirits of the Constitution. The conditions of marginalized and vulnerable section of society have significantly improved on account of Court's directions in PIL.

180. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other Courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Court must encourage genuine and bonafide PIL and effectively discourage and curb the PIL filed for extraneous consideration.

(2) Instead of every individual judge devising his own procedure for dealing with the Public Interest Litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima-facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima-facie satisfied regarding the correctness of the contents of the petition before entertaining petition.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure

that there is no personal gain, private motive or oblique motive behind filing the Public Interest Litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

13. In a very recent pronouncement of the Hon''ble Supreme Court in the case of P. Seshadri Vs. S. Mangati Gopal Reddy and Others, has observed that:--

Public Interest Litigation can only be entertained at the instance of bonafide litigants. It cannot be permitted to be used by unscrupulous litigants to disguise personal or individual grievances as Public Interest Litigations. The Supreme Court does not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals i.e. busybodies, having little or not interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently aboveboard. Otherwise the petition is liable to be dismissed at threshold.

14. It appears from the materials on record that the State Government has framed an Industrial Policy 2003 and the primary objective of such policy is to achieve global competitiveness for industries in Gujarat. Its objectives are as under:

To create a conducive environment for the investors who would be inspired to think of Gujarat first for his investment plans thereby enabling Gujarat to emerge as the most competitive destination for investment in the 21st century.

To equip new entrepreneurs as well as existing enterprises with the latest information in relevant field(s).

To strengthen the facilitation mechanism at the Government level - both at the state and district levels.

To sensitize the administration to the needs of the industries.

To implement the concept of e-governance in letter and spirit.

To further strengthen the current mechanism for redressal of legitimate grievances.

To develop the best of infrastructure facilities by infusing private sector investment.

To empower the industrial estates to undertake developmental responsibilities.

To enhance the quality of life in the state, as viewed by investors.

To establish strategic linkages between educational institutions including

universities and the industries to meet with future requirements of manpower, by introducing appropriate courses.

To take suitable measures for development of human resources through capacity building and skill upgradation for enhancement of productivity.

To evolve a conducive business environment by introducing labour reforms.

To bring about simplification of rules, regulations and procedural aspects.

To arrest environmental degradation.

With Sardar Sarovar Project on Narmada River nearing completion, Gujarat will witness a boom in agriculture sector and the state plans to capitalize on the increased agro production to process this wealth into profitable venture by developing necessary infrastructure.

To strengthen the mature manufacturing segments in the State.

To promote industries which are labour-intensive in nature to create large-scale employment opportunities in the State.

To provide assistance to small-scale industries for healthy growth.

To strengthen existing industrial clusters and promote new clusters.

To assist small and medium industries in getting bank finance.

To inculcate a sense of "Quality Consciousness" by promoting R & D efforts in the industries.

To assist industries in adopting technology upgradation programmes.

To tailor policies to combat any adverse effect on account of the impact of WTO regime on various sectors of industries in the State.

To equip the industries in Gujarat to meet with the challenges of WTO regime as also exploit the opportunities to their advantages.

To assist industries in arresting industrial sickness.

To project and to establish Gujarat as second to none in terms of "quality" and "brand image" of products, on international platform.

To ensure adequate supply of natural gas available from Gujarat at competitive tariffs to the industrial units in Gujarat.

To rationalize tax regime.

To bridge the gap between self-actualization needs of Non-Resident Indians/ Gujaratis and the developmental requirements of the State.

To promote port-driven industrialization.

To correct regional imbalances.

To address developmental aspects of specific issues like Fisheries Development, empowerment of tribals by creating employment opportunities in their respective regions and accentuating the developmental pace of Kutch district.

Fulfillment of objectives of this policy as outlined above, ultimately should lead to achieving sustainable industrial development to create large-scale employment opportunities all across the state, thereby correcting regional imbalances. The policy should also help industries achieving competitiveness not only within the country, but also in the international market by improving industrial productivity. The policy should also aim at inculcating the sense of quality consciousness as also sensitivity among the industries in the State towards preserving environmental standards.

15. In order to achieve the objectives, as enunciated above, the State Government has decided to introduce the following broad strategy initiatives:

Creating and sustaining a Global Brand Image for Gujarat and its products.

Good governance

(a) Labour reforms to facilitate industrial investment to generate employment and ensuring productivity.

(b) Upgradation of Industrial and Urban Infrastructure.

(c) Power reforms

(d) Port led development and setting up of SEZs.

Focusing on strength of Gujarat - Manufacturing.

Concerted efforts towards innovation, technology upgradation and value-addition.

Development of service sector-around strong manufacturing base.

Export competitiveness.

Consultative approach for policy initiatives (Phase I) and sector-specific strategy approach (Phase II).

16. The Chapter IV of the Industrial Policy 2003 relates to infrastructure and empowerment of industrial estates. According to the policy, infrastructure development is a priority on the State agenda which includes establishment of SEZs and industrial parks, which reads as under:

Establishment of SEZs and Industrial Parks.

Recently, the Government came out with ordinances to encourage private developers to set up SEZs and Industrial Parks. Both these ordinances will be converted into Acts very soon. The Government will also continue to offer financial assistance for employment-oriented parks, high-tech parks and

investment-oriented parks under the present scheme.

17. The policy also lays down certain guidelines regarding issues pertaining to allotment of land. The policy reads as under:

ISSUES PERTAINING TO ALLOTMENT OF LAND

Making the land available in time for industrial use at a reasonable and competitive price without any hassle is the main concern of every investor to ensure that the project goes on stream without undue delay and the policy therefore has rightly given due weightage to this issue. The important issues involved are: easy availability of private land/Government land, clearing of NA permission, land acquisition and evaluation of land. Keeping in view the objective to promote industrialization in Gujarat, the Revenue Department has so far taken following steps vide different GRs to facilitate allocation of land to industries.

(a) A provision of Deemed NA has been made which allows a bona fide industrialist to acquire agricultural land and commence activity without prior NA permission, as per the provisions under Sections 63 & 65 (as amended) of Land Acquisition Act. At the executive level of local administration as well as for the knowledge of industries, this provision will be reiterated.

(b) Land under restricted tenure is now easily convertible to old tenure for industrial purposes.

(c) Section 63AA of Gujarat Tenancy Act which came into effect from 6th March 77 enables a bona fide industrialist to possess agricultural land for setting up industrial undertaking without prior approval of the District Collector.

(d) For valuation of Government land, the value upto Rs. 50 lakhs is decided by the District Level Pricing Committee. In case of value exceeding Rs. 50 lakhs is decided by the State Level Pricing Committee. This mechanism facilitates appropriate and quick evaluation of land.

(e) As regards land acquisition, urgency clause is also invoked in deserving cases of public or private limited companies to facilitate quicker possession of land for industrial purposes.

The Government however, proposes further simplification in these matters.

Government/private land

(i) The valuation procedure of Government land is being simplified further to help quicker disposal of proposals of allotment of land.

(ii) Jantry rationalization currently used in stamp registration is also being taken up to help speed up the valuation procedure.

(iii) Geographical Information System (GIS) will be developed in due course along with updating and upgradation of land records to identify parcels of Government land available for potential development. The object is to have a

decentralized approach to enable an entrepreneur to get all the information at one point at the district level. The Government also plans to make available this information on-line in due course. This will also help to reduce the time of processing drastically.

(iv) The Government also proposes to dispense with the necessity to obtain NA permission in case of areas marked under Town Planning Schemes.

(v) The Government proposes to consider the concept of allotment of Government land initially at full price to be neutralized over a period of time commensurate with the progress of project implementation.

18. Thus, from the above, we are convinced that there is an Industrial Policy 2003 framed by the State Government and, therefore, we do not find any merit in the vociferous submission canvassed on behalf of the petitioners that the allotment of land in favour of the respondent No. 4 for the purpose of setting up of the IT Park was without any such policy.

--:QUESTION-2:--

19. It appears from the materials on record that the respondent No. 4 has many years of experience in setting up IT/ITES SEZs/IT Parks and has successfully established such parks in different cities of the country like Mind Space (Hyderabad), Mind Space (Mumbai), Mind Space (Navi Mumbai) etc. It also appears that the respondent No. 4 has been conferred with awards by the Maharashtra and Andhra Pradesh Government for its contribution to the creation of IT infrastructure.

20. Having regard to the initiatives taken by the State Government towards promoting IT/ITES and the Industrial Policy 2003, the respondent No. 4 made a request in writing dated 15th February 2006 furnishing details of the company and requested for allotment of land at Village-Koba, District-Gandhinagar, for the purpose of developing IT/ITES infrastructure.

21. After taking into consideration the credentials of the respondent and also taking into consideration the work undertaken by the respondent in other States, the State Government thought fit to look into the request of the respondent for allotment of land and for that purpose asked the Chief Town Planner to work out the valuation of the land.

22. The Chief Town Planner, after taking into consideration all the relevant aspects of the matter, and more particularly, the report of the District Level Pricing Committee placed its report before the Government dated 10th April 2006 determining the price of the land at the rate of Rs. 470/- per sq.mtr. According to the policy of the State Government, if the valuation of the land is more than Rs. 50 Lac then the matter has to be referred to the Council of Ministers. Accordingly, the Council of Ministers approved the decision so far as the fixation of the price of the land is concerned and pursuant thereto an allotment order dated 5th June 2006 was issued in favour of the respondent.

23. In the aforesaid background we are not impressed by the submission of Mr. Oza, the learned Senior Advocate appearing for the petitioner that the State Government could not have allotted the land without putting the same to public auction and in any case could not have been allotted on a single representation filed on behalf of the respondent for such allotment.

24. In this context, we may refer to a very recent pronouncement of the Supreme Court in the case of Pathan Mohammed Suleman Rahematkhan v. State of Gujarat and Others (Special Leave Petition (C) No. 32507 of 2013 decided on 22.11.2013). In the case before the Supreme Court, the submission was that the allotment of land by the State of Gujarat for development of an international financial services city at Ahmedabad could not have been made without inviting the tenders from various companies interested in the project. The Supreme Court refused to accept such submission and dismissed the SLP by observing as under:

We are of the view that these are purely policy decisions taken by the State Government and, while so, it has examined the benefits the project would bring into the State and to the people of the State. It is well settled that non-floating of tenders or absence of public auction or invitation alone is not a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable or amounted to mala fide or improper exercise of power. The Courts have always held that it is open to the State and the authorities to take economic and management decision depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest.

25. We are of the opinion that the procedure adopted by the State Government could neither be termed as illegal nor unconstitutional. The Government has a policy, referred to above, of allotting land with its primary object to achieve global competitiveness for industries in the State. This is not a case where it could be said that the State Government has given largess to an individual according to its sweet will and whims.

26. Mr. Joshi, the learned Senior Advocate appearing for the respondent No. 4 is right in submitting that in a case of integrated and indivisible project, the project has to be taken as a whole and must be judged where it is in the large public interest. It should not be split into different components and to consider whether each and every component will serve public good. The holistic approach should be adopted in such matters. If the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large, it will serve public purpose.

27. The Supreme Court in N.D. Jayal and Another Vs. Union of India (UOI) and Others, made the observations which we may quote with profit as under:

10. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of the project and

such a system cannot be said to be arbitrary, then the only role which the Court has to play is to ensure that the system works in the manner it was envisaged. It is made clear in that decision that the questions whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken. However, a note of caution was struck that the Courts have a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights as guaranteed under the Constitution are not transgressed upon except to the extent permissible under the Constitution. When a law has been enacted in relation to the protection of environment and such law is being given effect to and there is no challenge to such law, the duty of the Courts would be to see that the Government and other respondents act in accordance with law and there is no other obligation for the Court to examine further in the matter. We respectfully agree with the view expressed in the Sardar Sarovar project's case and apply the same to the facts arising in this case.

28. In Pathan Mohammed Suleman Rahematkhan (supra) the Supreme Court made the following observations in paragraph 8 of its judgment which we may quote with profit as under:

But we cannot lose sight of the fact that it is the Government which administers and runs the State, which is accountable to the people. State's welfare, progress, requirements and needs of the people are better answered by the State, also as to how the resources are to be utilized for achieving various objectives. If every decision taken by the State is tested by a microscopic and a suspicious eye, the administration will come to standstill and the decision-makers will lose all their initiative and enthusiasm. At hindsight, it is easy to comment upon or criticize the action of the decision maker. Sometimes, decisions taken by the State or its administrative authorities may go wrong and sometimes it may achieve the desired results. Criticisms are always welcome in a Parliamentary democracy, but a decision taken in good faith, with good intentions, without any extraneous considerations, cannot belittled, even if that decision was ultimately proved to be wrong.

29. A lot of hue and cry has been raised on behalf of the petitioner that the land has been allotted at a throw away price of Rs. 470/- per sq.mtr. It appears from the materials on record that, at the time of allotment, the land was absolutely unsuitable for any construction activity. The land is located near the border of Village-Koba and it is not correct to say that the same is in the heart of the city of Gandhinagar. It also appears from the materials on record and, more particularly, the photographs that the land was "vagha, kotar, jhadi, jhankhara" meaning to say was absolutely uneven, containing large pits, mends, ravines, bush weed etc. It also appears that the Indian Air Force had demanded the land in the same region and the State Government had allotted it at the rate of Rs. 75 per sq.mtr. but since the Indian Air Force found the land to be absolutely

unsuitable for construction they refused and requested for some other parcel of land.

30. It also appears that the land being far away from the Gamtal area (village site) and somewhere near the border of Koba without any access, a 2 km. long and 30 mtr. wide road had to be constructed by the respondent No. 4 at its own cost and such road is being used as a public road.

31. It also appears that, to make the land worthy of the project, more particularly, for carrying out the work of leveling, earth filling, landscaping, the respondent No. 4 had to spend crores of rupees.

32. We are satisfied with the report of the Chief Town Planner dated 10th April 2006 with regard to the price determination which has considered the sale instances of the past.

33. We may quote the valuation report so that the formula adopted by the State Government in determining the true market value of the land could be understood.

VALUATION REPORT

1. Subject:- Land-Gandhinagar District

Regarding allocation of land bearing Plot No. 4 to 10,

Survey No. 237, 238, 242 and 270 of Village Koba, Taluka Gandhinagar for I.T. Park.

2. Development Scheme/Town Planning Scheme/Broad Layout/C.R.Z. Proposals:--

As per the preliminary notification published on 22/03/06 in respect of the approved/implemented Development Scheme of GUDA, the land in question has been notified in the Institutional Zone-4 and certain area of the land in question is lying in the Town Planning Scheme No. 1 (Koba) of GUDA for approval. Other particulars are not applicable.

3. Description of the land in question:

(1) Area:- 3,76,581.00 sq. meter

(2) Entrance:- Entrance is from the road passes through border of Raisan-Koba.

(3) Aakaar:-Regular

(4) Surface:- Uneven and of pit-ravine, scrub-weed.

(5) Surrounding Development:--

River, pit - ravine lands, agricultural lands and lands of Raisan, which is little away in the north direction, is situated near the land in question.

4. Details of the valuation determined for the Plot No. 1 to 4 by Town Planner, Ahmedabad and District Valuation Committee:--

Town planner, Ahmedabad, prepared a sales plan by showing total 27 sale, out of which average of non-agricultural sales No. 2 to 6, 8, 9, 13, 17 comes to Rs. 771.86 from which 20% for pit - ravine land and 30% for developed area to be reduced and hence average is Rs. 386.00 per sq. meter and taking average of agricultural sales 18-27, average of Rs. 250.75 is considered. The average of these two being Rs. 318.38, in meeting dated 9/2/05 of Committee, for Plot No. 1 - 4 Opinion for Rs. 320 per sq. meter was presented and the Committee took the price of Rs. 300 unanimously.

5. Opinion of this Office:--

The rates of land in question are not fixed in the District Valuation Committee, but the Rs. 300.00 per sq. meter being the price of Plot No. 1 to 4 and S. No. 237 part has been fixed in the meeting dated 9/2/05 of the District Valuation Committee, whereas the Revenue Department has now asked to give opinion in respect of the present price of Plot No. 4 to 10.

The sales plan and calculation sheet has been prepared after taking into consideration sale No. 11, 12, 18 to 27 and new sales No. 28 to 34 from out of the sales plan submitted by the Town Planner before the Committee on 9/2/05. As per the enclosed sheet, they are not liable to be taken into consideration. Therefore, taking into consideration Sale No. 18, 19, 25 and 28 to 34, average comes to Rs. 434/- per sq. meter, and after deducting 20% for pit - ravine land therefrom, it comes to Rs. 347.20 per sq. meter.

Further, the past Valuation No. 5 in respect of Block No. 258 of Village Raisan came to Rs. 630.00 per sq. meter as on 10/11/05, which has also been finalized in the State Level Committee. Taking this into consideration, calculating duration of 5 months, it comes to Rs. 669.00 per sq. meter. The said land falls in the proposed Town Planning Scheme of GUDA and therefore, taking into consideration reduction of 30% as the land in question being Plot No. 4, 6, 7 is outside the area of the Scheme, reduction of 20% as the land in question being pit - ravine land, aggregating to reduction of total 50%, it comes to Rs. 335.00 per sq. meter.

Further, from out of the land in question, the price of Plot No. 4 is fixed at Rs. 300.00 per sq. meter in the meeting of District Valuation Committee held on 9/2/05 and which has not become final in the State Level Committee, wherein if fourteen months" period as per March-2006 is taken into consideration, it comes to Rs. 352.50 i.e. Rs. 353.00 per sq. meter.

Taking into consideration all the aforesaid facts, the final price as on March-2006 of the land in question being Plot No. 4, 6, 7 can be considered to be Rs. 360.00 per sq. meter. Further, since the Plot No. 5, 8 to 10 falls within the Scheme area, after giving 30% rise, it comes to Rs. 468/- per sq. meter. Therefore, it is opined

that the price of Plot No. 5, 8 to 10 can be considered to be Rs. 470/- per sq. meter, which please be noted.

Further, since the Plot No. 5, 8 to 10 from out of the said lands falls for the approval of the Government in Town Planning Scheme No. 1 (Koba), the proposals of the Scheme is to be taken into consideration at the time of disposal of the lands.

Sd/- Chief Town Planner, Gujarat State, Gandhinagar

Encl: 1. Calculation sheet. 2. Sales Plan

34. Besides the above, we should not be oblivious of the fact that the price of the land was fixed by the Chief Town Planner after due consideration of the report of the district level pricing committee and the State Level Pricing Committee consisting of high ranking officers.

35. We are also conscious of the fact that the allotment of the land in question has been made on new, impartible, inalienable and restricted tenure with several restrictions and conditions and could not be termed as a freehold sale.

36. In any view of the matter, it is not for the Court to determine the price of the land unless the same is shockingly disproportionate to the conscience of the Court.

37. It may not be out of place to state that the jantri of 1999 was in force at the time when the allotment was made in the year 2006 and the new rates of the draft ASR had not even come into force but still at the time of allotment the rates of draft ASR were made applicable for determination of the market price.

38. Mr. Oza also vociferously submitted that the State Government very conveniently ignored the request of the Indian Air Force for the land at a particular rate but very promptly allotted the land in favour of the respondent No. 4. According to Mr. Oza, the State Government offered the land to the Indian Air Force at Lekawada at the rate of Rs. 1100/- per sq.mtr. on the condition of surrender of another parcel of land to the State Government which was in possession of the Indian Air Force and if the Indian Air Force was not willing to hand over the possession of another land then at the rate of Rs. 8800/- per sq.mtr.

39. We are not impressed by such submission canvassed on behalf of the petitioner because it appears from the materials on record that the Indian Air Force had demanded the Koba land in August 1997 and was allotted the same in February 1998 at the rate of Rs. 75/- per sq.mtr. At the later stage, in the year 2000-01 the Indian Air Force on its own had refused to take possession of the Koba land as the same was totally unsuitable for construction.

40. It appears that, in 2003, the Indian Air Force was allotted the land in Lekawada at the rate of Rs. 7200/- per sq.mtr. very much close to the city of Gandhinagar. Such land at the time of allotment was being administered by the

Road and Buildings Department. The price was fixed on the basis of general resolutions of 1988 and 2003 respectively of the Road & Building Department applicable to the urban areas falling under the Road & Building Department. According to the 1988 resolution, the land falling within the Road & Building Department was to be allotted to the Central Government on the basis of 8 times the development charge. Under the 2003 resolution, the development charge was fixed at Rs. 900/- per sq.mtr. for the city of Gandhinagar and this is how the rate of Rs. 7200/- (900 ? 8) was arrived at. Pursuant to the representations, the price of the land was reduced to Rs. 1811/- per sq.mtr. vide allotment order of 2008.

41. It also appears from the materials on record that there is a vast difference between the land which was allotted to the respondent at Koba in 2006 and the one allotted to the Indian Air Force at Lekawada in all respects.

42. Thus, we hold that there is no merit in the contention canvassed on behalf of the petitioner so far as the price of the land is concerned.

43. Mr. Oza also tried to convince us that the allotment of the land in favour of the respondent No. 4 deserves to be set aside as it has violated the conditions prescribed in the order of allotment. According to Mr. Oza, in the first order of allotment very stringent terms and conditions were imposed but since such terms and conditions were found to be onerous, the respondent No. 4 successfully managed to get those conditions modified so as to suit its own convenience.

44. We are not impressed by the aforementioned submission canvassed on behalf of the petitioner because it is for the State Government to look into all such aspects whether the terms and conditions, as imposed, are being complied with or not. We do not find any mala fides on the part of the State Government in modifying those conditions. It appears that, after due deliberations, some of the conditions were modified but that, by itself, would not be sufficient to condemn the very act of allotment of the land which is in larger public purpose. We have also noticed that the original construction schedule prescribed in the order dated 8th May 2006 came to be modified vide order dated 1st October 2007. According to the modified conditions, the State has no power to forfeit or resume the land if the construction is not completed according to the schedule. In any view of the matter, even after the modifications of conditions the land continues to be a new tenure and impartible land.

45. Mr. Joshi invited our attention to Rule 5 of the unamended Central SEZ Rules 2006. According to the 1st proviso of Rule 5(2)(b) read with Rule 5(7), an IT, ITRS and SEZ is required to construct a minimum built up area of 1 Lac sq.mtrs. within ten years from the date of SEZ notification and 50% thereof i.e. 50,000 sq.mtr. within five years from the date of the SEZ notification.

46. It appears from the materials on record that the SEZ notification was issued on 23rd July 2008 and the period of five years therefrom expired on 23rd July

2013. It appears that the construction which has been completed by the respondent is much higher than the minimum requirement of 50,000 sq.mtr.

47. Rule 5(2) of the Central SEZ Rules has been amended by the Special Economic Zones (Amendment) Rules, 2013. The new Rules make significant reductions in the minimum construction and other requirements and it is apparent that they have been made in view of the huge recession being experienced by the markets and by the SEZs in particular as is also clear from the fact that the Office Memorandum thereof opens with the words "In order to revive investors" interest...." The amended minimum construction requirements for IT/ITES SEZs are as under:

48. In the context of the amended rule, the following could be noted:

(a) The respondent No. 4's IT SEZ does not fall in Category A or B City. Under the residuary Category C, the minimum construction requirement is 12,500 square meters in 5 years (i.e. by 23.7.13) and 25,000 square meters in 10 years (i.e. 23.7.18) from notification.

(b) By the year 2013, the respondent No. 4 has already constructed built up area in excess of 50,000 square meters and is in fact ahead by 4 times than the requirements of Category C (12,500 sq.mtr.). Not only that, in spite of the recession, the respondent No. 4 is performing better than the requirements of a Category A City like Mumbai or Delhi (50,000 sq.mtr. in 5 years) or a Category B City (25,000 sq.mtr. in 5 years).

49. We may now proceed to consider the decisions on which strong reliance has been placed by Mr. Oza in support of his case.

50. In Centre for Public Interest Litigation and Others Vs. Union of India (UOI) and Others, the issue before the Supreme Court was whether the Government had the right to alienate, transfer or distribute natural resources/national assets otherwise than by following a fair and transparent method consistent with the fundamentals of the equity clause enshrined in the Constitution. The Supreme Court observed that the natural resources belong to the people but the State legally owns them on behalf of its people and from that point of view natural resources are considered as national assets, more so because the State benefits immensely from their value. The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to the public interest. The Court also observed that like any other State action, constitutionalism must be reflected at every stage of distribution of the natural resources. In the facts of that case, the Court also observed that a duly publicized auction conducted fairly and impartially was perhaps the best method for discharging such burden and the methods like first come first serve when used for alienation of natural resources/public property were likely to be misused by unscrupulous people who may only be interested in

garnering maximum financial benefits and may have no respect for constitutional ethos and values.

51. There cannot be any quarrel with the proposition laid down by the Supreme Court in the aforesaid decision but we fail to see how it helps the petitioner in any manner. The question before the Supreme Court was altogether different and on the basis of the materials on record, the Supreme Court found that the manner and method in which the licenses were issued smacked of favouritism and the procedure adopted for grant of license was arbitrary and not in public interest. In such circumstances, the Supreme Court directed for fresh recommendations for grant of license and allocation of spectrum of 2G band in 22 service areas by auction. In the case before us we do not find anything suspicious or contrary to the public interest so far as the decision of the State Government to allot the land for the purpose of setting up of IT Park is concerned. It appears that pursuant to the Industrial Policy 2003 the Government took a conscious decision to promote IT and knowledge based industries and for that purpose allotted land for setting up of IT park.

52. In *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others*, the issue before the Supreme Court was whether the decision of the Government of Madhya Pradesh to allot 30 acres of land of Khasra, District Bhopal, to late Shri Khushabhau Thakre Memorial Trust without any advertisement and without inviting other similarly situated organizations/institutions to participate in the process of allotment was contrary to Article 14 of the Constitution and the provisions of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam or not. Having regard to the facts of that case, the Supreme Court took the view that the State cannot give largess to any person according to sweet will and whims of the political entities and or officers of the State. The Supreme Court deprecated the policy of allotting land on the basis of the applications made by individuals/bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. The Court took the view that by entertaining the applications made by individuals, organizations or institutions for allotment of land or for grant of any other type of largess the State cannot exclude other eligible persons from lodging/competing the claim.

53. The aforementioned decision is also of no avail to the petitioner because it cannot be said that the decision to allot the land in favour of the respondent No. 4 was for extraneous reasons. The Government is definitely going to gain out of the said project and it is not as if the respondent alone is going to be benefited by the same. We are saying so because the project has provided employment to hundreds of IT engineers and as it will progress further will provide more employment and would also generate substantial revenue for the State Government.

54. Mr. Oza, the learned Senior Advocate appearing for the petitioner also relied on a Division Bench decision of the Bombay High Court in the case of Abdul

Hamid Patel and Another v. State of Maharashtra and Others delivered in Writ Petition No. 1826 of 2003 decided on 9.2.2012. In the said case before the Bombay High Court two writ petitions were filed as public interest litigation challenging the action of the Maharashtra Film, Stage and Cultural Development Corporation (MFSCDC), a solely owned and controlled Corporation of the Government of Maharashtra, of entering into a contract with the Mukta Arts Limited whereby a huge tract of land admeasuring 20 Acres, which is equivalent to 8,71,200 sq.ft. situated at Goregaon in Greater Bombay was agreed to be given to and transferred in favour of a joint venture in which the Corporation was to hold only 15% shares. The basis for filing such a petition in public interest was that the transfer of land had been done without inviting any advertisement of tenders and the land admeasuring 20 Acres had been valued only at Rs. 3 Crore.

54.1 The Division Bench took notice of the fact that except the two Government Resolutions dated 30.5.2000 and 29.8.2000, the managing committee of MFSCDC Corporation had not passed any resolution either accepting the proposal of Mukta Arts or accepting that the valuation of the land admeasuring 20 Acres should be made at Rs. 3 Crore and, on that basis, the Corporation should be given equity participation of only 15% on the basis of assumption that the entire project cost would be Rs. 20 Crore. The Court also took notice of the fact that the various policy decisions of the Government of Maharashtra provided for grant of land at a concessional rate only to educational institutions and one of the essential precondition was that such educational institution should be a trust duly registered under the Bombay Public Trusts Act, 1950 or a society duly registered under the Societies Act, 1862. The Court took notice of the fact that Mukta Arts was not fulfilling any of the criteria fixed by the State of Maharashtra. The Court further took into consideration that without any approval either from the Cultural Affairs Department or from the Revenue Department of the Government of Maharashtra, the then Managing Director of MFSCDC had proceeded to execute the joint venture agreement and the then Chief Minister had signed the said joint venture agreement dated 24.10.2000 only at the request of the Managing Director of MFSCDC allegedly as a token of his good wishes to the said project. The Chief Minister's stance before the Court was that he had signed the agreement on the spur of the moment as requested by the parties to the agreement. The Court observed that the then Chief Minister signed an agreement which had no value in law and no resolution of the managing committee had been passed to enter into such an agreement.

54.2 In the aforesaid background of the entire matter, the Division Bench posed two questions for its consideration. They are as under:

Can the highest functionary of the State Executive being the Chief Minister of the State sign an agreement between the Maharashtra Film Stage and Cultural Development Corporation (MFSCDC), a wholly owned and controlled Corporation of the Government of Maharashtra and a private entity named Mukta Arts Ltd., as a witness purportedly at the spur of the moment in a transaction which the

State Government has stated on oath to be a transaction contrary to the provisions of law?

Can the head of the Executive in the State shirk his responsibility by claiming that he was not aware about the details of the transaction between the Corporation owned by State and a private entity and should Court accept his explanation that he remained present for the ceremony of the signing of the agreement only as a good gesture, particularly when on the face of it the agreement in question is mired in illegality and when the State is also not in a position even to remotely support the legality of the entire transaction?

54.3 While answering the aforementioned two questions, the Bench observed as under:

The State Government has already filed its affidavit in which it has clearly stated that even without a formal resolution of the Board of Director of the Corporation, the then Managing Director had proceeded to execute the Joint Venture Agreement. The affidavit filed on behalf of the Government by Smt. Swati Mhase Patel, which is extracted hereinabove clearly shows that even the State Government is not supporting the decision of the Managing Director. In fact from the said affidavit it is clear that neither the Government nor the Corporation had ever taken a decision either to allot the land in question to the Joint Venture Company or to permit the utilization of the said land by the Joint Venture Company. There was no authorization given by the State Government for use of said land for the purpose of the Joint Venture. Thus, here is the case where all norms of transparency and reasonableness have been given complete go bye. The present case is a classic example of arbitrary, unreasonable and illegal decision of permitting use of available land owned by the Government without any authority of law. We have already indicated that there is absolutely no basis for coming to the conclusion that the value of the land admeasuring 20 acres would be only Rs. 3 Crores. Since entire Joint Venture Agreement is based on such fallacious foundation that the value of the land should be taken as Rs. 3 Crores, the entire edifice of the case of the Respondent Nos. 3 and 4 to the effect that a conscious decision for entering into a Joint Venture was taken must fall to the ground. In the first place there is no conscious decision taken either by the Government or by the Respondent No. 1 Corporation for resolving to set up a Film and T.V. School. In the absence of any such decision, no further steps could have been taken by the Managing Director. It however appears that the Managing Director of Respondent No. 1 Corporation and Respondent No. 4 Mukta Arts were emboldened by the fact that their action had the blessings of the Highest functionary of the executive arm of the State namely the Chief Minister. In view of such a patronage from the highest functionary, without even a formal resolution of Board of Directors or any order of the Government, the Joint Venture Agreement in question has been executed. It is this illegal agreement which is ex-facie unsustainable which is countersigned by the then Chief Minister allegedly "at the spur of the moment."

55. The aforementioned decision of the Division Bench of the Bombay High Court is also of no avail to the petitioners because it is evident from the facts that the State Government of Maharashtra itself did not approve the decision of the Corporation to part with 20 acres of land. In the present case, there is nothing to indicate that the procedure adopted by the State Government was not transparent or was illegal.

56. We are of the view that these are purely policy decisions taken by the State Government and, while doing so, it has examined the benefits the project would bring into the State and to the people of the State. It is well settled that non-floating of tenders or absence of public auction or invitation alone is not a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable or amounted to mala fide or improper exercise of power. The Courts have always held that it is open to the State and the authorities to take economic and management decision depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest.

57. In this connection, we may also quote with profit the following observations of the Supreme Court in the case of Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another,

...It is true that no advertisements were issued by the State inviting tenders for award of tapping contract in respect of these blazes; or stating that tapping contract would be given to any party who is prepared to put up a factory for manufacture of resin, turpentine oil and other derivatives within the State, but it must be remembered that it was not tapping contract simpliciter which was being given by the State. The tapping contract was being given by way of allocation of raw material for feeding the factory to be set up by the 2nd respondents. The predominant purpose of the transaction was to ensure setting up of a factory by the 2nd respondents as part of the process of industrialization of the State and since the 2nd respondents wanted assurance of a definite supply of resin as a condition of putting up the factory, the State awarded the tapping contract to the 2nd respondents for that purpose. If the State were giving tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject, of course, to any of the relevant overriding considerations of public weal or interest, but in a case like this where the State is allocating resources such as water, power, raw materials etc. for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if

it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry. The State is not obliged to tell such party; "Please wait. I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should let you set up the industry." It would be most unrealistic to insist on such a procedure particularly in an area like Jammu and Kashmir which on account of historical, political and other reasons, is not yet industrially developed and where entrepreneurs have to be offered attractive terms in order to persuade them to set up an industry. The State must be free in such a case to negotiate with a private entrepreneur with a view to inducing him to set up an industry within the State and if the State enters into a contract with such entrepreneur for providing resources and other facilities for setting up an industry, the contract cannot be assailed as invalid so long as the State had acted bona fide, reasonably and in public interest. If the terms and conditions of the contract or the surrounding circumstances show that the State has acted mala fide or out of improper or corrupt motive or in order to promote the private interests of someone at the cost of the State, the Court will undoubtedly interfere and strike down State action as arbitrary, unreasonable or contrary to public interest. But so long as the State action is bona fide and reasonable, the Court will not interfere merely on the ground that no advertisement was given or publicity or made or tenders invited.

58. The above takes us to the third question posed by us for our consideration, whether the petition deserves to be dismissed on the ground of delay and laches.

--:QUESTION-3:--

59. It is well-settled that this sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of a vigilant litigant. The power of the High Court to be exercised under Article 226 of the Constitution, being discretionary, its exercise must be judicious and reasonable. The persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief, obtainable thereunder unless they fully satisfy the Court that the facts and circumstances of the case clearly justify the laches or undue delay on their part in approaching the Court for grant of such discretionary relief.

60. Where the High Court grants relief to a citizen or any other person under Article 226 of the Constitution of India against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief, so granted, becomes unsustainable, even if, the relief was granted in support of the alleged deprivation of his legitimate right by the State. Delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution, and the third party interest created on account of delay, should not be disturbed.

61. Reference could also be made to the observations passed by the Supreme

Court in the case of D.D.A. Vs. Rajendra Singh and Others, made in para Nos. 52 and 53, which are as under:

52. In Narmada Bachao Andolan v. Union of India, SCC para 229, this Court has held that PIL should be thrown out at the threshold if it is challenged after the commencement of execution of the project. It was also held that no relief should be given to persons who approach the Court without reasonable explanation under Articles 226 and 32 after inordinate delay.

53. We reiterate that the delay rules apply to PILs also and if there is no proper explanation for the delay, PILs are liable to be summarily dismissed on account of delay. In the case on hand, it is not in dispute that both the petitioners though claiming that they are very much conversant with environment and ecology, approached the High Court only in the middle of 2007, hence on the ground of delay and laches, the writ petitions were liable to be dismissed.

62. Bearing the aforesaid principles in mind, we are convinced that this petition also deserves to be dismissed on the ground of delay and laches. We have taken note of the developments which have taken place so far as the project is concerned. The following aspects need to be considered.

(i) The allotment of the land in favour of the respondent No. 4 by the State Government was way back in the year 2006, whereas the petition has been filed in January 2013.

(ii) Substantial development has already been undertaken at the Mind Space, Gandhinagar. To make the land usable, the work of leveling, earth filling, landscaping, etc. was carried out on a massive scale and at a cost of crores of rupees.

(iii) The respondent No. 4 has already constructed two interconnected seven storey towers, internal roads, walkways, an administrative office, a sales office, a ten acre landscaping garden, a service yard spread across the land apart from the boundary walls and other basic amenities.

(iv) The respondent No. 4 had to construct a 2 km. long and 30 meter wide public road for the purpose of ingress and egress.

(v) The total expenditure incurred by the respondent No. 4 till December 2012 was about Rs. 174 Crore.

(vi) Around 16 firms/companies have already set up their IT offices in the SEZ and are operating therefrom.

(vii) The IT offices operating from the IT park are generating annual IT exports of crores of rupees and the project is a significant component of the knowledge corridor, a major initiative of the government to develop the area as a center of excellence.

(viii) The project has provided employment to hundreds of labourers,

contractors, sub-contractors, workers etc.

63. For the foregoing reasons, we hold that there is no merit in these petitions and the same deserves to be rejected. In the result, both the petitions fail and are hereby rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.