courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 07/09/2026

(2012) 02 BOM CK 0205

In the Bombay High Court

Case No : Writ Petition No. 1826 of 2003

Mr. Abdul Hamid Patel.	APPELLANT
Vs	
The State of Maharashtra and Others	RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 151, 19(1), 226, 46
Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2012) 2 ALLMR 716 : (2012) 2 BomCR 540

Hon'ble Judges : Mohit S. Shah, C.J;Girish Godbole, J

Bench : Division Bench

Advocate : Mahesh Jethmalani, assisted with Naronha Nano Jose, for the Appellant; Ravi Kadam, Advocate General a/w. V.D. Patil, G.P. for Respondent Nos. 1 to 3 in WP 1826/03 and for Respondent No. 8 in PIL 219/09, Mr. A.A. Kumbhakoni, Advocate a/w N.R. Bubna, Advocate for Respondent No. 4 in WP No. 1826 and for Respondent No. 1 in PIL No. 219, Ms. Geeta Joglekar, Advocate for Respondent No. 5 in WP 1826/03, Mr. P.K. Dhakephalkar a/w. Simil Purohit and Ms. Azmi Irani and Manish Doshi instructed by . M/s. Vimadalal and Co. for Respondent Nos. 9 and 10 in WP No. 1826/03 and for Respondent Nos. 3 and 4 in PIL 219/09, Mr. P.P. Chavan and C.M. Lokesh instructed by . Lex Forum, Advocate for Respondent No. 5 in PIL 219/09, Mr. Venkatesh Dhond with Mr. Shahzad Kazi instructed by Negandhi Shah and Himayatullah for Respondent Nos. 6 and 7 in PIL 219/09 and Mr. Harihar Bhave a/w. Ashok Verma for Respondent No. 9(CBI) in PIL 219/09, for the Respondent

Judgement

Girish Godbole, J.—These two Writ Petitions filed as Public Interest Litigations challenge the action of the Maharashtra Film Stage and Cultural Development Corporation (MFSCDC), a wholly owned and controlled Corporation of the Government of Maharashtra, of entering into a contract with 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 is agreed to be given to and transfered in favour of a Joint Venture Company in which the Corporation is to hold only 15 per cent shares. Since this transfer of land has been done without inviting any advertisement or tenders and since while doing so the valuable land admeasuring 20 acres has been valued only at Rs. 3 Crores, the Petitioners have approached this Court for issuance of appropriate writs under Article 226 of the Constitution of India.

2. Before we proceed further, we must indicate that Writ Petition No. 1826 of 2003 is also filed in Public interest and PIL No. 219 of 2009 seeks to challenge 2 different actions of the State. Since the challenge to the Joint Venture Agreement/M.O.U. dated 24/10/2000 executed between the first Respondent the Maharashtra Film Stage Cultural Development Corporation Ltd. (hereinafter referred to as the MFSCDC Ltd.) is common in both these Petitions and since the controversy involved is same, by this Judgment we are disposing of Writ Petition No. 1826 of 2003 and prayer clauses (a) to (d) and (j) of PIL No. 219 of 2009. The other reliefs in the PIL No. 219 of 2009 relating to allotment of 2 Lakh Sq. Mtrs of land of MIDC to Respondent No. 6 are not being decided or disposed of by this Judgment and the same will be separately decided. Thus by this Judgment Writ Petition No. 1826 of 2003 is being finally disposed of, whereas only prayer clauses (a) to (d) and (j) in PIL No. 219 of 2009 are being disposed of.

3. In Writ Petition No. 1826 of 2003 following substantive reliefs are prayed for :

(a) that this Hon''ble Court may be pleased to issue a writ of certiorari or any other appropriate Writ, Order or Direction calling for the records pertaining to the Agreement dated 24th October, 2000 from Respondent Nos. 1 to 4 herein;

(b) that this Hon''ble Court may be pleased to issue an appropriate Writ, Order or direction Under Articles 226 of the Constitution of India declaring that the Agreement dated 24th October, 2000 being Exhibit "A" hereto is null, void and of no legal effect and not binding upon the Respondent Nos. 1 to 4 herein;

(c) that this Hon''ble Court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India commanding and directing Respondent Nos. 1 to 5 to cancel and/or revoke the Agreement dated 24th October, 2000 and all other approvals, permissions and actions taken in pursuance thereof;

(d) that this Hon''ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing Respondent Nos. 1 to 5 to forthwith stop all construction activities undertaken by Respondent No. 9 on the property situate at Film City, Goregaon (East) bearing CTS No. 1 admeasuring 20 acres (96,800sq.yards/80,000 sq.mtrs or thereabouts);

(e) that this Hon''ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing Respondent Nos. 1 to 3 to conduct a high level investigation and enquiry into the entire transaction including the Agreement dated 24th October, 2000 and the Construction in pursuance thereof undertaken by Respondent Nos.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has...

4, 6 to 9 and conclude the same within a period of three months from commencement thereof and file an action taken report in that behalf in this Hon''ble Court;

(f) that this Hon''ble Court may be pleased to issue a permanent order and injunction restraining the Respondent Nos. 5 and 9 from in any manner permitting and/or carrying out any development and construction work on the plot of land situate at Film City, Goregaon (East), bearing CTS No. 1 admeasuring 20 acres (96,800 sq. yards/80,000 sq. mtrs or thereabouts);

In PIL No. 219 of 2009 following substantive reliefs are prayed in respect of the land at Goregaon :

(a) Issue a writ of Certiorari or an order or direction in the nature of writ of Certiorari calling for the records and proceedings pertaining to the decision of Respondent No. 1 to enter into the Joint Venture agreement dated 24.10.2000 with Respondent No. 3;

(b) After examining the legality and propriety, to quash the joint venture agreement dated 24.10.2000;

(c) For an appropriate writ of Mandamus or any other order or direction in the nature of Mandamus directing Respondent No. 8 to repossess 20 acres of land in Goregaon (East) together with any structure thereupon handed over by Respondent No. 1 to Respondent No. 4;

(d) For an appropriate writ of Mandamus or any other order or direction in the nature of Mandamus directing Respondent No. 9 to initiate an investigation into the entire transaction pertaining to the Joint Venture agreement of 24.10.2000 for offences under the Prevention of Corruption Act, 1988 and such other offences as may be disclosed.

4. While admitting the Writ Petition (PIL) No. 1826 of 2003 by order dated 21/1/2004, the Division Bench (C.K. Thakkar, C.J. And S.A. Bobade, J) had passed a detailed speaking order while declining the interim relief. The Division Bench observed thus :

4. We have been taken by the learned counsel for the petitioner to the facts stated and averments made in the petition. It is urged that the agreement in question said to have been arrived at between respondent Nos. 4 and 9 as also Memorandum of Understanding are illegal, contrary to law and are liable to be set aside. In the larger public interest, therefore, the petitioners have approached this Court. It was also contended that large lands have been given to one pereson, respondent No. 9, without considering cases of other similarly situated persons, without inviting tenders and without intimating or informing them.

5. So far as Government is concerned, an affidavit in reply is filed by Prakash Tatyasaheb Gaud, Joint Secretary, on behalf of respondent Nos. 1 to 3. In

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has...

paragraph 4, it is stated :

I say that the Board of Film City has recommended that instead of the existing agreement regarding land, land may be allotted in terms of Government Resolution dated 8th February, 1983, 11th May, 1984, 30th June, 1992, 5th October, 1999 and 9th July, 1999. The said Resolution dated 30th June, 1992 provides for payment of lease rent for land allotted for Education Institute. The following Departments of Government will have to examine the proposal of Film City, Culture, Urban Development, Revenue, Higher & Technical Education and Finance. The Government of Maharashtra will consider the proposal of Film City strictly in accordance with the provision of law and the Maharashtra Land Revenue Code and Rules thereunder and the Government Resolutions quoted above. Until the said proposal receives all requisite approvals the work on site will continue under the current arrangement between Respondent Nos. 4 and 9.

In short, Respondent No. 10 in Writ Petition No. 1826 of 2003 was put to notice that all constructions and further actions will be subject to the outcome of the Petition and no equities can be claimed by the said Respondent.

5. We have extensively heard Mr. Mahesh Jethmalani, Sr. Advocate appearing for Petitioners in both the Petitions, Mr. Ravi Kadam, Advocate General for the State of Maharashtra and Respondent No. 2. Mr. A.A. Kumbhakoni, Advocate for Respondent No. 1 and Mr. P.K. Dhakephalkar, learned Sr. Advocate for Respondent Nos. 3 and 4 in PIL No. 219 of 2009 and the corresponding Respondent Nos. 9 and 10 in WP No. 1826 of 2003 and Mr. Venkatesh Dhond, Sr. Advocate for Respondent No. 7 in PIL 219 of 2009.

FACTS OF THE CASE

6. Before we proceed to deal with merits, it is necessary to give brief resume of facts which are not in dispute and lie in narrow compass.

7. It is an admitted position that a huge area of about 500 acres of land at Goregaon, a suburb of Mumbai is owned by the Government of Maharashtra. It is also admitted that this land has not been transferred to the MFSCDC Ltd. and only the management of the said land was permitted to be done by the said Corporation.. It is an admitted position that the Respondent No. 7 in PIL No. 219 of 2009 was the Chief Minister of Maharashtra from October, 1999 till 2003. It is also seen from the record that Mr. Subhash Ghai had been making efforts to get the land allotted from the Government of Maharashtra since he decided to set up a film training institute. Mr. Subhash Ghai is a well known personality in the Hindi Film Industry and is a well known director and he controls the Company Mukta Arts Ltd.

8. (a) On 30th May, 2000 the Managing Committee of the MFSCDC Ltd. passed a resolution on the subject relating to establishment of a training institute in collaboration with M/s. Mukta Arts. (b) After Shri Vilasrao Deshmukh became the Chief Minister Mr. Subhash Ghai had submitted an application to the then Chief

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

Minister seeking allotment of land for setting up a film institute. (c) The grant of Government land is governed by the provisions of Maharashtra Land Revenue Code, 1966 and the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971. In so far as the policy regarding Revenue Free/Concessional grant of Government land is concerned, the Government of Maharashtra in its Revenue and Forest Department has issued various circulars and Government Resolutions. Circular dated 8th February, 1983 provides for an elaborate procedure which is required to be followed before making any such grant. The Government Resolution dated 30th June, 1992 provides for grant of lands to Educational Institutions for educational purposes at a concessional rate and the charges for occupancy are to be levied at 50% of the market rate as on 1st January of the year preceding 5 years from the date of allotment of land. The third Government Resolution is dated 9/7/1999 which deals with allotment of lands to Cooperative Societies. (d) Thereafter, another resolution No. 17/8 was passed by the Managing Committee of the Corporation on 29/8/2000 which noted that the total cost of the project of setting up a research and training institute would be Rs. 20 Crores and 15% share capital was being given to MFSCDC Ltd.. No decision was taken in the said meeting and the Minutes merely state in the end as under :

Decision of the Managing Committee will be conveyed to the Hon''ble Chief Minister.

Though Shri Vilasrao Deshmukh who was the then Chief Minister, states that he had no personal interest in the project, the aforesaid Resolution states that the decision will be communicated to the Chief Minister.

9. What followed thereafter is more shocking. Without any formal resolution of the MFSCDC Ltd, a document titled as Joint Venture Agreement dated 24/10/2000 was executed between MFSCDC Ltd and Mukta Arts. The said document contains recitals that the Corporation was seized and possessed of land admeasuring 20 Acres or thereabouts bearing CTS No. 1 of Goregaon (East). Relevant clauses of the said Agreement read thus :

d. The said MFSCDC has agreed to provide the said land to Joint Venture Company for the said purpose and the parties hereto are desirous of recording the terms and conditions in the manner hereinafter appearing:

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS :

1. JOINT VENTURE COMPANY

1.1 The parties will form a company named Whistling Woods International Pvt.Ltd. (hereinafter referred to as "the Company" with its registered office in Mumbai. The authorised share capital of the Company will amount to Rs. 20,00,00,000/-(Rupees Twenty Crores only) consisting of 2,00,00,000 Equity Shares of Rs. 10 each as may be agreed upon.

1.2 The MFSCDC shall permit the said land described in the Schedule hereunder

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

written for use of the Company as their contribution. The MFSCDC declares that their title to the said land is clear and free from all encumbrances. The said MAL shall bring a sum of Rs. 17,00,00,000/-(Rupees Seventeen Crores only) as its contribution in the form of cash.

1.3 In lieu of the aforesaid MFSCDC will have 15% shareholding in the share capital of the Company and remaining 85% will be held by MAL and its Associates. MAL along with its associates is to bring in total cash required upto Rs. 17,00,00,000/- (Rupees Seventeen Crores Only).

...

3. DUTIES AND RESPONSIBILITY OF THE PARTIES

3.1 DUTIES AND RESPONSIBILITY OF MFSCDC

3.1.1 To permit the said land for use of the said Company as its contribution to the said project of the said Company.

3.1.2 To permit/authorise the said Company to enter upon, use, possess and enjoy the said land for the objects of the Company.

3.1.3 To permit the said Company to construct Institute-cum-Research centre, Studio Complex and such other structure as may be required and/ or necessary for implementation of the object of the Company by consuming F.S.I. of approximately four acres of the said land in the complex. In case if any additional construction is required for further growth of the company the same will be by mutual consent.

3.1.4 To obtain sanction and approval of Plans for construction as aforesaid.

3.1.5 Not to permit any other persons institution to use and / or occupy the said land or any part thereof.

3.1.6 To grant right to the Company to use, occupy and enjoy the said land and structures that may be constructed thereon without any objection or hindrance.

3.1.7 To execute Power of Attorney in favour of the Company interalia authorising it to submit plans and obtain various approvals for construction on the said land.

3.1.8 To keep the said land free from any litigation, mortgage, charge or any other encumbrance and keep indemnified the MAL in respect thereof.

3.1.9 To permit the MAL to run and conduct the day today management and affairs in the interest of the company.

3.1.10Not to sanction sale and/or authorise to permit to use directly or indirectly to any other person for the similar business activity of opening institute of similar nature for a period of 10 years in the vicinity of Film City, except by mutual consent.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

The joint Venture was to consume FSI of only 4 acres though a large area of 20 acres was allotted. This agreement dated 24th October, 2000 was signed by Shri Govind Swarup, M.D. of MFSCDC Ltd. and the representative of Mukta Arts Ltd. in the presence of Shri Vilasrao Deshmukh, the then Chief Minister. It is interesting to note that no resolution of the Board of Directors of the MFSCDC had been passed by this date. The then Chief Minister Shri Vilasrao Deshmukh (Respondent No. 7) made following endorsement "signed before me" and signed the agreement. In respect of this signature, it is interesting to read the affidavit in reply of Shri Vilasrao Deshmukh, Respondent No. 7 and the same reads thus :

5. I say that the aforesaid allegations of the Petitioners are ex-facie frivolous and devoid of any substance. The allegations are based on a mere self-serving conjecture on the part of the Petitioners. The mere fact that the said Joint Venture Agreement between the Respondent No. 1 and Respondent No. 3 came to be signed in my presence, cannot, by any stretch of imagination, mean that the said Land was allowed to be used by Respondent No. 1 at my instance. In fact, Respondent No. 1 is a Government Company incorporated under the Companies Act, 1956 and is independently carrying on business in accordance with its Memorandum and Articles of Association. The said Joint Venture Agreement came to be signed by the parties in my presence only at the request of the Managing Director of Respondent No. 1 that the parties desired to sign the Agreement in my presence. After the Agreement was signed by the parties, the parties also requested me that since the same was signed in my presence, I may also put my signature on the document as a token of my good wishes for the Project, which I did, on the spur of the moment, as requested.

Thus it is stated that the Chief Minster of the State remained present for the signing of the Joint Venture Agreement only at the request of the Managing Direction of MFSCDC Ltd. to lend his goodwill and allegedly signed the Agreement at the spur of the moment in respect of a transaction whereby a large piece of land admeasuring 20 acres in prime locality had been given to a Joint Venture Corporation without making any valuation of land in question, without following any rules or procedure, without passing any resolution of the Board of Directors and even without following the provisions of Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971. It is not in dispute that in respect of this transaction, the Comptroller and Auditor General raised serious objections by pointing out that the transaction was entered into without any authority of law and that a very low valuation of land in question was made at 3 Crores. According to the CAG Report, the land ought have been valued atleast at Rs. 31.20 Crores and as against this it was valued for Rs. 3 Crores. The CAG reached the conclusion that the value of the land in question was shown at only Rs. 375 per sq. meter, whereas the actual value was almost 10 times the said value.

10. Various affidavits have been filed for opposing the Petitions. In PIL No. 219 of 2009 an affidavit in reply has been filed by Smt. Suprabha Agarwal, Joint M.D. of Respondent No. 1 MFSCDC Ltd., in which an objection regarding delay has been

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

raised. It is stated in paragraph-3 that the Respondent No. 1 Corporation will take further action in accordance with the orders to be passed by this court. Another affidavit is filed by Shri C.S. Sangitrao, who was working as M.D. of the said Corporation from 16/1/2003 till 16/9/2003. On the specific directions of this Court by its order dated 25/11/2010, Affidavit has been filed by Swati Y. Mhasepatil, Deputy Secretary to Government of Maharashtra, Tourism and Cultural Affairs Department. Paragraphs 3 onwards of the said affidavit reads thus:

3. In this regard I say that the then Managing Director of the Respondent No. 1 entered into this joint venture agreement. Before signing the agreement he had not taken the prior approval of Board of Director. This decision was taken without inviting competitive bids. After this agreement the respondent No. 4 was constituted and land admeasuring approximately 20 acres which belongs to the Government but which was in possession of Respondent No. 1, was handed over to the said Respondent No. 4.

4. I state that the authorised capital of Respondent No. 4, is Rs. 20 Crores comprising 2 lakhs equity shares of Rs. 1000 each.

5. I say that the land admeasuring 20 acres that was handed over to Respondent No. 4, was valued of Rs.3 crores in the agreement. According to the Comptroller and Auditor General of India the value of land is Rs. 31.20 crores. This valuation is arrived at on the basis of the rate of Rs. 3900 per Sq. Mtr.

6. On 18.6.2003, the Board of Director of the Respondent No. 1, resolved to modify the agreement referred to above and this resolution was forwarded to the State Government.

7. In Writ Petition No. 1826 of 2003 filed in this Hon''ble Court, the State Government had taken a stand that it will consider modification of the aforementioned agreement dated 24.10.2000, in terms of the Government Resolution dated 8.2.1983, 11.5.1984, 30.6.1992, 5.10.1999 and 9.7.1999. I am annexing to this affidavit as exhibit 1, 2, 3, 4 and 5 (colly.) copies of the said Resolutions. However no decision could be taken for the reasons set out below. It was noticed that in order that the land is allotted in terms of Government Resolution dated 8th February 1983, 11th May 1984, 30th June 1992, 5th October 1999 and 9th July 1999 by payment of lease rent by educational institutions, the said institutions would have to be registered under the Societies Registration Act, 1860 or Mumbai Public Trust Act, 1950. In the present case the land is to be leased to Whistling Woods International Pvt.Ltd., which is neither registered under Societies Act, 1860, nor under Mumbai Public Trust Act, 1950. It is registered under the Companies Act, 1956. Therefore, the land could not be allotted in terms of the said Government Resolution. The Government therefore, decided to revisit the existing joint venture agreement.

8. Subsequently as per the instructions of the Government the Respondent No. 1 Corporation has constituted a Steering Committee on 1st September, 2010. This

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

Committee consists of three representatives from Respondent No. 1 Corporation and three representatives of M/s. Mukta Arts Ltd. This Committee is to review the structure of existing joint venture project. This Committee is also directed to decide the extent of land that would be required to be retained by the Respondent No. 4. Now the said committee is seized of the matter. Once the report of this Committee is received the State Government will take appropriate decision in accordance with law.

11. Affidavit has also been filed by Shri Subhash Ghai, Director of Mukta Arts Ltd., in which apart from various other contentions, the allotment is sought to be defended and it is stated that a project report was submitted by Respondent No. 3 to Respondent No. 1 Corporation on 3/3/2000. It is further stated that the Respondent No. 4 Joint Venture is having accumulated loss. It is further stated in paragraph-11 that the terms of Joint Venture are allegedly detrimental and commercially unviable but even then the project was undertaken only with a view to provide service to the film industry and to encourage common talent. It is further stated that :

... The Respondent No. 1 has similarly put up a film processing lab with Ad Labs within film city, where land was given to Ad Labs to use since last several years. I say that setting up of the Institute is within the powers vested into Respondent No. 1. Similar studios have been set up and let out by Respondent No. 1 without any Government permission in furtherance of its activities. The Respondent No. 4 is ready and willing to acquire the land which would benefit the Respondent No. 4 as it would thus be in a position to completely exploit the same without any restrictions. The entire concern of the Petitioners are a facade and false.

The role of the Respondent No. 7 Chief Minister is denied. A further affidavit is filed by Shri Subhash Ghai dated 15 April, 2011 in which it is stated that from 1992 he was trying to set up a film training institute. We have already dealt with the affidavit filed by Shri Vilasrao Deshmukh, the then Chief Minister.

12. From the various affidavits, it is clear that except 2 resolutions dated 30th May, 2000 and 29th August, 2000, the Managing Committee of MFSDC 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 Crores and on that basis, the Corporation should be given equity participation of only 15% on the basis of the assumption that the entire project cost would be Rs. 20 Crores. The various policy decisions of the Government of Maharashtra provide for grant of land at a concessional rate to educational institutions and one of the essential precondition is that such educational institution must be a trust duly registered under the B. P. T. Act, 1950 or a Society duly registered under the Societies Registration Act, 1862. It is an admitted position that Mukta Arts was not fulfilling any of the aforesaid criteria.

13. It is clear from the affidavits and particularly, affidavit of Smt. Swati Mhase Patil that without any approval either from the Cultural Affairs Department or

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

from the Revenue Department of the Government of Maharashtra, the then Managing Director of MFSDC proceeded to execute the joint venture agreement and the then Chief Minister signed the said joint venture agreement dated 24/10/2000 only at the request of the Managing Director of MFSDC allegedly as a token of his good wishes to the said project. The then Chief Minister claims that he signed the Agreement on the spur of the moment as requested by the parties to the agreement. The Petitioners contend that this signature was done as quid pro quo for bringing and promoting the son of the 7th Respondent in the Film industry. However, the material on record does not support the said contention. Even then, the fact remains that the then Chief Minister signed an agreement which had no authority in law and no resolution of the Managing Committee had been passed to enter into such an agreement. The material on record is sufficient to show that the then Chief Minister also attended ground breaking ceremony for the project and thereafter the building construction had commenced.

SUBMISSIONS OF RESPECTIVE ADVOCATES :

14. Mr. Mahesh Jethmalani, the learned Senior Advocate appearing for the Petitioners advanced following submissions:

a) The aforesaid joint Venture agreement executed between the MFSDC and Mukta Arts was vitiated on account of illegality and bad faith.

b) He submitted that there was absolutely no basis for arriving at a conclusion that the land admeasuring 20 acres would be valued only at Rs. 3 Crores. He submitted that even the ready reckoner valuation was much more than the so called valuation of Rs. 3 Crores. He submitted that the land admeasuring 20 Acres was equivalent to 8,71,200 sq. ft. equivalent to 96800 sq. yards or roughly 80936 sq. meters. He submitted that thus the valuable land at Goregaon was given on platter at throw away price of about Rs. 34 per sq. ft.

c) He invited our attention to the Report of the Comptroller and Auditor General for the period ending 31st March, 2003 and pointed out paragraph 4.2 of the said report. He pointed out that the CAG had valued the land at Rs. 3900/-per sq. meters which is around Rs. 362 per sq. ft. as against Rs. 34 per sq. ft as shown in the Joint Venture Agreement since only 15 % share was offered to the Corporation.

d) He submitted that because of the latest affidavit of the State Government, the fact that the entire transaction is illegal has been accepted even by the State Government and, hence, the only conclusion which can be drawn is that the Respondent No. 7 Shri Vilasrao Deshmukh used his official position to obtain a pecuniary advantage for Mukta Arts and Subhash Ghai without any public interest. He submitted that hence, apart from issuing appropriate writs and orders for cancellation of Joint Venture Agreement and resumption of the entire land in favour of the MFSCDC Ltd, this is a fit case where the Court should order an enquiry by C.B.I. He relied upon the provisions of Section 13(1)(d)(iii) of the Prevention of Corruption Act in support of submission that an action under the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has...

said Act needs to be initiated against the Respondents.

e) He invited our attention to the Resolution dated 29/8/2000 passed by the Board of MFSCDC Ltd. and drew our attention to the fact that the then Chief Minister was to be informed about further decision to be taken by the Managing Committee which showed that the Chief Minister was closely monitoring the entire project of handing over 20 acres of land to Mukta Arts at throw away price.

f) He relied upon two latest Judgments of the Supreme Court in Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, and particularly the observations in paragraphs 14 and 31 to 34 to which we will make reference at the appropriate stage. He also relied upon the Judgment of the Supreme Court in Humanity and Another Vs. State of West Bengal and Others, and particularly the observations in paragraphs 30 to 33, 40, 44 and 51 of the Judgment to which a reference would be made by us in due course.

g) He ultimately submitted that Writ Petition No. 1826 of 2003 had been filed when the construction was in progress, that in view of the affidavit filed by Mr. Prakash T. Goud, Joint Secretary, Cultural Affairs Department at the relevant time on 27/8/2003 this Court had declined to grant interim relief but had clarified that no equities whatsoever would be claimed. He submitted that latest affidavit of the Government by Swati Mhase-Patil has however clearly stated that the entire allotment is illegal and cannot be supported. He therefore prayed that apart from the resumption of land recovery of market rent till date should also be ordered and if that amount is not paid the building of the Whistling Wood Complex should be taken over by the Corporation.

15. The learned Advocate General Shri. Ravi Kadam advanced following submissions :

a) The report of the CAG cannot be made the basis of challenge in PIL. He submitted that there were no particulars given about the alleged illegalities in the CAG report. He referred to Article 151 of the Constitution of India and submitted that report of CAG is to be submitted to the Governor, who shall cause the same to be laid before the legislature of the State.

b) He relied upon the Judgment of the Division Bench of Goa Bench of this Court in the case of K. Raheja Corporation Private Ltd. v/s. The State of Goa and Ors. 2010 (112) BLR 4729. He pointed out the observations in paragraph -35 and 92 of the said Judgment which read thus :

35. The learned counsel appearing for the Petitioners relied upon the report of the Comptroller and Auditor General of India for the year 2008-09. He highlighted what is set out in Chapter VII of the said Report. He pointed out that the Auditor General of India has found several illegalities and irregularities in the allotment of lands by the GIDC to the contesting Respondents. He pointed out that the report indicates that due to illegalities and irregularities committed by the GIDC, a huge monetary loss has been suffered by the GIDC.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

92. There were extensive submissions made in the public interest litigation based on the report of the Comptroller and Auditor General of India. It is pointed out that serious irregularities and illegalities in the allotment of lands in favour of the Companies have been recorded in said report (hereinafter referred to as "the CAG Report.)" Reliance is placed on Chapter VII of the said CAG Report and it was contended that to the several irregularities and illegalities pointed out in the report, there is no answer by the GIDC. It must be noted at this stage that in view of Article 151 of the Constitution of India and in particular Clause (2) thereof, the report will have to be placed by the Honourable Governor before the Legislature of the State and it is for the Legislature for the State to take further steps in that behalf. The report is recommendatory in nature and as of today, the same is not placed before the Legislature. Therefore, the argument based on the CAG report cannot be taken into consideration.

c) Mr. Kadam also relied upon the Judgment of the Supreme Court in the case of State of Maharashtra Vs. Public Concern for Governance Trust and Others, and particularly observations in paragraphs-18 and 22 of the said Judgment. He therefore submitted that though the State Government has accepted that the joint venture was entered into without adopting proper procedure, the then Chief Minister cannot be held to have acted malafide.

16. On behalf of Mukta Arts Ltd. and M/s. Whistling Woods International Ltd. Respondent Nos. 3 and 4 in PIL No. 219 of 2009 who are also joined as Respondent No. 9 and 10 in WP (PIL) No. 1826 of 2003 Mr. Dhakephalkar, learned Senior Advocate advanced following submissions :

a) He submitted that around 500 acres of land of the Government was handed over to MFSCDC which was a Government Company. Relying on the objects of the said Corporation from the Memorandum of Association it was submitted that one of the objects of the Corporation was to enter into such Joint Ventures and therefore the activity of entering into a Joint Venture could not have been held to be beyond the objects of the Corporation. He submitted that Mumbai was well-known as a Center for Hindi Film Industry and the said Industry generated huge employment and income. He relied on Article 46 of the Memorandum of Association and contended that the purpose for which the Joint Venture Agreement was executed was well within the objects of MFSCDC Ltd. and hence, action could not be termed as illegal.

b) He submitted that managing Film City at Goregaon which is spread over an area of 500 acres is one of the principal objects of MFSCDC Ltd. He submitted that it was envisaged to create World Class Film and Television School and Development and Research Centre and hence the Joint Venture was essentially for advancing the objects of the Corporation. He submitted that Mukta Arts Ltd had the requisite funds, knowledge and expertise to run and look after day to day management of the Educational Institution which was proposed to be set up. He submitted that there was no allotment of land as contended by the Petitioners but only the land of the Corporation, which was actually owned by the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

Government was made available for setting up of the Film Institute having laudable object. He submitted that there was only a permissive user of land and there was no allotment of land to a third party but only a Joint Venture is created.

c) He placed on record the plan of the aforesaid area admeasuring 20 Acres and submitted that though total area is 20 Acres, FSI of only 4 Acres was allowed to be used and has been consumed. He submitted that the entire construction is completed and occupation certificate has been issued by MCGM in the year 2008. He submitted that a World Class Institute has been established having unique educational facilities. He submitted a plan pointing out that in the portion marked "B" on the said plan, the entire main building of the Whistling Woods was established and that this area was approximately admeasuring 25830.30 sq. meters which consisted of the actual building of the Institute.

d) Mr. Dhakephalkar sought to rely upon the Balance Sheet and Profit and Loss Account of Whistling Wood International Ltd. and contended that in fact the said company was incurring losses and further contended that Mukta Arts Ltd had not got any benefit. He submitted that the accumulated losses were to the tune of Rs. 42.82 Crores and neither the State Government nor the Corporation had contributed any monies to the share capital of Whistling Woods International Ltd.

e) On the question of land he submitted that there was no allotment of land to Whistling Woods International Ltd. but only a permissive user/licence had been created. He criticised the report of CAG and adopted submissions of the learned Advocate General. He submitted that the CAG report cannot be the basis for setting aside the permission granted in favour of Whistling Woods and that the CAG proceeds on an erroneous assumption that there was allotment of land to Respondent No. 4 without inviting competitive bids and seeking approval of the Board of Directors.

f) In so far as criticism about choosing Mukta Arts without inviting any tenders is concerned, he submitted that Shri. Subhash Ghai was one of the most reputed producer and director in the Hindi Film Industry and with a view to advance the objects of the Corporation, the Corporation wanted to use his expertise and with that object in mind, the Joint Venture was conceived and there was no illegality in the said project. He submitted that the Corporation was unable to set up such institution which would be advancing its objects and hence the Corporation consciously decided to enter into a Joint Venture.

g) As regards allegation regarding undervaluation, he submitted that there was no allotment of land, hence, there would be no question of undervaluation. He submitted that the land continued to be owned by the State Government and the MFSCDC Ltd. Mere permissive user of the said land to the extent of 20 acres had been permitted and this did not amount to an allotment of land. He submitted that this project cannot be considered to be on par with a commercial venture and since there was no allotment there was no question of finding out of market value of the land in question. He relied upon the Judgment of the Supreme Court

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

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, and contended that considering the uniqueness of the project of setting up a World Class Film and Television Institute, there was absolutely no need to invite tenders or bids from any other company since it was a unique project. He also relied upon the Judgment of the Supreme Court in Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, . He also relied upon the observations in paragraph 51 of the Judgment of the Supreme Court in the case of Humanity and Another Vs. State of West Bengal and Others, and contended that in the case before the Supreme Court the allottee did not claim any special knowledge or expertise as an educationist. He referred to the observations in paragraph-52 and submitted that in view of the special nature of the Institution sought to be set up, a policy decision was taken by the Corporation not to invite tenders or go in for advertisement for inviting other personnel from the film industry. He therefore submitted that the Petition should not be entertained.

h) He relied upon several coloured photographs and colourful brochures of Whistling Woods International Ltd. and submitted that the Institution was a World Class Institution and one of the top 10 schools of Film and Television in the entire World and considering unique nature of project, the decision of the Managing Director of the Corporation was appropriate. He submitted that the then Chief Minister also appreciated the unique nature of the project and there was nothing wrong, illegal or improper in the action of the then Chief Minister in signing the Agreement as a mark of goodwill or remaining present for the ceremony of laying down foundation of the said project. He submitted that the then Chief Minister has not been shown to be having any personal interest in the aforesaid project.

i) Mr. Dhakephalkar further submitted that the Government has decided to constitute a steering committee having 6 members, 3 from the State Government and MFSCDC and 3 from Mukta Arts Ltd. He submitted that it should be left to the Government to take an appropriate policy decision based on the recommendations of the steering Committee.

17. Mr. V.R. Dhond, learned Senior Advocate for the Respondent No. 7 Shri Vilasrao Deshmukh advanced following submissions.

a) The allegations of bad faith and malice cannot be lightly accepted. He submitted that it is incumbent upon the Petitioner that a case of inescapable inference has to be established. There must be clear and very high degree of proof before the Court comes to the conclusion that Constitutional Functionary has acted in bad faith. Thirdly the material sought to be used against such a Constitutional Functionary must enjoy a very high decree of credibility.

b) He relied upon the Judgment of the Supreme Court in the case of Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, and paragraphs 23 and 24 thereof which read thus:

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man''s mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting malafide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See S. Pratap Singh Vs. The State of Punjab,). It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. As noted by this Court in E.P. Royappa Vs. State of Tamil Nadu and Another, , Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.

24. The approach of the High Court, therefore, was not proper. But at the same time, the reasons which weighed with the disciplinary authority to dispense with enquiry equally do not appear to be proper.

c) He also relied upon the Judgment of the Supreme Court in Union of India (UOI) and Others Vs. Ashok Kumar and Others, and the following observations in paragraph-21 which read thus :

Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man''s mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting malafide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See S. Pratap Singh Vs. The State of Punjab,). It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. As noted by this Court in E.P. Royappa Vs. State of Tamil Nadu and Another, , Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.

d) He relied upon the Judgment of the Supreme Court in Jasbir Singh Chhabra and Others Vs. State of Punjab and Others, and on the following observations in paragraph-34 which read thus :

34. It is trite to say that while exercising power of judicial review, the superior courts should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of malafides is always on the person who moves the Court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to malafides and the courts should resist the temptation of drawing dubious inferences of malafides or bad faith on the basis of vague and bald allegations or inchoate pleadings. In such cases, wisdom would demand that the Court should insist upon furnishing of some tangible evidence by the petitioner in support of his/her allegations.

e) He submitted that the only allegations against the Respondent No. 7 were to be found in PIL No. 219 of 2009 and particularly in paragraphs 3, 7 and 11 which were not sufficient. He submitted that the only allegation against the Respondent No. 7 was that on account of the fact that he signed the Joint Venture Agreementdated 24/10/2000 it must be assumed that he was interested in allotment of land to Whistling Woods International Ltd. He invited our attention to the Affidavit In reply filed by Shri. Subhash Ghai in PIL No. 219 of 2009 and contended that there was no professional relationship between Subhash Ghai and son of Respondent No. 7 till 2005 and that in October, 2000 Ritesh Deshmukh, the son of the Respondent No. 7 was not in the film industry and was studying Architecture course in USA. In so far as the action of signing the Joint Venture Agreement is concerned, Mr. Dhond submitted that the signature was admitted, but mere presiding over the signing ceremony cannot be an indication of bad faith. He submitted that Respondent No. 7 has signed the agreement only as a witness.

f) Relying on the Brochure annexed to the Affidavit In Reply of Respondent Nos. 3 and 4, he submitted that the Institution was running some unique programs and the Respondent No. 7 as a Chief Minister was justified in desiring to have establishment of a unique Film and Television Institution within the campus of Film City.

g) Dealing with the criticism that the Minutes of the Board Meeting of MFSCDC Ltd. referred that the decision will be communicated to the Chief Minister,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

according to Mr. Dhond, this at the highest shows that the Respondent No. 1 Corporation wanted to keep the then Chief Minister informed about the decision taken by it and this by itself cannot result in an inference of bad faith.

18. In rejoinder Shri Mahesh Jethmalani submitted that the entire action was completely vitiated. He submitted that though Mr. Subhash Ghai was a reputed producer and director of Hindi Film Industry he was not the only person in the industry who could have set up similar institution. He submitted that there was no policy decision taken either by the Cultural Affairs Department of the Government of Maharashtra or by MFSDC to set up such an institution. No valuation of the land was done and though it is being submitted by Respondent Nos. 3 and 4 only a licence to use a land is given, in fact the land has been given as 15% contribution to the share capital of Whistling Wood International Ltd. and, hence, the contention that there was no allotment of land should not be accepted. He relied upon section 13(1)(d)(iii) of the Prevention of Corruption Act and submitted that with the active aid and blessings of the then Chief Minister Respondent No. 3 Mukta Arts has been able to obtain a valuable property without paying any money and all statutory provisions under M.L.R Code, 1966 and the government policy relating to allotment of land have been flouted with impunity. He submitted that since only about 5 and half acres of land was being used, the remaining land must be immediately directed to be resumed. He submitted that market rent based on ready reckoner valuation from the year 2000 till the actual handing over of the land admeasuring around 14.5 acres should be levied and recovered from Respondent Nos. 3 and 4. He submitted that the entire building of Whistling Wood International Ltd. should be directed to be handed over to the Respondent No. 1 Corporation and should be directed to be used by the Corporation for advancing its objects.

CONSIDERATION OF THE SUBMISSIONS

19. 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, is the disturbing question which we are required to answer in these two public interest litigations. 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. These are uneasy and disturbing questions which arise for our consideration in these two Public Interest Litigations.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

20. It is undoubted that the land admeasuring 20 Acres is owned by the Government of Maharashtra and is a part of the land admeasuring around 500 Acres owned by the Government which has been handed over to Respondent No. 1 Corporation. The status of the property as a public property is undisputed. It is also not in dispute that Respondent No. 1 Corporation is wholly owned and controlled by the Government of Maharashtra and is thus an instrumentality of the State.

21. In the recent Judgment of the Supreme Court in Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, , the Supreme Court has reiterated the law in respect of allotment of land belonging to State. All the Judgments in the field right from Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, were considered. Paragraphs 65 to 68 of the said Judgment summerises the law laid down by the said Judges and read thus :

65. What needs to be emphasized is that the State and/or its agencies/ instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. 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 shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such 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, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations 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 claim. 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 treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.

68. The allotment of land by the State or its agencies/instrumentalities to a body/ organization/institution which carry the tag of caste, community or religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/ organisations / institutions on political considerations or by way of favoritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible.

22. Thereafter in another Judgment in the case of Humanity and Another Vs. State of West Bengal and Others, this is what is observed by the Supreme Court in paragraphs 23 to 26, 30 and 31 read thus :

23. It has been repeatedly held by this court that in the matter of granting largesse, Government has to act fairly and without even any semblance of discrimination. Law on this subject has been very clearly laid down by this court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . A three-Judge Bench in the said decision has recognized that the Government, in a welfare State, is in a position of distributing largesse in a large measure and in doing so the Government cannot act at its pleasure. This court perusing the new jurisprudential theory of Professor Reich in his article on the "The New Property" (73 YLJ 733) accepted the following dictum contained therein:

The government action be based on standards that are not arbitrary and unauthorized.

24. This Court explained the purport of the aforesaid formulation by holding:

11.......The government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The government is still the government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual.

(Para 11, page 505 of the report)

25. The aforesaid dictum in Ramana (supra) is still followed by this court as the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has...

correct exposition of law and has been subsequently followed in many other decisions. In Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , another three-Judge Bench relied on the dictum in Ramana (supra) and held whenever any governmental action fails to satisfy the test of reasonableness and public interest, it is liable to be struck down as invalid. This court held that a necessary corollary of this proposition is that the Government cannot act in a manner which would benefit a private party. Such an action will be contrary to public interest. (See para 14, p. 13 of the report)

26. The setting up of a private school may have some elements of public interest in it but Constitution Bench of this court has held in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , that the right of a citizen, which is not claiming minority rights to set up a private educational institution is part of its fundamental right to carry on an occupation under Article 19(1)(g). Such enterprise may not be a totally business enterprise but profit motive cannot be ruled out.

30. Admittedly, no advertisement was issued and no offer was sought to be obtained from the members of the public in respect of the new allotment of a much bigger plot. In view of the principles laid down by this court, the impugned allotment is clearly in breach of the principles of Article 14 explained by this court in Ramana (supra), Kasturi Lal (supra) and other subsequent cases.

31. This court cannot persuade itself to hold that this allotment is in exercise of the right of the Government in the first advertisement dated 5.11.2006, where the Government reserved its right to change the location of the land. The second allotment is not only about a change in the location of the land, but the subsequent allotment is also of a much larger plot of land, brought about in terms of the request of the allottee for a bigger plot. The subsequent change was not brought about by the Government in its own discretion, assuming but not admitting that the Government could exercise its discretion in such a fashion but was in response to a written request of the allottee.

23. Shri Dhakephalkar sought to rely upon the Judgment of Sachhidanand Pandey and Kasturilal Reddy and contended that the project in question was a specialised project and hence, choice of Mukta Arts as a Joint Venture Partner cannot be held to be arbitrary. We cannot accept this submission for more than one reasons. In the case of Sachhidanand Pandey6 after a process of protracted discussion, consultation, negotiations and consideration of various aspects spread over 2 years the State Government had taken a conscious administrative decision which was a decision by the Cabinet. In the facts of that case therefore the Supreme Court has considered that the allotment of land in favour of Taj Group of Hotels cannot be held to be unconstitutional. In the case of Kasturilal Reddy5 the State Government wanted to attract industries in forest produce for manufacturing raisins and turpentine oil etc. and in that context the Supreme Court had upheld the action of the State Government. Contra-distinguishing from

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

the aforesaid facts in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, and Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, ; in the facts of the present case, we have a situation where even 2 resolutions of Respondent No. 1 Corporation do not indicate that a conscious decision was taken either to allot 20 acres of land to Mukta Arts Ltd. or to the Joint Venture between Mukta Arts Ltd and Respondent No.1 or to permit user of such land by Mukta Arts. The State Government has already filed its affidavit in which it has clearly stated that even without a formal resolution of the Board of Directors 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 Patil, 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 utilisation of the said land by the Joint Venture Company. There was no authorisation given by the State Government for use of 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". Viewed from any angle, the entire exercise of executing such a Joint Venture Agreement has to be considered to be entirely illegal. Even the State Government''s latest affidavit does not even remotely try to contend that the agreement in question is legal. It appears that after the filing of the Petition various efforts were made to somehow regularise or to legalise the entire transaction. However, since the Respondent No. 4 M/s. Whistling Woods International Ltd. is neither a trust nor a

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

Society, it was not found eligible even for allotment of any Government land and ultimately the Government has accepted in the affidavit that the transaction in question is illegal.

24. Submission of Mr. Dhond that there are no sufficient pleadings in the Petition so as to draw any inference against the Respondent No. 7 from Vilasrao Deshmukh cannot accepted. In paragraph-3 and 7 of the Petition there are clear averments against the Respondent No. 7. Similarly the averments in paragraph 11 are also sufficient to meet the test of pleadings. The role played by Respondent No. 7 in the entire transaction is depreciable. The Respondent No. 7 being the highest functionary of the Executive in the State must be held to be aware of the legal provisions regarding public property. The defence of innocence which is raised by Respondent No. 7 cannot be accepted and we decline to accept the defence that just as a token of goodwill and at the spur of moment the Respondent No. 7 signed the Joint Venture Agreement. The Respondent No. 7 has clearly misused his official position as a Chief Minister of the State and it is certainly not acceptable that a Chief Minister of a State will personally sign an agreement as a witness though such agreement is completely illegal and does not have any support or authority even in the form of resolution of the Respondent No. 1 Corporation. It is clear that the Respondent No. 7 has extended undue favours to Respondent No. 4. However, there is no material on record to indicate that these undue favours had been granted so as to get quid pro quo from Shri Subhash Ghai for establishing the son of Respondent No. 7 in the film industry. In view of this reason we do not consider this to be a fit case where a prosecution of Respondent No. 7 by the C.B.I. can be or should be ordered. Hence while holding that the role played by Respondent No. 7 is unusual, we refrain from issuing any writ for directing the C.B.I. to take action against the Respondent No. 7. However, we clearly disapprove the conduct of Respondent No. 7 and the role played by Respondent No. 7 in the entire proceedings leading to the signing of the J.V. Agreement. The second resolution of the Respondent No. 1 Board clearly shows that the Chief Minister was taking keen interest in the entire project and it is therefore difficult to accept defence of innocence.

25. Having reached the conclusion that the entire transaction is illegal and also reached the conclusion that the role played by the then Chief Minister, Respondent No. 7, was quite unusual, the next question which arises is how the relief is to be moulded. This raises a complicated problem for various reasons. Albeit under illegal transaction which is entered into with the blessings of and at the behest of the then Chief Minister, Respondent No. 4, Joint Venture Company has already constructed its huge building in accordance with the sanctioned plan for which occupation certificate has been granted by the MCGM. The Joint Venture Agreement is silent about the ownership of the said building. In the eyes of law the building cannot be held to be owned by Government of Maharashtra or the Respondent No. 1 Corporation. The Respondent No. 4 has already granted admissions to a fresh batch of students in the course run by the Respondent No.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

4. It has been stated across the bar that the last batch will complete the course by May, 2014 as it is stated to be a 3 years'' course. It is pertinent to note that the Institution being run by Respondent No. 4 is not recognised by AICTE and does not have any permission from AICTE. In that sense, the running of the said course appears to be contrary to the provisions of AICTE Act and Regulations framed thereunder. Be that as it may, the last batch which is admitted in the Institute of Respondent No. 4 is to exit in the year 2014. In so far as the user of the land by the Respondent Nos. 3 and 4 is concerned, undoubtedly they have been using the land admeasuring 20 Acres from the date of allotment i.e. the date of entering into the Joint Venture Agreement.

26. We have carefully perused the original files of the Cultural Affair Department, as also Respondent No.1 Corporation. When the State Government was considering regularisation of the allotment to Respondent No. 3, the Collector of Mumbai Suburban District has made the valuation. Various opinions of the Advocate General and the Associate Advocate General were also obtained so as to find out as to how the transaction can be regularised. The market price of the property as on 1/1/1995 according to the Ready Reckoner has been worked out at Rs. 43.56 Crores and if concessional rent at 50% the rate of 10.75% of the market value was to be applied the said concessional rent would be Rs. 2,34,13,500/-per year. The second proposal suggested is to give the land on lease according to the market rent for which market price as on 1/1/2000 at the rate of Rs. 760 per sq. ft would come to Rs. 66,21,12,000/-and at the lease rent of 10.75% per annum the lease rent would be Rs. 7,11,77,040/-. No decision however, appears to have been taken on the said two proposals and on the file note dated 9/9/2009 an endorsement is made by the Principal Secretary of the Tourism and Cultural Affairs Department to obtain detailed report from the MD. Pursuant to this the aforesaid report dated 18/1/2010 was sent by the MD. What emerges from the record is the fact that all the government functionaries were unanimous in their opinion that the original JV agreement which was signed between the MD of the Corporation and Mukta Arts and counter signed by the then Chief Minister at the spur of moment was completely without any authority of law and that only 4 acres of land was to be used for actual construction whereas the remaining 16 acres was to be used only for landscaping and open air stage only. It also emerges that even as on 1/1/1995, the market price of the property was Rs. 43.56 Crores and as on 1/1/2000 the market price of the property as per the ready reckoner was Rs. 66,21,12,000/-.

27. In such a situation, in our opinion, interests of justice would be served by moulding the relief in the following terms :-

(a) The allotment of land made in favour of Mukta Arts Ltd. and Joint Venture Agreement dated 24/10/2000 executed between the MFSCDC Ltd. and Mukta Arts Ltd. is hereby quashed and set aside.

(b) Out of 20 acres of land, (i) 14.5 acres of land which is vacant shall be resumed in favour of Respondent No. 1 Corporation by the Respondent No. 4 M/

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

s. Whistling Woods International Pvt.Ltd. immediately; (ii) Remaining land admeasuring 5.5 acres (on which the building of Respondent No. 4 M/s. Whistling Woods International Pvt.Ltd. is constructed and the appurtenant land) shall be resumed in favour of the Respondent No. 1 Corporation on or before 31st July, 2014. The portions of 5.5 acres and 14.5 acres is shown as demarcated on the plan submitted by Mr. Dhakephalkar, learned Counsel for Respondent No. 4 M/s. Whistling Woods International Pvt.Ltd. in PIL 219/2009 during the course of his submissions.

(c) The Respondent No. 4 in PIL 219/2009 M/s. Whistling Woods International Pvt.Ltd. shall pay market rent on the entire 20 acres of land to the Government of Maharashtra for the period from the date of Joint Venture Agreement till land admeasuring 14.5 acres is resumed in favour of the Respondent No. 1 MFSCDC Ltd.. The said market rent would be calculated on the basis of the full market value of the property according to the ready reckoner. On the basis of such ready reckoner valuation which has already been done, as can be seen from perusal of the files; according to the ready reckoner, market price of the property was Rs. 43.56 Crores as on 1/1/1995 and Rs. 66, 21,12,000/-as on 1/1/2000. This should be treated as basis for levy of rent. The annual rent will be fixed by a return of 8 percent on the market price of Rs. 66,21,12,000/-which will be payable every year. With this calculation, the rent payable will be Rs. 5,29,68,960/p. a.-rounded off to Rs. 5.30 Crores p. a. For the subsequent period till 31st May, 2014, the proportionate rent for a smaller area admeasuring 5.5 acres of land shall be recovered from the Respondent No. 4 M/s. Whistling Woods International Pvt.Ltd.. Simple interest @

6% p. a. shall be calculated on the arrears of rent.

(d) In so far as the building of the Respondent No. 4 in PIL No. 219/2009 M/s. Whistling Woods International Pvt.Ltd. is concerned, the Government shall appoint expert valuers for the purpose of valuation of the said building to be done on the basis of the audited balance-sheet of Respondent No. 4 Joint Venture in PIL No. 219/2009 M/s. Whistling Woods International Pvt.Ltd.. The Respondent No. 3 in PIL No. 219/2009 Mukta Arts Ltd. will have an option of paying the rent independently and thereafter claiming the market price of the building from the Government or an option of set off in respect of the price of the building vis-a-vis the rent at the aforesaid rates. If the Respondent No. 3 Mukta Arts Ltd. chooses the second option then building of the Respondent No.4 M/s. Whistling Woods International Pvt.Ltd. and the entire infrastructure will vest in the State Government and if the price to be fixed by the valuer is less than the rent payable by Respondent No. 4 M/s. Whistling Woods International Pvt.Ltd., the difference shall be recovered from the Respondent No. 4 M/s. Whistling Woods International Pvt.Ltd. as arrears of land revenue in accordance with law. If the price of the Building and other immovable infrastructure is more than the amount of rental dues, the Respondent No. 3 Mukta Arts Ltd. can claim that amount from the Respondent No. 1 Corporation in PIL 219/2009.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…

28. Writ Petition No. 1826 of 2003 is disposed of in the aforesaid terms. PIL No. 219 of 2009 is also partly disposed of in the aforesaid terms.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mr-abdul-hamid-patel-appellant-has…