
(2012) 11 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (P.I.L.) No. 26943 of 2009

Rajendra Tyagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Uttar Pradesh Industrial Area Development Act, 1976 — Section 17, 2(d)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117,
117(1), 117(2), 117(6), 143

Citation : (2012) 11 ADJ 723 : (2013) 1 AWC 886

Hon'ble Judges : Amitava Lala, Acting C.J.; P.K.S. Baghel, J

Bench : Division Bench

Advocate : Samir Sharma, for the Appellant; Ashwani Kumar Misra, D.K. Tiwari, Ramanand Pandey, S.C., Brijesh Dubey, Prem Chandra, V.K. Tewari, U.K. Tiwari and M.S. Piparsenia, for the Respondent

Judgement

1. This public interest litigation has been filed by the petitioner claiming himself to be a public spirited citizen and also elected Nigam Parshad and Member of the Ghaziabad Development Authority Board. The case of the petitioner as of now is that Village Dunda Hera, Pargana Loni, Tehsil and District Ghaziabad (in short called as the "village in question") is situated on National Highway No. 24, which connects New Delhi to Lucknow. The distance of village in question from New Delhi is about 20 Kms. The land in the village in question is having present market rate of Rs. 20,000/- per square meter and above. The respondent No. 7, which is a real estate company, has itself purchased the land in the village in question in the year 2009 and paid stamp duty @ Rs. 12,000/- per square meter under various sale-deeds. On 11th August, 1954 the State Government issued a notification, whereby the land in the village in question was vested in the then Ghaziabad Nagar Palika, now Ghaziabad Nagar Nigam, upon abolition of zamindari by virtue of Section 117(1) of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 (in short "Act, 1950"). On 29th January, 1972 a

notification was issued under the Uttar Pradesh (Regulation of Building Operations) Act, 1958 (in short "Act, 1958") notifying the land in the village in question as regulated area under said Act. On 09th March, 1977 a notification was issued under the Uttar Pradesh Urban Planning and Development Act, 1973 (in short "Act, 1973") notifying the land in the village in question as a development area of the Ghaziabad Development Authority (in short "GDA"). On 07th May, 1981 the State Government issued a Government order delegating the power u/s 117 of the Act, 1950 to the respective Collectors and Commissioners. Thereafter, on 21st February, 1994 a notification was issued u/s 2 (d) of the Uttar Pradesh Industrial Area Development Act, 1976 (in short "Act, 1976") notifying the land in the village in question as an industrial area and thereby the said land was automatically excluded from the development area of the GDA by virtue of operation of Section 17 of the Act, 1976. Subsequently, another notification was issued on 07th May, 1999 de-notifying the land in the village in question under the Act, 1976. On 26th December, 2006 the respondent No. 7 submitted a proposal before the GDA for acquisition of 91 acres of land in the village in question and for resumption of 52.10 acres land belonging to Ghaziabad Nagar Nigam. On 02nd March, 2007 the District Magistrate, Ghaziabad wrote a letter to the Commissioner, Meerut Division, Meerut specifically mentioning that the resumption is being done for the respondent No. 7 and the market rate of the land is Rs. 4800/- per square meter. A letter was also sent by the respondent No. 7 to the Commissioner, Meerut Division, Meerut on 13th March, 2007 for reconsideration of the rate for resumption of the land. Upon such request of the respondent No. 7, on 15th March, 2007 the Commissioner, Meerut Division wrote a letter to the District Magistrate, Ghaziabad directing him to submit a fresh report regarding value of the land sought for resumption. Pursuant to such direction, on 18th April, 2007 the Tehsildar, Sadar, Ghaziabad and Sub-Divisional Magistrate, Ghaziabad submitted a report regarding valuation of the entire land to be approximately Rs. 95 crores @ Rs. 4800/- per square meter, which report was forwarded by the District Magistrate to the Commissioner through his letter dated 16th June, 2007.

2. It is stated that thereafter, on 07th July, 2007 the budgetary meeting of the House of Ghaziabad Nagar Nigam was convened and at the very last moment an agenda was surreptitiously circulated proposing to resume 48.884 acres of land belonging to Ghaziabad Nagar Nigam so that it is made available to the respondent No. 7, whereas, according to the petitioner, on the day when budgetary discussion is to take place, no other item is placed on the agenda for consideration and further in such meeting, neither any discussion was held nor any decision was taken on the said proposal. However, on 30th August, 2007 when minutes of meeting of the House were circulated for its affirmation/ approval in the next proposed meeting, then the petitioner alongwith other Parshads surprisingly found and came to know that the move for resumption of 19.7883 hectare of land was shown to have been passed on 07th July, 2007 in favour of the respondent No. 7 by voice vote. Subsequent thereto, when the next

meeting of the House was held on 07th September, 2007, the confirmation of minutes of the meeting dated 07th July, 2007 came up and the proposal contained in the resolution No. 29 dated 07th July, 2007 was rejected in the House. The Mayor of the House immediately informed the Nagar Ayukta, Ghaziabad Nagar Nigam in writing about rejection of the proposal and also requested that this be intimated to all other concerned including Commissioner, Meerut Division, Meerut and the State Government as well.

3. It appears that in the meantime some correspondences were made between the GDA and respondent No. 7 and also between the concerned Commissioner and District Magistrate to provide the land in the village in question to the respondent No. 7 at a low cost and in this regard, some meetings were also held under the chairmanship of the Commissioner, Meerut Division, Meerut. Ultimately, on 12th September, 2007 the Commissioner, Meerut Division, Meerut issued an order/notification, whereby the land in the village in question measuring about 46 acres or nearly 19 hectares was resumed for being given to the respondent No. 7. Challenging such notification dated 12th September, 2007, the petitioner filed Civil Misc. Writ Petition (P.I.L.) No. 46193 of 2007 (Rajendra Tyagi v. State of U.P. and others), wherein on 01st October, 2007 a Division Bench of this Court was pleased to pass an interim order staying implementation of the order dated 12th September, 2007. Ultimately, the aforesaid public interest litigation was disposed of by this Court by order dated 18th July, 2008 on the ground that no right could be conferred to a private person u/s 117 (6) of the Act, 1950, and therefore, the order dated 12th September, 2007 was quashed by granting liberty to the respondents to issue a fresh notification and the petitioner was also granted the rights to raise his objections on all issues. The relevant part of the order dated 18th July, 2008 is extracted below:

The only short point involved herein is whether Section 117 (6) of U.P. Zamindari Abolition and Land Reforms Act, 1950, empowers the authority after resumption to confer any right through declaration on a private person or not. Under the impugned Notification dated 12.9.2007, the respondent No. 7 is mentioned as the beneficiary. But that cannot be made to be an integral part of the Notification under the said section when the scope is confined. Definitely, it affects the public interest, for which Public Interest Litigation is filed in 2007 and pending before this Court.

4. Relevant would it be to mention that on 16th July, 2008 notification was issued revising the circle rate in the village in question from Rs. 8000/- per square meter to Rs. 12,000/- per square meter.

5. However, on 25th September, 2008 GDA submitted a fresh proposal to the District Magistrate for resumption of the land in the village in question for the respondent No. 7. On 17th March, 2009 a notification has been issued by the Commissioner, Meerut Division, Meerut u/s 117 (6) of the Act, 1950 resuming 11.9020 hectares of land in the village in question to be transferred to GDA at the rate of Rs. 2000/- per square meter i.e. at a total cost of Rs. 21.80 crores.

According to the petitioner, such notification/order was issued without giving any notice or opportunity to the petitioner to raise his objections with regard to fresh proposal for resumption. It appears that pursuant to such notification, the District Magistrate, Ghaziabad by its letter dated 04th April, 2009 directed the Secretary, GDA to deposit the requisite amount so that the land in question could be transferred to the GDA and in pursuance of such letter, the Secretary, GDA, in turn, wrote a letter dated 09th April, 2009 to the respondent No. 7 directing to deposit the amount of Rs. 23,81,30,000/- with the GDA so that the land in question could be provided to the respondent No. 7 after being taken from the State Government. On 15th April, 2009 a letter was written by the respondent No. 7 to the GDA to allow it to deposit the amount in instalments. Accordingly, on 29th April, 2009 letter was written by the GDA to the District Magistrate to allow deposit of amount in instalments. The petitioner further contended that as soon as the petitioner came to know about the order/notification dated 17th March, 2009, he through his letter dated 13th April, 2009 requested the Commissioner, Meerut Division, Meerut to furnish copy of all the documents for resumption, based on which notification has been issued, so that the petitioner could file his objection and further when the petitioner came to know that the land in the village in question is going to be transferred to the respondent No. 7, he submitted his objections before the respondent authority against the resumption/transfer of the land to the respondent No. 7, but no response has been received by the petitioner thereon.

6. Against this background, on 21st May, 2009 this public interest litigation was filed wherein a Division Bench of this Court was pleased to pass an interim order of status quo by order dated 25th May, 2009. One of the grounds taken in the writ petition was that the land could not be resumed for/developed by the GDA as it did not fall within its development area.

7. Subsequently, on 12th January, 2010 a notification has been issued under the Act, 1973 notifying the land in the village as development area of GDA. On 27th April, 2010 the petitioner filed a supplementary affidavit annexing a copy of such notification dated 12th January, 2010. On 11th May, 2010 notification dated 12th January, 2010 was cancelled. On the same day i.e. 11th May, 2010 a letter was issued by the Principal Secretary of the State of Uttar Pradesh, Lucknow to GDA that the village in question is within the development area of the GDA since the date it was first declared as such by notification dated 09th March, 1977. Challenging such order dated 11th May, 2010, a public interest litigation, being Civil Misc. Writ Petition (P.I.L.) No. 40644 of 2010 was filed before this Court and the same was admitted.

8. Mr. Samir Sharma, learned Counsel appearing for the petitioner, submits that the impugned order dated 17th March, 2009 resuming the land in the village in question has been issued in colourable exercise of power, in undue haste and at the behest of the respondent No. 7, therefore, the same is most arbitrary and illegal and without jurisdiction. It has been issued only to confer undue benefit to

the respondent No. 7 at a throw away price and the order has been passed in violation of the principles of natural justice as no notice or opportunity has been given to the petitioner in spite of positive order of this Court.

9. Mr. Samir Sharma has submitted before this Court that from the aforesaid facts it is evident that the respondent authorities are trying to do something indirectly which is not permissible under the law directly and this is being done with the object of advancing private interest of respondent No. 7 at the cost of public interest. By the impugned action of the authorities, a loss of more than Rs. 150 crores is being caused to Ghaziabad Nagar Nigam/public exchequer as the land has been valued @ Rs. 2000/- per square meter as against the market rate of more than Rs. 20,000/- per square meter and also the circle rate of Rs. 8000/- to Rs. 12,000/- per square meter fixed by the State Government w.e.f. 16th July, 2008. The land measuring 11.9020 hectares in the village in question has been resumed by the impugned notification by invoking the provisions of Section 117(6) of the Act, 1950 and is being transferred to a private developer via GDA which is in violation of the said provision, as the resumption u/s 117 (6) cannot be made to transfer the resumed land in favour of any private party/person other than a local authority or Gaon Sabha. The land in question could only be resumed by amending or cancelling the notification dated 11th August, 1954 issued u/s 117(1) of the Act, 1950, whereby the same has been vested in Ghaziabad Nagar Nigam. Thus, the impugned order has been passed in the teeth of the principle of law, that if law prescribes a thing to be done in a certain manner, it has to be done in that manner or not at all. The Commissioner has exercised the power for resuming the land beyond the powers delegated under the Government order dated 07th May, 1981. Once the land in the village in question was notified under the Act, 1976 vide notification dated 21st February, 1994, then by virtue of operation of Section 17 of said Act the land was deemed to have been de-notified from any other Act and any Master Plan/Development Area. Therefore, even if by a subsequent notification dated 07th May, 1999 the land was de-notified under the Act, 1976, it would not automatically revert to being a part of the Master Plan/Development area of the GDA without any fresh notification. Hence, in absence of any fresh notification, the proposal to resume the land being based on a non-existent fact was itself fallacious.

10. Mr. Sharma has further urged that the order made in favour of the respondent No. 7 is in the teeth of Public Trust Doctrine. He has placed reliance on the judgement of the Supreme Court in Noida Entrepreneurs Association Vs. NOIDA and Others, . He further urged that the entire action of the respondents smack arbitrariness with a view to confer undue benefit to a Real Estate Company-the respondent No. 7 by transferring public Gaon Sabha land at throw away price. In pursuance of this submission he has placed reliance on the judgements of the Supreme Court in Maharaj Singh Vs. State of Uttar Pradesh and Others, ; Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others, and a judgement of this Court in Ansal Properties v. State of U.P. and others, 2011 (11) ADJ 468. He further submitted that in any view of the matter

allotting Gaon Sabha land to private individual on a throw away price is illegal. He has also placed reliance on the judgement of the Supreme Court in Jagpal Singh and Others Vs. State of Punjab and Others, . Lastly he submitted that since thereafter no fresh notification was issued either under the Act, 1958 or the Act, 1973 declaring the land in the village in question as a development area for the GDA, the land in the village in question could not be treated as part of the development area of GDA.

11. According to the respondent No. 7, by "National Habitate Policy, 1998" and "National Housing and Habitate Policy, 2005" the Government wanted to meet out the need of proper housing accommodation in the urban area. The respondent No. 7 is the licensee of the township. Majority of the land in the vicinity of the existing/adjustment L.L.C./resumed land has been purchased by the respondent No. 7 and its constituent members. Major infrastructure like road, water supply, gas station, police station, park, electric line, footpath, cycle track, etc. have been completed in accordance with the policy and more than 5000 families have started living in the city. No consolidation has ever been made in the village concerned. Due to such reason the land in question is falling in small patches on different places of the licence area of the township being developed by the respondent No. 7. Notification dated 17th March, 2009 has been issued by the Commissioner Meerut, Region, Meerut for resumption of lands of Nagar Nigam, Ghaziabad measuring 11.9020 hectares. The resumption has been challenged by a public interest litigation. The land in question is in the small patches scattered in the licence area of the township. Such small patches of land are of no use for Ghaziabad Nagar Nigam. Hence, the aforesaid resumption order has been passed to utilize the land for an integrated township. Under the housing policy of the State for an integrated township and other contractual obligation, the Government/GDA have to provide and transfer the land in question to the respondent No. 7 and/or its constituent company/members under the consortium.

12. The respondent No. 7 and its constituent company/members are ready to provide and transfer the own lands by way of Ekjahi through exchange without any consideration of money as provided under the circular dated 25th January, 1996. Sections 143 and 161 of the Act, 1950 as well as circulars dated 30th June, 2004, 29th October, 2004 and 25th January, 1996 issued by the State Government specifically provide the option of exchange of land in question to the respondent No. 7 and its constituent company/members of the consortium. In the aforesaid circumstances, the State Government/Nagar Nigam Ghaziabad may be directed to exchange the land in question with the respondent No. 7 and/or its constituent company/members under the consortium by way of Ekjahi through exchange without any consideration of money as provided under Sections 143 and 161 of the Act, 1950 and the aforementioned circulars.

13. We have considered the rival submissions and perused the records.

14. The proposal for resumption of the land was initiated in a meeting of the House of Ghaziabad Nagar Nigam on 07th July, 2007 to resume 48.884 acres

land belonging to the Nagar Nigam, Ghaziabad so that it is made available to the respondent No. 7. The said proposal was opposed and it was turned down/rejected in the House on 7th September, 2007. This fact is admitted in the counter-affidavit filed by the State authorities. The letter of the Mayor to the Nagar Ayukta dated 07th September, 2007 has been placed by the petitioner on record as Annexure-10 to the writ petition. Even after the said rejection, the Commissioner, Meerut Division, Meerut issued an order dated 12th September, 2007 to resume the said land to provide it to the respondent No. 7. The said order of the Commissioner came to be challenged in the Civil Misc. Writ Petition (PIL) No. 46193 of 2007 by the same petitioner and an interim order was granted staying the order of the Commissioner dated 12th September, 2007. The writ petition was disposed of on 18th July, 2008. Relevant portion of the order is quoted herein-below:

However, since Sri U.N. Sharma assisted by Sri C.B. Yadav contended before this Court that a Notification afresh can be issued eliminating the name of the Private party, therefore, we are of the view that the Notification should be quashed with a direction to Appropriate Authority to make issuance of the Notification as per its discretion. Hence the Notification dated 12.9.2007 is hereby quashed and it is open to the Appropriate Authority to declare the land in accordance with Section 117(2) of U.P.Z.A. & LR Act afresh.

Therefore, this Public Interest Litigation is disposed of on that issue alone.

However, the petitioner has every right to agitate all other points, before the concerned authority.

15. The order clearly recorded the statement of the learned counsel for the respondents that the notification can be issued eliminating the name of the private parties. A further direction was issued by this Court to pass a fresh order after giving opportunity to the petitioner. The petitioner herein was given liberty to agitate all other points before the concerned authority.

16. Indisputably the authority did not issue any notice to the petitioner nor gave any opportunity to him rather the Secretary of the Ghaziabad Development Authority by his communication dated 25th September, 2008 to the District Magistrate again submitted the same proposal in favour of the respondent No. 7. Pertinently, in this communication it is mentioned that the said action is in compliance of the order of the High Court. A perusal of the order of the High Court would demonstrate that no such direction was given by the High Court. Moreover, from this communication it is also clear that the petitioner was not issued any notice that the Ghaziabad Development Authority is again proceeding in the same matter for the same private respondent on the basis of the said communication dated 17th March, 2009 a fresh notification u/s 117(6) of the Act, 1950 for resuming 11.900 hectare of the land (same land) at the rate of Rs. 2000/- per square meter was made. In pursuance of the order of the Commissioner the Ghaziabad Development Authority granted indulgence of the

easy installments to the respondent No. 7, a private builder.

17. The impugned order has been passed without notice and opportunity to the petitioner despite of the fact that the Division Bench while disposing the writ petition in its order had clearly stated that the petitioner shall be given opportunity and he shall be at liberty to raise all the points. Therefore, in our view, the order has been passed in violation of principles of natural justice as no notice or opportunity was given to the petitioner.

18. Another important aspect of the matter is that indisputably the land resumed by the Commissioner has been allotted to a private individual without issuing any advertisement or public notice. The respondent No. 7 in its counter-affidavit has admitted this fact clearly that the Ghaziabad Development Authority has called some of the builders and after the negotiation the land has been allotted to the said respondent. The relevant portion of the counter-affidavit made on this issue is extracted hereunder:

The private developers are investing a huge amount only for public interest, private developers have been invited by Ghaziabad Development Authority, Ghaziabad and after complete scrutiny and judging financial status of the private developers, out of 10 private developers, 5 has been selected and License has been issued to the respondent No. 7 by the Ghaziabad Development Authority, Ghaziabad and Development Agreement dated 3.2.2007 between the respondent No. 7 and Ghaziabad Development Authority, Ghaziabad has also been executed laying down all terms and conditions for the purposes of developing the integrated township, the respondent No. 7 agreed.

19. The State in its counter-affidavit has preferred to give an evasive reply regarding method and procedure adopted for allotting the said land in favour of the respondent No. 7. There cannot be absolute discretion of the Ghaziabad Development Authority or the State authorities to allot the land in favour of a private respondent without following the law. The public interest was a paramount consideration. We also failed to appreciate that why the authorities had proceeded in such a hot haste after decision of this Court within two months without any information to the petitioner or public at large. Again a fresh notification has been made purported to be in compliance of the judgement of the High Court and in favour of the respondent No. 7, in whose favour the earlier allotment was set aside by this Court. The respondent No. 3 to 6 are public authorities. They were under the legal obligation to exercise their power reasonably and in good faith. The Supreme Court in Paragraphs-38, 39, 40 and 41 of NOIDA Entrepreneurs Association (supra) has laid down the law in the following terms:

38. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse, etc. acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately

accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee.

39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

40. The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. [Vide *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, ; *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, ; *Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation*, ; *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, and *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*, { *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, .]

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. [Vide *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, ; *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, ; *State of Punjab and Another Vs. Gurdial Singh and Others*, ; *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, ; *Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal*, ; and *N.D. Jayal and Another Vs. Union of India (UOI) and Others*, .]

20. The Supreme Court in a series of decisions has settled the law in respect of the distribution of the public largesse. Recently in *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others*, , the Supreme Court had occasion to deal with similar facts when the State of Madhya Pradesh had allotted land to a memorial trust, which was registered public trust without any public

notice or the advertisement. The relevant paragraph of the Supreme Court judgment reads as follows:

What needs to be emphasised 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 recognised 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 favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

21. In another similar matter the Supreme Court had set aside the allotment of the land in the judgement in *Humanity and Another Vs. State of West Bengal and Others*, . In this matter also a plot of land was allotted in the hot-haste. The Supreme Court found that no advertisement was issued nor any public notice was given before making the said allotment and as such the Supreme Court found that the action of the State authorities is in breach of principles of Article 14 of the Constitution. Relevant portion of the judgement being Paragraphs 29 and 30, for our purpose, is extracted hereunder:

29. Pursuant to such request of the allottee, another plot of land was allotted to him with exemplary speed by the Government, within a month, if we go by the normal pace in Governmental transactions. The request was made by the allottee for a bigger plot of land on 19.1.2009 to Mr. Ashok Bhattacharya, Minister of Urban Development and Municipal Affairs and from the said Department a communication was sent to the allottee on 17.2.2009, to the effect that after considering the request of the allottee, the Government was pleased to cancel its previous order of allotment and in lieu thereof was allotting a new plot of land being No. CA-222 measuring 62 kathas (which is actually 63.04 kathas).

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*, *Kasturi Lal* and other subsequent cases.

22. What emerges from the aforesaid decisions of the Supreme Court is that the Government authorities are not free to distribute the public largesse at their sweet will. Their action must be based on transparency without any discrimination. It is a trite law that the advertisement/public notice is one of the

most fair procedure where the State Authorities want to dispose/deal the public largesse to provide individual. Otherwise the action of the State smacks the arbitrariness and violative of Article 14 of the Constitution.

23. In the present case, it is not disputed that no public notice or advertisement has been issued. It is also not disputed that on 16th July, 2008 the circle rate of the concerned area was enhanced from Rs. 8,000/- per square meter to Rs. 12,000/- per square meter. However, the land has been allotted only at the rate of Rs. 2,000/- per square meter. Thus the allegations of the petitioner that there was a huge loss of the public exchequer, cannot be ruled out.

24. We are surprised that inspite of the fact that the earlier decision of the respondent was set aside by this Court, the respondents preferred to adopt the same procedure without even a slight deviation. It appears that the Secretary of the Ghaziabad Development Authority misconstrued the order of the Division Bench and in his communication he has mentioned that the action has been initiated for allotment of the land in favour of the respondent No. 7 in compliance of the order of this Court. As we have mentioned earlier, in the order of the Division Bench on the contrary there was a clear direction to delete the name of the respondent from the writ petition and the petitioner was permitted to raise all the points against resumption of the land by the Commissioner. This positive direction was ignored by the authorities without any cogent reason.

25. The Supreme Court in the judgement in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , held that "if the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."

26. In the counter-affidavit no reason has been mentioned as to why public notice has not been issued before allotment of such a huge track of the land in favour of the respondents.

27. No effort has been made by the authorities to verify whether the claim of the respondent No. 7 that he purchased 215.45 acre of the land was correct or not. This fact ought to have been enquired into seriously whether the private builder had actually purchased the 215.45 acre of land through the registered sale-deed and got the possession or not. To get the State land, builders get only the agreement to sell or such type of suspicious agreement to satisfy the authorities, who are willing to believe every documents and statement of the private builders. On the records, we do not find that the authorities have verified whether 215.45 acre land has been rightly purchased by the respondent No. 7 or not, before allotting the Gaon Sabha land to a private person. The said enquiry was imperative which has not been done in this case.

28. The respondent No. 4 in its counter-affidavit has mentioned that six licenses

were issued to the various reputed private Companies although ten applications were received for the purpose. In the entire counter-affidavit no where it is mentioned that whether any advertisement or public notice was issued or not. Paragraphs 19 and 20 of the counter-affidavit are extracted hereunder:

19. That the recommendations of High Power Committee was thereafter placed for consideration before the Authority in its board meeting and in the said board meeting, total number of 6 licences were issued to various reputed private companies, although 10 applications were originally received for the purpose. Copy of the minutes of meeting of Board meeting dated 25.5.2006 is enclosed and is marked as Annexure-CA-9 to this counter-affidavit.

20. That the provisions relating to invitation of proposals, its process and consideration as well as selection of private developers are result of transparent and uniform policy of the State, which has not been questioned so far.

29. We also find considerable force in the submission of Mr. Sharma that the State Government had vested the land in the Gaon Sabha and local authorities with the object that the property will be maintained for the public welfare. The power under sub-section (6) of Section 117 of the Act, 1950 can be invoked for some important public purpose only. It was not meant for the benefit of a private party. For the sake of convenience, Section 117 (6) of the Act, 1950 is extracted hereunder:

117 (6). The State Government may at any time, by general or special order to be published in the manner prescribed, amend or cancel any declaration, notification or order made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority and resume such thing and whenever the State Government so resumes any such things, the Gaon Sabha or other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any, effected by it in or over that things:

Provided that the State Government may after such resumption make a fresh declaration under subsection (1) or sub-section (2) vesting the thing resumed in the same or any other local authority including a Gaon Sabha, and the provisions of sub-sections (3), (4) and (5), as the case may be, shall mutatis mutandis, apply to such declaration.

30. However, we find that there is nothing on record to justify the decision of the Commissioner to exercise the power conferred under sub-section (6) of Section 117 of the Act, 1950 in favour of respondent No. 7, a private builder. Therefore, in our view, the exercise of the power by the Commissioner is a malice in law. The Supreme Court in some recent decisions had occasion to deal with the malice in law. In Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, , the Supreme Court has held as follows:

25. The State is under obligation to act fairly without ill will or malice--in fact or

in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.

26. Passing an order for an unauthorised purpose constitutes malice in law.

31. In *M.P. State Co-op. Dairy Fedn. Ltd. and Another Vs. Rajnesh Kumar Jamindar and Others*, , the Supreme Court has held that:

44. The power of judicial review of a superior Court although a restricted one, has many facets. Its jurisdiction is not only limited in the cases where the administrative orders are perverse or arbitrary but also in the cases where a statutory authority has failed to perform its statutory duty in accordance with law. An order which is passed for unauthorised purpose would attract the principles of malice in law.

32. After careful consideration and for the reasons given hereinabove, we are of the view that the impugned order dated 17th March, 2009 passed by the respondent No. 3, the Commissioner, Meerut Division, Meerut is liable to be set aside. Accordingly the impugned order dated 17th March, 2009 is set aside.

33. The Commissioner, Meerut Division, Meerut is directed to consider the matter afresh in the light of the judgments of the Supreme Court mentioned hereinabove and after giving opportunity to the petitioner. The petitioner is at liberty to submit fresh representation within a period of two weeks from the date of receipt of a certified copy of this order to the Commissioner, who will consider his cause after giving him opportunity of hearing. With the aforesaid observations and order, the writ petition is disposed of finally.

However, no order is passed as to costs.