

(2013) 10 OHC CK 0026
In the Orissa High Court
Case No : Writ Petition (C) No. 1495 of 2011

Sri Satyajit Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2013) 10 OHC CK 0026

Hon'ble Judges : I. Mahanty, J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : S.P. Misra, Niranjan Panda-1, S.K. Acharya, M.K. Panda and S. Majumdar, for the Appellant; Sanjib Swain, S.C. Panda and B.R. Rath for Opp. Party 2, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Mahapatra, J.—This Writ Petition has been filed with a prayer to issue writ of mandamus directing opposite parties to release the order of allotment of a plot in Prachi Enclave, Chandrasekharapur, Bhubaneswar at the approved cost as per the Scheme (Annexure-1) within a specific time. The further prayer of the petitioner is to direct opposite parties to calculate the cost of the plot as decided by the Bhubaneswar Development Authority (for short, "BDA") vide order dated 27.11.2007 of the Hon'ble Minister-cum-Chairman, BDA under Annexure-10 read with the policy decision taken in the proceeding dated 20.10.2008 under Annexure-13 to the Writ Petition. Petitioner's case in a nutshell is that in 2002, opposite party No. 2-BDA introduced a new plotted development Scheme at Prachi Enclave, Chandrasekharapur, Bhubaneswar for allotment of 225 plots. In 2003 due to terrestrial change in the field, 9 extra plots were carved out. On 31.12.2003, petitioner made an application to opposite party No. 2 for allotment of a plot of land in his favour out of discretionary quota of the Chairman on payment. On 29.01.2004, Hon'ble Minister, Urban Development-cum-Chairman, BDA (for short, "the Chairman") directed the Vice-Chairman, BDA to allot a plot of land measuring 2400 square feet each to six persons including the petitioner.

On 28.02.2004, petitioner represented before the authorities as well as the Chairman for issuance of necessary instructions to the Vice-Chairman, BDA for release of allotment order in favour of the petitioner. On 03.04.2004, petitioner again filed an application before the Chairman, BDA to issue instructions to the Vice-Chairman and Secretary, BDA to release allotment order as per the decision taken. Due to non-responsiveness of the opposite party-authorities, petitioner filed complaint before the Hon''ble Lokpal on 09.08.2005 vide Lokpal Case No. 548 LY(A) 2005 ventilating his grievances regarding allotment of land. On 09.03.2007, the Hon''ble Lokpal directed the BDA to follow guidelines dated 03.01.2007 regarding allotment of plots under discretionary quota. On 22.06.2007, the Hon''ble Lokpal directed for consideration of petitioner's application for allotment of a plot under discretionary quota as per guideline dated 03.01.2007. On 07.07.2007, in 100th Authority Meeting of the BDA authorities vide agenda item Nos. 29 and 30, approved the proposal for allotment of plot in Prachi Enclave plotted Scheme, Phase-I, out of the 9 numbers of newly carved out plots at the rate of Rs. 1681/- per square feet. On 14.11.2007, petitioner filed a reminder for issuance of allotment order by receiving cost of the land. On 27.11.2007, the Secretary, BDA, Vice-Chairman and the Chairman decided the following:

- (i) One plot is to be approved for allotment in favour of the petitioner in Phase-1 of Prachi Enclave;
- (ii) Allotment order/intimation regarding allotment which has not been issued as the cost of land has not been approved by the authority and yet to be finalized;
- (iii) Land rate at the rate of Rs. 1681/- per square feet as suggested by Cost Assessment Committee needs to be re-examined as land is meant for residential use;
- (iv) The recommendation of the CAC will be put before a 102nd meeting. After fixation of the rate by the authority, the petitioner will be communicated the allotment letter;
- (v) As per clause-8 of this Scheme (brochure) the petitioner shall pay interest @ 18% per annum. The cost of the plots are governed by the scheme. It would be improper to discriminate the petitioner in the land rate than the other allottees. The matter be placed before the next Authority Meeting;
- (vi) The Minister-cum-Chairman, BDA on due consideration of the rules/ instructions and the practices followed by the BDA passed order for assessment of amount of cost of land by the original allottee for allotment of land.

On 11.01.2008, the Authority observed that a clear distinction should be made between residential plots and commercial plots. The authority decided to re-examine the whole issue in the above perspective. On 20.10.2008, in 107th Authority Meeting, decision was taken with regard to the policy for fixation of price of the land plus interest at the Scheme rate to be compounded annually till

the date of payment.

2. Mr. S.P. Mishra, learned Senior Advocate appearing for the petitioner submitted that the petitioner is a small businessman and staying in a rental house with his family members and cannot afford to purchase a plot from the open market and construct a house for residential purpose. Even though the petitioner has been legally allotted with a plot since 2004, but no order has been communicated by the BDA in regard to allotment and cost of land. It clearly shows that the BDA is adopting discriminatory practice in withholding the petitioner's order of allotment to absorb any other influential person. BDA is issuing orders of allotment to various influential persons like politicians, bureaucrats, from out of discretionary quota. Petitioner time and again pursued the issue before the BDA for communication of the allotment order as approved by the highest authority under the Act. Petitioner gave representation on 09.11.2009 after running from pillar to post to get the order of allotment with the cost amount as per the Scheme. The last representation was dated 12.07.2010 before the Chairman, BDA but no response has been received from authority. Such a long silence, discrimination and inaction on the part of the BDA in spite of having required sanction for allotment of the plot with approved cost under the Scheme are illegal. Mr. Mishra further referred to the orders passed during the period from 09.04.2009 to 04.09.2009 which are reproduced herein below:-

? The CAC stuck up there (sic) earlier recommendation that is @ Rs. 1681/- per square feet;

? In 107th authority meeting it was decided to adopt uniformal policy of cost in allotment of land;

? Out of 9 newly carved out plots, plot No. 248 was given to an (sic) R.C. Pani on exchange;

? On 03.06.2009 the Vice-Chairman instructed planning member to carve out some more plots so that the cost of the plot reserved under discretionary quota will be finalized;

? Sri Satyajit Mohanty has not yet been issued the allotment order due to non-finalisation of the cost;

? At present 8 numbers of newly carved out plots are vacant for allotment (Plot No. 249 to 256) total area is 24540 square feet. The CAC recommended the cost of land @ Rs. 1681/- per square feet;

? The planning member has not yet carved out some new plots in Prachi enclave phase-1.

3. Mr. Mishra referring to Annexure-15 submitted that several persons have been allotted with plots in Prachi Enclave under discretionary quota. Clause-8 of the BDA (Procedure for allotment of Assets) Scheme, 2010 (for short, "BDA Scheme,

2010") provides for discretionary quota not exceeding 10% but the Scheme is prospective in nature. Referring to Annexure-19, Mr. Mishra submitted that there are persons, who have been allotted with plots and houses under discretionary quota during 01.04.2004 to 31.10.2011 along with cost of land charged. The petitioner cannot be discriminated to pay a different cost which is much higher than the brochure cost. It is further submitted that an advertisement has been published in local Daily "Dharitri" on 01.05.2012 for auction sale of eight numbers of residential plots at Prachi Enclave Developed Plotted Scheme in Chandrasekharapur at the rate of Rs. 1200/- per square feet as upset price.

4. Mr. Mishra also submitted that in the counter affidavit the opposite parties admitted the decision of allotment of one plot under discretionary quota to the petitioner. Report dated 09.03.2007 of Hon'ble Lokpal in favour of the petitioner is not disputed. Opposite parties have not taken any decision in 107th Authority meeting dated 20.10.2008 regarding fixation of cost of residential plot. The plot was allotted and approved by the Authority on 07.07.2007 in its 100th Authority Meeting after order of the Hon'ble Lokpal dated 09.03.2007. The procedure for fixation of cost of the plot was also decided by the Chairman on 27.11.2007 and by Authority on 20.10.2008. The Government order dated 20.12.2011 not to allot any plot/land/house under discretionary quota is prospective in nature.

In support of his contentions, Mr. Mishra placing reliance on the decision of the Hon'ble Supreme Court in the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, submitted that statutory Rule or Government Order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Further, placing reliance on the judgment of this Court in the case of Shri Nagen Kumar Barik Vs. Cuttack Development Authority, it was submitted that the Chairman being the highest authority of CDA and since he had recommended the plot in favour of the petitioner, the other authority of the CDA should have honoured the order passed by the Chairman and should have issued an allotment order in favour of the petitioner. Concluding his argument, Mr. Mishra submitted to allow the prayer made in this writ petition.

5. Mr. S. Swain, learned counsel appearing on behalf of opp. party-Bhubaneswar Development Authority submitted that the BDA has developed two plotted development schemes, namely, Prachi Enclave Phase-I and Phase-II at Chandrasekharapur, Bhubaneswar. In Prachi Enclave Phase-I total 148 nos. of plots were developed and out of the same, on the basis of lottery held on 27.12.2000, 132 plots have been allotted under general allotment and 15 plots have been allotted under discretionary quota. One plot was kept reserved in view of a case matter. In Prachi Enclave Phase-II, total 77 plots were developed out of which, 69 plots have been allotted on the basis of lottery held on 27.12.2002 under general allotment and 8 plots have been allotted under discretionary quota. Thus in both the Phases no plot was available for allotment. Subsequently, in course of survey after 2003 some vacant area was identified within the Prachi Enclave Phase-I area and 9 additional plots were developed over the same. The

petitioner had submitted one plain paper application dated 31.12.2003 under Annexure-2 requesting Vice Chairman, BDA to consider his case for allotment of a plot of land under discretionary quota at Prachi Enclave, Chandrasekharapur, Bhubaneswar. Not a single pie was deposited by the petitioner for the said purpose. It was submitted by Mr. Swain that in both the aforesaid schemes under Prachi Enclave there was a provision for reservation of 10% of the total available plots for allotment under discretionary quota. Applying the said principle out of 10 plots, one plot is to be reserved for discretionary quota. Since 9 additional plots were developed within the Phase-I area, the question of reservation was not there. However, taking a lenient view a decision was taken to reserve one plot for allotment under discretionary quota. While the application of the petitioner along with others was pending consideration for allotment under discretionary quota, the petitioner filed a case bearing No. 548-LY(A)/2005 before the Hon"ble Lokpal, Odisha and the Lokpal Odisha submitted his report dated 9.3.2007 with the observation that when no final order has been passed by the Chairman and the file is pending for discussion by the Chairman with the Vice Chairman as well as order of Status quo of Court, I am unable to find any abuse of position by any public servant. It is further observed that the recommendation given in some complaints in respect of some other projects of Bhubaneswar Development Authority should be brought to the notice of the Chairman at the time of discussion with the Vice Chairman for taking a decision. Thereafter the matter was placed before the 100th Authority meeting at Agenda Item No. 30/100 held on 7.7.2007. In the said meeting allotment of one plot under the discretionary quota was made in favour of the petitioner and it was decided to re-examine the cost of the land keeping in view that the land is meant for residential use. As per the above decision of the authority, the matter was referred to Cost Assessment Committee for fixation of cost of the land. Since in the meantime, more than four years had passed, different opinions were raised with regard to fixation of the cost of the land and finally in 102nd Authority Meeting held on 11.01.2008 in additional Agenda Item No. 25/102, it was decided for re-examination of the whole issue by the authority with regard to allotment of plot in favour of the petitioner and fixation of cost of the plot in Prachi Enclave Phase-I.

6. When the matter stood thus, there was a hue and cry in the State of Orissa against reservation by different authorities under discretionary quota and one Public Interest Litigation was filed. Therefore, the State Government taking a serious view of the matter, after careful consideration decided that the Orissa State Housing Board and all Development Authorities shall not allow allotment of any plot of land, flat or house under discretionary quota. The said decision of the State Government was communicated to the Vice-Chairman of all the Development Authorities, Odisha and to the Secretary of Odisha State Housing Board, Bhubaneswar vide its Circular dated 20.12.2011 (Annexure-A to the counter). Therefore, Mr. Swain submitted that in view of the aforesaid decision of the State Government, the BDA cannot allot any plot to any one under

discretionary quota as all the Development Authorities are bound to obey the decision of the State Government as per Section 103 of the Orissa Development Authorities Act, 1982. Since the scheme period was over and in a subsequent survey some vacant area was identified within the Prachi Enclave Phase-I area, it was decided to allot the same on the basis of auction sale in order to fetch highest market value. Accordingly, advertisement dated 1.5.2012 was published in different news papers for auction sale of 8 nos. of residential plots of different sizes within Prachi Enclave Scheme area. The date of sale of application forms was from 01.05.2012 to 31.05.2012. The last date of receiving the sealed quotation was 12.06.2012 and the date of opening of the said quotation was 20.06.2012. Out of nine newly developed plots, one plot was allotted in favour of the earlier allottee as his allotted land was used for drainage purpose.

7. Mr. Swain further submitted that though the present writ petition was filed long back on 21.1.2011, no notice was issued to the opp. parties. During Summer vacation, 2012 the matter was taken up on the basis of Misc. Case No. 8250 of 2012 filed by the petitioner. Since the decision of the State Government with regard to discontinuance of allotment under discretionary quota was not brought to the notice of the Court, an interim order dated 23.5.2012 was passed to the effect that the auction sale of plots under Annexure-21 may continue but no final decision shall be taken in the matter till 25.6.2012 and direction was given to list the matter on 19.6.2012. Since the matter becomes litigated at the instance of the petitioner and the sale of Application Form was found to be very poor, it is decided by the opp. parties to stop further sale of the Application Form and not to go ahead with the auction sale of the aforesaid plots. The petitioner has absolutely no right to be allotted with any plot in his favour under discretionary quota. Neither sale price of the plot has yet been finalized nor the petitioner has deposited any amount towards cost of the plot.

8. Placing reliance on the judgment of the Hon''ble Supreme Court in the case of Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, it was submitted that notings in departmental files do not have the sanction of law to be an effective order. It is merely an opinion by an officer. Only when a final order is communicated to the person concerned, it confers legal right on such persons. Further placing reliance on the decision of the Hon''ble Supreme Court in the case of P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, it was submitted that Government or legislature has power to evolve its new fiscal policy in public interest which includes its power to withdraw the old policy. Court would not bind the Government to its previous policy by invoking the doctrine of legitimate expectation of the applicant for licence unless the change in policy is vitiated by mala fides or abuse of power. Doctrine of promissory estoppel is equally inapplicable in such circumstances. Further, placing reliance on the judgment of the Hon''ble Supreme Court in the case of Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others, Mr. Swain submitted that prohibition imposed on allotment of plot under discretionary quota on the ground of allegation of mala fides to frustrate the

pending application of the petitioner cannot be sustained. Further placing reliance on the judgment of the Hon''ble Supreme Court in the case of Union of India (UOI) and Another Vs. International Trading Co. and Another, it was submitted that applicability of the doctrine of legitimate expectation is a question of fact. Such expectation in order to be legitimate must be founded on sanction of law. Any claim based on legitimate expectation without anything more cannot confer a right. Reasonableness of restriction must be determined from the standpoint of general public interest. Policy decision of Government taken in purported exercise of statutory power in public interest, acting reasonably and in good faith is not open to the court's interference. Further placing reliance on the judgment of Hon''ble Supreme Court in the case of Bachhittar Singh Vs. The State of Punjab, it was submitted that it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. Concluding his argument Mr. Swain submitted for dismissal of the writ petition.

9. In his rejoinder affidavit, the petitioner stated that out of the 9 additional plots developed under Prachi Enclave Phase-I, one plot was decided by the authority to be allotted to the petitioner. The plots were numbered as Plot Nos. 249 to 256. The area of plot nos. 249 to 256 has been mentioned in the note sheet dated 06.08.2009 under Annexure-20; those plots were more bigger in size than the plots as reflected in the advertisement under Annexure-21. Instead of creating a separate plot since the area of the existing plots is enhanced, the petitioner was deprived of getting a plot. The circular dated 20.12.2011 for non-allotment of plot/land/house under discretionary quota cannot be treated to have retrospective effect. Since the authority has already decided for allotment of a land to the petitioner since long, the Government Circular dated 20.12.2011 is not applicable to the petitioner. The Public Interest Litigation was dismissed. The petitioner was not given any reasonable opportunity of hearing before the State Government passed any order prejudicial to any person as provided u/s 103 proviso of Orissa Development Authorities Act, 1982. The writ petition was filed on 21.01.2011 and a copy of the writ petition was served in the office of the Advocate General on 24.01.2011 and this matter was put up before the Court on 08.11.2011, 18.11.2011 and finally on 07.05.2012 the matter was heard and notice was issued. A Lawyer's notice was served on opp. Party no. 2 on 11.5.2012 and subsequently copy of the interim order was served on the opp. Parties for their appropriate action. Opp. Parties are wrong to submit that the order/circular of the State Government dated 20.12.2011 with regard to the decision for non-allotment of plot/land/house under discretionary quota was not mentioned. The BDA cannot take advantage of the mistake/delay in garb of the Order/Circular of the Government dated 20.12.2011. The said decision of the Government being prospective, it is not applicable to the case of the petitioner. The opp. Parties cannot deprive and discriminate the petitioner in allotting a plot in his favour when they have allotted plots/lands to many persons under discretionary quota.

10. On the aforesaid rival contentions of the parties, the following questions fall for consideration by this Court:

(i) Whether any right accrues in favour of the petitioner in the matter of allotment of a plot on the basis of discussions made by the Chairman and other authorities of the BDA particularly when no final decision has been communicated to the petitioner with regard to allotment of a plot in his favour and price of the plot?

(ii) Whether in the fact situation, the petitioner can legitimately expect a plot of land to be allotted in his favour?

(iii) Whether the petitioner is entitled to be allotted with a plot in Prachi Enclave Phase-I under discretionary quota?

(iv) Whether the order of the Government dated 20.12.2011 regarding non-allotment of plot/land/house under discretionary quota is applicable to the petitioner?

(v) Whether the opp. Parties-BDA is justified to publish advertisement on 1.5.2012 in different news papers for auction sale of 8 numbers of residential plots of different sizes within Prachi Enclave Development Scheme area?

(vi) What order?

11. To deal with the above questions, it is necessary to note here certain facts which are not in dispute. The petitioner submitted a plain paper application dated 31.12.2003 requesting Vice-Chairman, BDA to consider his application for allotment of a plot of land under discretionary quota at Prachi Enclave, Chandrasekharapur, Bhubaneswar. He has not deposited a single pie along with the application. The matter was placed before the 100th Authority Meeting as agenda item no. 30/100 held on 7.7.2007 (Annexure-8). In the said meeting allotment of one plot under discretionary quota was approved in favour of the petitioner. It was further decided to re-examine the cost of the land keeping in view the fact that the land is meant for residential use. A conjoint reading of the approved proposal for allotment of plot at Prachi Enclave dated 7.7.2007 in 100th Authority meeting of BDA, the decision of the Secretary, B.D.A., Vice-Chairman dated 24.11.2007 in this regard, the decision taken in 102nd Authority meeting held on 11.1.2008 and the decision dated 20.10.2008 taken in 107th Authority meeting and the orders passed during the period from 9.4.2009 to 4.9.2009 does not show that any final decision has been taken by opp. party-authorities to allot any particular plot to the petitioner for a consideration finally determined by opp. party-authorities and the same has been communicated to the petitioner. While the matter stood thus, the State Government decided that the Orissa State Housing Board and Development authorities shall not allow allotment of plot of land, flat or house under discretionary quota. The said decision of the State Government was communicated vide Circular dated 20.12.2011 to the Vice-Chairman of all the Development Authorities and to the

Secretary, Orissa State Housing Board, Bhubaneswar. On 1.5.2012 BDA published an advertisement in different news papers for auction sale of 8 numbers of residential plots of different sizes within Prachi Enclave plotted Development Scheme area.

12. Question no.(i) is Whether any right accrues in the matter of allotment of a plot in favour of the petitioner on the basis of discussions made by the Chairman and other authorities of the BDA particularly when no final decision has been communicated to the petitioner with regard to allotment of plot in his favour and price of the plot? Admittedly, in the present case internal notings made in the opp. party-BDA's file have not been communicated to the present petitioner. Internal notings in the file are meant for taking a final decision in the matter. Only when a final decision is taken and it gets approval of final decision making authority and communicated to the person concerned, the notings in the file culminate into an executable order affecting the rights of the parties. In the present case, undisputedly notings in the file of opp. party-BDA don't show that any final decision was taken for allotment of a particular plot in favour of the petitioner and the price of the said plot was determined and the same has been communicated to the petitioner at any point of time. Now the question arises whether on the above factual scenario any right accrues in favour of the petitioner to be allotted with a plot. To deal with this question, we should not detain ourselves for a longer period. It would be beneficial to refer to the judgment of the Hon'ble Supreme Court in the case of Sethi Auto Service Station and another (supra), wherein it is held as under:

14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

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22. From the afore-extracted notings of the Commissioner and the order of the Vice-Chairman, it is manifest that although there were several notings which recommended consideration of the appellants' case for relocation but finally no official communication was addressed to or received by the appellants accepting their claim. After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposal was rejected by the Vice-Chairman, the final decision-making authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of the State Level Coordinator (Oil Industry) and the Technical Committee but

these did not ultimately fructify into an order or decision of DDA conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision-making process, in our view, are of no consequence and shall not bind DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did not confer any right upon the appellants as long as they remained as such. We do not find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench, warranting interference.

(Underlined for emphasis)

(Also see the cases of Laxminarayan R. Bhattad and Others Vs. State of Maharashtra and Another,

13. In view of the above settled legal position and in the fact situation, we are of the considered view that various notings made in the file of opp. parties-BDA recommending allotment of a plot in favour of the petitioner having not been fructified into an order and communicated to the petitioner, no legal right accrues in favour of the petitioner to be allotted with a plot in Prachi Enclave, Chandrasekharpur. This is more so when any particular plot has not been earmarked for the petitioner; the price of the plot has not been determined by the BDA and the final order has not been communicated to the petitioner.

14. So far question No.(ii) is concerned, the petitioner cannot base his claim on the doctrine of legitimate expectation as he has not satisfied the Court that he has relied on any representation and the denial of that expectation will work out to his detriment. On the other hand, the decision of the State Government that no plot/land/house shall be allotted to any person under discretionary quota is in public interest and such decision is not arbitrary, unreasonable or in gross abuse of power or in violation of principle of natural justice.

15. Further, expectation to be legitimate must be founded on sanction of law. Claim based on legitimate expectation without anything more cannot confer a right. The Hon'ble Supreme Court in the case of Union of India (UOI) and Another Vs. International Trading Co. and Another, has held as under:

20. As was observed in Punjab Communications Ltd. v. Union of India³ the change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury reasonableness". The decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of policy is for the decision-maker and not the court. The legitimate substantive expectation merely permits the court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely legitimate expectation without anything more cannot ipso facto give a right. Its uniqueness lies in the fact that it covers the entire span of time: present, past and future. How significant is the statement that today is tomorrow's yesterday. The present is as we experience it, the past is a present memory and future is a present expectation. For legal

purposes, expectation is not same anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law.

16. Law is well settled that concept of legitimate expectation has no role to play where the State action is a public policy or in the public interest. The Hon'ble Supreme Court in the case of Sethi Auto Service Station and another (supra) held as under:

32. An examination of the afore-noted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. (Vide Hindustan Development Corpn.8)

17. As stated above, the petitioner's claim to be allotted a plot of land in Prachi Enclave, Chandrasekharapur is not founded on sanction of any law. On the other hand, the decision of the State Government dated 20.12.2011 that no public property shall be allotted to any person under discretionary quota is a public policy or in the public interest and such action of the State Government does not amount to abuse of power. Therefore, the petitioner cannot claim any benefit on application of doctrine of legitimate expectation.

18. Question Nos.(iii) and (iv) being interlinked, they are dealt with together.

We have already held that at no point of time any right has accrued in favour of

the petitioner to be allotted with a plot of land in Prachi Enclave, Phase-1, Chandrasekharapur, Bhubaneswar. While the said situation remained unchanged, the Government took a decision not to allow allotment of any plot of land/flat/house under discretionary quota which was communicated vide Circular/letter dated 20.12.2011 to the Vice-Chairmans of all the Development Authorities and the Secretary, Orissa State Housing Board, Bhubaneswar. Such decision of the Government is binding on the opp. parties-BDA in view of Section 103 of the Orissa Development Authorities Act, 1982 which provides that the Authority shall carry out such direction as may be issued to it, from time to time, by the State Government for the efficient administration of this Act and if in or in connection with the exercise of its powers and discharge of its functions by the Authority under this Act, any dispute arises between the Authority and the State Government, the decision of the State Government on such dispute shall be final.

19. The Hon"ble Supreme Court in the case of Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, held that the Corporations are instrumentalities of the State Government and the decision of the State Government is binding on them.

20. In view of the above, we are of the considered view that the petitioner is not entitled to be allotted with a plot in Prachi Enclave Phase-I under discretionary quota and the circular/letter of the Government dated 20.12.2011 regarding non-allotment of plot/land/house under discretionary quota is applicable to the petitioner.

21. Question No.(v) is whether the opp. party-BDA is justified in publishing advertisement on 01.05.2012 in different news papers for auction sale of 8 nos. of residential plots of different sizes within Prachi Enclave Development Scheme area ? Law is no more res-integra on this point. Needless to say that all attempts should be made by the State and its instrumentality to obtain the best available price while disposing of its property and one of the methods of getting best available price is to sell the public property by public auction.

22. In Ram and Shyam Company Vs. State of Haryana and Others, , the Supreme Court held as under:

12. ...A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting up of a welfare State....

23. In Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, , the Hon"ble Supreme Court indicated that the best method of disposal of public property is by public auction and not by private negotiation, and the

authorities entrusted with care of public property are required to show exemplary vigilance.

24. In *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , the Supreme Court held that-

39. On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

(Also *Rashbihari Panda etc. Vs. State of Orissa*,

25. For the reasons stated above, we are of the considered view that the petitioner is not entitled to the relief prayed for. In the result, the writ petition is dismissed.

I. Mahanty, J.

I agree.