

(2009) 01 KAR CK 0025
In the Karnataka High Court
Case No : Writ Petition No. 13239 of 2006

Sri Rajendra Kumar Goyal

APPELLANT

Vs

The Karnataka Industiral Areas Development Board and
Panna Stones Pvt. Ltd.

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Karnataka Industrial Areas Development Board Regulations, 1966 — Regulation 10, 11, 5

Citation : (2009) ILR (Kar) 2029 : (2009) 5 KarLJ 98 : (2009) 2 KCCR 1339

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Y.K. Narayana Sharma, for the Appellant; B.R. Srinivasa Gowda, P.V. Chandrashekhar for R1, G.S. Bhat, A/S. for R2, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The petitioner's application dated 0.5.2003 for allotment, of 6752 sq. mtrs. of land in plot; No, 14-P Jigani industrial area, 1st Phase, to establish an industry for cutting and polishing granite slabs and tiles was returned by the 1st respondent KIADB informing the petitioner that the said plot of land was earmarked for sale by public auction to be notified and published in the newspaper, by letter dated 9.9.2005 Annexure-B. It is the allegation of the petitioner that the 1st respondent processed the 2nd respondent's application dated 24.9.2005 and allotted by way of a lease-cum-sale basis, the said plot of land by letter dated 29.10.2005 Annexure-C followed by execution of the agreement dated 22.12.2005 Annexure-D, to set up a granite cutting and polishing industry. The petitioner's written requests dated 28.8.2006 Annexure-E, and 13.9.2006 Annexiire-1% to furnish copies of the documents of allotment, were responded to by the 1st respondent furnishing a copy of the allotment letter dated 29.10.2005 while denying a certified copy of the agreement dated 22.10.2005 on the premise that the petitioner was not a party to the said transaction. Hence, this petition filed on 19.9.2006 for a writ of certiorari to

quash the allotment letter Annexure-C; the agreement Annexure-D, and; to consider the petitioner's application for allotment of the plot of land or appropriate orders.

2. The petition is opposed by filing statement of objections dated 9.10.2006 of the 2nd respondent allottee, inter alia contending that, on allotment, heavy investments are incurred towards payments to KIADH, private contractors for supply of goods and materials to put up construction of the building in accordance with the sanction of building plan on 2.2.2006, and in addition, obtained financial assistance from M/s Kai Yitaka State Financial Corporation, it is further contended that the allotment of the said plot, in exercise of Regulation 10 of the Disposal of Lands by KIADB Regulations, 1969, is legal and proper, it is lastly contended that the petitioner has no legal right to question the allotment.

3. The first respondent has opposed the petition by filing statement of objections dt. 13.11.2006, inter alia denying that the schedule property was put up for auction as a corner site and allotment of the site in favour of the 2nd respondent was strictly in accordance with Regulations 5, 10 and 11 of the Karnataka Industrial Areas Development Board Regulation 1969. According to this respondent the disposal of the property either by auction sale or least? is in the sole discretion of the authority and that the 1st respondent being satisfied over the 2nd respondent's ability to start production within a reasonable time, was sufficient compliance with the conditions in Regulation 10 of the Regulations and hence neither arbitrary nor opposed to law. In addition, it is contended that the writ petition is not maintainable.

4. This court's order dated 25.9.2006 issuing emergent notice re-rule and directing the respondents to maintain status quo in respect of the said plot of land,, which when sought to be vacated by filing LA. 2/2006 of the 2nd respondent was confirmed by order dated 11.10.2006. That order when carried in W.A. 1801/2006, the 2nd respondent filed an affidavit dated 3.11.2006 undertaking to put up construction of the building at his own risk without; pleading equities or creating any 3rd party interest, which when taken on record, the Division Bench by order dated 6.13.2006 disposed of the appeal in the following terms:

8. Under the facts and circumstances of the case, we deem it fit to dispose off this writ appeal by passing the following:

ORDER

(a) The appellant is permitted to complete the ongoing civil construction work at his own risk and subject to the outcome of the Writ Petition, it is clear that the appellant shall not plead equities;

(b) The appellant shall not alienate the building in question in any manner or create any third party interest therein;

(c) To allay the misgivings of Sri Sharma, we are making the needless and

harmless observation that the learned Single Judge would adjudicate the matter without being influenced by the permission granted herein to the appellant to complete the civil construction;

(d) The respondent no.2 shall file its counter in the writ proceedings within one week from today;

(e) The appellant shall seek early hearing of the main matter before the learned Single Judge within one week from today. The respondents No. 1 and 2 undertake not to oppose the appellant's request for early hearing. We request the learned Single Judge to expedite the hearing by taking the matter out of turn.

(i) The respondent No. 2 shall explore the possibility of giving an alternative plot (a plot, which is of comparable quality, size and local ion) to the respondent No. 1.

(g) In the event of the alternative site not being allotted to the respondent No. 1, and in the event of the petitioner (respondent No, 1 herein) succeeding in the Writ Petition, the appellant shall remove the construction at its own cost and make it over to the second respondent-Board.

9. The writ appeal is disposed oil in the above terms. No order as to costs.

5. In compliance with (1) above, the 1st respondent KIADB by memo dated 11.10.2007 enclosed a copy of communication dated 6.10.2007 addressed to the petitioner stating that KIADB is developing industrial areas at Harohalli 40 kms; Dabuspet 42 kms. and Narasapura 38 kms from Bangalore city and offered the petitioner a choice of anyone of the said estates where 1? acres of land would be allotted, subject to making an application etc., By another memo dated 12.1.2009 was enclosed a copy of the letter dated 7.1.2009 addressed to its counsel furnishing the plot numbers in respect of the land measuring 1? acres at Dabuspet and Somapura industrial area and Harohalli industrial area, II Phase available for allotment.

6. Learned Counsel for the petitioner submits that the petitioner having inspected the locations offered by the KIADB, as alternate sites for allotment, noticed that die industrial areas were under-developed with no infrastructure and by no standards an alternate plot of land, in comparison with the plot allotted to the 2nd respondent, being contrary to the directions contained in the order of the Division Bench, was not acceptable.,

7. Sri Y.K.N. Sharma, learned Counsel for the petitioner contends that the Karnataka Industrial Area Development Act, 1966 and Regulations framed thereunder, provides for allotment of plots of land in an industrial area by inviting applications from the public or by way of public auction so as to eliminate the chance of private negotiations and to make transparent the process of allotment of State largesse. According to the learned Counsel, the 1st respondent KIADB in its letter Annexure-B having correctly applied the law returned the petitioner's application for allotment and informed and of the decision to earmark the plot of

land for sale by public auction and to participate in the auction to be notified in the newspaper. The action of KIADB in furnishing and receiving the 2nd respondent's application 15 days after issuing letter Annexure B and allotting the said plot is characterized as capricious, arbitrary and contrary to the Act and Regulations. Learned Counsel hastens to add that the action of the KIADB has negated the right of the petitioner to participate in the process of sale of the said plot in a public auction, as promised.

8, Learned Counsel for the 1st respondent KIADB while not disputing the contents of the letter Annexure B and that, in law, the Regulations permit allotment of a plot of land by issuing a notification inviting applications from public and entrepreneurs or by public auction publishing the same in newspapers having wide circulation, however, is unable to answer the pointed question of this Court as to whether the allotment of the plot of land in favour of the 2nd respondent is in accordance with the Regulations. Learned Counsel contends that the petitioner would be allotted 1? acres of land in any of the industrial areas surrounding Bangalore city as indicated in the memos filed.

9. Learned Counsel for the 2nd respondent - allottee seeks to sustain the allotment as being legal, valid and not calling for interference. It is contended that: the petitioner", a speculator, made an application accompanied by payment of Rs. 9,01,000/- instead of the prescribed fee Rs. 100/-, which was rightly returned by the KIADB. According to the learned Counsel, the letter Annexure-B of the 1st respondent KIADB does not invest in the petitioner a right to question the allotment in favour of the 2nd respondent. Lastly, it is contended that the writ petition is liable to be rejected as suffering from delay and laches.

10. Learned Counsel places reliance upon the following decisions:

1. Sri. Balaji Amenity Center Vs. The Chairman, KIADB, The Chief Executive Officer and Executive Member, Karnataka Industrial Area Development Board, The Chief Development Officer, Karnataka Industries Area Development Board and Sri. K.C. Shivaram, Class-1 P.W.D. Contractor (Civil), ;

2. State of Madhya Pradesh and Ors. v. Mandlall Jaiswal 1986 (4) SCC 566

3. Chairman and MD. BPL Ltd. v. S. Rgururaja 2008 (3) SCC 567.

11. The State of Karnataka in order to secure and establish industrial areas in the State and generally to promote the establishment: and development of industries in such industrial areas and for that purpose, to establish an industrial Area Development Board, promulgated the Karnataka Industrial Area Development Act, 1966, for short the "Act" which received the assent of the President, on 14.6.1966. The State invoking Sub-section (1) of Section 40 of the Act framed Karnataka Industrial Area Development Rules, 1966, for short. "Rules" and Section 41(2)(b) of the Act, made the Karnataka Industrial Area Development Board Regulations, 1969, for short "Regulations". The main object of the Act being acquisition of lands to establish industrial infrastructure in the

State of Karnataka, the 1st respondent "Board", a creature of the statute, is a State for the purpose of Article 12 of the Constitution. The action of the 1st respondent, in relation to the public at large must be fair and not arbitrary or discriminatory.

12. The power to frame Regulations incorporating terms and conditions by which the Board may dispose of the land is Clause (b) of Sub-section (2) of Section 41 of the "Act". Chapter 11 of the Regulations provides for form of application; manner of disposal of the land; reservation of plots; inviting applications; deposit; registration; allotment; decision of the Board; revocation of the proposal for disposal of land and; allotment, of plots in special cases. Regulation 4 states that an application for allotment of land in an industrial area in the prescribed form (Form No. 1) is to be obtained from the Board, in duplicate, and presented in person or by registered post addressed to the Executive Member, along with earnest money of Rs. 100/-, only after applications are invited under Regulation 7. Regulation 5 empowers the Board to decide the manner of disposal of land/shed in each industrial area either by lease, lease-cum-sale, sale, auction sale, auction lease, assignment or otherwise. Regulation 7 requires the Board to notify the availability of land, the manner of disposal, the last, date for submission of applications and such other particulars as the Board may consider necessary in each case by giving wide publicity through newspapers having circulation in and outside Karnataka State and inviting applications from industrialists or persons intending to start industries. Regulation 10 relates to allotment by the Board while Regulation 11 deals with decision of the Board and runs thus:

10. Allotment: (a) The Board, on being satisfied that the person, firm or company who has made an application is likely to start production within a reasonable period, and is not one which is declared obnoxious under Regulation 14 may make an allotment in his/their favour;

(b) The Board may constitute sub committees for considering allotment of plots and also delegate its power to the executing member, if necessary;

(c) The Executive Member shall notify such applicant to whom an allotment is made to execute the agreement in Form 3 or 4 or 5 as the case may be with such modification as may be necessary in each case on such date, time and place as may be fixed by the executive member and to pay the consideration for the occupancy of the land as fixed by the Board within the time fixed by the Board;

(d) Failure to execute the agreement or to pay the sums demanded by the Executive Member as per the notice given under Regulation 10(c) will render the allottee to have been deemed to have declined the allotment;

(e) The Board or with the authority of the Board, the Executive Member will have the discretion to grant extension of time for complying with the terms of the said notice for the extended period,

11, Decision of the Board: The Board shall have the right to reject any

application without assigning any reasons, In case where there are more than one applicant for a plot and if all the applicants satisfied the conditions for allotment, the Board shall have the right to allot the plot to any one of the applicants without assigning any reasons. The decision of the Board shall be final and binding on every applicant.

13. A conjoint reading of the aforesaid provisions of the Regulations, it is manifest, that an industrialist or person intending to start an industry can make an application for allotment of land in an industrial area, only after a notification by the Board duly published in newspapers having wide circulation in and outside the State of Karnataka, disclosing the details of land availability, the manner of disposal, etc. It is no doubt true that Regulations 7, 10 and 11 empower the Board to take a decision on the application either to reject or allot the land and may also revoke the proposal for disposal of land, while Regulation 13 provides for allotment of plot or area in special cases in consultation with the State Government other than those in respect of which applications are invited under Regulation 7.

14. It is useful to refer to the observation of the Apex Court in Chairman M.D. BPL Limited case ILR 2007 KAR 2946 while considering Regulations 7 and 13, of the Regulations, which reads thus:

20. xxxxx There cannot, be and doubt whatsoever that normally allotment of such industrial plots should be done in terms of Regulation 7 aforementioned. But the same by itself did not. preclude the authorities of the Board and the State having regard to the fact situation obtaining herein to take recourse to Regulation 13. Once the court finds that the power exercised by the statutory authorities can be traced to a provision of a statute, unless and until violation of mandatory provisions thereof is found out and/or it is held that a decision is taken for an unauthorized or illegal purpose, the com will not ordinarily interfere either with the policy decision or any decision taken by the executive authorities pursuant to or in furtherance thereof.

21. Malice in common law or acceptance means ill will against a person, but in the legal sense it means a wrongful act done; intentionally without just cause or excuse.

15. In the facts of this case, admittedly the 1st respondent KJADB was justified in returning the petitioner's application for allotment of plot No. 14-P in Jigani industrial area, I Phase, by communication Annexure-B and indicating that the Board earmarked the said plot for disposal by public auction and further calling upon the petitioner to participate in the auction, when no tilled. The Board having taken a conscious decision to earmark the plot in question to be sold in public auction, in exercise of power under Regulation 5, over the manner of disposal of land, the 1st respondent, in the circumstances, was justified in informing the petitioner to look out for the notification to be published in the newspapers fixing the date of public auction, whence the petitioner could

participate, so as to comply with Regulation 7 to invite applications.

16. Despite the letter dt. 9.9.2005 Annexure-B nevertheless, the Board for undisclosed reasons, issued an application in Form-I to the 2nd respondent who submitted the same on 24.9.2005 to the Executive Member, 15 days from Annexure-B, without publishing a notification in the newspaper having wide circulation in and outside the State, inviting applications for allotment or for sale of the plot by public auction. However the Executive Member proceeded to allot the plot of land in favour of the 2nd respondent by letter dt. 29.10.2005 Annexure-C.

17. The contention of the Learned Counsel for the respondent that the allotment is in compliance with Regulations 5, 7, 10 and 11 cannot be countenanced. As noticed supra, Regulation 4 provides for the form of application to be obtained from the Board and submitted to the Executive Member only after a notification is issued u/s 7 inviting applications. Thereafter, if the application together with the deposit is Regulation compliant, the said application is to be registered under the Regulation 9, in furtherance of which the Board may in accordance with Regulation 10 take up for consideration all the applications. Thus, the consideration of the applications by the Board under Regulation 10 must precede the inviting of applications by issuing a notification as contemplated under Regulation 7. Regulation 10 cannot, be read in isolation but with reference to Regulation 7 as otherwise Regulation 7 calling for applications for allotment of plots of land would be rendered otiose and meaningless. The only other method of allotment is provided for in Regulation 13, which in special cases the Board in consultation with the State Government, may allot plot or area other than those in respect of which applications are called for under Regulation 7, to any individual or company for establishment of an industry.

18. It is not the case of the respondents that Regulation 13 was invoked by the 1st respondent in consultation with the State to allot the plot, in question in favour of the 2nd respondent. The further contention that the Regulation 11 justifies the allotment of the plot in favour of the 2nd respondent,, is without merit. Regulation 11 makes it abundantly clear that where there are more than one applicant for allotment of a plot and if all the applicants satisfy the conditions for allotment, the Board shall allot the plot to any one of the applicant without assigning any reason. This too is not the case of the respondents as admittedly there was only one application filed by the 2nd respondent on 24.9.2005 while the petitioner's application earlier was returned on 9.9.2005. The KIADB has suppressed material particulars by not making available the records relating to the; allotment of the site in favour of the 2nd respondent. In the circumstances, the 1st respondent KIADB's contention that the allotment of land in favour of the 2nd respondent despite the decision of the Board to dispose of the plot by public auction, is legal and valid, is unacceptable.

19. In that, view of the matter, the contention of I lie 2ndrespondent allottee that Annexure-B letter does not invests a right in the petitioner to question the

allotment, is but a specious plea. The KIADB having taken a conscious decision under Regulation 5 to dispose of the land in question by way of public auction, as evident from the indisputable contents of Annexure-B letter, the petitioner being interested in applying for and participating in the process of securing the land more appropriately being directed to participate in the public auction to be held to dispose of the plot of land, it cannot but be said that the petitioner is an interested person entitled to maintain this writ, petition.

20. Though a faint effort, was made to contend that the petitioner was a speculator by pointing to the deposit of Rs. 9,01,000/- together with the application, since returned, that by itself and nothing more cannot, lead to drawing a presumption as contended. Even otherwise, the petitioner's application having been returned by the KIADB cannot be construed as an advantage in favour of the 2nd respondent and a disadvantage to the petitioner. The facts in Sri Balaji's case ILR 2007 KAR 2946 were that the petitioner therein made an application by depositing Rs. 12 lakhs, for allotment: of 1? acres of plot by his KIADB which when rejected, and a petition for a writ of certiorari to quash the order of rejection and to direct confirmation of allotment whence a learned Single Judge of this Court observed at paragraph 12 thus:

12. xxxx apparently, it appears that the petitioner wanted to speculate and if in the bargain, he could be allotted a land.

21. The ratio of a decision is generally *secundum subjectam materiam* i.e. the authority has to be understood in the context of facts based on which the observations therein are made. In *Rajendra Singh v. State of U.P.* (2007) 7 SCC 378 the Apex Court extracted the observations of Earl of Halsbury, L.C. in *Quinn v. Leatham* 1901 AC 495 which reads thus:

...that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.

22. Thus ratio decidendi of a judgment has to be found out only on reading the entire Judgment, it is well settled that in erasure of any doubt as regards any observations, reasons and principles, like other part of the Judgment has to be looked into. By reading a line here and there from the Judgment, one cannot find out the entire ratio decidendi of the judgment. Quotability as "law" applies to the principles of a case, is ratio decidendi. Pronouncements of law that are not part of ratio decidendi are classed as obiter dicta and not authoritative. The Judges' decision that is binding upon a subsequent Judge is the principle upon which the case was decided.

23. In my considered opinion, the observations of the learned Single Judge in Sri Balaji's case ILR 2007 KAR 2946 cannot be regarded as a ratio decidendi or

laying down the Law to be followed in the instant case.

24. The contention that the writ petition suffers from delay and laches since the petitioner did not approach the court immediately after the allotment is without merit. The petitioner was informed by the KIA. DB to look out for the paper publication fixing the date of auction of the said plot as disclosed in the letter dt. 9.9.2005 Annexure-B. Least did the petitioner know that, the 1st respondent accepted the 2nd respondent's application within 15 days from the date of Annexure-B, processed the same, made an allotment on 29.10.2005 followed by execution of the lease agreement dt. 22.12.2005, and sanction of a building plan on 2.2.2006 or the material preparations made by the 2nd respondent by placing orders for purchase of material to put up an industry identical to the one proposed by the petitioner. Factually the petitioner having noticed the digging of the land in the month of August 2006 made a written representation on 28.8.2006 Annexure-E addressed to the 1st respondent to furnish, if any, the particulars of allotment and to cancel the allotment, which was not responded to. The 1st respondent's indolence in the matter, for reasons not forthcoming in the statement of objections led to the petitioner making another written representation dt. 13.9.2006 Annexure-F whence a copy of his letter of allotment, was furnished, leading to the filing of writ petition on 10.9.2006. The statement of objections dt. 9.10.2006 of the 2nd respondent discloses that the construction of the building was at its initial stage and that the industry was yet to be established and commissioned, in the aforesaid facts, it is too far fetched to contend that there is an inordinate delay and that the petition suffers from laches not calling for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

25. In State of M.P.'s case 1986 (4) SCC 566 facts were that the Distillery manufacturing spirit in the State of M.P. was established by the State Government long back under a licence issued by the Excise Commissioner. The practice followed by the Excise Department in regard to the working of the distillery was to invite tenders and the person whose tender was accepted for any particular distillery was given a licence for working the distillery and also for wholesale supply of country liquor manufactured in that distillery. The State Government under the orders of the Chief Minister constituted a cabinet sub-committee consisting of Ministers of Separate Revenue Dept, etc., which in turn constituted another committee for considering which distillery was to be transferred from its existing place and selecting a suitable site. After hearing representations of the association and considering various aspects of the cabinet, sub-committee submitted its report. A policy decision was taken on 30.12.1984 and a letter of intent dt. 1.2.1985 was issued to the State Government: in favour of respondents therein who were existing contractors for grant of distillery licence for construction of a distillery at a new site for the purpose of supplying country liquor w.e.f 1.1.1986 in lieu of existing distillery in respect: of which such respondents held licences for the period ending 31st March 1986. After the deeds of agreements were signed on 2.2.1985, it was at that stage the writ petitions

were filed by some contractors challenging the policy decision dt. 30.12.1984 taken by the cabinet. In the backdrop of these facts, the Apex Court at paragraph 24 of the judgment observed thus:

24.---Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait-jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.

Having regard to the facts as extracted in paragraph 25, their Lordships held that it was difficult to believe that the petitioners were not aware of the policy decision dated 30.12.1984 since the consideration of the matter started as far back as July 1983 and there were? prolonged and wide-ranging deliberations lasting several months, coupled with spot inspections by the Committee and Excise Department and after considerable discussion and deliberation the policy decision was arrived on 30.12.1984. The petitioners had shown that they were liquor contractors by profession and they were in the trade of country liquor in the State since several years and therefore, it was held that, it would be wholly unrealistic and naive to suppose that the petitioner's were not aware of the change in the policy which was being discussed at various levels over a period of three years, to conclude that the petition suffered from delay and laches.

26. Having regard to the facts of this case noticed supra, the filing of the writ petition was after a month from the date of petitioner's knowledge, only due to the inaction of the KIADB, perhaps to cover up the illegality in the allotment of a plot in favour of the 2nd respondent, in the circumstances it cannot but be said that the petition does not suffer from any delay or laches and that the aforesaid decision has no application to the facts of this case.

27. In *Chairman and M.D. BPL Ltd.*'s case 2008 (3) SCC 567 a Public Interest Litigation questioning the allotment of bulk land by KIADB pursuant to the recommendations made by the high level committee, the Apex Court having found that the decision to allot the land was traceable to the power of the State and not arbitrary, the writ petition filed after one year of the allotment was held to suffer from delay and laches. This decision too in my considered opinion does not aid the 2nd respondent's contention that this writ: petition suffers from delay and laches.

28. in *State of U.P. and Others Vs. Dr. Sarvadaman Mishra and Others*, the Apex Court observed thus:

73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing

surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being angiophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not tailing to intervene where a grave error has crept in. moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.

(emphasis supplied)

29. The Apex Court while interpreting the meaning of "jurisdiction" in *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, observed thus:

117. In general, however, the Courts adhere firmly to the wide meaning of "jurisdiction" since this is the sheet-anchor of their power to correct abuses. They appear to be willing to stretch the doctrine of ultra vires to cover virtually all situations where statutory power is exercised contrary to some legal principles. There are many cases in which a public authority is held to have acted for improper motives or irrelevant considerations, or have failed to take account of relevant considerations, so that its action is ultra vires and void: *H W R Wade's Administrative Law*, 5th Edition at Pp.42, 348 and 369. The learned author aptly sums up situations in which error of jurisdiction may arise, at p.42.

Lack of jurisdiction may arise in many ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that: it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction, it would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.

Their lordships further find that, fraud on power voids orders if it is not: exercised bonafide for the end design at para 18 which reads thus:

118. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bonafide, and with best of intentions, some

extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh Vs. The State of Punjab*, A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alierr purpose other than the one for which the power is conferred is malafide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown* 1904 AC 515, that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred". It was said by Warrington, C.J. in *Short v. Poole Corporation*, (1926) 1 Ch 66 that:

No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of (hat body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.

In *Lazarus Estates Ltd. v. Beasley* (1956) 2 QB 702 at Pp.712-13 Lord Denning, LJ, Said:

"No judgment of a Court, no order of Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

See also, in *Lazarus* case at. p. 722 per Lord Parker, GJ:

All these three English decisions have been cited with approval by this Court in *Rratap Singh's* case.

30. The order or action, if ultra vires, the power becomes void and it does not confer any right, but the action need not necessarily be set-at-naught in all events. -Justice being in jeopardy it is necessary that the writ must right the wrong forthwith or must stand condemned as make believe, since justice wherever would be in jeopardy and freedom in fetters, the courts which is non-aligned acts with sensitive speed, is the law laid down by the Apex Court in *Kishore Singh Ravinder Dev and Others Vs. State of Rajasthan*, .

31. It is elsewhere said that there is every need to prevent the different Bodies from overstepping their limitations, there is also a need to see that any action on the part of the Government or authorities and local Bodies do not contribute to the contravention of any statutory schemes, which are evolved for public good.

32. Having regard to the facts of this case, more appropriately, allegation imputing improper motive not: specifically denied does not debar the court from inquiring into the allegations. The 1st respondent failed to produce tire records,

which perhaps would have thrown Light over die methodology followed of justification or otherwise to allot the plot No. 14P in favour of the 2nd respondent. The contents of Annexuie-B letter, not being In dispute, there is no explanation forthcoming as to why the respondent KIADB changed its stance from placing the plot for sale by public auction to one of allotment by a private negotiation. Thus, die allegation that the impugned allotment was malafide and motivated, in my opinion, is an action of the 1st respondent which cannot but be characterised as ultra vires the power, void and does not confer any right in favour of the 2nd respondent. The allotment not an outcome of an exercise of power in good faith but misuse in bad faith cannot, be countenanced. The misuse of power by the 1st respondent is writ large in the order of allotment itself. The decision of the KIADB to allot the plot to the 2nd respondent is not exercised bonafide for the end design, and therefore is a fraud on power, necessarily to be set-at-naught.

33. The 2nd respondent having given an undertaking in the form of an affidavit before the Division Bench of this Court stating that he would erect the construction without seeking equities, cannot be permitted to canvas, at this stage, that having invested huge sums of money the allotment even if irregular, needs to be approved.

34. In the circumstances, it is appropriate to refer to the observations of the Apex Court in Shiv Sagar Tiwari Vs. Union of India and others, . That, was a ease where Smt. Shiela Kaul, in exercise of her discretion for allotment of shops during the year 1992 and 1991 to persons who were relations of her personal staff came up for consideration whence, the Apex Court absolved thus:

Question is whether they were selected in accordance with law, which aspect has its importance because apparently a large number of other persons could as well mil within the categories in question and had applied also?

35. The allottees were selected not by following the fender system as required by policy of the year 1994 but because of their relationship with the Minister other personal stall or being employees or friends of such persons mid therefore, the allotments were held to be arbitrary and speak of misuse of power. Having regard to the important question as to what was required to undo the wrong and how the wrong doer has to be dealt with within the parameters known to law, directed Smt. Kaui to pay Rs. 60 lakhs as exemplary damages to the Government exchequer.

36. In Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, . their lordships of the Apex Court considering the public office held by minister"s, performing public functions under" the Constitution, Jaw or the executive policy said to be public duties owe certain accountability for the act done or duties performed, moreso in a democratic society governed by rule of law and such powers are conferred on the holder of public office or the authority concerned by the Constitution by virtue of appointment, held that the whole of

office therefore gets an opportunity to abuse or misuse the power. The observations at paragraphs 12 and 13 are apposite:

12. When a Government in office misuses its powers figuratively, we refer to the individual Minister/Council of Ministers who are constituents of the Government. The Government acts through its bureaucrats, who shape its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect, on the actions of the Government, The actions are Intended to further the goals said down in the Constitution, the laws or administrative policy. The action would, therefore, bear necessary integral connection between file "purpose" and the end object of public welfare and not personal gain. The action cannot, be divorced from that of the individual actor. The end is something aimed at mid only individuals can have and shape the aims to further the social, economic and political goals. The ministerial responsibility thereat comes into consideration. The Minister is responsible not only for his actions but also for the job of the bureaucrats who work or have worked under him. He owes the responsibility to the elector's for all his actions taken in the name of the Governor in relation to the Department, of which he is the head. If the Minister, in fact, is responsible for all the detailed workings of his Department, then clearly ministerial responsibility must cover a wider spectrum than mere moral responsibility: for no Minister can possibly get acquainted with ail the detailed decisions involved in the working of his department. The ministerial responsibility, therefore, would be that the Minister must be prepared to answer questions in the House about the actions of his department and the resultant enforcement of the policies. He owes them moral responsibility. But for actions performed without his concurrence also, lie will be required to provide explanations and also bear responsibility for the actions of the bureaucrats who work under him. Therefore, he bears not only moral responsibility but also in relation to all the actions of the bureaucrats who work under him bearing actual responsibility in the working of the department under his ministerial responsibility.

13. All purposes or actions for which moral responsibility can be attached are actions performed by individual persons composing the department. AH government actions, therefore, means actions performed by individual persons to further the objectives set down in the Constitution, the laws and the administrative policies to develop democratic traditions, social and economic democracy set down in the Preamble, Part 111 and Part IV of the Constitution. The intention behind the government actions and purposes is to further the public welfare and the national interest. Public good is synonymous with protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

In yet another reported opinion of the Apex Court in Lucknow Development Authority Vs. M.K. Gupta, while considering the oppressive? And capricious acts of public officers, their effects on society and responsibility to pay compensation observed thus:

8. xxx xxx xxx Still more important issue is the liability of payment. That is should the society or the tax payer be burdened for oppressive and capricious act of the public officers or it be paid by those responsible for it. The administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now accepted both by this Court and English Courts that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. In State of Bombay (Now Gujarat) Vs. Memon Mahomed Haji Hasam, the order of the High Court directing payment, of compensation for disposal of seized vehicles without waiting for the outcome of decision in appeal was upheld both on principle of bailee's, "legal obligation to preserve the property intact and also the obligation to take reasonable care of it. to return it in same condition in which it was seized" and also because the Government, was, bound to return the said property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by act of its agents and servants". It was extended further even to bona fide action of the authorities if it was contrary to law in Bishambar Nath and Others Vs. The Agra Nagar Mahapalika, Agra and Another, . It was held that where the authorities could not have taken any action against the dealer and their order was invalid, it is immaterial that the respondents had acted bonafide and in the interest of preservation of public health. Their motive may be good but their orders are illegal. They would accordingly be liable for any loss caused to the appellants by their action." The theoretical concept that King can do no wrong has been abandoned in England itself and the State is now held responsible for tortuous act of its servants. The first Law Commission constituted after coming into force of the Constitution on liability of the State in Tort, observed that the old distinction between sovereign and non-sovereign functions should no longer be invoked to determine liability of the State, Friedmann observed,

It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through incorporated public authorities, engages in activities of a commercial, industrial or managerial character. The proper test is not an impracticable distinction between governmental and non-governmental function, but the nature and form of the activity in question.

Even Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, did not provide any immunity for tortuous acts of public servants committed in discharged of statutory function if it was not referable to sovereign power. Since house construction or for that matter any service hired by a consumer or facility availed

by him is not a sovereign function of the State the ratio of *Kasturi Lal* (supra) could not stand in way of the Commission, awarding compensation. We respectfully agree with Mathew, J., in *Shyam Sunder and Others Vs. The State of Rajasthan*, that it is not necessary, "to consider whether there is any rational dividing line between the so-called sovereign and proprietary and commercial functions for determining the liability of the State". In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently. As far back as 1878 the law was succinctly explained in *Geddis v. Proprietors of Bann Reservoir* (1878) 3 App Cas 430 thus,

I take it, without citing cases, that it is now thoroughly well established that no action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing what the Legislature has authorised, if it be done negligently.

Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the Statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the Statute like the Commission or the Courts entrusted with responsibility of maintaining the rule of law." xxx xxx xx

If the injury is due to oppressive, arbitrary or unconstitutional action by servants of the Government, their lordships observed:

10...The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in *Cassell and Co. Ltd. v. Broome*, 1972 AC 1027, on the principle that, "an award of exemplary damages can serve a useful purpose in vindicating the strength of law". An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In *Rookes v. Barnard* 1964 AC 1129 it was observed by Lord Devlin, the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and righting succumbs

to the pressure of undersirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. Wade in his book "Administrative Law" has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which, apart, from other factors succeeded in keeping a salutary check on the functioning in the government or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarded damages against them.

11. xxx xxx No more claim to be under protective cover, xxx xxx

37. In the light of the aforesaid authoritative pronouncements of the Apex Court dealing with public accountability, it is needless to state that the 1st respondent Board constituted by its members and the Chief Executive Officer and the Executive Member responsible to allot plot No. 14-P in favour of the 2nd respondent in gross violation of rule of law, are accountable. The said authorities though responsible for the action are also attached governmental actions performed in furtherance of the objectives set out in the Act, Rules and Regulations. The intention behind the Regulation is to further public welfare and national interest and therefore, the Board and its Officers were required to cover the interest of the citizens not; only as a territorial unit but a nations as a whole. The 1st respondent authorities cannot but be said to be guilty of violating interest of society by preventing exploitation or misuse or abuse of office for personal gain or illegal gratification. The impropriety being writ large in the action complained of, the 1st respondent-Board and its Officers cannot but be brought to book.

38 In the result the following:

ORDER

i) the writ petition is allowed in part;

ii) The allotment of plot No. 14-P in Jigani Industrial Estate, Bangalore, in favour of the 2nd respondent by letter Annexure-C and the execution of the agreement Annexured) between tile 2nd respondent and the 1st respondent, are quashed;

(iii) The 2nd respondent, in terms of die undertaking in the affidavit filed before the Division Bench, is directed to restore the land to its original position In removing the structures and deliver vacant possession to the 1st respondent forthwith.

(iv) the 1st respondent-Board is directed to put up for sale by public auction the

said plot in compliance with Regulation 7 to the Regulations, and the petitioner is permitted to participate, in any event within a period of 3 months from taking possession of the property which in any event should not exceed five months in all.

(v) Costs are fixed at Rs. 10.000/- payable by the 1st respondent; to the petitioner;

(vi) the 1st respondent to recover the costs from the salary/pension from the officers concerned and to file a compliance report with the Registrar General of this Court immediately thereafter, and within the six months from the date;