
(2004) 09 BOM CK 0080
In the Bombay High Court
Case No : Writ Petition No. 648 of 1990

Transport Nagar Free Zone Co-operative Society Limited	APPELLANT
Vs	
Nagpur Improvement Trust and Another	RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Nagpur Improvement Trust (Land Disposal) Rules, 1983 — Rule 2, 22, 23, 26, 5
Nagpur Improvement Trust Lands Disposal Rules, 1955 — Rule 3

Citation : (2005) 1 ALLMR 643 : (2005) 3 BomCR 485

Hon'ble Judges : Sinha D.D., J;Joshi A.H., J

Bench : Division Bench

Advocate : M.G. Bhangde, for the Appellant; S.K. Mishra, for respondent No. 1-N.I.T. and T.D. Khade, A.G.P., for respondent No. 2-State, for the Respondent

Final Decision : Dismissed

Judgement

Sinha D.D., J.—Heard learned Counsel for the petitioner as well as learned Counsel for the respondent No. 1-N.I.T. and learned Asstt. Govt. Pleader for respondent No. 2-State.

2. Learned Counsel for the petitioner states that petitioner is a society which was formed with the object of providing land and building to its members for their transport and allied trade. The petitioner approached the respondent No. 1 for allotment of land out of "Eastern Industrial Area Street Scheme" and on 9th February, 1982 the respondent No. 1 considered the application of the petitioner for allotment of land and allotted 140 plots, admeasuring 16,00,000 sq.ft. to the petitioner society. The petitioner society credited an amount of Rs. 5,75,000/- with the respondent No. 1.

3. Learned Counsel for the petitioner further states that on 2nd November, 1983 the respondent No. 1 cancelled the allotment of the aforesaid land made in favour of the petitioner. It was stated that the steps for cancellation were taken in view of the provisions of Nagpur Improvement Trust Act, N.I.T. Land Disposal

Rules, 1983. It is contended that without prejudice to the rights of the petitioner, the petitioner submitted representation dated 30th November, 1983 to the respondent No. 2 for relaxation of the Rules in exercise of power conferred by it under Rule 26 of the N.I.T. Land Disposal Rules, 1983 (in short "Land Disposal Rules 1983") and to consider the allotment of land referred to herein above in favour of the petitioner/respondent No. 2 did not decide the representation for a long time and the respondent No. 1 wanted to take possession of the said plot from the petitioner. In view of the order of cancellation dated 2nd November, 1983 the petitioner was constrained to approach this Court and therefore, petitioner filed Writ Petition No. 940/84. This Court disposed of the said petition on 7-10-1987 with the direction to the respondent No. 2-State to decide the representation of the petitioner dated 30-11-1983 within the period of four months.

4. The learned Counsel for the petitioner further contended that respondent No. 2 in exercise of the powers conferred by Rule 26 of the Land Disposal Rules, relaxed the provisions of the Land Disposal Rules and ordered allotment of 140 plots in favour of the petitioner by order dated 21-9-89 on a price to be determined by respondent No. 1 on "no profit-no loss" basis. It is submitted that after the order of allotment dated 21st September, 1989, the respondent ought to have given possession of the said land to the petitioner. However, since there was complete inaction on the part of the respondent to take appropriate steps pursuant to the order dated 21-9-1989 passed by respondent No. 2, the petitioner submitted various representations to the respondent Nos. 1 and 2. However, none of the respondents responded to the request letters and representations made by the petitioner. Therefore, the petitioner was constrained to file the present writ petition seeking direction to the respondent No. 1 to comply with the order dated 21st September, 1989 issued by the respondent No. 1 whereby 140 plots were allotted to the petitioner society.

5. The learned Counsel for the petitioner states that it is not open for the N.I.T. to question the validity of the decision of respondent No. 2-State Government dated 21st September, 1989, nor the respondent No. 1 challenged the same by filing appeal or revision or under any other provisions of law before any competent authority and in absence thereof it is not open for the respondent No. 1 to question the validity of the decision dated 21-9-1989 taken by the respondent No. 2 and the respondent No. 1 is duty bound to carry, out the orders passed by the respondent No. 2-State Government.

6. Learned Counsel for the petitioner further contended that even otherwise the case of the petitioner was reconsidered by the State Government as per the mandate of this Court issued in the judgment passed in Writ Petition No. 940/84 in view of Rule 26 of the Land Disposal Rules, 1983, which provides for power of relaxation of Rules to the Government. Rule 26 reads thus:-

"Rule 26-Relaxation of Rules. - The Government may, for reasons to be recorded in writing, relax any of the Rules in respect of case, which, in its opinion is of

special nature.

By an order and in the name of the Governor of Maharashtra."

7. The learned Counsel for the petitioner further contended that in view of this Rule, there is an independent power vested in the State Government to relax any Rule or Rules of Land Disposal Rules, 1983, irrespective of any prohibition or otherwise provided under this Act or any impediment created otherwise in this regard. It is submitted that this is an overriding power vested in the State Government which is distinct and independent in nature and is exercised by the State Government. In view of the direction issued by this Court in W.P. No. 940/84, the State Government passed the impugned order dated 21st September, 1989, whereby 140 plots were allotted in favour of the petitioner. It is, therefore, contended that the action of the State Government is perfectly legal as per the provisions of Rule 26 of the Rules and the same being binding on the respondent No. 1, mandamus be issued to the respondent No. 1 to comply the order dated 21st September, 1989, issued by the State Government. In order to substantiate the contentions, reliance is placed by the learned Counsel on the following judgments of the Apex Court;

(i) State of U.P. and Others Vs. Ashok Kumar Saxena and Another Etc., .

(ii) State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, ,

8. Learned Counsel for the respondent No. 1 states that the issue in question has a chequered history and therefore, some extremely important and material facts are required to be considered before the issue in question is adjudicated by the N.I.T. for "Eastern Industrial Area Street Scheme" and was earmarked for the industrial purpose in the relevant development plan of Nagpur city. The petitioner and others submitted application under Sub-rule 3(a) of the N.I.T. Land Disposal Rules, 1955 for allotment of land since at the relevant time as per Sub-rule 3(a) allotment of land was permissible by direct negotiations with the parties. Mr. Mishra, learned Counsel for the respondent No. 1 contended that on 30th October, 1981 the Board of Trustees of the Nagpur Improvement Trust passed the resolution allotting 140 plots to the petitioners. Under the resolution, 45 plots were allotted to Dal Miller Association and 139 plots were allotted to the Octroi Free Zone Cooperative Housing Society.

9. The learned Counsel for the respondent No. 1 states that at the relevant time Writ Petition No. 1418/78 wherein constitutional validity of Rule 3(a) of the Land Disposal Rules, 1955 was called in question, was pending. It is submitted that in the month of June, 1980 the said writ petition is allowed by this Court and Rule 3(a) of the Land Disposal Rules, 1955 was struck down.

10. Learned Counsel for respondent No. 1 N.I.T. further submitted that, in Public Interest Litigation i.e. Writ Petition No. 956/82 which was pending in this Court at the relevant time, validity of said Rule 3(a) of 1955 Rules was under challenge, and this Court while order dated 7th October, 1987 finally disposed of

the said writ petition by observing thus;

"This petition under Article 226 of the Constitution is directed against certain resolutions passed by the respondent No. 1 Nagpur Improvement Trust allotting certain plots of land to several persons as mentioned in Annexures A to H of the petition. The ground of attack was that Rule 3 of the Land Disposal Rules of the Nagpur Improvement Trust was void. After the petition was admitted, this Court in Writ Petition No. 1418 of 1978, decided on 29-6-1982 struck down Rule 3(a) of the Land Disposal Rules. In view of this position, the relief sought by prayer Clause (a) would not survive. By prayer (b) a writ is sought against the respondent No. 1 preventing it from making allotment of plots in exercise of its power under Rule 3(a) of the Land Disposal Rules and the allotments made should be quashed and set aside. The respondent No. 1 in its return in paras 4 and 5 has referred to the decision in Pushpa v. Nagpur Improvement Trust, Writ Petition No. 1418 of 1978, decided on 29-6-1982 and stated that it is not acting upon the resolution at Annexures A to H as it has no power in view of quashing of Rule 3(a) of the Nagpur Improvement Trust Land Disposal Rules, 1955. In view of this clear statement by respondent No. 1, nothing survives in this petition and the petition is accordingly disposed of and the rule is discharged. There will be no order as to costs."

11. The learned Counsel for the respondent No. 1 further submitted that the N.I.T. in the year 1987 itself had taken a positive stand before this Court in view of the decision dated 29th June, 1982 rendered by the Division Bench in Writ Petition No. 141/78 not to act upon the resolution dated 30th October, 1981 and therefore, Writ Petition No. 956/82 was disposed of and rule was discharged by this Court.

12. The learned Counsel for the respondent further states that the State Government vide letter dated 21st October, 1983 informed the Executive Officer of the respondent No. 1 Trust that the proposal made by the N.I.T. under its D.O. Letter No. 170, dated 9th June, 1983 (i.e. seeking permission of the Government for allotment of plots in view of the Board's resolution dated 30th October, 1981) cannot now be approved as it is not permissible under the N.I.T. Land Disposal Rules, 1983, and hence plots will have to be auctioned and thus approved the request made by the N.I.T. for allotment as per Resolution dt. 30-10-1981.

13. Mr. Mishra, learned Counsel for the respondent No. 1 states that other two allottees of the plots i.e. Dal Miller. Association and Octroi Free Zone Cooperative Housing Society also challenged the cancellation of allotment letter dated 2-11-1983 issued by N.I.T. by filing Writ Petition Nos. 2691/83 and 2692/83 respectively and this Court decided both these Writ Petitions by common order dated 8-10-1987, dismissed both Writ Petitions. The judgment is reported in Pathandhare Anveshan Grahaniirman Sanstha Maryadit (Proposed) Vs. Nagpur Improvement Trust, .

14. Learned Counsel for the respondent No. 1, therefore, contended that in view

of the above referred decision, the allotment which is made under Rule 3(a) of the Land Disposal Rules vide Resolution dated 30th October, 1981 itself was held to be bad in law and therefore, any further decision pursuant to that taken by the authority is null and void.

15. Learned Counsel for the respondent No. 1 further contended that Rule 5 of the Land Disposal Rule, 1983 deals with the manner of disposal of land whereas Rule 6 deals with the disposal of land for commercial, residential and industrial purposes as well as mandatory provision is also carved out in the said Rule in this regard. It is submitted that Rule 7 deals with the premium of the disposal of the land by public auction and tender and special Rule 2 provides the constitution of the Committee for this purpose. It is submitted that Rules 22 and 23 deals with the allotment of land for residential purpose to persons belonging to economically weaker section of the society and those who are affected by the land acquisition proceedings. It is submitted that in the entire 1983's Land Disposal Rules there is no provision for allotment of land by private negotiation as was provided under Rule 3(a) of 1955 Rules for allotment of lands on "no profit-no loss" basis. It is submitted that in absence of such Rules, question of relaxation in this regard under Rule 26 does not arise and therefore, the exercise under taken by the State Government under Rule 26 and the land allotment order dated 21-9-1989 passed by the State Government is totally perverse and unsustainable in law.

16. Learned Assistant Government Pleader submitted that after the receipt of G.R./Order dated 21-9-1989, the Nagpur Improvement Trust brought to the notice of the State Government the relevant information referred to herein above. It was brought to the notice of the State Government that matter of allotment, could not be considered only in respect of petitioner's society i.e. Transport Nagar Free Zone Cooperative Society, however, in view of the directions given in Writ Petition No. 940/84, and it would not be permissible to allot the land as prayed, however, the Government is reconsidering the whole issue in consultation with the local department of the Government. Hence the Government cannot give any directives to the N.I.T. at this stage as asked for by the petitioner. Learned Assistant Government Pleader does not dispute the factual aspect referred to herein above and the relevant orders and judgments passed by this Court in the various Writ Petitions referred to herein above.

17. We have given our anxious thought to the various contentions advanced by the respondent as well as decision rendered by this Court in Writ Petitions referred to herein above and perused the relevant provisions of the Land Disposal Rules, 1955 & 1983 and the judgment of the Apex Court relied upon and cited by the parties to this petition. In the instant case it is no doubt true that on 21-9-1989 the respondent No. 2 in exercise of power conferred by Rule 26 of the Land Disposal Rules, 1983 passed an order dated 21-9-1989 and allotted 140 plots in favour of the Petition on "no profit no loss" basis. However, in order to appreciate the correctness of this decision of the State Government, it

is necessary to taken into consideration certain undisputed facts and the decisions of this Court which have positive bearing in this regard.

18. In the instant case, it is not in dispute that the application for allotment of 140 plots out of "Eastern Industrial Area Street Scheme" was made by the petitioner under the provisions of Rule 3(a) of the Land Disposal Rules of 1955. The mode of transfer of land is provided in Rule 3 of the Land Disposal Rues, 1955, relevant part of the Rule reads thus-

"Rule 3- The transfer of Trust land shall be:-

(a) By direct negotiation with the private party, or;

(b) By public auction, or

(c) By inviting tender, or

(d) By concessional rates.

It is also not in dispute that respondent No. 1 Trust processed the application of the petitioner as per Sub-rule (a) of Rule 3 of Land Disposal Rules, 1955 i.e. after entering into negotiations with the petitioners, the Board of Trustees of respondent No. 1 passed a resolution dated 30-10-1981, whereby allotted 140 plots to the petitioner, admeasuring 16,00,000 sq.ft., and the petitioner society was asked to credit an amount of Rs. 5,75,000/- with the respondent No. 1. By the said resolution and by following the same procedure, the respondent No. 1 had also allotted plots to the other two claimants i.e. Dal Miller Association - 40 plots and the Octroi Free Zone Cooperative Housing Society. - 139 plots.

19. It is not in dispute that the validity of Rule 3(a) of the Land Disposal Rules, 19,55 was called in question in Writ Petition No. 1418/78 Pushpa v. Nagpur Improvement Trust, which was decided by this Court on 29-6-1982 and by said judgment Rule 3(a) of the Land Disposal Rules of 1955 was struck down.

20. Another important and relevant circumstance is that one public interest litigation was filed in the form of Writ Petition No. 956/82 challenging the validity of Rule 3(a) of Land Disposal Rules, 1955. The said writ petition is disposed of by the Division Bench on 7th October, 1987 in view of the statement of the N.I.T. that, since as per the decision in Pushpa v. N.I.T. in Writ Petition No. 1418/78 the respondent No. 1 is not acting upon the Resolution dated 30-10-1981 as it has no power in view of quashing of Rule 3(a) of the N.I.T. Land Disposal Rules, 1955. Vide letter dated 2nd November, 1983 the Executive Engineer, N.I.T. informed the petitioner that the Government has rejected the proposal of allotment of 140 plots in the "Eastern Industrial Area Street Scheme" to the petitioner and therefore, withdrawn the offer of allotment of plots and the amount for Rs. 5,75,000/- was also returned to the petitioner.

21. Vide communication dated 21st October, 1983 issued by under Secretary to the Government, addressed to the Executive Officer, N.I.T., the Government informed the N.I.T. that the trust proposal submitted vide letter dated 9th June,

1983 cannot be approved as it was not permissible under the N.I.T. Land Disposal Rules, 1983 and the plots would have to be auctioned. The petitioner being aggrieved by the above referred cancellation of allotment of plots taken by the State Government and communication to the petitioner by the respondent No. 1, filed a Writ Petition No. 940/84. In the said writ petition, petitioner has raised several challenges to the action of respondents of cancellation of allotment, one of them was that under Rule 26 of the Land Disposal Rules, 1983, Government has the power to relax any of the Rules in respect of a case which in its opinion is of a special nature. The petitioner in the said petition also contended that a representation was made by the petitioner on 30th November, 1983 to the Government for relaxing the Rules and for allotment of the land to the petitioner. Since the said representation dated 30th November, 1983 of the petitioner for relaxation of Rules was not considered by Government and the petitioner in the said writ petition restricted prayer only for issuance of direction to the State Government to consider the representation of the petitioner dated 30th November, 1983 submitted under Rule 26 of the Land Disposal Rules, 1983 within a stipulated period, the Division Bench of this Court disposed of the Writ Petition No. 940/84 on 7th October, 1987 by issuing following directions, which reads thus :-

"In the result, we direct the respondent No. 1 to decide the petitioner's representation dated 30th November, 1983 within a period of four months. The ad interim injunction would continue for a period of 15 days after the decision on the petitioner's representation is communicated to him. The petition is disposed of. Leave is granted to the petitioner to file fresh petition on the subject-matter of this petition should occasion arise. There will be no order as to costs of this petition."

It is, therefore, evident that this Court without adjudicating upon the provisions of Rule 26 of the Land Disposal Rules of 1983 as well as without considering the entitlement of the petitioner's claim and power of State Government of relaxation under Rule 26, issued simpliciter direction to the State Government to consider the representation of the petitioner dated 30th November, 1983. It is further evident that in the Writ Petition No. 940/84, this Court has neither interpreted Rule 26 of the Land Disposal Rules, 1983, nor considered the power of the State Government of relaxation of Land Disposal Rules and left it to the State Government to consider these issues and decide the representation of the petitioner dated 30th November, 1983 according within a period of four months from the date of order i.e. 7th October, 1987.

22. The another relevant circumstance which has a positive bearing on the issue in question is that Vidarbha Dali Miller Association to whom 45 plots were allotted vide resolution dated 30-10-1981 of the Board of Trustees of respondent No. 1 was also communicated about cancellation of allotment of plots made in their favour. Similarly, Octroi Free Zone Cooperative Housing Society to whom 139 plots were allotted vide resolution dated 30-10-1981 of the Board of Trustees of

respondent No. 1 was also informed about the cancellation of allotment. Being aggrieved by the order of cancellation of allotment, Vidarbha Dall Miller Association filed Writ petition No. 2691/83 and Octroi Free Zone Cooperative Housing Society has filed Writ Petition No. 2692/ 83. Both these writ petition are disposed of by the Division Bench of this Court by common judgment on 8-10-1987 reported in Pathandhare Anveshan Grahanirman Sanstha Maryadit (Proposed) Vs. Nagpur Improvement Trust, . The point for consideration before the Division Bench in the said writ petition reflected in para 2 of the judgment reads thus:-

"The only limited point for our consideration is whether the decision in Writ Petition No. 1418 of 1978 would apply to the transactions which had been finalised prior to the date of invalidation or Rule 3(a) of the Land Disposal Rules by the decision which was rendered on 29th June, 1982 the allotment having taken place on 30th October, 1981. Shri Manohar the learned Counsel for the petitioner relied on an observation in Judicial Review of legislation by V.S. Deshpande to the following effect on page 204:

"A statute which is void either partly or wholly does not cease to exist. It is only presently unenforceable. But it will still exist for various purposes. Things which have been done under it and which cannot be re-opened either because of the principle of res judicata or for other reasons would be construed to have been validly done because the statute existed when they were done."

23. In other words, the challenge in the writ petition was the allotment of plots done by the respondent No. 1 vide resolution dated 30-10-1981, which is prior to the decision in Writ Petition No. 1418/78, wherein the Division Bench of this Court struck down Rule 3(a) of the Land Disposal Rules and therefore, said resolution dated 30-10-1981 is not affected by subsequent invalidation of Rule 3(a) of the Land Disposal Rules. The Division Bench of this Court while concluding the issue in paras 5 and 6 observed thus:-

"5. Shri Manohar strenuously urged that after Rule 3(a) of the Land Disposal Rules was held invalid, the decision can operate only prospectively and wanted to rely on the observations in I.C. Golak Nath and Others Vs. State of Punjab and Another, , but the limitations have been categorically stated in para 51 of the judgment in the following words:

As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions : (1) The doctrine of prospective overruling can be invoked only in matters arising under our constitution; (2) it can be applied only by the highest Court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law abiding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions" is left to its direction to be moulded in accordance with the justice of the cause or

matter before it.

Even Shri Manohar found it difficult to contend in view of these propositions that we could resort to the theory of prospective overruling in the present case. The conclusion would ultimately be that the provisions of Rule 3(a) of the Land Disposal Rules, 1955 would be bad from its inception and would not become bad by virtue of the judicial declaration, but on account of the vice inherent in it as it contravened the constitutional provisions. The allotment of land which was done pursuant to the power which could be traced only under Rule 3(a) cannot, therefore, be supported and the petitioners would not be entitled to claim any relief in respect of the transactions in their favour. The action of the respondent in withdrawing the allotment and regarding the allotment as non est would not be open to question.

6. In the result, the writ petitions are dismissed and the rule is discharged. There will be no order as to costs. Shri Manohar states that we should suspend the operation of this judgment because he wants to approach the Supreme Court against the order which we propose to pass. Since we have only followed the dicta laid down by the Supreme Court, we do not see any justification for grant of stay."

24. It is, therefore, evident that in case of Pathandhare Anveshan Grahanirman Sanstha Maryadit (Proposed) and Anr. v. N.I.T., it is finally concluded by this Court that the provisions of Rule 3(a) of the Land Disposal Rules, 1955, would be bad from its inception and would not become bad by virtue of judicial declaration, but on account of vice inherent in it as contravened the constitution provision and therefore, it is further concluded that the allotment of land which was done pursuant to the power which could be traced only under Rule 3(a) cannot, therefore, be supported and the petitioner would not be entitled to claim any relief in respect of transaction, in their favour and finally it has observed that the action of respondents in the said writ petition in withdrawing the allotment and as the allotment as non est would not be open to question. Both the petitions were dismissed by this Court and rule was discharged. By virtue of this decision, it was finally concluded that resolution of Board of Trustees of respondent No. 1 dated 30-10-1981 whereby 140 plots allotted to the petitioner as well as 45 plots allotted to the Vidarbha Dall Miller Association and 139 plots allotted to the Octroi Free Zone Cooperative Housing Society was bad in law and the claim of the petitioner for allotment of plots in view of resolution dated 30-10-1981 was disallowed by this Court, though in favour of Vidarbha Dall Miller Association and Octroi Free Zone Cooperative Housing Society, however, by necessary implication, the allotment of 140 plots made in favour of the petitioner vide resolution dated 30-10-1981 also be bad in law and the claim of the petitioner for allotment of plots in view of Resolution dated 30-10-1981 also would be impermissible in law.

25. The above referred decision of this Court in Pathandhare Anveshan Grahanirman Sanstha (supra), finally concluded the issue of allotment of plots

vide resolution dated 30-10-1981 passed by the Board of Trustees of the respondent No. 1 Trust in favour of the petitioner and other two association & society, by holding that though the provisions of Rule 3(a) of the Land Disposal Rules, 1955 are struck down after resolution of allotment of plots was passed, however, on account of vice inherent in it, the allotment of land which was done pursuant to the power which could be traced only under Rule 3(a) cannot be sustained in law from the inception of said Rule. Admittedly nobody had filed any SLP against the above referred judgment and therefore, the decision has reached finality and was binding on the respondent No. 1 N.I.T., the State Government, the present petitioner as well as the petitioners in the Writ Petition Nos. 2691/83 and 2692/83 and the State Government was not legally entitled to consider the claim of the petitioner for allotment of plots.

26. So far as the contention of the petitioner that the application of the petitioner dated 30th November, 1983 was made to the respondent No. 2 not under provisions of Land Disposal Rules, 1955 but under Rule 26 of the Land Disposal Rules, 1983 which empowers the State Government for reasons to be recorded in writing, relax any of the Rules in respect of a case which in its opinions if of a special nature is concerned, before we consider Rule 26 of 1983 Rules, it will be appropriate to consider the scheme of the 1983 Rules. Rule 5 deals with the manner of disposal of land and respondent No. 1 Trust is entitled to dispose of the land of the Trust in the following manner;

(i) By holding public auction;

(ii) By inviting tender by inviting public advertisement;

(iii) By making offer to and accepting offer from the Government, local authorities, public sectors etc.

It is pertinent to note that there is no provision in 1983 Land Disposal Rules to transfer the land by direct negotiation with the private party which was stipulated in Rule 3(a) of the Land Disposal Rules of 1955. In, 1983 Rules, disposal of lands to the private individuals is permitted only by holding public auction or by inviting tenders by public advertisement. So far as Rule 6 of the Land Disposal Rules, 1983 is concerned, it deals with the disposal of land for commercial, residential and industrial purposes and contemplates that such disposal shall be inviting tender or by public auction to be held after giving due publicity as to the date, place, time and particulars of the Trust land to be auctioned. The land in question being from the industrial zone, the only method of disposal is provided under Rule 6 is by inviting tenders or by public auction and therefore, the question of allotting land by any other method would not only be impermissible in law but would be void ab initio. Rule 26 of 1983 Rules empowers the State Government for reasons to be recorded in writing, relax any of the Rules, however, when there is no Rule in 1983 Rules, which provides disposal of land by any other method than inviting tender or by public action, the question of relaxing the same does not arise. The power of relaxation of Rules

contemplated in Rule 26 presupposes existence of Rule, however, for want of Rule, question of relaxing the same does not arise. It must be borne in mind that under Rule 26 the Government is not empowered to create altogether different procedure for disposal of land which is completely de hors of the existing Rules and therefore, any action taken by the State Government under the garb of power of relaxation of Rules under Rule 26 by evolving altogether different procedure for disposal of land of the Trust would be totally impermissible in law and such action would be null and void.

27. In the instant case, the State Government vide order dated 21-9-1989 allotted 140 plots to the petitioner by evolving completely different procedure than the one which is totally de hors of Rules 5 and 6 of the Land Disposal Rules, 1983 which in our considered view, for the reasons stated herein above, is totally impermissible in law therefore, the order of allotment cannot be sustained in law. Similarly, Rule 26 of 1983 Rules empowers the State Government to relax any Rule, if it is necessary, in the special circumstances, for the reasons to be recorded in writing for such relaxation and not otherwise. In the instant case, the order of allotment dated 21-9-1989 is completely silent in regard to the reasons as to why the State Government thought it fit to exercise power of relaxation in case of the allotment of plots to the petitioner nor there is any whisper about special nature of the transaction. In other words, the State Government has given no reasons as to why they are relaxing the Rules. There is also absolutely nothing mentioned about the special nature of transaction which necessitated the State Government to exercise power of relaxation of Rules vested in it under Rule 26. The order of allotment simply states that as per provisions of Rule 26 of N.I.T. Land Disposal Rules, 1983, the State Government was allotting 140 plots to the petitioner. In absence of reasons to be recorded in writing as to why the State Government is required to relax the Rules and in absence of special circumstance or nature of transaction, the State Government cannot exercise the power of relaxation under Rule 26 of the Land Disposal Rules, 1983 and since the impugned order of allotment is silent on these aspect, the same is unsustainable in law in view of the scheme of Rule 26 of the Land Disposal Rules of 1983.

28. We have already observed herein above that the direction given by the Division Bench of this Court while order dated 7th October, 1987 in W.P. No. 940/84 is a simpliciter direction to the State Government to consider the application of the petitioner dated 30th November, 1983, submitted to the Government under Rule 26 of the 1983 Rules, without expressing any view either on the entitlement of the petitioner for allotment of plots not the manner in which the, State Government is required to exercise the power under Rule 26 of the Land Disposal Rules, 1983, and therefore, it was incumbent on the State Government before exercising the power under Rule 26 of 1983 Rules to consider the scheme of the Rules, the circumstance in which such power can be exercised and what are the reasons for relaxing the Rules. However, the State Government by giving complete go-bye to the procedure contemplated by Rule 26 of 1983 Rules, passed the impugned order of allotment dated 21-9-1989 which in our

considered view is unsustainable in law.

29. In the instant case, we cannot turn Nelson's eye to the conduct of the State Government in passing the order of allotment of plots dated 21-9-1989 in favour of petitioner and other societies in the light of the above referred undisputed facts. The respondent No. 1 vide resolution dated 30-10-1981 allotted 140 plots to the petitioner society, 45 plots to the Vidarbha Dal Miller Association and 139 plots to the Octroi Free Zone Co-operative Housing Society. The petitioner and other two societies were submitted application for allotment of plots admittedly u/s 3(a) of the Land Disposal Rules of 1955. Section 3(a) of 1955 Rules was struck down by this Court vide judgment dated 29-6-1982 in Writ Petition No. 1418/78 Pushpa v. N.I.T.. The resolution of allotment of plots in favour of Vidarbha Dal Miller Association and Octroi Free Zone Co-operative Housing Society, passed by the respondent No. 1 dated 30-10-1981, was held to be bad in law by the Division Bench of this Court in case of Pathandhare Anveshan Grahnirman. Sanstha Maryadit (Proposed) and Anr. v. Nagpur improvement Trust, Nagpur. If that is so, the right of the petitioner as well as other associations/societies to get the plots allotted to them came to an end and thereafter there is no question of considering their request for allotment of plots when the resolution of allotment dated 30-10-1981 was held to be bad in law by this Court. It is really disturbing that Government being fully aware about these aspects, ought to have straightway rejected the application submitted by the petitioner for allotment of plots and there was no special reason to exercise power under Rule 26 of 1983 Rules nor there was any special circumstance to do so, which is evident from the order dated 21-9-1989 itself, in which there is not even a whisper about the reasons much less the reasons in writing as well as any special circumstance which required the State Government to exercise the power of relaxation under Rule 26. The conduct of the State Government in passing the order dated 21-9-1989 is not only palpably wrong but the same is de hors of the provisions of law and procedure and it is apparent that the same is passed only to oblige the petitioner.

30. So far as binding nature of order of allotment dated 21-9-1989 passed by the State Government is concerned, it is well settled that if the order is palpably wrong and manifestly illegal, similarly de hors of provisions of law and procedure applicable, is a non est order and therefore, there is no question of same being binding on the subordinate officers or local authorities. In the instant case, we admired the conduct of the Nagpur Improvement Trust who has showed its inability to implement the order of allotment dated 21-9-1989 by passing resolution dated 28-12-1989. The contention canvassed by the learned Counsel for the petitioner in this regard, therefore, is misconceived, devoid of substance and cannot be accepted.

31. So far as case of State of U.P. & others (supra) is concerned, in para 8 the Apex Court has observed, thus :-

"In this case, the High Court passed an order on 16-10-1995 dismissing the writ

petition filed by the second respondent refusing to interfere with the order of transfer. Thereby the High Court upheld the validity of the order of Government transferring the second respondent. By doing so the High Court did not and could not have put any fetters on the powers of the Government to pass any subsequent order of transfer or recall the order of transfer already made. High Court had no occasion to restrict such powers of the Government which were in fact recognised and acknowledged by the Court in the very same order of dismissal. It cannot therefore be said by any stretch of imagination that by the said order the High Court put its final seal of approval on the order of transfer dated 7-10-1995 passed by the government. The High Court had not and could not have taken over the administration of the State by the said order dismissing the writ petition. There was therefore no bar against the Government or the appellant withdrawing, altering or modifying the order of transfer passed on 7-10-1995."

The above referred conclusion drawn by the Supreme Court is entirely in different facts & circumstances and therefore, the ratio laid down by the above referred judgment is not either attracted in the facts & circumstances of the present case nor is applicable here because of the peculiar undisputed facts involved in the present writ petition and therefore, the said judgment is of little help to the petitioner and for the similar reasons, the laid down by the Apex Court in case of State of A.P. and others (supra) also does not further the cause of the petitioner.

32. The Apex Court in case of J.C. Yadav and Ors. v. State of Haryana and Ors., reported in AIR 1991 S.C. 857, had occasion to deal with the scope and object of power to relax the Rule conferred on the Government under Rule 22(6) for the Haryana Service of Engineers Class 1, P.W.D. (Public Health Branch) Rules, 1961, and the relevant observation in this regard are in para 6 of the judgment which reads thus :-

"The Rule confers power on the Government to dispense with or to relax the requirement of any of the Rules to the extent and with such conditions as it may consider necessary for dealing with the case in just and equitable manner. The object and purpose of conferring this power on the Government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. If the Rules cause undue hardship or Rules operate in an inequitable manner in that event the State Government has power to dispense with or to relax the requirement of Rules."

It is, therefore, evident that the power to relax Rule though conferred on the Government, it is necessarily required to exercise in just and equitable manner and to mitigate undue hardship, if any, caused in a particular case. In the instant case, similar power is conferred on the State Government under Rule 26 of the N.I.T. Land Disposal Rules, 1983, and the Government is expected to exercise the same in a just and equitable manner and such power is not conferred on the government to give go-bye to the statutory procedure contemplated under such

Rules nor such power can be exercised to do under favour to any individual. Similarly, if the exercise of such power results in destroying the very scheme of the Rules, such power cannot be exercised by the State Government.

33. For the reasons stated herein above, the contentions canvassed by the learned Counsel for the petitioner are misconceived and devoid of substance. The order dated 21-9-1989 cannot be enforced nor any mandamus can be issued against the State Government.

34. Rule is discharged. No order as to costs.