

(1998) 02 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No. 30965 of 1996

S.P. Gururaja and Others

APPELLANT

Vs

The Executive Member, Karnataka Industrial Areas
Development Board, Bangalore and Another

RESPONDENT

Date of Decision : 07-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 226, 227

Karnataka Industrial Area Development Act, 1966 — Section 13, 17, 28 (1), 41 (2)

Citation : AIR 1998 Kar 223 : (1998) ILR (Kar) 1212 : (1998) 3 KarLJ 223

Hon'ble Judges : R.P. Sethi, C.J;V. Gopala Gowda, J

Bench : Division Bench

Advocate : Sri M.V. Seshachala, for the Appellant; Sri Ashok B. Hinchigeri and Sri Udaya Holla, for the Respondent

Judgement

V. Gopala Gowda, J.—The petitioners have filed this writ petition as a Public Interest Litigation seeking to quash the order at Annexure-B, dated 7-4-1995 by which the 2nd respondent Karnataka Industrial Areas Development Board (hereinafter referred to as "the Board") has allotted 175 acres of land in favour of the 3rd respondent B.P.L. India Limited, at the rate of Rs. 92/- per square metre. The petitioners have also sought for a direction to the 2nd respondent to develop the acquired land, invite applications for allotment of industrial plots from the general public and to allot the same in accordance with law.

2. Under a notification dated 2/4th September, 1991 issued u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as "the Act"), the Board acquired 296-26 acres of land in Dobospet for the purpose of establishment and development of industries. Out of that, the Board has allotted an extent of 175 acres of land under Annexure-B dated 7-4-1995 in favour of the 3rd respondent alone pursuant to the application made by it on 10-2-1995 as per Annexure-A. The allotment was made pursuant to the decision of the High Level Committee constituted by the Government.

3. The petitioners have contended that the said allotment is bad and contrary to law and the regulations of the Board. It is the contention of the petitioners that the land acquired should be utilised exclusively for the purpose for which it was acquired. According to them, the Board can acquire lands for three purposes. It is stated that the Board has allotted another bit of land to another entrepreneur at a cost of Rs. 8,80,000/- per acre and whereas the allotment made in favour of the 3rd respondent is at the rate of Rs. 3,72,324/- per acre. The petitioners contend that the allotment has been made contrary to the Regulations and in an arbitrary and unreasonable manner. It is the further case of the petitioners that the allotment has been made in favour of the 3rd respondent without inviting applications and without notifying the availability of land to the general public. According to the petitioners, the exercise of power by the Board is mala fide and suffer from legal malice. The further contention of the petitioners is that the procedure adopted by the 2nd respondent in allotting the land in favour of the 3rd respondent without notifying and without inviting applications is opposed to the public policy. It is stated that the 2nd respondent has chosen only the 3rd respondent for allotment of such vast extent of land according to their whims and fancies. The petitioners also contended that the allotment is discriminatory as other small industrialists have no opportunity to seek allotment of industrial plots. The action is also arbitrary since allotments have been made fixing different rate. The action of the 2nd respondent, according to the petitioners, shocks their conscience as it is in utter contravention of the provisions of the Act and the rules and regulations framed thereunder. It is further contended that the allotment of such bulk land in favour of a single unit has defeated the very purpose for which the lands were acquired and also defeated the object of the Act. Having contended so, the petitioners have prayed for exercise extraordinary jurisdiction of this Court under Article 226 of the Constitution of India in public interest.

4. The 2nd respondent has filed statement of objections. It is contended that the High Level Committee constituted by the Government under the Chairmanship of Hon"ble Minister for Industries has recommended for making available 220 acres of land immediately to the 3rd respondent for implementing their Colour Picture Tube for Televisions and Batteries Project and acquisition proceedings may be taken for acquisition of land for the additional requirement of land and in the 28th meeting held on 29-3-1995 it resolved to hand over 175 acres of land in favour of the 3rd respondent. Thereafter the Government had sanctioned infrastructural facilities vide its order dated 16-5-1995 (Annexure-R5). The 2nd respondent justifies the allotment relying upon Regulation 13 of the Regulations framed under the Act and contends that there is no illegality in the allotment of land and that there is no arbitrary exercise of power.

5. In the statement of objections filed on behalf of the 3rd respondent/BPL it is contended that the writ petition is not maintainable as the petitioners have no locus standi to file this writ petition. It is stated that the writ petition is liable to be rejected on the ground of delay and laches as the allotment of land in favour

of 3rd respondent was made on 7-4-1995 but the writ petition was filed on 11-11-1996. A specific contention is taken that the petition is also not maintainable as the procedure contemplated under Order 1, Rule 8, CPC has not been followed. It is also stated that the petition is not filed in public interest but it is filed at the instance of the land owners whose lands had been acquired. It is stated that already a sum of Rs. 8,431 lakhs is spent for implementing the project on the land allotted and the petition has been filed to prevent the company from proceeding further with the project. It is inter alia stated that any interference at this stage would jeopardize the investment. It is stated that there is no merit in this petition and prayed for dismissal of the petition.

6. Justifying allotment of land, Sri Ashok B. Hinchageri, learned Counsel for the 2nd respondent contended that in exercise of the executive power under Article 162 of the Constitution, the Government had constituted a single window agency to acquire and allot land in favour of new entrepreneurs for establishment of industries or for expansion of the existing units, which include allotment of industrial infrastructure like land, power, water etc. It is further contended that where an industrial project involves an investment of more than 50 crores of rupees, the decision to allot the land shall be taken by the High Level Committee constituted under the Chairmanship of the Hon'ble Minister for Industries. The Committee decided to allot the land required by the 3rd respondent and thereafter the Government has cleared the three projects of the 3rd respondent and decided to allot the land. It is contended that after consultation with the Director, Town Planning, the layout plan of the area was prepared comprising of 28 plots ranging from 1 acre to 210 acres. It is stated that plot Nos. 1 and 2 measuring 30 acres and 210 acres respectively were reserved in favour of the 3rd respondent.

7. Learned Counsel submits that the Government orders at Annexures-R1 to R3 constituting the single window agency, its modification thereafter, are passed under Article 162 of the Constitution and the decision taken by the said Committee is binding on the 2nd respondent and the allotment is justified. According to him the High Level Committee considered the requirement of the 3rd respondent as a special case and therefore did not allot the land under Regulation 7 by inviting applications but allotted the land under Regulation 13 of the regulations, which regulation, according to him, confers wide power on the Board notwithstanding Regulation 7.

8. Mr. Udaya Holla, learned Counsel for the 3rd respondent strenuously contended opposing the petition that the allotment of land in favour of the 3rd respondent was for the purpose of establishing an industry to achieve the object of the Act. According to him, by the establishment of the industry, which is the first of its kind in India, will save considerable amount of foreign exchange, the economy of the country will be improved and unemployment problem will be reduced to a certain extent and industrialisation will take place. It is submitted that the High Level Committee and the Board as also the Government had taken

into consideration the nature of the industry of the 3rd respondent and allotted the land. Absolutely there are no bona fides on the part of the petitioners in filing this writ petition and there is no cause of action to challenge the impugned allotment of land in favour of the 3rd respondent. It is contended that the report of Technical Consultancy Services Organisation of Karnataka (hereinafter referred to as TECSOK'), on which reliance has been placed by the petitioners to show the requirement of land, cannot be relied upon as the said organisation does not have any idea about the magnitude of the projects of the 3rd respondent. According to him, the contention of the petitioners that the allotment has been made at a lower rate, is not tenable. He submits that the details of cost price, development charges, the land to be used for the civic amenities, formation of roads etc., have been taken into consideration and by working out the detailed project report, the value of the land has been fixed. He relies upon the decision of the Supreme Court in *Administrator-General of West Bengal v Collector, Varanasi*, in this regard. He has also placed reliance upon paragraph 24 of the decision of the Supreme Court in *State of Madhya Pradesh and Others v Nandlal Jaiswal*, with regard to delay and laches. The Counsel contends that these petitioners have been set-up by the land owners and absolutely there are no bona fides on the part of the petitioners. It is contended that the action of the 2nd respondent is not discriminatory. He also contends that the petitioners have not placed any material to show that the lands in question were acquired for providing small plots in favour of small entrepreneurs. He contends that the allotment of land in question was in public interest and strictly in accordance with the policy of the Government. He prays that this Court need not interfere with the allotment of land made in favour of the 3rd respondent and for dismissal of the writ petition.

9. Having heard the learned Counsel for the parties and perusing the voluminous documents placed on record, we now proceed to examine the matter on the respective contentions of the parties.

10. The acquisition of land by the Board and allotment made in favour of the 3rd respondent are not in dispute. While petitioners have challenged the allotment of land in public interest, the respondent contend that petitioners have no locus standi to file this petition and that there is delay and laches. So far as the contention regarding delay and laches is concerned, we have to hold that the contention is untenable. The impugned allotment of land in favour of 3rd respondent by the 2nd respondent was under Annexure-B, which is dated 7-4-1995. The writ petition was filed on 11-11-1996. In paragraph 10 of the writ petition the petitioners have stated the reasons for not approaching the Court immediately after the allotment of the land. The reasons stated therein are convincing and acceptable. Even otherwise, once the petition is filed in public interest, this Court should not give much importance to such technical objections. Hence, rejecting the contention of the respondents in this regard, we proceed to examine the other contentions.

11. The other technical objection raised to the petition by the respondents is that the petitioners have no locus standi and the petition is not maintainable as the same is not filed in public interest. In the first paragraph of the petition itself the petitioners have stated that they are espousing a public cause in this petition; that they are actively involved in social work and that they have instituted this petition on behalf of small entrepreneurs who propose to start small scale industries. In paragraph 3 they have contended that the Board has allotted the land in question contrary to its own regulations. In paragraph 7 they have stated that the arbitrary action of the Board has shaken their conscience and as citizens of this country have approached to set-right the continuous illegalities being committed by the Board in allotment of industrial plots. Even the prayer of the petitioners is for quashing of the allotment of land and for a direction to the 2nd respondent to develop the acquired land, call for applications from the general public and make allotments in accordance with law. They have not prayed for any relief in their favour. Whether the challenge made to the allotment is genuine or not, is a different aspect and the same will have to be considered on merits. But, certainly it cannot be said that this petition was not filed in public interest or that the petitioners have no locus standi to file this petition and therefore the petition is not maintainable on this ground. We, therefore, reject the contention raised in this regard by the respondents.

12. As regards the specific objection raised by the 2nd respondent that there is no compliance of Order 1, Rule 8, CPC is concerned, we have no doubt in our mind that the said provision applies only to suits and not to the writ proceedings. Further, Rule 7(2) of the Writ Proceedings Rules, 1977, framed by this Court under Articles 226 and 227 of the Constitution provides that several persons having common or joint interest but not seeking individual relief (interim or final), may file a single petition. In view of this specific provision, the technical objection raised by the 2nd respondent in this regard does not hold water and the same is hereby rejected.

13. As regards the locus standi of the petitioners to file this petition in public interest, it is well-settled law in a catena of decisions of the Apex Court as also various High Courts that any citizen can initiate proceedings in public against an illegal action of an authority. In this regard, we quote the relevant passages of few decisions. In *S.P. Gupta and Others v President of India and Others*, the Supreme Court, after referring to the judgments of various Courts, has held as under:-

".... any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely necessary for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of constitutional objective "law".

In *Janata Dal v H.S. Chowdhary and Others*, the Supreme Court has held as

under.-

".... only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or oblique consideration".

"..... while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, way-farers or officious interveners. . . . break the queue muffling their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions. ... which piquant situation creates a frustration in the minds of the genuine litigants".

In *Sheela Barse v Union of India and Others*, the Supreme Court has held as under.-

"The proceedings in a public interest litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation of rights, constitutional or statutory, of sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert -- and quite often not even aware of -- those rights. The technique of public interest litigation serves to provide an effective remedy to enforce these group-rights and interests. In order that these public causes are brought before the Courts, the procedural techniques judicially innovated specially for the public interest action recognises the concomitant need to lower the locus standi thresholds so as to enable public minded citizens or social action groups to act as conduits between these classes of persons of inherence (sic) and the forum for the assertion and enforcement of their rights".

In *Fertilizer Corporation Kamagar Union (Regd.), Sindri and Others v Union of India and Others*, the Supreme Court has held thus.-

"If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the Court will not be a bar for him. But he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busy body, he cannot be told off at the gates although whether the issues raised by him is justifiable may still remain to be considered".

14. In the instant case, petitioners have filed this petition in public interest alleging that the allotment of vast extent of land by the 2nd respondent in favour of 3rd respondent at a lesser price without notifying the availability of land and without inviting applications. According to the petitioners, small prospective

industrialists have been deprived of the opportunity of seeking allotment of land for establishing their industries. While such a vast extent of land has been allotted in favour of a single unit as stated above, allotment of land sought by some persons have been denied in this industrial area on the ground of non-availability of land in this particular industrial area and asking them to seek for allotment elsewhere. Petitioners have produced documents in proof of this. Thus, the petition is filed in public interest against favouritism, nepotism and colourable exercise of power by the statutory authority in contravention of the Act, rules, regulations and virtually defeating the very object for which the Board is constituted. We, therefore, hold that petitioners have locus standi to file this petition and the petition filed in public interest is maintainable.

15. Having rejected the technical objections, we now proceed to examine the challenge made in this writ petition on merits.

16. In this case the acquisition of land by the Board and allotment made in favour of the 3rd respondent are not in dispute. The allotment of land in favour of the 3rd respondent is challenged by the petitioners on various grounds. In order to appreciate the rival contentions of the parties and test the genuineness of the requirement of land and the validity of the allotment, the matter will have to be considered from all angles.

17. The allotment of land in question was made pursuant to the application at Annexure-A dated 10-2-1995 which was received by the 2nd respondent on 15-2-1995. The requirement shown therein is 500 acres. Out of this, 250 acres are required for Batteries Project and the balance 250 acres of land is shown to be required for implementing the Colour Picture Tube Project. It is stated that this project would be implemented by a Company (to be formed) in the group, namely BPL Limited. From this it becomes clear that the requirement of land by the 3rd respondent is both for the current project and for future project which will be implemented by a company to be formed. Pursuant to this request, 175 acres has been allotted under Annexure-B dated 7-4-1995. This allotment is based on the recommendation of the High Level Committee constituted by the Government in its 28th meeting dated 29-3-1995. Copy of the proceedings of the said meeting is produced as Annexure-R4. In that proceedings, at page 12 it is observed as under:-

"Subject No. 4:

Proposal of M/s. BPL Group for setting up of (1) Colour TV Mfr. (1.5 million pcs. p.a.), (2) Batteries Project and (3) Colour T.V. Picture Tube Mfr. (1 million tubes p.a.) at dobospet Industrial Area, Tumkur.

The Committee noted that the above three proposals of M/s. BPL Group were discussed in the 22nd HLC meeting held on 10-10-1994 and also in the 25th HLC meeting held on 24-1-1995, wherein HLC recommended that:-

(i) 220 acres of land be made available immediately to the BPL Group at

dobospet I.A for implementing Colour Picture Tube and Batteries Project;

(ii) Additional land acquisition proceedings be initiated by the KIADB on the basis of justification of total land requirement of 500 acres to be furnished by the Group;

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As regards to Colour TV manufacture Project, BPL have informed that the requirement of land is around 30 acres and details are being worked-out and would be submitted later".

18. In Paragraph 6 of the counter filed by the 2nd respondent, reference is made to what is extracted above. From this, it becomes clear that the application as per Annexure-A for allotment of land made by the 3rd respondent was dated 15-2-1995. However, the recommendation has been made by the High Level Committee in its meetings dated 10-10-1994 and 24-1-1995 itself, which was much prior to the filing of the application. How this has been done is not forthcoming. On this ground alone it has to be held that the entire proceedings culminated in the impugned allotment was bad.

19. In the application at Annexure-A seeking allotment of land, it is stated that the balance 250 acres of land is required for Colour Picture Tube Project. The production is one million tubes per year. The other 250 acres of land is for the Battery Project for the manufacture of three million Nickel Cadmium Battery Cells. The petitioners have produced Annexure-C and D along with the writ petition. In Annexure-C, one of the industrialist has sought the "land requirements in respect of similar projects. Under Annexure-D, dated 31-5-1996 the TECSOK replied that the land requirement for both the projects would be 10 to 15 acres. So, it becomes clear that the 3rd respondent has sought for allotment of land more than the requirement for their project. No doubt, they have indicated that the land is required for other purposes also. Even if such requirement is taken into consideration, what was sought was very huge extent than the "actual requirement. This aspect has not been considered both by the Government or the 2nd respondent while allotting the land.

20. In the statement of objections filed by the 3rd respondent it is stated that Annexure-D issued by TECSOK should not be relied upon as it does not give the correct picture and it has no idea of the magnitude of the projects proposed. This contention cannot be accepted for the reason that TECSOK is an organisation of the Government of Karnataka. The technical consultants therein are experts in the field and they have been appointed by the Government. The opinion or report furnished by such an organisation cannot be brushed aside to suit the case of 3rd respondent. No doubt, it has not taken into account the land required for other amenities such as roads, buildings, treatment plant etc. Even if all these are taken into account, we are clearly of the opinion that the requirement put forth by the 3rd respondent is beyond its actual requirement.

21. The petitioners have produced Annexure-E and F wherein the 2nd respondent has sought to justify the requirement of small bits of plots sought by the applicants. When such small entrepreneurs were asked justification for their small requirements, we really fail to understand how the 2nd respondent allotted such a vast extent of land in favour of 3rd respondent alone. Instead of allotting such vast extent of land in favour of a single unit, the 2nd respondent would have been justified if the same land had been allotted to various needy small scale industrialists. Such a bulk allotment without inviting applications or notifying the public, that too at a very low price, smacks of colourable exercise of power on the part of 2nd respondent. Arbitrary exercise of power is glaring.

22. In order to satisfy ourselves about the legality and validity of the allotment of land, we have asked the learned Counsel appearing for respondents 2 and 3 to produce before us the concerned files relating to acquisition and allotment. Accordingly, those files have been placed before us. From the file relating to allotment of this land, we are surprised to find that there were several complaints and press reports in several leading newspapers regarding the favouritism in the allotment of land in favour of 3rd respondent-BPL. It is noticed that by letter dated 18-9-1995 Sri Gundappa Korwar, former member of Parliament, sought information from the Director of Industries and Commerce stating that he has received several representations from various small scale industrialists to the effect that 80% of the land in question had been allotted to BPL depriving allotment of land for the prospective industrialists. All these things would highlight the favouritism shown to BPL in the matter of allotment of vast extent of land depriving the other entrepreneurs to establish their industries. These factors will prove the allegations made by the petitioners in the petition.

23. In the proceedings sheets maintained by the 2nd respondent, at page 3, a note is put-up that "The Chairman has ordered to allot 175 acres of land in Dobospet, on the note sent to him on 3-4-1995". The said note is found at page 37 of the file. In that note it is mentioned as under:-

"Considering the urgency of the requirement of land for implementation of the project, it was decided that 200 acres of land is to be allotted and a time limit of one week was given for handing over of land to M/s. BPL.

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Normally, the allotment of land and possession certificate will be given only after the issue of Government order in the case of H.L.C. cases.

In view of the urgency, I request the orders of the Chairman for allotment of 200 acres of land at Rs. 3.50 lakhs per acre immediately, pending" formal issue of Government order in respect of extent of land and pending ratification of the Board in respect of fixation of price".

From this it becomes clear that even prior to fixation of price and issuance of Government order the allotment has been made by the Chairman. What is the

urgency in the matter is not forthcoming except stating implementation of the project. Everything appears to have been done in hurry in order to favour the 3rd respondent.

24. The grievance of the petitioners is that after acquisition of land, the Board has to develop it into industrial area, notify the availability of industrial area, call for applications from the general public and allot the same to prospective entrepreneurs, as per Regulation 7 of the Regulations called the regulations governing the disposal of lands by the Board framed u/s 41(2)(b) of the Act. But, according to the 2nd respondent, the allotment in question had been made under Regulation 13 of the regulations which empowers the Board to allot the land notwithstanding anything contained in Regulation 7 as a special case. Under the said regulation, the allotment has to be made in consultation with the State Government. From what is quoted above, it becomes clear that allotment has been made contrary to that. The Board as such has not passed any resolution to this effect. It is pertinent to note that the High Level Committee has looked into the requirement of 3rd respondent and made the recommendation for allotment of land. As already noticed, the application itself was submitted along with the covering letter dated 15-2-1995 (Annexure-A). In that, reference is made to the 25th High Level Committee Meeting dated 24-1-1995. How the HLC discussed the matter and made recommendation for allotment of land in favour of 3rd respondent much prior to filing of applications is a serious matter which this Court takes judicial note. The allotment order is also issued within two months from the date of said application and surprisingly reference is made to various aspects of the matter in this short period, such as meetings of HLC, clarifications sought in the matter, notes put-up, proceedings conducted, discussions held at various levels etc. How all these things took place within such a short time, is a matter to be taken into consideration in this public interest litigation. Everything has been done in hurry in order to favour the 3rd respondent.

25. u/s 13 of the Act, the functions of the Board inter alia involves development of industrial areas and make them available for undertakings to establish themselves. In paragraph 10 of the statement of objections filed by the 2nd respondent it is stated as under:-

"This respondent while developing an industrial area undertakes developmental works like formation of WBM roads, with black topping, drains with deck slab culverts, storm water drains, water supply through borewell, street lighting, avenue trees and drawing high tension and low tension lines".

This is in accordance with Section 13 of the Act. But, what the Board did in the present case is admitted in the very same paragraph. It is stated therein that the land that is allotted to the 3rd respondent has not been entirely developed by this respondent. Even in paragraph 6 of the additional statement filed on behalf of the allottee/3rd respondent it is admitted that the land which has been allotted to the said respondent is undeveloped. This clearly establishes that the Board has not discharged its statutory function by not developing the land by

providing with the facilities mentioned above. It has allotted the undeveloped land and thus acted as a "real estate agent" to the 3rd respondent. This was not the statutory function or duty of the Board. The allotment of such vast extent of undeveloped land within a short period of less than two months from the date of application at Annexure-A is nothing but exercise of colourable power to favour the 3rd respondent alone ignoring the small entrepreneurs who had sought allotment of industrial plots. Day in and day out we are noticing that no action will be taken by the Government and other statutory bodies on the applications or representations for a long period and ultimately writ petitions are filed seeking mandamus directing to consider the applications/representations submitted. Even in Court proceedings also prompt and quick actions are not taken by the authorities. Such being the position, how the allotment of such vast extent of land has been made by the Board in favour of the 3rd respondent within a short period of less than two months, has to be taken judicial note. In order to allot such a vast extent of land, the concerned file has to move at different offices and at various levels discussions will have to take place, meetings have to be called and convened and follow-up, actions have to take place. It is highly depreciable as to how all these things took place within a short span of less than two months from the date of submitting the application for allotment of land by the 3rd respondent. What prompted the Board and the Government or the High Level Committee to take keen interest to complete the process of allotment so quickly, is not forthcoming. It could be easily inferred from these that just to favour the 3rd respondent all these things have been done briskly. Favouritism is glaring to naked eyes. The action is arbitrary and illegal. There is failure to discharge the statutory duty and functions. All these make the allotment of land in question bad in law. Hence, the impugned action cannot be upheld. The action needs interference by this Court.

26. Even the requirement of land put forth by the 3rd respondent is also illegal. The allotment of land was sought not only for the ensuing or ongoing project but for further developments in future. 3rd respondent attempted to get the vast extent of land allotted in its favour for future requirement also and succeeded in it while the small industrialists were deprived of allotment of even small bits of plots. The action of the Board is, on the one hand it deprives allotment of smaller bits to small entrepreneurs but simultaneously favoured the 3rd respondent by allotting the bulk land for the present projects and also shown keen interest to meet the future requirement also. This action of 2nd respondent Board is also violative of Article 14 of the Constitution.

27. In our opinion, the impugned action also suffers from malice in law or legal malice. In *Smt. S.R. Venkataraman v Union of India and Another*, the Supreme Court has stated thus.-

"Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.

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.... it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard, C.J., in *Pilling u Abergele Urban District Council*, where a duty to determine a question is conferred on an authority which state their reasons for the decision,

and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have take into account, the Court to which an appeal lies can and ought to adjudicate; on the matter.

If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.

8. We are in agreement with this view. It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another".

28. In the present case, what is astonishing is that the application had been filed by the 3rd respondent as per Annexure-A on 10-2-1995 and the allotment of such vast extent of land has been made in a short period of less than two months, as is evident from Annexure-B dated 7-4-1995. Reference is made to the High Level Committee meeting dated 24-1-1995. According to the 2nd respondent, the said HCL made the recommendation for allotment of land in favour of the 3rd respondent in its meetings held on 10-10-1994 and 24-1-1995. That means, even before filing of application for allotment of land, the matter had been considered and recommendation made.

29. Even if it is assumed that the allotment had been made not under Regulation 7 but under Regulation 13 of the Regulations as a special case, the same should be made in consultation with the Government. But, in the allotment letter at Annexure-B there is no mention that the Government has been consulted in the matter. The allotment is made purely on the basis of the recommendations of the HCL and there is no physical consultation of Board with the Government. Thus, there is violation of Regulation 13 of the regulations.

30. No doubt, the Government constituted Single Window Agency to examine and accord sanctions/clearances for all industrial entrepreneurs. According to that, decisions regarding the projects involving investments beyond Rs. 50 crores shall be taken by the HCL. As already noticed, in the instant case the HCL has discussed the matter and made recommendation for allotment of land in favour

of 3rd respondent much earlier to filing of the application seeking allotment of land. The impugned action therefore suffers from legal malice.

31. In *State of Punjab and Another v Gurdial Singh and Others*, the Supreme Court has held thus:-

"9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibbersingh unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of powers--sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions--is the attainment of ends beyond the sanctioned purposes of power by simulation of pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion. . . . Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even being. ... If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act".

32. A Division Bench of this Court in *Mrs. Behroze Ramyar Batha and Others v The Special Land Acquisition Officer, Bangalore and Others*, has held that where with the object of providing lands to private individual if acquisition proceedings are resorted to or the power of eminent domain comes to be exercised, it would be nothing more than fraud on power.

In the present case, we are fully convinced that the allotment of land in question has reached the destination beyond the object for which the Board is established and there is colourable exercise of power in favour of a private company. The action is vitiated by mala fides and fraud on power.

33. Having come to the above conclusion, what is to be done, is observed in *Mrs. Batha's* case cited supra thus:-

"In *Dr. Ram Manohar Lohia v State of Bihar*, it was laid down that the Courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be sufficient reason to strike down the action".

34. One of the contentions urged before us is that the Board is bound by the directions issued by the Government in exercise of its executive power under Article 162 of the Constitution of India and also u/s 17 of the Act and pursuant to

the direction of the Government the land had been allotted in favour of the 3rd respondent. We cannot accept this contention for the simple reason that the administrative rules or orders however become inoperative when the law made by the legislature occupies the field. The directions that can be given u/s 17 of the Act by the Government are of general nature for carrying out the purposes of the Act and not contrary to the purposes of the Act. Whatever directions that the Government can issue to the Board shall be in conformity with the Act, Rules and the Regulations framed thereunder and not beyond that. The Board cannot escape from its illegal action showing finger towards the Government and stating that it acted on the directions of the Government.

35. The illegality in the allotment of land by the 2nd respondent in favour of the 3rd respondent is also clear from one more fact. That is, while it is stated that 2nd respondent has made allotment of the land in question, in reality what is done is lease of the land. Annexure R-8 is the lease deed which has been produced along with the additional statement filed by the 3rd respondent. It is dated 17-4-1996. But, even before execution of this document the possession of 149 acres 5.5 guntas of land has been handed over on 29-5-1995 under Annexure R-2 to the 3rd respondent by the Board. It is a matter of dismay as to how the Board, which is a statutory authority, can hand-over possession of the land even before execution of the relevant document (either lease deed or any other document) in that regard. We are constrained to observe the sorry state of affairs that have taken place in the impugned action. Thus, two aspects emerge from the transaction and they are, (1) various discussions have taken place and orders issued even before filing of the application seeking allotment of land and (2) the possession of land has been handed over even before execution of relevant document. How these things happened is a matter which this Court can take judicial note of. Further, even though the lease agreement at Annexure-R8 is dated 17-4-1996, the same has been presented for registration only on 17-9-1996 and the document was registered on 12-12-1996 as per the endorsements on the said document. The Board could have handed-over possession of the land only after the document was registered and not earlier to that. It is quite reverse in this case. This indicates the hurry shown by the Board to favour the 3rd respondent as otherwise the Board could not have violated its statutory duties. We have no hesitation to hold that the then Government was also a party for all these favouritism and colourable exercise of power. In the circumstances, viewed from any angle, the impugned action cannot be sustained. We have got comments even on the recitals and terms and conditions of the lease agreement at Annexure R-8 but we refrain ourselves from making any comment thereon except to point-out, as an example, one aspect mentioned in the opening para of page 2 thereof. It is stated therein thus:

"Whereas, the lessee has applied to the lessor for the grant to it of the land and premises herein after described, which the lessor, has agreed to lease to it, upon certain terms and conditions, and, whereas, before signing this agreement, the lessee has paid to the lessor the sum of Rs. 5,55,27,470/- (Rupees five crores

fifty-five lakhs twenty-seven thousand four hundred and seventy only) being the initial deposit/premium payable by the lessee".

A careful reading of the opening sentence extracted above makes it clear that the Board assumed that the 3rd respondent has applied for grant of the land and while so applying it has specifically mentioned for allotment of the land in question. In the application filed by the 3rd respondent no such mention is made and in fact it cannot ask for allotment of a specific land. It is the choice of the Board to consider the application and allot the available land and the applicant has no option for seeking allotment of a particular piece of land. The recitals of Annexure-R8 extracted above clearly demonstrates that the Board presumed itself that 3rd respondent has applied for allotment of the particular land in question. Thus, the impugned action is done on assumptions and presumptions in order to favour the BPL. It is also evident from the extracted portion that even before signing the said agreement more than 5.5 crores have been paid by the 3rd respondent to the Board. Such a huge payment can be made only after all the formalities are completed and agreement is entered in relation to the transaction. In this case everything has been done in advance ignoring all statutory obligations.

36. In the additional statement filed by the 3rd respondent it is stated that it has already spent Rs. 84.31 crores and Annexure-R4 issued by the Chartered Accountants is produced in support of the same. It is stated that machineries have been imported from foreign countries. According to the opinion of TECSOK produced at Annexure-D, the total requirement of land for all the three projects which the 3rd respondent intends to start is 10 to 15 acres. In the grounds for interim relief the petitioners have averred that the 3rd respondent has developed only 15 acres of land and it is apprehended that the rest of the land is likely to be used for different purpose or transfer the same to third parties. In paragraph 22 of the statement of objection filed by the 3rd respondent it is no doubt denied that the 3rd respondent has utilised only 15 acres of land so far. But, it is not clearly stated as to how much extent of land has been utilised so far, thereby the true fact is suppressed. However, it is admitted that the projects could not be implemented speedily on account of opposition of local people and pending litigations in the Courts. Anyhow, one thing becomes obvious that the 3rd respondent has not utilised much of the land allotted, particularly in view of the fact that the very lease agreement itself was registered on 12-12-1996. The 3rd respondent could take steps only thereafter for implementation of the projects by getting the plans sanctioned and license obtained for the construction of buildings. These processes will consume considerable time and ultimately the utilisation of much land can be ruled-out. This leads us to provide justice to the 3rd respondent to that extent only instead of quashing the entire action. During the course of arguments, Mr. Udaya Holla appearing for the 3rd respondent submitted that if ultimately this Court comes to the conclusion that the impugned allotment is bad, the 3rd respondent may be allowed to retain the land by paying the reasonable price to the land.

37. Having regard to the facts and circumstances of the case, taking into consideration the investment made by the 3rd respondent already and having regard to the submission made on behalf of the 3rd respondent, we are of the opinion that ends of justice will be met if the 3rd respondent is allowed to retain the land which has already been utilised by it but at any rate the same shall not exceed 30 acres (Thirty acres), however, subject to payment of proper price. The Board has to take back possession of the rest of the land.

38. As regards the price to be paid by the 3rd respondent for the portion of the land it has already utilised by investing huge amount, it is seen that the allotment is made at the rate of Rs. 3,72,324/- per acre. As already noticed, one acre of land has been allotted at a price of Rs. 8,80,000/- to some other industrialist. In this regard, we have perused the file produced by the 2nd respondent in respect of 65 acres of land in the very same industrial area. The relevant notes of the proceedings sheet in that file are extracted hereunder in order to arrive at a proper price for the land.-

"9. Earlier the land price approved by the Board was of the order of Rs. 5.00 lakhs per acre. In view of the new roads now proposed due to formation of sub-layout the costing works-out to Rs. 8.00 lakhs per acre.

xxxxx

13. Chairman. What is the rate at which other lands are given here?

14. May please see the query at paragraph "A" of pre-page.

15. The current rate prevailing in Dobospet is Rs. 5.00 lakhs. The additional expenditure for construction of roads etc., to make 52 plots out of one plot conies to Rs. 3.00 lakhs per acre, x x x

It is only to take into account the additional cost involved in the sub-layout that orders are solicited to charge Rs. 8.00 lakhs per acre.

Yes. Keep informed.

18. Cost does not include 10% Board's Service Charges. The revised costing as per para 18 is herewith enclosed for taking further n.a. in the above matter".

The revised rate has been worked-out at a sum of Rs. 9,08,14,038-00 per acre and the same is rounded of to Rs. 10.00 lakhs per acre.

39. From what is extracted above, it becomes clear that the price of land per acre would be Rs. 10.00 lakhs. However, it is an admitted fact that the Board has allotted an undeveloped land to the 2nd respondent . That does not mean that the land given to the 3rd respondent was a plain land. Plots have been formed in the land and handed over. Taking into consideration all these circumstances, in our opinion, Rs. 8.00 lakhs per acre would be fair and reasonable for the extent of land that will be left with the 3rd respondent. We are doing this by moulding the relief to meet the ends of justice on both sides.

40. Accordingly, we allow this writ petition partly and quash the allotment of land made by the 2nd respondent-Board in favour of 3rd respondent-BPL under Annexure-B only in so far as excess land than the land actually utilised so far by the 3rd respondent, at any rate not exceeding 30 (thirty) acres. The 2nd respondent is directed to recover possession of the remaining land forthwith from the 3rd respondent leaving the land actually utilised so far and at any rate over and above 30 acres in accordance with law.

(a) After recovering possession of land from the 3rd respondent, the 2nd respondent is directed to form industrial plots and allot the same to the prospective industrialists after notifying and inviting applications.

(b) In respect of the land that will be left with the 3rd respondent, the 2nd respondent shall work out the cost of such land at the rate of Rs. 8.00 lakhs per acre and after adjusting the total amount out of the amount already paid by the 3rd respondent, shall refund the balance amount to the 3rd respondent together with interest at 6% per annum from the date of receipt of the amount from the 3rd respondent until repayment is made.

(c) In order to ascertain the actual utilisation of land by the 3rd respondent so far, we direct the Assistant Director of Land Records, Bangalore, to conduct survey of the land which is actually utilised by the 3rd respondent in the presence of the petitioners, and respondents 2 and 3, prepare a sketch thereof and ear-mark the boundaries so that the Board can recover possession of rest of the land from the 3rd respondent. The process should be completed within a fortnight from today.

(d) Having regard to the trouble taken by the petitioners and the efforts put forth by them to espouse the public cause, we direct payment of cost of Rs. 10,000-00 by the 2nd respondent-Board to the petitioners within four weeks.

(e) Office is directed to send a copy of this order immediately to the A.D.L.R., Bangalore.