

SUPREME COURT OF INDIA

Padma

Vs.

Hiralal Motilal Desarda

C.A.No.5698 of 2002

(G. B. Pattanaik and R. C. Lahoti JJ.)

09.09.2002

JUDGEMENT

G.B.Pattanaik, J.

1. Leave granted in SLP(C) Nos. 19687, 20512, 20666, 20753 of 2000 and 4606 and 21825 of 2001.

2. In these appeals by grant of special leave the judgment of High Court of Bombay, Auranga-bad Bench in Writ Petition No. 2338 of 1999 is under challenge. A Public Interest Litigation was filed in the High Court challenging *reported in*¹ the procedure adopted by the City and Industrial Development Corporation (hereinafter referred to as CIDCO) for disposal of the land by bulk sale. CIDCO is a company registered under the Companies Act and is a Government company under Section 617 of the Companies Act. The Government of Maharashtra incorporated the aforesaid company with several objectives and the main objectives being:

“(a) To develop land for residential, commercial and allied industrial activities and to provide the required physical infrastructure, such as roads, drainage, water supply, sewerage, street lights and landscaping etc.

(b) To build as many houses and community centers, shopping centers, parks, play grounds, bus stations, etc. to meet the day to day needs of the population, as well as for a fast take up of new growth areas and also to make available and develop the plots at affordable prices, so as to construct residential dwellings for self occupation.

(c) To promote growth of commercial wholesale market activities, warehousing transport, office and other activities in order to evolve expeditiously a sound economic base for self sustained growth and achieve, at the same time a process of relieving congestion in the cities like Bombay as well as the fast developing cities in other parts of Maharashtra and

(d) While doing so, to maintain ecological balance and ensure that environmental degradation is not allowed.”

3. The CIDCO was declared as special planning authority for Aurangabad notified area under sub-section 3(A) of Section 113 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the Act) for residential, commercial and industrial purposes. The State of Maharashtra acquired huge land for CIDCO in villages Mukundwadi, Garkheda, Harsul, Hatesing-pura, Jaswantsingpura, Bayaji-pura, Jadhavwadi, Murtizapur, Mastanpur etc. which are all located in the outskirts of Aurangabad Municipal limits.

4. The Government of Maharashtra approved the development plan submitted by CIDCO by its notification dated 3-7-1973. Under the approved plan about 900 Hectares of land was to be utilized for residential purposes, commercial, education community facilities, medical services etc. and a patch of land had been shown in the approved plan meant for future expansion, but the purposes for such use had not been indicated.

5. Between 1975-76 and 1999-2000, CIDCO constructed tenements within notified area popularly known as New Auranga-bad and 120 Housing Societies also came into existence. Within these societies 39 societies were allotted land on which the societies themselves have constructed residential tenements. It transpires that 37.74% of land has been used for residential purposes, 4.90% for commercial purposes, 3.27% for educational purposes and 4.60% for industrial purposes. That apart land has also been utilized for providing social services and for utilities as well as for road and pathways and Airport and part of the land has been kept as open and vacant land. CIDCO used to allot plots to citizens and society for construction of residential dwelling units and it was also building multi-storey building consisting of several apartments and used to sell them. CIDCO used to develop commercial and shopping centres. In 1998-99 CIDCO started negotiating with the Municipal Corporation of Aurangabad for taking over land in New Aurangabad area. Proclamations were issued in the newspapers inviting tenders for disposal of bulk land from different Survey Numbers, more particularly from Survey Nos. 23 and 24 of Garkheda Village in Sector "B". The total land in these two Survey Numbers admeasured 19.53 Hectares. The land owners were given 2.59 Hectares by negotiations and balance 16.94 Hectares became the property of CIDCO, which was sought to be disposed of by bulk sale. It is this proposal of bulk sale by CIDCO, which was assailed by filing a writ petition purported to be one in public interest, essentially challenging the procedure adopted for disposal of the land. After filing of the writ petition in May, 1999, the High Court passed an interim order in July, 1999, directing the CIDCO, not to proceed further with acceptance of the tenders in respect of the bulk sale. After the initial application that was filed, several other applications were filed, challenging the alleged disposal of land made by CIDCO and ultimately the High Court by the impugned Judgment, came to the conclusion that the action of CIDCO in the matter of disposal of land by bulk plots is against the public interest and the so-called allotment of land in Sectors N-2 and N-4, consisting of Survey Numbers 23, 24 and 70 is null and void, as the draft development plan has not been approved by the State Government, as required under Section 115 of the Maharashtra Regional and Town Planning Act. Accordingly, those allotments were cancelled. The High Court also held that the proclamations issued for disposal of land are

illegal and would stand cancelled. Individual allotments made in favour of respondent Nos. 5, 8, 9, 10 and 15 also were annulled and the Administrator was directed to take immediate possession of the respective lots, including the structure and buildings standing thereon. It was further ordered that as and when the Government of Maharashtra approves the Draft Development Plan, then the land earmarked for residential purposes could be disposed of by CIDCO by inviting public tenders and by drawing lots. There were also certain other directions in the impugned judgment.

6. Before the High Court, it was stated by the CIDCO and other allottees that the writ petition filed by one Hiralal Motilal Desarda, purported to be one in public interest, really does not espouse any public interest as the lands have been allotted to different Housing Societies many of whom have already constructed several flats for the members of the society and any order annulling those allotments would be against the public interest. It was also averred before the High Court that the said writ petitioner himself has taken several plots for business purposes and the present writ petition has been filed as a business rival and not in public interest. The High Court however was not persuaded to accept this part of the stand taken by different allottees, though factually it cannot be disputed that the writ petitioner before the High Court and his family members had several plots of land on which building activities had been carried on.

7. Mr. V.A. Mohta, learned senior counsel appearing for the petitioner in S.L.P. No. 19687 of 2000, learned Additional Solicitor General appearing in some of these SLPs and a host of other counsel submitted, that the High Court committed error in entertaining an individual grievance who himself happens to be a builder on purchase of land as a Public Interest Litigation and annulled the allotments made for the purpose of construction of houses which does not subserve any public interest at all. It was further urged that neither Section 115 of the MRTP Act nor any regulations framed thereunder restricts the right or puts any embargo on the right of the CIDCO to dispose of land in accordance with the Regulation framed by it, and that being the position the High Court committed error in setting aside the allotment made by CIDCO. It was also contended that the Court exceeded its jurisdiction under Article 226 in embarking upon an enquiry on several questions of facts by scrutinizing several governmental files and in coming to the conclusion that there have been gross irregularities in the matter of allotment of land. According to the counsel for the Petitioners the disposal of bulk plots of land by Special Planning Authority, like CIDCO after development of the land in question is for providing opportunity to the citizens to have their houses built on the land and the action of CIDCO is required to be examined from that stand point. It is urged that no personal interest of any authority of the CIDCO having been found to have been augmented on account of the allotment of bulk land the Court was not justified in exercising its discretionary jurisdiction and interfering with the allotment made. It is urged that CIDCO being a Special Planning Authority constituted under Section 40 of the Maharashtra Regional Town Planning Act is not required to be covered by the provisions of the Act relating to preparation of Draft Development Plan and the conclusion of the High Court on that score is thus vitiated. It is also contended that the Regulations in question having been framed by CIDCO in exercise of power conferred under Section 159(1)(a) of the Maharashtra Regional Town Planning Act, which is known as the New Town Disposal Regulation, 1992, and the

disposal of lands impugned in the Writ Petition having been made in accordance with the said prescribed procedure under the Regulation, the High Court should not have interfered with the same, particularly when there has been no allegation of corruption and nepotism in the matter of allotment of land, much less any proof of the same. It is vehemently urged that the question of distribution or sale of land for establishment of a New Township in the context of an abnormal growth of the city of Aurangabad, is essentially a matter of policy and whether the sale of bulk plots is more profitable or beneficial subserving public interest or not is a matter of policy and such policy decisions would not have been interfered with by the High Court in exercise of its power of judicial review under Article 226 of the Constitution, when it has not been established how the aforesaid policy was erroneous or it caused any injustice to the public interest. According to the learned counsel the so-called approval required under Section 115 of the MRTP Act having been granted by the Government of Maharashtra, the Court ought not to have interfered with the allotment of land made. According to the counsel for the petitioner the legality of allotment of land from survey Nos. 23 ad 24 could not have been examined by the High Court in the absence of any pleadings in that respect and, therefore the impugned judgment cannot be sustained. It is further urged that the change of user or development of land is permissible with the permission of the Planning Authority and once the Planning proposal is published in the Gazette there is no restriction on transfer of ownership. The learned counsel further contended that under Section 31 of the Act the State Government is required to approve the plan within one year and if this is not done within the said period then the restrictions under Section 43 will not be attracted. The learned counsel lastly urged that in respect of several plots of land constructions having already been made and the Appropriate Authority of the government having approved the development as well as proposal of bulk disposal of plots it is fully inequitable to cancel the allotments made and also the direction of the High Court works out gross injustice.

8. The learned counsel appearing for the respondent No.1, however, vehemently urged that the findings of the High Court tantamount to a finding of fraud committed by CIDCO in the matter of allotment of land and therefore fraud vitiates every action of the authority. It is urged that the Director of CIDCO as well as the Chief Administrator have allotted plots to themselves and their family members which on the face of it is illegal and such an allotment could not have sustained the scrutiny of any Court of law. According to the learned counsel for the price fixed for allotment was even lower than the base price of Rs. 1,500/- per sq.metre and this could not have been done without the board's agreement which was required under the CIDCO publication title "New Aurangabad Guidelines". The counsel urged that there has been allotment of land at a price of Rs. 1,300/- per sq. metre which was done without re-advertising or tendering. So far as procedural irregularities are concerned, the counsel urged that the applications were entertained without any formal application and even without any payment of earnest money and allotments were made to the parties even who never had made any application for the same. It was also vehemently urged that the very method of sale of bulk plot caused serious financial loss to the CIDCO and no court should permit such sale at the cost of public exchequer. It was also urged that the proposal of CIDCO to the State Government for sale of bulk plots to the builders was never notified and as such there has been an infraction of Section 115(2) and (3) of the Regional Town Planning

Act. The counsel urged that when the Court on consideration has found serious financial and procedural irregularities and the findings arrived at would lead to an irresistible conclusion that fraud has been perpetrated in the matter of allotment, it was just and proper for the High Court to set aside the allotment made, and therefore, this Court should not interfere with the same in exercise of its power under Article 136 of the Constitution.

9. The troubled part of story, with which we are concerned, has its genesis in certain events seated around the year 1998-99. Two significant events occurred in that period of time. Out of several acres of land acquired by CIDCO for developing the township of New Aurangabad, 120 housing societies had come into existence over 136 plots and some 39 societies were relocated in accordance with the developed scheme of CIDCO. What had remained was 3.3% of land earmarked as 'developable land'- to be developed in accordance with development scheme to be sanctioned by the State Government which would obviously depend inter alia on the relevant factors to be assigned weight in the light of the development which had taken place till then and keeping in view of the needs of the population already accommodated in vicinity and/or the township already emerged and yet aspiring for still better quality of life and better fulfilment of its needs in future consistently with the needs of modern living standards. CIDCO, which was till then engaged in allotting plots to citizens or societies for construction of residential dwellings and building up multi-storey buildings catering to small and medium sized apartment requirements of families and selling them was yet to pass on and enter into the three facets of its development activities, i.e. developing commercial and shopping centres so as to cater to the needs of the individuals and families settled in the township. Left with 3.3% of developable land only it dawned upto CIDCO that insofar as the notified area is concerned its developmental activities were nearing their end and CIDCO would be better advised to hand over the township to Aurangabad Municipal Corporation to be looked after in accordance with the municipal law governing it. Suddenly CIDCO dropped the idea of developing the township further in accordance with the development plan which was yet to be sanctioned by the State Government and thought that it would be profitable to hold bulk sales of remaining land and earn a lot of money therefrom and thereby enrich itself. We can understand an individual being overpowered by greed; however, here what the High Court notices is greed of an institution - an institution, the primary object whereof is not solely to earn money but to serve the people through activities in tune with the avowed objects with which it has been found and as set out in the earlier part of this judgment. However, as the several findings arrived at by the High Court and noticed shortly hereinafter would show the greed was implanted into the institution by builders who had an eye over the left-over developable land so as to garb the same by prevailing over CIDCO and manipulate allotment to their own commercial advantage. Lest we should digress and drift away, we revert back to notice yet another event. In the year 1998, Section 80-IB of the Indian Income Tax Act, 1961 was amended by Parliament whereby payment of income tax was exempted on income derived from the housing projects commenced and completed between 1-10-1998 and 31-3-2001. The object of amendment was to give a boost to house building activity in big cities. Another requirement of the exemption was that the project claiming benefit of the exemption ought to be on a piece of land with a minimum area of one acre and the residential units shall not exceed 1500 sq.ft. A sense of hurry is writ large on the movements of CIDCO displaying an anxiety to dispose of the land by bulk sale

and earn money before the proposal for handing over the township to Municipal Corporation could materialize. Advertisements were inserted in the newspapers inviting tenders for disposal of bulk land out of survey Nos. 23 and 24 of Garkheda village in 'B' sector, i.e. the land situated on the south of Jalna Road, wherein was included 19.53 hectares of land forming part of the survey Nos. 23 and 24. Out of this area, 2.59 hectares area of land was parted with in favour of some land owners through negotiations. 16.94 hectares area of land was still available.

10. At this point of time, the public interest litigation came to be filed on 19-5-1999 knocking the doors of the High Court when it was closed for summer vacation. The High Court felt that the issue raised in the petition calls for its attention. Notices were issued to CIDCO and other respondents. By an interim order proceedings for acceptance of the tenders and thereafter were directed to remain stayed. The High Court soon realised that the issue of public interest raised in the writ petition required the conduct of the case not to be left in the hands of the writ petitioner alone, and therefore, by its order dated 7-12-1999 appointed an amicus curiae to assist the Court. However, a little later it was brought to the notice of the High Court that the original writ petitioner was not carrying on well with the amicus curiae and to avoid the conflict the High Court chose to proceed with the hearing of the petition dispensing with the assistance of the amicus curiae. The fact remains that the litigation had assumed the character of a public interest litigation of wider scope, not necessarily confined to grievance raised by the writ petitioner and the High Court was intervening to bring under its scrutiny, on the well settled parameters of public interest, the proceedings of CIDCO relating to attempted disposal of developable land. While hearing a public interest litigation the constitutional court acts as the sentinel on the qui vive discharging its obligation as custodian of the constitutional morals, ethics and code of conduct - well defined by series of judicial pronouncements. The Court is obliged to see while scrutinising the conduct and activities of a public body constituted with the avowed object of serving the society to see that its activities bear no colour except being transparent, are guided with the object of public good and are within the four corners of law governing the same. The holder of every public office hold a trust for public good and therefore his actions should all be above board. Whatever may have been the grievance raised in the writ petition filed by the original writ petitioner, vide its order dated 28-4-2000 the High Court framed the following four questions laying down the scope of hearing before it:-

“(a) Whether CIDCO should be allowed to resort of bulk land sale as a normal course of its activities?

(b) Whether such an action by CIDCO is permissible in the public interest vis-a-vis its objectives?

(c) Whether the bulk land sale transactions made in the recent past and more particularly after the petitioner has approached this court have been dubious in nature and they have been made by giving a go-bye to the Rules and Regulations as well as objectives of CIDCO?

(d) Whether the plots have been allotted at a price much lower than the base price and this has resulted in a substantial loss to CIDCO?”

We have set out the abovesaid part of the High Court proceedings to meet the plea raised by the appellants before us which complains of want of pleadings and denial of necessary opportunity of defending themselves at the hearing in the writ petition. The High Court had, by having framed the abovesaid questions, put all the parties before it on notice that it proposed to enter into issues wider than what may have been raised in the writ petition filed before it. The non-petitioners in the High Court, including the appellants before us, were put on notice of the issues on which the High Court proposed to dwell upon and they were allowed full opportunities of defending themselves by bringing in such pleadings and documents as they proposed to do in their defence. The High Court called for the record of CIDCO and subjected the same to scrutiny under its magnifying glass of judicial review. The non-petitioners in the High Court were well aware of CIDCO record of proceedings and the findings of the High Court are based on the facts discernible from the records and the factual inferences necessarily and inevitably flowing therefrom. In public interest litigation jurisdiction the Constitutional Court is mobilized and acts for redressal of public injury, enforcement of public duty, protection of social rights and upholding constitutional and democratic values. Technicalities do not deter the Court in wielding its power to do justice, enforcing the law and balancing the equities. We are unhesitatingly of the opinion that the appellants before us cannot raise any grievance on the ground of want of necessary pleadings.

11. The private respondents joined before the High Court can be grouped into three:

“(a) Sethes Co-operative Housing Society, respondent No.7 and Judges Co-operative Housing Society, respondent No. 8- The allotments to these two do not appear to have materialized and therefore as to these respondents the High Court has not made any direction. In any case the controversy as regards these two is not the subject matter of proceedings before us.

(b) Mrs. Padma representing Tapadia Construction Pvt. Ltd., respondent No. 9, (hereinafter referred to simply as 'Tapadia', for short).

(c) Aurangabad Ajanta Bahu Udeshiya Seva Sanstha, CIDCO, Aurangabad, respondent No.5, Suchita Housing Society, Aurangabad, respondent No. 6 and Aurangabad Holiday Resort Pvt. Ltd., respondent No. 15.

The allotments to group 'b' and group 'c' above though made during the same period of time and suffering from vitiating factors of more or less equal magnitude yet have some essential difference which will have a bearing on constructing the ultimate relief to be given and therefore we have carved out these groups. The High Court has also, during the course of its judgment, set out the facts referable to these two groups with some margin of differentiation.

So far as the facts, and the findings flowing from the documents, are concerned, for the purpose of this judgment, it would suffice if we extract and reproduce the gist thereof from the detailed and well cast judgment of the High Court inasmuch as after affording full-dressed hearing to the learned counsel for the parties we are satisfied that so far as the findings of fact are concerned no fault can be found with the ones arrived at and recorded by the High Court in its judgment. We proceed accordingly.”

12. Shri Sambhaji Pawar, respondent No. 12, has been a Director of CIDCO between 1995 and 1999. Aurangabad Ajanta Bahu Uddeshiya Seva Sanstha ('Sewa Sanstha', for short), Suchita Housing Society and Aurangabad Holiday Resorts Pvt. Ltd. ('Holiday Resorts', for short), as the facts found by the High Court go to show, are nothing but alter-ego of Shri Sambhaji Pawar, respondent No. 12. There is every reason to draw a deduction that these legal entities of different colour and shade were brought into being around the crucial period of time and almost just following the point of time when the idea of disposal of the developable land through bulk sale had dawned upon the CIDCO wherein Shri Sambhaji Pawar was a Director. These three entities, though each appearing in a legal cloak outwardly, were in fact family affair of Shri Sambhaji Pawar, respondent No.12. While these legal entities were entering the portals of CIDCO from the front door demanding its developable land, the respondent No.12 was already inside the portals to welcome them and exercise his influence - and if not influence at least his contacts within - to enable the land being parted with in favour of his own alter-egos.

13. First, we shall see how the proposal for allotment of land by bulk sale was mooted and pushed through and how its pricing was done.

14. On 15.1.1999 was published the CIDCO proclamation inviting tenders for bulk sale of four plots designated as plot Nos. A, B, C and D. Only three tenders were received. The tenderers included Shri Gaud and Pandey and M/s. Tapadia Construction Ltd. As against the minimum acceptable price of Rs. 1201/- per sq. meter set out in the proclamation the tenders offered Rs. 951/- for plot C and Rs. 1224/- for plots Nos. A, B, C and D. One Shri B.G. Ajmera, styling himself as 'Director of proposed private limited company' made an offer of Rs. 1201/- per sq. meter. All the tenders being below the minimum price were rejected and the earnest money deposited by the tenderers was directed to be refunded. All the tenders were defective not liable to be accepted, in view of their suffering from one or other shortcomings taken note of by the Administrator of CIDCO in his note dated 18-2-1999 and put up on 25-2-1999 recommending cancellation of all the tenders. Of their own, the tenderers started negotiations and revision of their offers. On 20-4-1999, Shri Ajmera made a representation revising his offer of Rs. 1300/- per sq. meter for plot A. This revised offer was endorsed by the Administrator on 28.4.1999 recommending allotment of plots A and D, having an area of 4182 sq. meters each to Shri Ajmera. The Joint Managing Director, having held a discussion with the Administrator and the Chief Economist of CIDCO, opined in favour of counter offers of the base rate for these plots which was Rs. 1500/- per sq. meter being mooted to the tenderers. On 29.4.1999, the counter offers were sent to all the three tenderers calling for their response within three days. On 13.5.1999, Tapadia responded by

revising its offer to Rs. 1300/- per sq. meter for two or four plots whereas Ajmera revised his offer to Rs. 1301/- per sq. meter for four plots, viz. A, B, C and D.

15. On 13-5-1999, CIDCO issued tender notices for sale of bulk plots from survey No. 70 of Mukundwadi and survey Nos. 23 and 24 of Garkheda (south). Plots Nos. A, B, C and D were excluded from the tender notice. At this point of time the writ petition came to be filed.

16. On 26-5-1999, the Administrator, CIDCO put up a fresh note to the Chief Administrator (NT) wherein it was stated that the Chief Economist had fixed the base rate at Rs. 1300/- per sq. meter. Chief Administrator (NT) had fixed the base rate at Rs. 1400/- to Rs. 1500/- per sq. meter and that was being given a wide publicity through brochures published and released by CIDCO. Attention of the Chief Administrator was invited to the fact that the Court had by an oral order directed the sale proceedings of bulk plots to be stayed till 11.6.1999, the next date of hearing. The note mentioned Ajmera's offer to take all the six plots. On 28.5.1999, the Chief Administrator submitted a note for approval of the Joint Managing Director for giving the six plots to Ajmera @ Rs. 1300/- per sq. meter. The Chief Economist, in his note dated 31-5-1999, expressed his mild dissention by pointing out that the counter offers under consideration were equal to the base rate but below the rate printed in the brochures issued by CIDCO. The Chief Economist advised the counter offer rate of Rs. 1300/- per sq. meter being accepted in view of the poor response of offers. But at the same time he suggested the plots being advertised afresh at a fixed rate of Rs. 1300/- per sq. meter for allotment on 'first come first serve' basis. In either case, the Chief Economist advised the proposal being approved by the Board before being accepted. The General Manager (Admn.) of CIDCO, in his note dated 1-6-1999, advised for the result of the writ petition pending in the High Court being awaited before taking any decision. The Joint Managing Director, in his note dated 2.6.1999, sounded a note of caution in the interest of CIDCO. He said that if the plots in question which were frontline plots abutting on the roads were disposed of at the rate of Rs. 1301/- per sq. meter the price of the plots situated away from the roads would be lesser than Rs. 1300/- per sq. meter, and therefore, in his opinion, the counter offers deserved to be rejected. On 16.6.1999, the Chief Administrator (NT) put up a note which in the opinion of the High Court is 'surprising' apparently for its somersault and vagueness. It states that the case was discussed with the Joint Managing Director on 9.6.1999 at his residence when the Administrator was also present and CIDCO could proceed further 'as per the instructions given by the Joint Managing Director' during the course of discussion on 9.6.1999 without placing on record what those instructions were. On the next day the same authority directed plots Nos. A and B to be allotted to Ajmera and plots Nos. C and D to be allotted to Tapadia. This was approved by the Joint Managing Director on 24.6.1999. Ajmera's offer in respect of plots No. E and F was rejected. Another striking feature of the allotment is that allotment letters to Holiday Resorts in respect of plots No. A and B and to Tapadia in respect of plots Nos. C and D were issued by the Administrator, CIDCO on 21.6.1999 although the approval of Joint Managing Director is dated 24.6.1999 and the approval of the Board of Directors, which was insisted on by the Chief Economist in his note dated 31.5.1999, was never obtained. While plots Nos. A, B, C and D were so allotted, the tender notice in respect of plots other than these issued on 13.5.1999 was cancelled in view of the pendency of the writ

petition in the High Court in view of the note put up by the Administrator, CIDCO (on 16.9.1999).

17. Tapadia and Holiday Resorts were required to pay the first instalment of the leased premium on or before 21.7.1999 and the second instalment on or before 21.8.1999. The possession over the plots was to be handed over only after the entire lease amount was paid and documentation legally done. It is pertinent to note that the letter of allotment mention the use of land only as bulk land and do not specify as to whether the plots could be used for residential or commercial or what purpose. The Court having been apprised of the issuance of allotment letters, vide its order dated 19.7.1999 directed CIDCO not to proceed further in the matter. Now CIDCO was advised by their counsel not to execute the agreement and hand over the possession of the plots to allottees and so the CIDCO called upon the allottees to receive the amount deposited by them. But the allottees in their turn insisted on documentation and delivery of possession making it plain that it was for CIDCO to have the order of the High Court vacated or modified. On 18.1.2000, by an interim order, the Court directed execution of agreements of lease whereafter lease deeds also came to be registered in May, 2000. Copy of the order dated 21.5.2000 passed by the Division Bench of the High Court, brief obviously as it is, shows the applicant allottees had appealed to the High Court into passing of the order by highlighting that unless that was done the allottees would be deprived of the benefit of income-tax exemption which loss would be irreversible. Each of the applicants undertook to pay any difference in premium which the Court may find ultimately to be payable additionally by them.

18. The High Court has pierced the veil of respondents Nos. 5, 6, and 15. At the very outset let it be noted that Aurangabad Ajanta Bahu Uddeshiya Seva Sanstha, CIDCO, Aurangabad, respondent No. 5, Suchita Housing Society, respondent No. 6 and Aurangabad Holiday Resorts Pvt. Ltd., respondent No. 15 have all but one address, i.e. 'Raj Heights', Town Centre, Behind Fire Brigade, CIDCO, Aurangabad. The same is the address of Shri Sambhaji Pawar, respondent No. 12. The allotment of land secured by him, through his projections has been about 7 acres of such valuable land. Sewa Sanstha, the respondent No. 5 claims to have been registered as a society under the Societies Registration Act, 1860 on 29.9.1998. It also claims to have applied on 17.8.1999 for allotment of bulk land for developing a sports club and maintenance of play field. This vague expression employed by Sewa Sanstha outwardly sound to be very benevolent as if the sports club and a play field are meant for serving the inhabitants of New Aurangabad. However, the Sewa Sanstha came to be registered as a public trust on 6.2.1999 under the Bombay Public Trust Act, 1950. The list of trustees too is revealing. Shri Sambhaji Pawar, respondent No. 12, who was already holding the office of Director in CIDCO, is one of the trustees in the above said trust and the other trustees are his wife, his son, his daughters, his aunt, his niece and so on. The High Court has found it is a 'abundantly clear' that it was a trust managed by Shri Sambhaji Pawar, his family members and close relations.

19. Suchita Housing Society, respondent No. 6, has as its members most of whom are either the family members of Shri Sambhaji Pawar, the respondent No. 12 or his close relations/friends and some senior government officers. Beyond this we need not dwell further

in view of the High Court having noticed that the allotment of land by CIDCO to this society was at a later stage cancelled by CIDCO itself and that cancellation is sub judice in some other writ petition filed by the respondent No.6. We are taking note of this fact here for the limited purpose that there were at least three entities bearing legal cloaks projected by Shri Sambhaji Pawar, the respondent No.12 soliciting allotment of land from CIDCO.

20. The Holiday Resorts, respondent No.15, does not have a different story to be told about. The High Court has found that Shri Sambhaji Pawar was directly connected with this company and Mrs. Aruna Patil, another Director, is a family member of Shri Sambhaji Pawar, respondent No.12. The list of Directors of this company is not on record and was also not revealed either to the CIDCO or to the High Court. The fact is, as we will notice shortly hereinafter, that although the decision of Joint Managing Director of CIDCO was to allot plots to Ajmera yet ultimate allotment was made to Holiday Resorts. CIDCO never bothered to find out how Ajmera was acting for Holiday Resorts or had any interest therein whether as a Director, as a major share holder or as any official of the limited company.

21. Having said so much to reveal the real identity behind respondents Nos.5, 6 and 15 as found by the High Court we revert back to the facts found by the High Court touching the allotment of land and termed at one place by High Court as 'surprising and shocking'.

22. By letter dated 27.1.1999, CIDCO allotted 18015 sq. meters plot to Sewa Sanstha. On 11.5.1999, lease agreement was entered into between CIDCO and Sewa Sanstha. Possession slip was also issued to Sewa Sanstha which slip does not bear any date. Out of the total area of land it is stated that an area admeasuring 4114 sq. meter would be used for 'construction of sports building' and 13901 sq. meter would be used 'as per wishes of the trust/lessees'. Such proposed users are disclosed by the documents as drafted. However, once the lease deed was ready and before it was presented for registration there is an insertion made in hand which goes on to say that an area admeasuring 4118.04 sq. meter would be used for commercial purpose (sports club) and balance of area admeasuring 13901 sq. meter would be used as play field without any FSI but the ownership of play field will be with the lessee. All this is in the background that such user, vague and uncertain as it is, was so kept by employing choicest expression and is not supported by any resolution or decision of CIDCO. The allotment as per recitals of the lease deed purports to have been made pursuant to the resolution dated 22.12.1998.

23. The allotment of land made to Sewa Sanstha, the respondent No.5 suffers from several serious infirmities. An area of about 41/2 acres has been parted in favour of respondent No.5 without affording other competitors or rivals an opportunity of participating in the bid at the price at which it has been parted with. The revised development plan of CIDCO as regards this allotment was pending with the Government of Maharashtra for approval as required by Section 115 of the Act and was not cleared by the State Government. The parting with has been without any transparency and almost in secrecy.

24. A marginal percentage of a huge chunk of land was kept reserved in the development plan for development in accordance with requirements of future expansion obviously which

should be guided by the paramount consideration of catering to the needs of those who have already become a part and parcel of development and expansion till then. That is why the law insists on a development plan being sanctioned at the level of the State Government where the decision is taken in consultation with experts in the field of planning. The High Court which is closer to realities prevailing in Maharashtra has made a pertinent observation during the course of its judgment. The High Court has noted- "There is nothing on record as to what is meant by sports club, specially when it has been stated in the agreement that it is for commercial use. The term 'sports club' has acquired a dubious meaning in the recent past and more particularly in and around Aurangabad city. It is common knowledge that some Five Star Hotels have been named as sports club. In the absence of specific purpose for the utility of such plots it was totally unwarranted and unlawful for CIDCO to allot the land to respondent No.5".

25. Now, we take a quick note of some out of the several infirmities and vitiating factors found by the High Court touching the allotment of land of Holiday Resorts. The tender submitted by Ajmera in February 1999 which was for plot No. A only seeking allotment to a proposed private limited company which was yet to come in existence and yet to be named even, was cancelled by CIDCO. The process of allotment had originated by inviting tenders. On 20.4.1999, Ajmera submitted a letter showing his interest in allotment of plots No. A and D @ Rs. 1300/- per sq. meter. This proposal by Ajmera was in a tender and certainly not accompanied by any earnest money deposit. The EMD submitted along with his tender in February 1999 was for one plot and that too had been directed to be refunded. It had no relevance nor adequacy to act as EMD of the offer dated 20.4.1999. CIDCO's response to Ajmera's proposal was in the negative grounded on the minimum rate acceptable by CIDCO being of Rs. 1500/- per sq. meter. New on 1.5.1999, Mrs. Aruna Patil stepped in joining Ajmera and informing that they were interested in all the four plots i.e. plots Nos. A, B, C and D. Needless to say this proposal is neither a tender nor accompanied by any EMD. We have already noticed the Managing Director's decision dated 24.6.1999 in favour of allotment of plots Nos. A and B to Ajmera but the decision preceded by allotment letter dated 21.6.1999 by Administrator, CIDCO in favour of Holiday Resorts for plots Nos. A and B. On the same day, Holiday Resorts submitted its Certificate of Incorporation and Memorandum of Association to CIDCO projecting as if this was the private limited company in the mind of Ajmera when he had submitted his tender in February 1999. Even in the affidavit filed in the High Court, as late as on 30.8.2000, Ajmera, impleaded as respondent No. 10 in the writ petition, does not indicate how and in what manner he was connected or associated with Holiday Resorts, a private limited company. The High Court has noted it as a 'mystery' the failure on the part of the record of CIDCO to reveal as to how and under what circumstances on 21.6.1999 the Administrator, CIDCO issued letter of allotment in favour of Aurangabad Holiday Resorts Pvt. Ltd. touching plots Nos. A and B though Ajmera had not at all then revealed the name and particulars of M/s. Ajmera Holiday Resorts Pvt. Ltd. In the opinion of the High Court the issuance of letter of allotment in the name of such company was most uncalled for. There was some ghost-play indeed inasmuch as the learned Judges of the High Court meticulously compared the signature of Ajmera appearing at various places in the numerous letters addressed to CIDCO purportedly by him and found such variations in

the signatures that they were doubtful if the letter dated 15.6.1999 was at all signed by Ajmera.

26. The Board of CIDCO had never approved the allotment of lands to Ajmera of Holiday Resorts, though the same was insisted on by the Chief Economist in his note. The minimum price notified by CIDCO in its various brochures which was Rupees 1500/- per sq. meter was given a go-by apparently for no reason and certainly without a specific approval in this regard by the Board or anyone vested by competence to do so. Here it may be noted that pursuant to order dated 28.4.2000 of the High Court, the CIDCO had called for tenders for smaller size plots in place in bulk land and the response was overwhelming. The tenderers were too willing to pay a price more than the lease price of Rs. 1750/- and demand was out of proportion to what CIDCO could meet. The letter of allotment to Holiday Resorts does not set out the nature of land user which the allottee would be competent to do. The tender by Ajmera having been cancelled there was no occasion for allotment in favour of Ajmera or Mrs. Aruna Patil or two of them or Holiday Resorts except by affording others also an opportunity of availing the allotment at the rates at which it was done to Holiday Resorts.

27. Allotment of land of Tapadia need not be dealt with by extensively dealing with findings arrived at by the High Court in this regard. Suffice it to observe generally that it suffers from infirmities and deficiencies of more or less the same magnitude as the High Court has found attaching with the allotments in favour of Sewa Sanstha and Holiday Resorts. In view of the ultimate directions which we propose to make in partial modification of those made by the High Court it would suffice for us to note that allotment for any price less than Rs. 1500/- per sq. meter except by approval of the Board of Directors of CIDCO or any other authority competent in this regard and except by affording others an opportunity of competing with Tapadia in the matter of allotment of land at the rate at which it was allotted to Tapadia cannot be sustained.

28. Very sale of bulk land by an institution like CIDCO is an anathema to its objective and purpose of its establishment. Large scale land acquisitions were made by the Government of Maharashtra and land handed over to CIDCO for planned development of the township of New Aurangabad. The development plans were finalized and approved by the State Government whereon CIDCO acted and marginal land was left out of decision by the State Government at that point of time and it can safely be assumed that it was a conscious decision to plan the development of such left over land at a later and appropriate point of time by which point of time the other land stands utilized so as to keep in view the till then development over major part of the acquired land, its trend and needs and the march of times. The State Government could have approved a development plan for the land left out from planning earlier and earmarked only as 'developable land' so as to cater to the needs of the township which had come into existence by that time guided by the requirements of healthy human living. By no stretch of imagination it can be contemplated that it was or could have been intended either at the time of acquisition or at the time of sanction of development plans by the State Government that at some point of time in future the developable land would be available to be disposed of by bulk sale and that too in favour of professional builders. That

is why a condition was imposed that the developable land shall be available for being utilized in accordance with the plan to be sanctioned by the State Government at a later point of time.

29. Laws dealing with development planning are indispensable to sanitation and healthy urbanization. Development planning comprehensively takes care of statutory, manual, administrative and land-use laws hand in hand with architectural creativity. In the words of a well-known architect, development planning is the DNA of urbanization - the genetic code that determines what will get built. A development plan is essential to aesthetics of urban society. American Jurisprudence 2d (Volume 82, at page 388) states: "Planning', as that term is used in connection with community development, is a generic term, rather than a word of art, and has no fixed meaning. Broadly speaking, however, the term connotes the systematic development of a community or an area with particular reference to the location, character, and extent of streets, squares, and parks, and to kindred mapping and charting. Planning has in view the physical development of the community and its environs in relation to its social and economic well-being for the fulfillment of the rightful common destiny, according to a "master plan" based on careful and comprehensive surveys and studies of present conditions and the prospects of future growth of the municipality, and embodying scientific teaching and creative experience."

30. The significance of a development planning cannot therefore be denied. Planned development is the crucial zone that strikes a balance between the needs or large-scale urbanization and individual building. It is the science and aesthetics of urbanization as it saves the development from chaos and uglification. A departure from planning may result in disfiguration of the beauty of an upcoming city and may pose a threat for the ecological balance and environmental safeguards.

31. It is not disputed that CIDCO is supposed to carry out its activities on 'no profit no loss' basis and that is the basis on which CIDCO, as per its own case, has been acting until it decided to part with the chunk of developable land by bulk sale which proposal was obviously in departure from the policy of serving on 'no profit no loss' basis such people as were craving for a roof over their heads. The High Court while dealing with this aspect of the matter has assigned several convincing reasons why the very concept of sale of bulk land cannot sail with CIDCO, either in law or in propriety. Assuming that an extraordinary situation which there was none - had warranted a policy decision for bulk sale the decision should have been of the Board and accompanied by reasons. In the present case, if only the proposal would have been placed before the Board of CIDCO in all probability it would have been discarded. It is pertinent to note that good number of officials, through whose hands the proposal passed while travelling up, were not agreeable to and had their own reservations on the proposal of such bulk sale. What prevailed with one or two of those placed at the higher rung or bureaucratic ladder in permitting such bulk sale in hot haste defies explanation for the simple reason that in the decisions available on the note sheets of the record looked into by the High Court no reasons have been assigned in favour of endorsing the proposal for bulk land sale. We are not prepared to accept even for a moment that there was no demand of land. Even if the development plan for the developable land was not approved by the State Government there is nothing which had prevented the CIDCO from carving out small middle

level and larger plots which those who can afford would have certainly been prepared to take and build small, middle level or spacious houses or bungalows for their own residential requirements. This find support from the overwhelming demand of land which the High Court has noted and which demand the CIDCO had found out of proportion as compared to the availability of land with it. The decision for bulk land sale cannot be said to have been taken in public interest. The High Court has rightly observed in its judgment that some public institutions who were allotted large pieces of land have developed parks and gardens but they are not open for free access by people generally. The local residents and children must have place enough to be used as parks, gardens and for entertainment which not only act as lungs and ventilators for suffocating growth of population but also add luster and beauty to the township. The utility of such pieces of land acting as buffer for maintaining ecological balance and environmental demands needs no emphasis. We entirely agree with the reasons of the High Court and the observations made by it while recording its strong disapproval of bulk sale.

32. There is yet another angle of looking at the propriety of the questioned bulk sale of land by CIDCO and the manner in which it was done. The land acquired and entrusted to CIDCO cannot just be permitted to be parted with guided by the sole consideration of money-making. CIDCO is not a commercial concern whose performance is to be assessed by the amount it earns. Its performance would be better assessed by finding out the number of needy persons who have been able to secure shelter through CIDCO and by the beauty of township and quality of life for people achieved by CIDCO through its planned development schemes. So long as such objectives are fulfilled CIDCO's operation on 'No-profit-No Loss' basis cannot be found fault with. There should have been no hurry on the part of CIDCO in disposing of the balance land and that too guided by the sole consideration of earning more money. Even that object the CIDCO has not been able to achieve for at the end it has parted with land at a price less than Rs. 1500/- per square meter - the reserved price. Even if a sale of left-over land was a felt-necessity it should have satisfied at least two conditions: (i) a well-considered decision at the highest level; and (ii) a sale by public auction or by tenders after giving a more wide publicity than what was done so as to attract a larger number of bidders.

33. It was contended that Shri Sambhaji Pawar, the respondent No. 12 was not a party to any of the decisions whereby the land was allotted to Sewa Sanstha, Suchita Housing Society or Holiday Resorts (respondent Nos. 5, 6 and 15 respectively) and therefore the allotment is not vulnerable on this count. We are not impressed. Shri Sambhaji Pawar was holding a public office and that too in CIDCO. If he directly or indirectly proposed to deal in property and in the course of such business activity to encounter with CIDCO then he should have not accepted the directorship of CIDCO, Else if he was motivated with the idea of serving the society by being a Director of CIDCO he should have seen that he cautiously kept away from directly or indirectly dealing with CIDCO. The least that was expected of him was to have informed CIDCO very specifically that the respondent Nos. 5, 6 and 15 consisted of his family members and/or relations and CIDCO while dealing with them should be consciously aware of this. Such standards are required to be maintained by public office-holders in the interest of probity in public life.

34. For all the foregoing reasons we find ourselves in agreement with the conclusion arrived at by the High Court holding the impugned sales to be vitiated.

35. It was urged during the course of hearing that the High Court should not have entertained the writ petition filed by the respondent No.1 herein who was a business competitor of respondent Nos. 5, 6, 9 and 15. This submission has been noted only to be rejected for several reasons. Firstly, we do not find the respondent No. 1 having figured anywhere in or around the impugned transactions of sale. He was not bidding with any of the respondents who have been successful in securing allotment of land. Merely because at sometime in the past the respondent No.1 had himself secured some allotment of land from CIDCO that would not mean that he was a business competitor so far as the impugned transactions are concerned though he might be a business competitor otherwise for which we find no material available to hold so. Secondly, the High Court has found the respondent Nos. 5, 6 and 15 having been born just around the year 1998-99 and therefore the question of their being in existence at that point of time and hence in rivalry when respondent No. 1 had secured some allotment of land in the past does not arise. The proceedings in the High Court show only the ball of judicial scrutiny having set rolling by the respondent No. 1. Soon the High Court found the case fit for exercising its own public interest jurisdiction, and therefore, the High Court framed its own issues which were not necessarily confined to the pleas raised in the writ petition filed by respondent No. 1. We cannot hold that the interest served by the proceedings in the High Court has been anything other than pro bono publico.

36. However, so far as the relief allowed by the High Court is concerned it needs a re-touching and some minor variation which we propose to do and set out our reasons hereunder.

37. We have already noticed the High Court having restrained of the proceedings for attempted bulk sale of land by CIDCO by its interim direction in May 2000 and the same having been brought to the notice of CIDCO, and therefore, the prospective buyers as well. However, the contesting respondents herein persuaded the High Court in modifying its order by demonstrating a pressing necessity in that regard. Obviously any change of status quo brought about during the pendency of the proceedings is at the risk of beneficiaries thereof.

38. Record of SLP(C) No. 19687/2000 filed by Tapadia does not show that Tapadia had anyone inside CIDCO exerting his or her influence from within to oblige Tapadia as it has been in the case of Shri Sambhaji Pawar and his cloaked duplicates. By 16-10-2000, the date on which Tapadia filed her affidavit in the High Court, five buildings having 72 tenants had come up as 'complete' and rest of the construction was in 'full swing' with an investment to the tune of over rupees three crores on the project for which she had taken a loan of about rupees one crore from the bank and rest from other sources. Vide para 30, the High Court has noted the contention of Tapadia, the respondent No.9, that it had already constructed multi-storeyed building consisting of residential apartments and those apartments were ready for allotment; in all 132 tenements had been constructed on plot Nos. C and D. Several persons had booked their flats. Thus, third party interests had also been created. These facts are not

controverted in the pleadings and therefore we do not find any reason to doubt the correctness thereof. Such flat buyers would obviously be innocent and least wary investors craving for shelter but unmindful of the consequences which awaited their lot. No useful purpose would be served by divesting Tapadia of the land secured by her for the edge of the axe would fall on lot of unwary buyers and investors. In such circumstances it would meet the ends of justice if Tapadia is called upon and compelled to pay the difference in price between the one paid by her and the reserve price.

39. From the pleading and documents filed on SLP(C) No. 20666/2000 preferred by Holiday Resorts, no idea can be formulated about the nature and extent of construction, if any, done and the time by which it was done. From the judgment of the High Court (para 28 of the paper book) we find only a passing reference wherefrom it can be gathered that 'some' building has come into existence over the land allotted to Holiday Resorts. The High Court has in its judgment stated- "We have no alternative but to restrain the respondent No.15 from further proceedings of the construction work on the said plot and direct the respondent No.1 to take possession of the land as well as the building as it exist today". There is not a slightest indication of Holiday Resorts having created any third party interest. Whatever may have been done by Holiday Resorts it has been done only to its own advantage.

40. The case of Sewa Sanstha, respondent No.5, is the worst. The pleadings and documents placed on the record of SLP(C) No. 20512/2000 preferred by Sewa Sanstha do not project (and none brought to our notice) that the Sewa Sanstha has made any construction, much less created any third party interest, so as to make the situation irreversible. We, therefore, deem it proper to sustain the order of the High Court directing resumption of land so far as Sewa Sanstha is concerned. So far as Holiday Resort is concerned, some further investigation is called for.

41. Accordingly, the appeals are disposed of in terms of the following directions:-

“1. On principle and in substance, the order of the High Court is maintained. We agree with the High Court that the impugned sales of land in favour of respondent Nos. 5, 6, 9 and 15 are vitiated and hence not binding on CIDCO;

2. In spite of holding the sale in favour of respondent No.9 vitiated, in view of subsequent events, the situation having become irreversible on account of construction of vast magnitude having come up and third party interest having been created, we direct that the respondent No.9 shall remain liable to pay the price of the land allotted to it @ Rs. 1500/- per sq. meter - the reserve price, within a time to be appointed by CIDCO.

3. The sale in favour of Aurangabad Ajanta Bahu Uddeshiya Sewa Sanstha, respondent No.5, shall stand annulled, as held by the High Court and the land shall revert back to CIDCO.

4. The land sold to Aurangabad Holiday Resorts, the respondents No.15, shall be inspected, surveyed and demarcated under the supervision of a highly placed and responsible official of CIDCO to be nominated by its Board. Such of the land on which substantial construction has come up rendering the situation irreversible shall be separated along with some more area of contiguous land so as to make its user practical. The total area of such land shall be calculated and in that regard the buyer shall pay to CIDCO the price @ Rs. 1500/- per sq. meter subject to adjustment for the amount already paid. Such other land on which no construction has come up or no substantial construction has been made shall be demarcated and revert back to CIDCO.

5. The difference in price, in terms of the above said direction Nos. 2 and 4, shall be recovered by CIDCO by securing enforcement of undertaking furnished by these respondents in the High Court and by such other means and methods as may be available.

6. The CIDCO and all other law enforcing agencies shall see that the land user complies with the requirements of development plan and local laws and no departure therefrom shall be permitted.

7. Such of the land as shall revert to CIDCO shall in future be utilized strictly in accordance with the development plan sanctioned by State Government and after meeting with the approval of the Board of CIDCO.

8. Inasmuch as we have upheld the judgment of the High Court except for minor variations in the relief granted by the High Court, it shall be open to CIDCO or to any other party, for the matter of that, to seek directions of the High Court so as to implement the judgment of the High Court as sustained by this Court. The costs of these proceedings throughout shall be borne by the respondents Nos. 5, 6, 9 and 15 (in the High Court).SLP(C) No. 14121/2001”

41. We have referred to the allotment made in favour of Suchita Cooperative Housing Society having been cancelled by CIDCO itself and the society having filed a civil writ petition laying challenge to the cancellation. Having disposed of the public interest litigation by its judgment dated 10-11-2000, which has been dealt with hereinabove, the High Court dismissed the writ petition filed by Suchita Cooperative Housing Society by brief order and holding that in view of its judgment delivered earlier on the same day the petition of the society did not survive and was liable to be rejected summarily. We cannot find fault with the view taken by the High Court. It is interesting to note that this SLP has been filed by the proposed Suchita Cooperative Housing Society through its member Satyajit Hanumantrao Bhand. The proposed society is petitioner No.1 and Satyajit Hanumantrao Bhand is petitioner No.2. Copy of writ petition filed in the High Court has not been produced in this Court. There is no disclosure made of the members of the proposed society. In view of what has been stated in the main judgment hereinabove we are not inclined to grant leave to appeal to these petitioners. The petition is dismissed.

Petition dismissed.

¹2001 (2) Mah LR 676