
(2019) 11 UK CK 0179
In the Uttarakhand High Court
Case No : Special Appeal No. 990 Of 2019

Bhav Singh	Vs	APPELLANT
State Of Uttarakhand And Others		RESPONDENT

Date of Decision : 25-11-2019

Acts Referred:

Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 3(14), 9(3) (E), 109, 117(6), 129(4), 133A, 143, 144, 178, 195, 197, 198, 198(1)
Government Grants Act, 1895 — Section 3
Constitution Of India, 1950 — Article 14, 162, 166, 226

Citation : (2019) 11 UK CK 0179

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Shobhit Saharia, B.P.S. Mer, Arvind Vashisth, Vivek Pathak

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred, by the third respondent in the writ petition, aggrieved by the order passed by the learned Single Judge in Writ Petition (M/S) No. 3061 of 2016 dated 22.10.2019 quashing the order dated 27.05.2019 passed by the Additional Secretary, Government of Uttarakhand; and the subsequent order dated 15.07.2016 by which the District Magistrate / Collector, Tehri Garhwal had executed a lease-deed in favour of the appellant-third-respondent.

2. Facts, to the limited extent necessary, are that the Additional Secretary, Government of Uttarakhand passed order dated 27.05.2016 directing the District Magistrate, Tehri Garhwal to allot the subject-land, to the appellant-third respondent, for construction of a parking-lot. By the subsequent order dated 15.07.2016, the District Magistrate, Tehri Garhwal executed a lease-deed in favour of the third-respondent to construct and operate a parking lot in the subject-land which belonged to the Gram Sabha of 'Banglow Ki Kandi', and is classified in the revenue-records as 'Banjar land' in terms of Section 9(3)(E) of

the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (for short the '1950 Act'). Alleging that allotment of the subject-land, for the commercial purpose of establishing a parking-lot, was in violation of the earlier Government Orders dated 09.05.1984 and 12.09.1997, besides being contrary to various provisions of the 1950 Act, respondent nos. 3 to 7 in this appeal filed Writ Petition (M/S) No. 3061 of 2016.

3. In the order under appeal dated 22.10.2019, the learned Single Judge noted that the allotment had been made in favour of appellant-third respondent on his moving an application for allotment of land on lease, for a period of ninety years, for establishing and running a parking area near Kempty Fall; on this application, the Additional Secretary, Government of Uttarakhand had passed order dated 27.05.2016 granting allotment; consequent to this order, the District Magistrate/Collector, District Tehri Gahrwal, by his order dated 15.07.2016, had executed a lease deed in favour of the appellant-third respondent; respondent nos. 3 to 7 herein (petitioners in the writ petition) had alleged that this was done, since the appellant-third respondent was a former Pradhan of the Gram Sabha, and had close links with the powers that be; it was because of his close proximity, with the authorities and politicians, that he had procured a lease in his favour for a period of ninety years; the land had been given to him not for agricultural purposes, but purely for commercial purposes; it was not the case of the appellant-third respondent that he was a landless person, and needed land for agriculture purposes and for his sustenance and livelihood; the subject land, of an extent of 0.200 hectare, allegedly contained more than 1000 trees, which were required to be felled for construction of a parking-lot; and it formed a part of the forest area.

4. The learned Single Judge also noted the contention, urged on behalf of respondent nos. 3 to 7 herein, that, before allotting land by way of a lease-deed, no general notice was given to the villagers or in the Gram Sabha; initially an application was moved by the educated unemployed association, of which one of the members was the son of appellant-third respondent; while this application was being processed, the land was ultimately allotted in favour of the appellant-third respondent based on his subsequent application; the land was prone to landslides and a concrete parking structure was not practical; and it was also against the environmental laws.

5. The learned Single Judge noted that the State Government had not even filed its counter affidavit inspite of their being provided opportunities to do so; while a counter-affidavit was filed on behalf of the District Magistrate, the said affidavit was deposed not by the District Magistrate, but by the Tehsildar who had contended therein that the impugned orders had been passed as per the Government orders dated 09.05.1984 and 12.09.1997; a similar counter-affidavit had been filed on behalf of the appellant-third respondent who contended that there was total transparency in the matter, in as much as there was a resolution of the Gram Sabha in this regard expressing its no objection for

such an allotment to be made in favour of the appellant-third respondent; and the appellant-third respondent had admitted that the subject-land was barren land under the control of the Land Management Committee or the State Government.

6. After referring to Section 198 of the 1950 Act, the learned Single Judge observed that the said provision contained a detailed procedure regarding the order of preference in admitting persons to Gram Sabha land under Sections 195 and 197 of the 1950 Act; Sections 195 and 197 were categories of land under the control of Land Management Committee or was a vacant land or was vested with the Gram Sabha; this provision showed that the mandate of law was that the land had to be given to landless persons of various categories; where there was no landless person, then a bhumidhar or an asami residing there, having less than 1.26 hectares i.e. 3.125 acres, was entitled for such allotment; admittedly the appellant-third respondent had not got the land under this category; Section 117(6) of the 1950 Act stipulated that surplus land, which falls under the Gram Sabha, is under the management and control of the Gram Sabha; the Government Order dated 09.05.1984 stated that with respect to land, under the management and control of the Gram Sabha and which was actually the land of the State (only the management was with the Land Management Committee or the Gram Sabha), when all eligible persons under Section 198 of the 1950 Act have been given land, and there is still surplus land available with the Management Committee, then it should be given first to the State authorities meaning Government Companies in which at least 50 per cent share is held by the Government; only as a last resort, it should be given to private persons when eligible persons were not available as provided in Section 198 of the 1950 Act; the subsequent Government Order dated 12.09.1997 stated the same, except that it charged the rates on which it should be given; neither of the counter-affidavits stated that the procedure as provided under Section 198 of the 1950 Act, and the two Government Orders dated 09.05.1984 and 12.09.1997, had been followed; there should be no other eligible person in the Gram Sabha who could have been allotted this land; and, therefore, it was a clear violation of the provisions of Section 198 as well as the Government Orders dated 09.05.1984 and 12.09.1997.

7. The learned Single Judge, thereafter, relied on Centre for Public Interest Litigation and others vs. Union of India and others (2012) 3 SCC 1, and observed that Government land was a natural resource, which could be utilized for several purposes; these natural resources belonged to the people; the State, while distributing its natural resources, acted on behalf of the people; the action of the State must, therefore, be fair and equitable; and apart from the clear violation of the provisions of the 1950 Act, as well as the Government Orders dated 09.05.1984 and 12.09.1997, while allotting land in favour of the appellant -third respondent, both the State Government as well as the second-respondent in the writ petition had not followed the principles of equality or the mandate of following the larger public good. Consequently, the impugned orders were set

aside.

8. Before us Sri Shobhit Saharia, learned counsel for the appellant-third-respondent, would submit that grant of lease of the subject-land, in favour of the appellant-third respondent, was by way of a lease-deed executed in terms of Section 133A of the 1950 Act, and the Government Grants Act, 1895; lease-rent was determined in terms of the Government Orders dated 09.05.1984 and 12.09.1997; allotment of the subject-land is not referable to Section 198 of the 1950 Act, since the appellant-third respondent was neither a bhumidhar nor an asami, and the Land Management Committee was not involved; Chapter VIII of the 1950 Act relates to 'classes of tenure' and, among the classes referred to therein, are lessees of government lands; the lease-deed refers to the Government Grants Act; since the land belongs to the Government, the State Government has unfettered discretion to issue a grant in favour of the applicant; respondent nos. 3 to 5 (petitioners in the writ petition) cannot claim to be persons aggrieved by such allotment; they could not, therefore, have invoked the extra-ordinary jurisdiction of this Court; and, in the light of the law laid down by the Supreme Court in *Raghubar Dayal vs. State of U.P.* 1995 Supp. (3) SCC 20, and *Hajee S.V.M. Mohamed Jamaludeen Bros. and Co. vs. Government of Tamil Nadu* (1997) 3 SCC 466, the order under appeal necessitates being set aside.

9. Sri Shobhit Saharia, learned counsel for the appellant-third respondent, would further submit that, even if this Court were to uphold the order of the learned Single Judge, the question which would still necessitate examination is with respect to the amount deposited by the appellant-third respondent; he had deposited Nazrana at twice the market value; besides such deposit, he had also incurred a huge expenditure in developing the land for the purpose of utilising it as a parking area; and the respondents should, at least, be directed to refund the amount deposited by him, and the amounts incurred by him in developing the land for the purposes of a parking area.

10. We see no reason to non-suit the respondent-writ petitioner for lack of standing, for it is well settled that, if a person has some concern deeper than that of a busybody, he cannot be told off at the gates, and a petition is permissible under Article 226, although the question, whether the issue raised by him is justiciable, may still remain to be considered. (*Fertilizer Corpn. Kamgar Union v. Union of India* (1981) 1 SCC 568; and *Institute of Law, Chandigarh v. Neeraj Sharma* (2015) 1 SCC 720).

11. Section 198 of the 1950 Act prescribes the order of preference in admitting persons to land under Sections 195 and 197 thereof. It is not in dispute that, in the present case, the priorities stipulated in Section 198 have not been followed. The contention urged on behalf of the appellant-third respondent, on the other hand, is that the provision is inapplicable. Section 198(1) of the 1950 Act stipulates that, in the admission of persons to land as bhumidhar with non-transferable rights or asami under Section 195 or Section 197(referred to in this

Section as allotment of land), the Land Management Committee shall, subject to any order made by a Court under Section 178, observe the order of preference stipulated therein. The appellant-third respondent is, admittedly, neither a bhumidhar, nor an asami, nor was he allotted land by the Land Management Committee. We are satisfied, therefore, that Sri Shobhit Saharia, learned counsel for the appellant-third respondent, is justified in his submission that allotment of the subject-land is not referable to Section 198(1) and, consequently, the procedure of allotment, stipulated therein, is inapplicable.

12. Sri Shobhit Saharia, learned counsel for the appellant-third respondent, would contend that the lease granted to the appellant is governed by Section 133A of the 1950 Act. Section 133A of the 1950 Act relates to government lessees and, thereunder, every person, to whom land has been let out by the State Government, shall be called a Government lessee in respect of such land and shall, notwithstanding anything to the contrary contained in the 1950 Act, be entitled to hold the same in accordance with the terms and conditions of the lease relating thereto. It is also true that Chapter VIII of the 1950 Act relates to 'classes of tenure', and government lessees form part of the classes of tenure under Section 129(4) of the 1950 Act. It must, however, be borne in mind that the word 'land' is a defined expression under the 1950 Act and, in terms of Section 3(14) of the 1950 Act, 'Land', except in Sections 109, 143 and 144 and Chapter VII, means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming.

13. The right which the appellant-third respondent claims is under Section 133A in Chapter VIII of the 1950 Act, and does not fall within Sections 109, 143 and 144 and Chapter VII of the said Act. Since the land is being used for a commercial purpose, it does not fall within the definition of 'land' under Section 3(14) of the 1950 Act either. Section 133A of the 1950 Act relates to government lessees, in respect of land, which can only mean land the lease of which is granted for purposes connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming. The subject land, for which a lease was granted in favour of the appellant-third respondent, does not fall within any of the aforesaid categories and is a grant of lease for the commercial purpose of constructing and operating a parking-area. Section 133A of the 1950 Act is also inapplicable.

14. The submission of Sri Shobhit Saharia, learned counsel for the appellant-third respondent, is that, even if the provisions of the 1950 Act are held not to apply, the appellant-third respondent's right is traceable to the Government Order dated 09.05.1984.

15. The said proceedings dated 09.05.1984, which relates to determination of general principles to be followed for use of the land obtained through ceiling, and other government land vested in the Gram Sabha / local bodies, records that, after resumption, lands come under the direct control of the State Government,

and the same can be used for purposes other than agriculture; in this manner, land vested in the Gram Sabha / local bodies can be used for agriculture or any other purpose; in a similar manner, Government land can also be provided on lease, under the Government Grants Act, 1895, for agriculture and other purposes; no general principles, as per any policy, are being followed for preference to be given in respect of the use of such land; and it is necessary to have coordination for making available land among persons eligible for allotment of land, to different departments undertaking programmes, and for private purposes / industries.

16. After due and serious deliberations in respect of all aspects of the problem, general principles were made, under the proceedings dated 09.05.1984, to provide future guidelines in respect of preference for use of land vested in the Gram Sanbha / local bodies received through ceiling, and other government land. First priority was given for utilization of land as per different enactments, and preference was to be given to landless agriculture labourers and persons belonging to the weaker section of society. Thereafter non-agriculture land, received through ceiling and vested in the Gram Sabha / local bodies, and other Government land, were required to be kept reserved for general use of the villagers, and for planned development of the village. Thereafter, non-agricultural land was to be made available to State Government commercial departments, and departments of Government of India, for fulfillment of their requirements i.e. for construction of such institutions in which Government has invested more than 50 per cent; for departments providing service, land should be given free of cost; for commercial departments of the State Government, and departments of the Government of India, land was to be given on payment of the market value of the land; and, in addition thereto, 40 times the revenue was to be recovered as a one-time measure from the commercial departments of the State Government.

17. The proceedings dated 09.05.1984, thereafter, states that private persons / industries / private companies would be provided land, received through ceiling and vested in the Gram Sabha / local bodies, and other Government land, only where land was left after allotment to eligible landless persons; land had been reserved for general use of the villagers, and planned development of the village; after providing land to the State Government service / commercial departments and departments of the Government of India, the land was required to be used, on the lease provided to private persons / industries / private companies, for a fixed period; twice the prevailing market value was required to be deposited as Nazrana one time; and the annual rent was to be fixed at 20 times the Mal Gujari i.e. the rent at the new rates. The concerned District Magistrates were required to provide a certificate to the effect that, in the concerned village, all eligible persons had been allotted land, besides land being reserved for the general use of villagers and for planned development of the village. Similarly, while forwarding the proposal for providing land received through ceiling and vested in the Gram Sabha / local bodies, and other Government land, to private persons / industries /private companies, the concerned District Magistrate was required to

give a certificate to the effect that, in the concerned village, all eligible persons had been allotted land, land was reserved for the general use of villagers, and for the planned development of the village; land had been made available for fulfilling the requirement of service / commercial departments of the State Government and the departments of the Government of India; and no such proposal was under consideration or was pending.

18. The scope and ambit of the proceedings dated 09.05.1984 fell for consideration before a Division Bench of this Court in Recall Application MCC No. 880 of 2018 in Writ Petition (PIL) No. 174 of 2015 and, in its order dated 19th July, 2019, the Division Bench opined:

"... The present application is filed seeking recall, of the order of the Division Bench dated 19.06.2018, on the ground that, in terms of the Government Order dated 09.05.1984, unutilized land can be allotted to persons who apply for such allotment. The proceedings dated 09.05.1984 is merely a letter addressed by the Revenue Secretary to all Divisional Commissioners and all District Magistrates in the State of Uttar Pradesh. It is debatable whether such a letter can be construed as a Government Order under Article 162 read with Article 166 of the Constitution of India. Even otherwise, para 6 of the said letter relates only to the land vested in the Gram Sabha received for ceiling and other government land; and allotment to private persons is permitted only if land remains after allotment to landless poor persons, and planned development of the village. Even when allotment is to be made, certain conditions are prescribed thereunder.

Reliance is placed, on behalf of the review applicant, on the letter of the District Magistrate dated 19.11.2013, wherein he stated that there was no lease proposal for the allotment by the administration at present. The requirement, of the proceedings dated 09.05.1984, is for the District Magistrate to certify that land has been allotted to all eligible persons of the concerned village, sufficient land has been reserved for the general use of villagers, and for pre-planned development of the village. There is no such certification in the letter of the District Magistrate dated 19.11.2013. It is also evident from the said letter that the Army was claiming possession over the concerned land. It is, therefore, debatable whether or not the subject land, in fact, belongs to the Gram Sabha.\

Viewed from any angle, we are satisfied that the conditions stipulate in the proceedings of the Revenue Secretary dated 09.05.1984 are not satisfied in the present case. We see no reason, therefore, to recall the order passed by the Division Bench on 19.06.2018....." (emphasis supplied)

19. As held in the aforesaid judgment, the District Magistrate has not, even in the present case, certified that land had been allotted to all eligible persons of the concerned village, sufficient land has been reserved for the general use of villagers, and for pre-planned development of the village; and there was no lease proposal for allotment by the administration at present. In more or less identical circumstances, as in the present case, the Division Bench had opined, in the

afore-extracted order, that the conditions stipulated in the proceedings dated 09.05.1984 had not been satisfied.

20. Yet another aspect, which must be noted is that the proceedings dated 09.05.1984 does not prescribe the manner in which Government land should be allotted in favour of private persons. In *Raghubar Dayal* 1995 Supp. (3) SCC 20, on which reliance is placed on behalf of the appellant, the Government had granted the appellant certain parcels of land for settling down colonies thereon and to cultivate the land on improved methods of cultivation, subject to the terms and conditions contained in the grant made under the Government Grants Act, 1895. It was contended before the Supreme Court that the conditions imposed by the Government, for such grant, was illegal. While taking note of proviso to Section 3 of the Government Grants Act, the Supreme Court held that, by operation of Section 3, the applicability of the provisions of the Transfer of Property Act stood excluded; and the action taken by the Government was within its jurisdiction. What was under challenge in *Raghubar Dayal* 1995 Supp. (3) SCC 20 were the terms and conditions contained in the grant, and not the mode and manner in which Government land should be allotted to private parties. Reliance placed on *Raghubar Dayal* 1995 Supp. (3) SCC 20 is, therefore, misplaced.

21. In *Hajee S.V.M. Mohamed Jamaludeen Bros. and Co.* (1997) 3 SCC 466, on which also reliance is placed on behalf of the appellant, the question which arose for consideration was whether the Government could unilaterally rescind a contract if the terms thereof so provided? In this case also, the grant was given in favour of the appellant under the Government Grants Act, 1895, and, in the exercise of the power conferred under Clause 7, the Government revoked the contract. On the question whether the agreement could be revoked at the will of the grantor, the Supreme Court held that the appellant could not by-pass Clause 7 of the instrument under which he obtained the right; and the said clause adequately empowered the government to unilaterally terminate the arrangement or revoke the grant without assigning any reason whatsoever. This judgment does not also relate to the question whether or not Government land can be allotted to an individual without following a transparent process of allotment of land.

22. The discretion conferred on the State Government to allot land to private parties is not unfettered and is required be exercised in accordance with law. That means at least this: the authority must be guided by relevant considerations and not by irrelevant ones. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the authority may have acted in good faith; nevertheless the decision will be set aside. (*Institute of Law, Chandigarh v. Neeraj Sharma* (2015) 1 SCC 720; *Akhil Bhartiya Upbhokta Congress v. State of M.P.* (2011) 5 SCC 29; *Breen v. Amalgamated Engg. Union* (1971) 1 All ER 1148; and *Padfield v. Minister of Agriculture, Fisheries and Food* 1968 AC 99). Discretionary power should be exercised only for the public good. (*Institute of*

Law, Chandigarh (2015) 1 SCC 720; Akhil Bhartiya Upbhokta Congress (2011) 5 SCC 29; and Laker Airways Ltd. v. Deptt. of Trade (1977) QB 643). In our constitutional structure, no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution, and is an antithesis to the concept of the rule of law. (Institute of Law, Chandigarh (2015) 1 SCC 720; and Akhil Bhartiya Upbhokta Congress (2011) 5 SCC 29). In a system governed by the rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law, from this point of view, means that the decision should be taken by the application of known principles and rules. In general, such decisions should be predictable, and the citizen should know where he stands. If a decision is taken without any principle or without any rule it is unpredictable. (S.G. Jaisinghani v. Union of India AIR 1967 SC 1427; Institute of Law, Chandigarh (2015) 1 SCC 720; and Akhil Bhartiya Upbhokta Congress (2011) 5 SCC 29).

23. The Government is not and should not be, as free as an individual in selecting the recipients of its largesse. Whatever its activity, the Government is still the Government, and is subject to restraints inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal. (V. Punnath Thomas v. State of Kerala AIR 1969 Kerala 81 (Full Bench); and Ramana Dayaram Shetty v. International Airport Authority of India 1995 Supp. (3) SCC 20). Unlike a private individual, the State cannot act as it pleases in the matter of giving largesse. The constitutional power, conferred on the Government, cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largesse, its validity would be tested on the touchstone of reasonableness and public interest and, if it fails to satisfy either test, it would be unconstitutional and invalid. (Kasturi Lal Lakshmi Reddy v. State of J&K (1980) 4 SCC 1). The concept of public interest must, as far as possible, receive its orientation from the directive principles. What according to the founding fathers constitutes the plainest requirement of public interest is set out in the directive principles. If, therefore, any governmental action is calculated to implement or give effect to a directive principle, it would ordinarily, subject to any other overriding considerations, be informed with public interest. (Kasturi Lal Lakshmi Reddy (1980) 4 SCC 1).

24. While dealing with the public, whether by entering into contracts or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases. Its action must be in conformity with the standards or norms which are not arbitrary, irrational or irrelevant. (New Horizons Ltd. v. Union of India (1995) 1 SCC 478; Ramana Dayaram Shetty 1995 Supp. (3) SCC 20; Kasturi Lal Lakshmi Reddy (1980) 4

SCC 1; *Fasih Chaudhary v. Director General, Doordarshan* (1989) 1 SCC 89; *Sterling Computers Ltd. v. M & N Publications Ltd.* (1993) 1 SCC 445; *Union of India v. Hindustan Development Corpn.* (1993) 3 SCC 499). Every action/decision of the State and/or its agencies/instrumentalities, to give largesse or confer benefit, must be founded on a sound, transparent, discernible and well-defined policy, which should be made known to the public by the recognised modes of publicity, and such a policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse, like allotment of land, by the State and its agencies/instrumentalities, should always be done in a fair and equitable manner, and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State (*Akhil Bhartiya Upbhokta Congress* (2011) 5 SCC 29).

25. There cannot be any policy, much less a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land, or for grant of any other type of largesse, the State cannot exclude other eligible persons from lodging competing claims. Any allotment of land, or grant of other form of largesse, by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be held to be arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution. (*Akhil Bhartiya Upbhokta Congress* (2011) 5 SCC 29).

26. State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule, but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism. (*Sachidanand Pandey v. State of W.B.* (1987) 2 SCC 295).

27. Sunlight is the best disinfectant, and a fair and transparent mode of grant of lease hold rights, either by way of a public auction or by a tender process, should be resorted to. (*Radhey Shyam v. State of Uttarakhand & Others* Order in SPA No. 371 of 2019 dated 20.05.2019. The ordinary rule is that the State, or its instrumentalities, should dispose of public property by way of public auction, or by inviting tenders. If it chooses to act otherwise, its action should be fair, reasonable and free from arbitrariness; and, in case the State or its

instrumentalities intend to sell or lease its properties, its action should be transparent and unbiased, and should not suffer from favoritism. (Radhey Shyam Order in SPA No. 371 of 2019 dated 20.05.2019; Ramana Dayaram Shetty 1995 Supp. (3) SCC 20; Kasturi Lal Lakshmi Reddy (1980) 4 SCC 1; New Horizons Limited & another (1995) 1 SCC 478; Sachidanand Pandey & another (1987) 2 SCC 295; Institute of Law, Chandigarh (2015) 1 SCC 720).

28. Government largesse can only be provided on a fair, transparent and rational basis, and not under the cloak of darkness without all eligible applicants being made aware that land was available for allotment for a specified commercial purpose. The activities of the Government have a public element and, therefore, there should be fairness and equality and absence of arbitrariness and discrimination in such transactions. The State need not enter into a contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. (Erusian Equipment and Chemicals Ltd. v. State of West Bengal (1975) 1 SCC 70).

29. The Government cannot act in a manner which would benefit a party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot give a contract for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. It is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court should decide whether the action of the Government is reasonable and in public interest. (Kasturi Lal Lakshmi Reddy (1980) 4 SCC 1). Where the object is augmentation of revenue and nothing else, the State is under an obligation to secure the best market price. (Ram & Shyam Co. v. State of Haryana (1985) 3 SCC 267). In such matters there should not be any suspicion of a lack of principle. (V. Purushotham Rao v. Union of India (2001) 10 SCC 305).

30. The rule that property should be purchased/sold through public auction or by inviting tenders not only secures the best price but also ensures fairness in the activities of the State and public authorities. Their actions should be legitimate and above board. Their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism. Ordinarily, these factors would be absent if the matter is brought to public auction. There may be situations necessitating a departure from the rule, but then such instances must be justified by compulsion and not by compromise. It must be justified by compelling reasons and not just by convenience. (Haji T.M. Hassan Rawther v. Kerala Financial Corpn (1988) 1 SCC 166).

31. Public auction with open participation, and a reserve price, guarantees public interest being fully subserved. (State of U.P. v. Shiv Charan Sharma AIR 1981 SC 1). The object of holding the auction is generally to raise the highest revenue. (Ramana Dayaram Shetty 1995 Supp. (3) SCC 20). The methodology which can

be adopted, for receiving maximum consideration in a normal and fair competition, would be by public auction which is fair and transparent. Public auction not only ensures a fair price and maximum return, it also militates against any allegation of favouritism on the part of the Government authorities. Courts have accepted public auction as a transparent means. (Shiv Charan Sharma AIR 1981 SC 1; Ram & Shyam Co. (1985) 3 SCC 267; Sterling Computers Ltd. v. M & N Publications Ltd (1993) 1 SCC 445; Mahesh Chandra v. Regional Manager, U.P.Financial Corpn (1993) 2 SCC 279; Pachaiyappa's Trust v. Official Trustee of Madras (1994) 1 SCC 595; Chairman and MD SIPCOT v. Contromix (P) Ltd (1995) 4 SCC 595; New India Public School v. HUDA (1996) 5 SCC 510; State of Kerala v. M. Bhaskaran Pillai (1975) 3 SCC 432; Haryana Financial Corpn. v. Jagdamba Oil Mills (2002) 3 SCC 496; and Aggarwal & Modi Enterprises (P) Ltd. v. New Delhi Municipal Council (2007) 8 SCC 75). It is well recognised that one of the fairest means, which a State can adopt, without showing any favour in purchase/sale of property, is by auction. (Chint Ram Ram Chand v. State of Punjab (1996) 9 SCC 338). Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach. (Aggarwal & Modi Enterprises (P) Ltd. v. New Delhi Municipal Council: (2007) 8 SCC 75).

32. We are satisfied that the learned Single Judge was justified in setting aside the orders impugned in the writ petition, both in terms of the proceedings dated 09.05.1984, and as the appellant-third respondent was picked by the State government and chosen for grant of largesse without following a fair and transparent process of allotment of land.

33. We cannot, however, ignore the fact that the appellant-third respondent had been called upon to pay a substantial amount upfront for grant of lease-hold rights and he cannot, therefore, be deprived of his right to be repaid the said amount, on the allotment of the land in his favour being set aside by this Court. The District Magistrate concerned shall compute the amount payable by the appellant-third respondent for the period he operated the parking area and, after deducting the amount payable by him in this regard, to refund the balance amount, paid by the appellant earlier to the second respondent, with utmost expedition and, in any event, within six weeks from the date of production of a certified copy of this order.

34. While the appellant-third respondent also claims to have incurred expenditure in developing the parking area, it would be wholly inappropriate for us, in proceedings under Article 226 of the Constitution of India, to compute the expenditure incurred by him in this regard. Suffice it to leave it open to the appellant-third respondent to avail the common law remedy of filing a civil suit for recovery of the amount which he claims to have spent in developing the said land as a parking-area.

35. It is no doubt open to the State Government to adopt a fair, reasonable and transparent mode for grant of lease, including allotment of its land for

commercial purposes, provided the conditions stipulated in the proceedings dated 09.05.1984 are fulfilled. In the absence of any such mode being stipulated, a fair and transparent mode of grant of lease of land would be by way of a public auction. Suffice it, therefore, to hold that, in case the Government intends allotting the said land to private individuals for operating the parking-area thereat, it shall do so by adopting a fair, reasonable and transparent mode of allotment of land which, in the absence of any other mode being stipulated, would be by way of public auction after wide publicity is given therefor. In case the Government decides to allot the land for a commercial purpose, and conducts a public auction, neither the order under appeal, nor the order now passed by us, shall disable the appellant-third respondent from participating therein along with other bidders.

36. With the aforesaid observations and directions, the Special Appeal is disposed of. No costs.