(2007) 05 RAJ CK 0112

In the Rajasthan High Court

Poonam Chand Bhandari APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Jaipur Development Authority Act, 1982 — Section 25(1), 90
Rajasthan Improvement trust (Disposal of Urban Land) Rules, 1974 — Rule 15

Citation : (2008) 1 RLW 885

Hon'ble Judges : R.S. Chauhan, J;R.M. Lodha, J

Bench : Division Bench

Judgement

R.M. Lodha, J.—The Project Jaipur, popularly known as Pink City, besides the - capital of the State of Rajasthan is an important tourist destination. The growth of the city is rapid. It is rated as one, of the fastest growing cities in the country. M/s. R.F. Properties and Trading Private Limited (respondent No. 4) says that the World Trade Park to be built by them shall be State of Art building to provide international showcase to the state industry. The building is to have a computer controlled integrated building management system, wireless LAN, Trade Information Bureau, Electronic Trading Facilities, Electronic Facilities for export enquiries, Auditoriums, Convention Center. Trade Fair Zones, Exhibition Centers, Showrooms. Display Centers, Corporate Offices, Guest Rooms, Multiplex, Conference Rooms with Video Conferencing Facility and Business Centers. The building shall have special zones for B.P.O. Industry and service providers, Bio-Technology, Information Technology, Banking and Insurance, Gems and jewellery, Handicrafts and Textiles etc. The respondent No. 4 claims that the World Trade Park would increase business tourism, enhance investment in State, increase employment by providing direct employment to around 5,000 persons and indirect employment to around 20,000 persons. It shall be open to all, irrespective of segment or industry and empower the people of Rajasthan and provide them with a word of opportunities.

The Allotment

2. On 1.9.2004. The respondent No. 4 submitted a proposal to the State Government for creating World Trade Center at Jaipur along with request for allotment of land. A presentation is said to have been made by the respondent No. 4 on that very day. In the presentation, the respondent No. 4 highlighted that Jaipur may be brought to a new pedestal for economic growth and up-liftment by providing state of the art World Trade Park.

3. Considering the nature of the proposed development, the State Government asked the Jaipur Development Authority (J.D.A.) to submit its comments on the proposal made by the respondent No. 4.

4. The J.D.A. vide its communication dated 13.9.2004 provided its comments to the State Government observing that from the perusal of the project report and presentation, the utility of the project was extremely important for the city of Jaipur as it would bring in revenue augmentation, employment generation., industrial development and business investment due to provision for IT enabled services, place for international trade fairs, conferences, convention center etc. In response to the request of the respondent No. 4 for allotment of 17,000 to 20,000 Square Meters, the J.D.A. stated that the land ad-measuring 16338 square meters avail able on Jawahar Lal Nehru Road (J.L.N. Road) can be considered for allotment. About the rate of the land, some instances were referred to in the comments and J.D.A. noticed that the commercial reserve for J.L.N. Road has not been declared.

5. After receipt of comments from the J.D.A., a decision was taken by the Urban Development Department to place the matter for consideration in Board of Infrastructure Development and Investment. Promotion (B.I.D.I.). The J.D.A. was, accordingly, asked to submit the report for placing the matter before B.I.D.I.

6. On 6.11.2004. The J.D.A. sent a detailed note to be placed for consideration by B.I.D.I.

7. The matter was placed before the 17th Meeting of B.I.D.I. held on 17.12.2004. The B.I.D.I. directed the Chief Secretary and the Additional Chief Secretary to Chief Minister to examine the issue and submit their recommendations regarding terms of allotment in the next meeting after obtaining the project report and company profile from the respondent No. 4.

8. On 18.1.2005 pursuant to the direction of B.I.D.I. the Chief Secretary held the meeting and directed the J.D.A. and Finance Department to study the entire matter and place the matter for consideration by B.I.D.I. once the views of the concerned Departments were available along with the past precedents for consideration and final decision.

9. As per the meeting held by the Chief Secretary on 18.1.2005 and decision taken therein, the J.D.A. considered the issue once again and vide its communication dated 24.2.2005 recommended designation of the project as infrastructure project. The J.D.A. also proposed the rate of Rs. 25,000/- per

square meter.

10. On 19.4.2005, the Notification u/s 25(1) of the Jaipur Development Authority Act, 1982 (for short, the J.D.A. Act'') was published in Official Gazette pursuant to the order of the State Government dated 15.1.2002 directing the J.D.A. to affect change in land use on J.L.N. Marg from, institutional to institutional and commercial.

11. In the 18th meeting of B.I.D.I. held on 20.4.2005, the matter concerning the allotment of land to the respondent No. 4 was considered and it was directed to the Department of Urban Development to allot 17579.7 Square Meters of land surrendered by the Mahalaxmi Society on J.L.N. Marg to the respondent No. 4 at Rs. 25,000 per square meter. As per the said decision, the respondent No. 4 would pay 15% of the total amount due upfront before - possession was handed over and the balance with interest at 12% per annum in six half yearly installments. The FAR for the project was restricted to 1.75 and it was made clear that the project shall be completed within two years from the date of taking possession and that no other concession would be provided to the respondent No. 4.

12. In compliance of the decision taken by B.I.D.I. on 20.4.2005, the respondent No. 4 deposited a sum of Rs. 7,07,36,763/- on 21.5.2005 including 15% of the total amount due upfront.

13. On 2.7.2005 the J.D.A. issued allotment letter to the respondent No. 4. After the allotment letter was issued by the J.D.A., the respondent No. 4 submitted the building plans to the J.D.A. for approval. The B.P.C. considered the proposed building in the category of ''special category building'' and, accordingly, moved the State Government for its sanction.

14. On 31.8.2005, the State Government passed, an order extending relaxation to the provisions of the building regulations in relation to the specific matters like height and basement.

15. On 25.11.2005, the building plans were approved by the J.D.A.

16. The lease deed for the land allotted to the respondent No. 4 was executed by the J.D.A. and duly registered on 2.11.2006.

The petitioner

17. The petitioner is a practicing lawyer of this Court. According to him on 28.8.2005, a news item appeared in the Hindi Daily published from Jaipur about the scam in the land allotted to the respondent No. 4 by the J.D.A. Through this news item he came to know that the land that-belonged to Mahalaxmi Housing Society was surrendered to the J.D.A. for the purpose of public utility facility. He, accordingly, made necessary enquiries and decided to challenge the allotment of the aforesaid land to the respondent No. 4 by the J.D.A. in the public interest.

The challenge to the allotment

18. In the writ petition the petitioner has challenged the allotment of the prime land on J.N.L. Road to, the respondent No. 4 on diverse grounds. The petitioner has set up the case that the land of commercial nature and the allotment being also for the commercial purposes, under Rule 15 of the Rajasthan Improvement ''trust (Disposal of Urban Land) Rules, 1974 (for short, Rules of 1974''), could have only been disposed of by public auction. According to him World Trade Park project is not covered by the infrastructure projects mentioned in Rule 15-B of the Rules of 1974 and, therefore, Rule 15-B for allotment of the said land to the respondent No. 4 was not attracted. The plea has also been raised that the State Government and the J.D.A. could not have allotted institutional land to any private company for commercial purposes and there is no provision in the J.D.A. Act and the Rules of 1974 for disposal of institutional land for the purposes of commercial nature. The petitioner has alleged that the State Government and the J.D.A. malafidely allotted the land to the respondent No. 4 @ Rs. 25,000/-per square meter to give undue benefit and favour to the respondent No. 4.

The submissions

19. During the course of arguments, the petitioner crystallized his submissions thus:

i) That u/s 54 of the J.D.A. Act as well as Rules 15 and 15-B of, the Rules of 1974, the power to allot land is vested in the J.D.A. and not the State Government. The State Government is required to grant only approval under Rule 15-B of the Rules. The J.D.A., therefore, cannot abdicate its power to the State Government and the State Government cannot usurp power of J.D.A. under the said Rules. Reliance is placed on the decisions viz. Commissioner of Police, Bombay Vs. Gordhandas Bhanji, ; The State of Assam Vs. Keeshab Prasad Singh and Another, ; State of Punjab and Another Vs. Hari Krishan Sharma, ; The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, and Chandrika Jha Vs. State of Bihar and Others,

ii) The State Government has no power to give direction in individual or particular case either u/s 54 or 90 of the J.D.A. Act or the Rules 15 and 15 B of the Rules of 1974. The State Government can only direct the J.D.A. to exercise its power and perform it''s duty in accordance with the, policy framed and the guidelines laid down from time to time. The policy and guidelines can be issued for general application or for a class of persons or area or based on some other criteria in conformity with Article 14 of the Constitution of India. Reliance is placed on the Judgment of the Supreme Court in the case of Ganga Retreat and Towers Ltd. and Another Vs. State of Rajasthan and Others,

iii) The land for commercial purpose can be sold only through public Auction under the Rules of 1974. Even if the law is silent, the fairness demands that public land is sold only through public auction and not privately. This is necessary to ensure transparency and avoid arbitrariness. Reliance is placed on the Judgments of the Supreme Court viz., 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, ; State of U.P. v. Shivcharan Sharma 1981 Supplementary SCC 84; Ram and Shyam Company Vs. State of Haryana and Others, ; Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, ; Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, ; Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, Venugopala Naidu v. Venkatarayulu Naidu Charities 1989 Supplementary (2) SCC 356 and Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . Reliance is also placed on the Division Bench Judgment of this Court dated 19.5.1995 in the Gurunanak Tubewel Private Limited v. State of Rajasthan and Ors.

iv) The allotment has not been made Under Rule 15-B nor could it have been made under the said Rule because the project of World Trade Park is not an infrastructure project. The Agenda dated 17.12.2004 prepared by the J.D.A. and submitted by Urban Development and Housing Department mentions that the project is commercial project. The allotment letter dated 2.7.2005 mentions that the land shall be used for commercial purpose. The lease deed dated 2.11.2006 in its title mentions commercial use and so also condition No. 4. That the word ''includes'' in Rule 15 B of the Rules of 1974 is exhaustive and the World Trade Park project does not fall in any of the categories of the infrastructure projects mentioned in Rule 15-B. Reliance is placed on the judgment of the Supreme Court in the case of the Southern Gujarat Roofing Tiles Manufacturers Association v. The State of Gujarat AIR 1977 S.C. 90.

v) Rules of business framed under Article 166 cannot override the provisions of the J.D.A. Act and the Rules of 1974.

Response by the respondent Nos. 1, 2 and 3

20. In the reply filed on behalf of respondent Nos. 1, 2 and 3 on 21.3.2007, preliminary objection has been raised that the writ petition suffers from delay and laches. The decision was taken by B.I.D.I. on 20.4.2005 for the allotment of land to the respondent No. 4 for establishment of World Trade Park and the formal allotment was made by the J.D.A. on 2.7.2005. By that time the respondent No. 4 had deposited Rs. 35,31,13,355/- with the J.D.A. The lease deed has been executed on 2.11.2006 on a stamp paper of over Rs. 3.00 crores and it has been registered. The construction work is in progress.

21. That the B.I.D.I. has been constituted by amendment in the Rajasthan Rules of Business vide order dated 15.1.2005 which is high power committee headed by the Chief Minister. The decision to allot the land has been taken by the B.I.D.I. in accord-ance with law. Vide Gazette Notification dated 16.4.2005, the use of the land on J.N.L. Marg has been changed. Along with use of institutions, use of land for commercial and commercial establishment was added. In the additional affidavit of the Principal Secretary of the Urban Development and Housing Department Government of Rajas-than filed on 28.4.2007 various instances of

allotment of land by the B.I.D.I. from time to time at different prices has been set out to justify the allotment of land to respondent No. 4 at the rate of Rs. 25,000/- per square meter. An additional affidavit has also been filed by Secretary, Jaipur Development Authority on 28.4.2007.

Response by the respondent No. 4

22. The respondent No. 4 filed its counter affidavit on 26.3.2007 and stated that the World Trade Park is multi-activity infrastructure project for promoting investment, business, trade and industrial opportunities in the city of Jaipur. The project inter-alia provides for trade zones, platform for global trade, international trade, business investment and multifarious activities to promote business and trade through various events schedules/calenders. They have sought dismissal of the writ petition on the ground of res judicata as four other writ petitions challenging the said allotment had been dismissed by this Court and in one of the matters, the SLP filed form the order of dismissal of the writ petition also came to be dismissed. They have also reiterated the preliminary objection of delay and laches. They have justified the allotment of land to them as their project was covered in the category of Infrastructure Project and by Rule 15B of the Rules of 1974. According to them before the allotment of land, the decision making process had been elaborate and all the factors were considered by the B.I.D.I. They have given the details of the expenditure so far incurred on the project.

23. The petitioner has filed rejoinder as well as few other additional affidavits on different dates, the last of such affidavits is dated 151 May, 2007.

The IDA Act

24. The Jaipur Development Authority Act, 1982 for short (for short, "Act of 1982") was enacted for setting up the authority namely J.D.A. for the purpose of planning, coordinating and supervising the proper, orderly and rapid development of the Jaipur City and areas contiguous to it and to enable the J.D.A. to either itself or through other authority to formulate and execute the plans, projects and schemes for the development of Jaipur Region so that housing, community facilities, civic amenities and other infrastructure are properly created for the population of Jaipur Region in the perspective of 21st Century. Consequent upon the Act of 1982 JDA was constituted u/s 3. Its composition is provided in Section 4. Since the main object of the J.D.A. is to secure the integrated development of Jaipur Region, Section 16 provides for functions of the J.D.A. that, inter-alia, provides formulation and sanction of the projects and schemes for the development of the Jaipur Region and also execution of the projects and schemes. The provisions for Master Development Plan and Zonal Development Plan are contained in Sections 21 to 28. Sections 29 to 37 deal with the control of development and use of land included in the plans. Sections 38 to 43 make provision for projects and schemes. Acquisition and disposal of land are provided in Sections 44 to 64.

25. Section 54 is reproduced as it is:

54. Land to vest in the Authority and its disposal-

(1) Notwithstanding anything contained in the Rajasthan Land Revenue Act, 1956 (Rajasthan Act No. 15 of 1956), the land as defined in Section 103 of that Act, excluding land referred to in Sub-clause (ii)of clause (a) of the said Section and nazul land placed at the disposal of a local authority u/s 102A of that Act in Jaipur Region shall, immediately after establishment of the Authority, u/s 3 of this Act, be deemed to have been placed at the disposal of and vested in the Authority which shall take over such land for and on behalf of the State Government and may use the same for the purposes of this Act and may. Dispose of the same [by way of allotment, Regularization or auction] subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner as it may, from time to time, prescribe:

Provided that the Authority may dispose of any such land-

(a) Without undertaking or carrying out any development thereon; or

(b) after undertaking, carrying out such development as it thinks fit, to such person, in such manner and subject to such covenants and conditions, as it may consider expedient to impose for securing development according to plan.

(2) No development of any land shall be undertaken or carried out except by or under the control and supervision of the Authority.

(3) If any land vested in the Authority is required, at any time by the Nagar Nigam, Jaipur for carrying out its functions, or by the State Government for any other purpose, the State Government may, by notification in the Official Gazette, place such land at the disposal of the Nagar Nigam, Jaipur or any Department of the State Government on such terms an d conditions, as may be deemed fit.

(4) all land acquired by the Authority, or by the State Government and transferred to the Authority, shall be disposed of by the Authority in the same manner as may be prescribed for land in Sub-section (1).

26. Then there is Section 90 that provides for control by the State Government in the functions of the J.D.A. It reads thus:

90. Control by State Government-

(1) The Authority shall exercise its powers and perform its duties under this Act in accordance with the '' policy framed and the guidelines laid down, from time to time by the State Government for development of the areas in the Jaipur Region.

(2) The Authority shall be bound to comply with such directions which may be issued, from time to time, by the State Government for efficient administration of this Act.

(3) If, in connection with the exercise of the powers and the performance of the duties of the Authority Under this Act, any dispute, arises between the Authority and the State Government, the matter shall be decided by the State Government

and its decision shall be final.

Disposal of Urban Land Rules

27. That the Rules called the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 (for short, ''Rule of 1974'') continue to operate even after coming into force of the Act of 1982 is not in dispute before us. Rule 15. Rule 15 reads thus:

15. Allotment and sale of nonresidential land-Land for non residential purposes shall be allotted to public and charitable institutions on terms and conditions prescribed Under these Rules provided that lands of commercial, nature shall be disposed of by public auction in the manner [as prescribed in Annexure A] provided further that lands reserved for cinemas. [Luxury hotels, [Film Studios and Amusement Parks], [Hospital, Diagnostic Centre,. Nursing Homes and Tourism Unit] petrol, pumps and for setting up godowns by [XXX] persons having authorized agencies of domestic gas allotted to them shall be disposed of in accordance with the directions of the State Government that may be issued from time to time:

Provided that plots of land for consumer Co-operative Stores duly certified to the registered with the Assistant Registrar, Co-operative Societies of the concerned District, shall be allotted in the commercial areas on the reserve price of the scheme. The price shall be recovered in four equal annual installments:

Provided further that the number and size of such plots shall be determined by the Trust in consultation with the Government.

Provided further also that the price for allotment of land for gas godowns to be, set up by War widows, member of Scheduled Castes and Scheduled Tribes and handicapped persons shall be the reserve price determined for land meant for commercial use in the scheme and for other category of persons the price shall be double the reserve price determined for land meant for commercial use in the scheme.

28. Rule 15-B that was brought in the Rules of 1974 wit effect from 21.4.2001 provides that the land for infrastructure projects may be allotted on such terms and conditions and at such rates as may be determined by the State Government form time to time and after obtaining the prior approval of the State'' Government. We produce Rule 15-B as it is:

15-B Notwithstanding anything contained in these Rules, land may be allotted with the prior approval of the State Government for infrastructure projects which includes power plant, telecommunication, transport facilities, tourism units, public utilities, information technology, water supply, technical education institutions, waste disposal project, on such terms bend conditions and at such rates as may be determined by the State Government from time to time.

The distribution of state largesse

29. In a welfare State, the Government has to in a fair, transparent, just and reasonable manner. It must, as said by Mr. Justice. Frankfurther in Viteralli v. Saton 359 U.S. 535, rigorously held to the standards by which it professes its actions to be Judged. No action of the Government can be founded on the arbitrary exercise of power nor can any individual be chosen for distribution of state''s largesse on its liking. The Government cannot be permitted to its action in favour of any person on the of its discretion to do so unless such exercise of discretion is founded with clear cut guidelines and policy bereft of unreasonableness or arbitrariness.

30. The Government, said the Supreme Court in the case of Ramanna D. Shetty, does not stand in the position as that of private individual and being the Government, when it acts in the matter of granting largesse cannot act arbitrary. In Ramanna D. Shetty the Supreme Court agreed with the observations made in v. V. Punnen Thomas Vs. State of Kerala, that the Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still Government and will be subject to restraint, 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. Any impression that the Government has a right to enter into contractual relation like any other private individual was out rightly rejected in Ramanna D. Shetty.

31. In the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, , the Supreme Court observed that stated-owned or public owned property is not to be dealt with at the absolute discretion of the executive.

32. Section 54 of the Act of 1982 inter alia provides that the land vested in the J.D.A. may be disbursed by way of allotment, regularization or auction subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time, prescribe.

33. The Rules of 1974 deal with the disposal of the land by way of allotment, regularization or auction. Rule 15-B over rides the provisions contained in the Rules regarding disposal of the and by the authority as it provides that the land may be allotted with the prior approval of the State Government for infrastructure projects at such terms and conditions and at such rates, as may be determined by the State Government from time to time.

34. Though the public auction of the disposal of the Government land is the ordinary Rule, it is not invariable. In case of M.P. Oil Extraction and Another Vs. State of M.P. and Others, , the Supreme Court on consideration of some of its previous decisions 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, ; State of M.P. v. Nandlal Jaiswal 1986 SCC 566 Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, ; Brij Bhushan and Others Vs. State of Jammu and Kashmir and Others, and G.B. Mahajan and

others Vs. The Jalgaon Municipal Council and others, held that although ensure, fair play are transparency in State action, distribution of largese by inviting open tenders or 1 public auction is desirable but it cannot be held that in no case distribution of such largess by negotiation is permissible.

The guidelines for disposal of land under Rule 15B.

35. What is important, in our considered opinion, for the purposes of exercise of power Under Rule 15-B, is the existence of definite guidelines and policy for allotment of land for the purposes of infrastructure projects. The approval of the State Government has to be based on definate guidelines and the policy. Any allotment of land Under Rule 15-B based on arbitrary improvisation by ad-hoc procedure to meet the exigency of a particular case cannot be countenanced and may render such decision or allotment unsustainable in law. Reserve price and competitive bidding necessarily obviates arbitrariness and provides transparency.

Section 90(2)

36. Section 90(2) of the J.D.A. Act is to the effect that the State Government can direct the authority to exercise its powers and perform its duties in accordance with the policy framed and the guidelines laid down from time to time. Under this Section, the policy and guidelines can be issued for general application or, for a class persons or area or based on some other criteria a may with stand the test of Article 14 of the Constitution. This is what was said by the Supreme Court in the case of Ganga Retreat and Towers Ltd. and Another Vs. State of Rajasthan and Others, . The Supreme Court went on to say further that the power conferred by Section 90 cannot be exercised by the Government to give directions in on individual or particular case.

B.I.D.I. and the Rules of Business

37. The Principal Secretary, Urban Development and Housing Department in his affidavit filed on 25.4.2007 has stated that the Rajasthan Rules of Business came to be amended by the Government of Rajasthan vide Notification No. P.27 (6) CAB/99 dated 10.1.1999 and the existing Rule 55 of the Rules of Business was replaced by the amended Rule 55. Amended Rule 55 reads thus:

55(1) With a view to expediting the decision making in specific sectors of Governmental functioning, wherever it is considered necessary, in public interest to do so, all empowered committee may be set up by the Government in the concerned administrative department with the prior approval of the Chief Minister. Such an Empowered Committee would be fully competent to take any decision including approvals of estimates sanctioning of expenditure granting concession and incentives etc. for achieving the objective and fulfilling the purpose for which the committee has been set up.

(2) The proposal for setting up and Empowered Committee shall be put up for the approvals of the Chief Minister by the Secretary of the Department concerned through the Chief Secretary and Ministers/State Minister in charge of the

Department. The proposal should clearly specify the composition and the purpose of setting up such a Committee as also the terms of reference including functions and powers proposed to be given to, such Empowered Committee.

(3) It would be competent for the Government to set up Committees more than one in a specific sector depending upon the requirement of the appropriate levels related to financial and other administrative implications of the subject matter.

(4) The decisions of such an Empowered Committee (s) shall be complied with by the departments which they relate and further examination and scrutiny and approval at various levels by the Departments concerned shall not be necessary.

38. According to the State Government, the amended Rule 55 enabled it to set up empowered committees with a view to expedite decision making in specific sectors of Government functions.

39. B.I.D.I. was constituted vide Notification dated 26.10.1999. The said Notification was, Superseded by the Notification dated 15.1.2005. The mandate of the B.I.D.I., inter alia, empowers it to consider and review schemes and provide directions for accelerating investment into the State, to clear projects pertaining to investment involving Rs. 25/- crores and above dispose of the cases not decided within the stipulated time by the administrative department pertaining to investment, amendment in investment policies to approve a customize package of incentives bringing investment catalysing employment and further investment into the State.

40. In the case of State of Haryana Vs. P.C. Wadhwa, IPS, Inspector General of Police and Another, it was held that the Business Rules framed under Article 166 are for the convenient transaction of the business of the Government and for the allocation of business among the Ministers. Such Rules cannot override the provisions of the Act or any statutory Rules.

41. Seen thus, the direction by the B.I.D.I. to the J.D.A. for allotment of huge piece of land to the, respondent No. 4 to meet the exigency of a particular case, without any guidelines and the policy for a general application or for a class persons or area or. Some other criterion taking shelter of the powers u/s 90(2) of the J.D.A. Act and the Rules of business, strictly speaking, may not be proper. The question, however, is: does the allotment, of land to the respondent No. 4 for the establishment of World Trade Park on the direction of the State Government call for any interference in this, writ petition. Our answer is in the negative for the reasons that we immediately indicate hereinafter.

The line of previous PILs

42. The present writ petition in challenging the allotment of the land to the respondent No. 4 is fifth in line. The present petitioner challenged the allotment of land to the respondent No. 4 for World Trade Park previously by filing Writ Petition No. 7593/2005 on 14.9.2005 on the exactly identical grounds. That writ petition was also filed in the nature of public interest.

43. One S.K. Saini filed another writ petition being Writ Petition No. 7976/2005 for the identical reliefs and on the same cause of action concerning allotment of land to the respondent No. 4. Though that writ petition was filed a few days later than the writ petition filed by the petitioner, yet the fact of the matter is that S.K. Saini''s writ petition came up for consideration before the Division Bench earlier in point of time. On 27.9.2005 the writ petition filed by S.K. Saini was dismissed by the Division Bench of this Court at the admission stage. It was observed that no representation was given by the petitioner to the concerned authorities. The appropriate course for the petitioner was to give the representation to the concerned authorities for an appropriate action. Exactly three days later the Writ Petition No. 759/2005 filed by the petitioner came up before he Court. On 30.9.2005 the said writ petition was dismissed by the following order:

By this petition, in the nature of Public Interest Litigation, Mr. Bhandari has, challenged the allotment of land to World Trade Park.

He submits that the land was meant for facility area. He further submits that the possession was given on 25.5.2005, while the land has been allotted on 2.7.2005. His third submission is that the land has been sold contrary to Rule 115A of Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974. The same allotment has also been challenged in the other writ petition in the nature of the Public Interest Litigation i.e. CW No. 7976/2005. That has been dismissed on 27.9.2005. Considering the submissions and the fact that earlier similar writ petition has been dismissed by this Court, no case is made out for interference.

This petition is also dismissed.

44. Yet another Writ Petition No. 8265/2005 came to be filed by one Shripal Jain in the public interest on 28.9.2005 praying therein the cancellation of allotment of land given by the J.D.A. to the various persons and institutions including the land allotted to the present respondent No. 4. The said writ petition was dismissed on the ground that no representation was given by the petitioner, and nothing was shown that the allotments were against the interest of public.

45. Shripal Jain is said to have made representation to the concerned authorities as was observed in the order dated 20.10.2005 when no response was received from respondents, he filed another writ petition, being Writ Petition No. 10223/2005.

46. The said writ petition (Writ Petition No. 10223/2005) was dismissed on 4.1.2006 by the Division Bench presided over by Hon''ble the Chief Justice by the following order:

This writ petition has been filed as a public interest litigation questioning the decision of the State Government to constitute the Board of Infrastructure Development and Investment Promotion for the purpose of allotment of land. It appears that the said Board has been constituted to promote investment in the State. The grievance of the petitioner is that two statutory bodies namely, Jaipur

Development Authority and the Municipal Corporation are in place in the city of Jaipur and, therefore, there was no need to constitute any Board. The submission is wholly fallacious. Firstly, it is the policy matter of the State Government to constitute a body for a particular purpose. Secondly, the purpose for which the Board has been constituted does not fall ''within the ambit of Jaipur Development Authority Act or the Municipal Corporation Act. The petitioner has also questioned the manner in which land is proposed to be allotted to persons mentioned in Schedule ''A'' to the writ petition namely International Habitat and Convention Centre, New Delhi. Radisson Hotel International, New Delhi. Bharat Hotels Limited, New Delhi, TG Leisure and Resorts (P) Ltd., New Delhi, World Trade Park and Gold Souk Projects, M/s. Hero Honda Company, Mahindra and Mahindra and Arihant Cine World Pvt. Limited. The case of the petitioner is that lands are being allotted at throw away price much below market rate. No supporting document has been brought on record to substantiate the case. It appears that the petitioner had moved this Court earlier making same grievance in D.B. Civil Writ Petition No. 8265/2005 which was dismissed with observation that "no material is there whether the allotment is not in accordance with law or contrary to the interest of public". In the present petition no fresh material has been brought on record. The only development is that in the meantime the petitioner claims to have filed a representation in the light of the observations of this Court in the said writ petition. The representation appears to have been filed on or about 25th November, 2005 i.e. only about six weeks ago. No ground for interference by this Court is made out.

The petition is dismissed.

47. Shripal Jain challenged the aforesaid order dated 4.1.2006 by filing SLP to the Supreme Court. The SLP was dismissed on 3.3.2006.

48. The issue, thus, relating to the allotment land to the respondent No. 4 had come up before this Court on almost the similar grounds number of occasions previously.

49. It is true that some of the writ petitions filed earlier were dismissed for want of representation having been given by the petitioner before approaching the Court but the fact of the matter is that the Court did not find any ground for interference in the matter. This is clearly reflected from the order dated 4.1.2006 passed by the Division Bench in the matter of Shripal Jain. (Writ Petition No. 10223/2005). The SLP there from was dismissed by the Supreme Court.

Res-Judicata in PILs

50. In State of Karnataka and Another Vs. All India Manufacturers Organization and Others, , the three Judge Bench of the Supreme Court reiterated the legal principles of res-judicata and its applicability to the public interest litigation thus:

32. Res-judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim nemo debet bis vexari pro una et eadem

causa (no one ought to be twice vexed for one and the same cause) and second, public policy that there ought to be an end to the same litigation. It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "CPC") is not the foundation of the principles of res-judicata, but merely statutory recognition thereof and hence, the Section is not to be considered exhaustive of the general principle of law. The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to re-agitate the matter again and again. Section 11 CPC recognizes this principle and forbids a court from trying any suit or issue which is res-judicata, recognizing both "cause of action estoppel" and "issue estoppel"

51. The Supreme Court went on to observe in paragraph 35 of the report thus:

As a matter of fact, in public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a Judgment in previous public interest litigation would be a Judgment in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised, should have been raised on an earlier occasion by way of public interest litigation.

52. Though the contention was raised by the petitioner that the petitions filed by M/s. S.K. Saini and Shripal Jain were not bonafide, but we find nothing on record to suggest this. On the contrary it was not disputed that Shripal Jain like the petitioner had been espousing the cause public interest. He has filed numerous petitions in public interest.

53. Mr. Poonam Chand Bhandari also argued that in none of the orders passed by this Court, the controversy has been decided on merits. He may be right to that extent but the fact of matter is that the Court found no ground for interference in all these writ petitions.

Delay and laches

54. Moreover, the construction of the World Trade Park having substantially progressed by the time the present writ petition was filed; any interference jn the order of allotment of land to the respondent No. 4 is not justified and, rather would be prejudicial to the public interest. The respondent No. 4 has stated in its counter affidavit that after approval by the Government the project has continued un-hindered. They have by now made an investment of Rs. 113 crores; thus one third of the budget has already been spent. The contract, of Rs. 54 Crores is said to have been issued for civil works to M/s. Shapoorji Pallonji and Company limited after global tender of which Rs. 22.54 crores has been disbursed. Work of Rs. 45 Crores is said to have been awarded to M/s. Sterling Wilson Electricals Pvt. Ltd. Structural Glazing Work of Rs. 35 crores, the respondent No. 4 says, has been awarded to M/s. Pinkline Glasses Private Limited of which Rs. 9.29 crores has been disbursed. Large Number of workers and staff have been engaged and, machinery worth over Rs. 10 Crores have

been employed at site. The area of approximately 1.5 lac square ft. has already been cast. Annexure-8 (pages 166 to 169) depicts the progress of construction. Surely, it is not in the public interest at this distance of time to undo what has already been done. The extent of progress that has already been made in completion of the project rather demands that the project is completed at the earliest in the public interest since the completion of project may boost the trade an business activities in the city of Jaipur and provide direct arid-indirect employment to good number people.

55. Though the allotment of the land to the respondent No. 4 may not be strictly proper for what we have already noticed above in view of the legal position that the Rules of Business cannot override the statutory provisions and the Rules nor the direction can be given by the State Government in exercise of its control u/s 90(2) in one individual or a particular person and that for the purposes of exercise of power Under Rule 15B, the existence of definite guidelines and policy for allotment of land for infrastructure project is necessary yet the fact of the matter is that the allotment of, the subject land has been made by the J.D.A. to the respondent No. 4 and not by the State Government albeit at the direction of the State Government; the decision making process by the State Government has been extensive and elaborate. The proposal has been examined at various level inasmuch as no sooner the proposal was received from the respondent No. 4, the B.I.D.I. after the consideration of the said proposal, directed the Chief Secretary and Additional Chief Secretary to the Chief Minister to consider the proposal for setting up the World Trade Park and put up the recommendations regarding allotment in the next meeting of B.I.D.I. The Chief Secretary, accordingly, held the meeting on 18.1.2005. That was attended to by the Principal Secretary-Urban Governance, Principal Secretary-Finance, Commissioner-J.D.A., Secretary-SSI, Secretary-Urban Governance and Chief Town PlannerJDA. In the said meeting, the Chief Secretary directed the J.D.A. and Finance Department to study the entire issue in the, context of the presentation made by the respondent No. 4 and further directed the placement of the matter for consideration by B.I.D.I, once the views of the concerned Departments were available. The J.D.A. after receiving the communication from the Chief Secretary recommended designation of the project as Infrastructure Project and Rs. 25,000/- per square meter were proposed as the rate of allotment. The J.D.A. also proposed the permission for commercial use. The entire material pertaining to the issues including the recommendations, comments offered by the Departments were then placed before the B.I.D.I. which ultimately took decision to allot the said land to the respondent No. 4 at Rs. 25,000/- per square meter on the conditions stated therein. The material available on record does not indicate that the decision by the B.I.D.I. was actuated with ulterior motive or it was taken for extraneous reasons.

The prece.

56. The argument was advanced by the petitioner that on 4.6.2005, the J.D.A.

itself fixed the reserve price on J.N.L. Marg at Rs. 40,000/- per square meter, then how on 2.7.2005 the land could be allotted at the rate of Rs. 25,000/- per square meter to the respondent No. 4. It was submitted that in Sector 9, shop land was allotted in auction @ Rs. 45,000/- per square meter by the Rajasthan Housing Board about three years ago and in adjoining area-Gaurav Tower, the reserve price for auction was Rs. 35,000/- per square meter fixed by the J.D.A. few years back; thus the allotment of land to the respondent No. 4 @ Rs. 25,000/- per square meter shows favoritism.

57. The position with regard to the price of the land @ Rs. 25,000/- per square meter has been explained in the affidavit of the Principal Secretary. It is stated that in the very meeting dated 20.4.2005 whereby the decision was taken to allot the land to respondent No. 4 @ Rs. 25,000/- per square meter, the land ad-measuring 10,000 square meter situate on Jawahar Lal Nehru Circle near Jagatpura, Road Petrol Pump was allotted to M/s. Aerens Gold Souk International Limited for Rs. 25,000/- per square meter. The other instances of the allotment to various entrepreneurs at Jawahar Lal Nehru road, Jawahar Circle and Jagatpura road have been given.

57.1. Once the decision to allot the subject land to the respondent No. 4 at the rate of Rs. 25,000/- was taken by the B.I.D.I. on 20.4.2005 and in performance thereof 15% price was paid by the respondent No. 4 upfront, the subsequent revision of the reserve price for the area by the J.D.A. though before the formal letter of allotment, would not lead to an inference that the land was allotted to the respondent No. 4 at lower price.

58. Looking to the past precedents, the allotment of land to the respondent No. 4 (ft Rs. 25,000/- per square meter cannot be said to be unconscionably low or to favour the respondent No. 4.

Whether an infrastructure project

59. The argument of the petitioner that the State Government did not treat the World Trade Park project as infrastructure project does not appeal us. The petitioner took us through various documents to show that the project was commercial and not infrastructure. It is true that there is no order of the State Government designating the world. Trade Park as an infrastructure project, but the fact of the matter is that the J.D.A. through its Commissioner on 24.2.2005 recommended to the government that the said project be designated as infrastructure project. It was on that recommendation that the State Government acted. Moreover Rule 15-B does not contemplate any specific order by the State Government declaring a project as an infrastructure project.

60. In conventional meaning infrastructure projects would be projects concerning roads, ports and airports but in the context of economy and development, the projects of diverse nature leading to overalls development shall be nothing but infrastructure projects and it is for this reason that Rule 15-B has widened the scope of infrastructure projects by using the term "includes". A brief sketch of

the project that we have indicated in the beginning of the Judgment would bring the project of World Trade Park in the category of infrastructure project. Obviously every infrastructure project has an element of commerce and, therefore, in that sense ''commercial'' but for the purpose of applicability of Rule 15-B what is important is that the project must be primarily infrastructure project. Once the said category has been carved out with regard to the infrastructure projects, Rule 15-B of the Rules of 1974 comes into play and Rule 15 that relates to disposal of land for commercial purposes shall stand excluded.

61. By relying upon the decision of the Supreme Court in the case of the The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another, , the petitioner submitted that the word "includes" in Rule 15-B indicates all projects of infrastructure which are included therein and. thus, exhaustive. The word "includes" is generally used as word of extension. However, as held by the Supreme Court in the said decision that there cannot be any inflexible Rule that the word ''includes'' should be read always as a word of extension without reference to the context. In the same context the word "includes" might suggest a different intention i.e. limitation. Having carefully read Rule 15-B, in our view, the word ''includes'' therein is a word of extension and not limitation. The projects mentioned therein are only illustrative and not exhaustive.

62. In view of the fore-going discussion, our conclusions are thus: that Section 90 of the Jaipur Development Authority Act, 1982 permits the State Government to direct the J.D.A. to exercise its powers and perform its duty in accordance with the policy framed and the guidelines laid down from time to time; that such policy and guidelines can be issued for general application or for a class of persons or area or based on some such other criteria in conformity with Article 14 of Constitution but the power conferred by Section 90 cannot be exercised by the Government to give direction in respect of one individual particular case; that for exercise of power Under Rule 15-B, the existence of definite guidelines and policy for allotment of land for the purposes of infrastructure projects is necessary - the reserve price and competitive bidding obviates arbitrariness that the Business Rules framed under Article 166 of the Constitution of India are for the convenient transaction of the business of the State Government and for the allocation of business among the Ministers and such Rules cannot over-ride the provisions of the Act or the statutory Rules; that though the allotment of land to the respondent No. 4 may not withstand the tests afore-referred yet the said allotment does not call for any interference because of the dismissal of previous writ petitions and the substantial progress having already been made in completion of the project and also because the decision for allotment of land was taken after extensive consultation and that allotment is found to have not been made for extraneous reasons and at unconscionable low price. The writ petition disposed of accordingly.

