RAJASTHAN HIGH COURT

Mohan Lal Sharma

Vs.

Union of India

C.W.P. No. 2207 of 2007
(J.M. Panchal Actg. C.J. and Mohammad Rafiq, J.)

10.08.2007

JUDGEMENT

J. M. Panchal, Actg. C. J.

1. By filing this public interest litigation under Article 226 of the Constitution, the petitioner has prayed to set aside the Memorandum of Understanding (MoU, for short) dated July 4, 2005 executed between the Government of Rajasthan and M/s. Mahindra and Mahindra Limited, a Company incorporated under the provisions of the Companies Act, 1956, for setting up Special Economic Zone (SEZ, for short) on a land admeasuring 3000 acres situated near Mahapura, Ajmer Road, *Jaipur*. The petitioner has further prayed to set aside the decision dated September 5, 2005 of the Government of Rajasthan by which the C.W.P. No. 2207 of 2007Development Authority (JDA, for short) has granted approval to transfer the land admeasuring 161.23 hectares to the Rajasthan State Industrial Development and Investment Corporation Limited (RIICO, for short) for the purpose of setting up SEZ. The petitioner has also prayed to set aside Lease Deed dated September 26, 2006 executed by JDA in favor of RIICO for the purpose of establishment of SEZ. The petitioner has further prayed to set aside the notification dated December 20, 2005 issued under Section 4(1) of the Land Acquisition Act, 1894 (Act of 1894, for short) declaring that the lands mentioned therein are likely to be needed for the public purpose of setting up of SEZ. Yet another prayer claimed by the petitioner is that the State of Rajasthan, RIICO as well as JDA be restrained from transferring any further land to Mahindra World City (*Jaipur*) Limited directly or through RIICO. It is also prayed by the petitioner that a High Level Enquiry Committee be constituted to probe large scale scam to the tune of Rs. 5,000 crores in the State of Rajasthan relating to setting up of SEZ at *Jaipur*.

2. The petitioner is a retired municipal employee and claims that he had espoused public causes by filing public interest litigation relating to grabbing of valuable Government land. According to the petitioner, to accelerate industrial development, the Rajasthan Special Economic Zones Development Act, 2003 (State Act of 2003, for short) was enacted which came into force with effect from September 8, 2003. It is stated by the petitioner that under Section 6(1) of the State Act of 2003, the State of Rajasthan has to identify and notify the area to be developed as a special economic zone whereas under Section 6(2) of the said Act, the State Government has been entrusted with the duty to select a developer for the purpose of development of the zone, and under Section 6(3) of the said Act, the State Government is required to prescribe the procedure for the selection of the developer. According to the petitioner, to derive undue advantages, the State Government entered into MoU dated July 4, 2005 for establishing SEZ near Mahapura, Ajmer Road, *Jaipur* with Mahindra and Mahindra Limited, which is illegal. The petitioner has produced a copy of MoU dated July 4, 2005 at Annexure-2 to the petition. What is averred by the petitioner is that the Deputy Commissioner Zone-II, JDA prepared a proposal for acquisition of 13,000 bighas of land at Ajmer Road situated at various villages and forwarded the said proposal to the Secretary, JDA who after approving the proposal, forwarded the same to the Commissioner, JDA which was approved on June 16, 2005 without mentioning public purpose which mistake was subsquently rectified by mentioning that the public purpose for which the lands were sought to be acquired was establishment of Information Technology City, Bio-Tech City and Knowledge City at *Jaipur*. According to the petitioner, after identifying and notifying the area to be developed as a Special Economic Zone, it was the duty of the State Government to follow the procedure prescribed by the Rules for the selection of the developer and as the Rules have not been framed under the State Act, the decision to set up SEZ could not have been taken and as the State Government has selected the developer contrary to the provisions of Section 6 of the Act, the MoU dated July 4, 2005 entered into between the State of Rajasthan and Mahindra and Mahindra Limited is liable to be set aside. What is claimed by the petitioner is that the decision of selecting the developer has been taken with *mala fide* intention to *favor* Mahindra and Mahindra Limited as priceless land has been transferred to the said Company without charging single naya paisa in a clandestine manner and, therefore, the MoU should be set aside by the Court. It is explained by the petitioner that the SEZ was required to be set up on a land admeasuring 3000 acres out of which 1000 acres of Government land available in the name of JDA was leased out to RIICO at Agricultural Reserve Price by Lease Deed

dated September 6, 2005 which is illegal and, therefore, the lease deed is also liable to be set aside. The petitioner has asserted that RIICO, in turn, has handed over the land leased to it, to M/s. Mahindra World City (*Jaipur*) Limited which is contrary to the provisions of the State Act of 2003. According to the petitioner, the proposed requirement for setting up SEZ was 3000 acres of land and, therefore, the JDA took steps for acquisition of land admeasuring about 3495 acres of land by issuing notification dated December 20, 2005 under Section 4(1) of the Act of 1894 which was published in the Official Gazette on December 22, 2005 on the ground that the land was likely to be needed by the JDA which is contrary to the State Act of 2003 and, therefore, liable to be set aside. According to the petitioner, the land proposed to be acquired is approximately within a radius of 10 kms. from *Jaipur* and is inappropriate for the purpose of setting up of SEZ as it is highly fertile agricultural land. What is maintained by the petitioner is that after acquiring the land, the JDA would transfer it to RIICO, which in turn, would transfer the same to private Company for commercial use which is illegal and, therefore, the notification published under Section 4(1) of the Act of 1894 should be set aside.

It is maintained by the petitioner that the market price of the land is in no way less than Rs. 1 crore per bigha which has been given to RIICO @ Rs. 3,82,338/- per bigha, and as the exchequer is likely to suffer a huge loss by establishment of SEZ, the MoU as well as the lease deed and notification issued under Section 4(1) of the Act of 1894 should be set aside. According to the petitioner, 1600 bighas of land was already been handed over to Mahindra World City (*Jaipur*) Limited without charging single naya paisa from the said Company though the market price of the land transferred is Rs. 1 crore per bigha and, therefore, having regard to the magnitude of large scale scam not only the transfer of land should be set aside but a High Powered Committee should be constituted to look into the scam. What is maintained by the petitioner is that under Rule 15-B of the Rajasthan Urban Improvement Trust (Disposal of Urban Land) Rules, 1974, the land can be allotted for commercial purpose only through auction, but valuable land has been transferred to private Company for establishment of SEZ which is illegal and, therefore, transfer of land in *favor* of respondent No. 6-Company should be set aside. It is stated by the petitioner that lease of land to RIICO is a camouflage for transferring the land in *favor* of respondent No. 6-Company, and as the petitioner apprehends that the land sought to be acquired would also be transferred to the said Company through RIICO, the State of Rajasthan, RIICO and JDA should be restrained from transferring any further land to respondent No. 6-Company directly or through RIICO. Under the circumstances, the petitioner has filed the instant petition

and claimed reliefs, to which reference is made earlier.

3. On service of notice, respondents Nos. 2 and 3 i.e. the State of Rajasthan and RIICO have filed reply controverting the averments made in the petition. In the reply, it is stated that the petitioner has filed the instant portion to grab public glare with political overtones and, therefore, the petition should be dismissed by the Court. It is mentioned in the reply that the process for establishing SEZ started in February 2005 and apart from allotment of land to RIICO for the purpose of development of two IT majors i.e. Infosys and Wipro have already proposed for allotment of land in the SEZ, *Jaipur* by the Company and, therefore, the petition which is against public interest should not be entertained by the Court. In the reply it is mentioned that Mahindra and Mahindra Company i.e. respondent No. 6 addressed a letter dated February 21, 2005 to the Government of Rajasthan declaring its intention to set up SEZ in the State of Rajasthan, after which meetings were held on April 23, 2005, May 11, 2005, June 1, 2005 and June 9, 2005 to discuss the proposal. What is stated in the reply is that the Government of Rajasthan Administrative Reforms Department (Group-3) by its order dated June 16, 2005 constituted an Inter Departmental Steering Committee for setting up multipurpose SEZs in the State of Rajasthan and after holding discussions, Inter-Departmental Steering Committee considered the MoU entered into between the Government of Rajasthan and respondent No. 6-Company and approved its draft with certain amendments which was sent to Bureau of Investment Promotion for further action. It is stated in the reply that in its 19th meeting, the Board of Infrastructure Development and Investment (BIDI, for short) discussed the draft MoU and directed the Industries Department to examine the same. It is informed in the reply that on July 4, 2005, the Secretary, Industries, Government of Rajasthan forwarded the draft MoU approved by the State Government to RIICO mentioning that RIICO, as an agency of the State Government was authorized to sign MoU for development of integrated SEZ, and as per the directions, RIICO as an agency of the State Government had signed MoU with Mahindra and Mahindra for establishing integrated SEZ at *Jaipur*. A copy of the letter dated July 4, 2005 is produced by the deponent of the affidavit-in-reply at Annexure-R/2/2. It is further stated in the reply that BIDI, in its 20th meeting held on August 25, 2005, granted ex-post facto approval to the MoU for establishment of SEZ whereas the Cabinet took decision on November 17, 2005 to establish SEZ near *Jaipur*-Ajmer National Highway and directed that the land meant for SEZ shall be utilized in accordance with the guidelines issued by the Government of India. What is stated in the reply is that in terms of MoU dated July 4, 2005, the Project Company which was conceived as Special Purpose Vehicle was incorporated in the name and

style of Mahindra World City (*Jaipur*) Limited on August 26, 2005 and upon the application of Mahindra World City (*Jaipur*) Limited, the State Government made recommendations to the Government of India, Ministry of Commerce on November 23, 2005 for grant of approval. It is mentioned in the reply that Mahindra World City (*Jaipur*) Limited submitted a proposal to the Board of Approval, Ministry of Commerce and Industry, Government of India for setting up a sector specific SEZ for IT/ITES Sector and Multiproduct SEZ at *Jaipur* which is estimated to generate foreign exchange as well as employment, which is in public interest. It is stated in the reply that the Government of India, Ministry of Commerce and Industry by communication dated April 7, 2006 granted formal approval to the proposal for development operation and maintenance of sector specific SEZ and also granted in-principle approval for expansion of the same into a multiproduct SEZ at *Jaipur* in Rajasthan. What is highlighted in the reply is that Shareholders' Agreement was executed on 25th June, 2006 between RIICO and Mahindra Gesco Developers Limited.

It is stated in the reply that RIICO is holding equity shares in the Mahindra World City (*Jaipur*) Limited to the extent of 26% whereas Mahindra Gesco Developer's equity in the said Company is 74% and the Board of Directors comprises 10 Directors, out of which 4 Directors have to be nominated by RIICO and, therefore, it is wrong to say that private Companies have been *favor*ed in the matter of allotment of land. After pointing out to the Court that the State Government had committed for allotment of 1000 acres of Government land for the purpose of establishment of SEZ, it is submitted that JDA has allotted Government land vested in it by virtue of Section 54 of the *Jaipur* Development Authority Act, 1982 (JDA Act, for short) for a consideration of Rs. 61,17,40,727/- to RIICO which cannot be considered to be illegal at all. It is mentioned in the reply that vide Notification No. 382 dated April 10, 2007, the Central Government, has, in exercise of the powers conferred by sub- section (1) of Section 4 of the Special Economic Zones Act, 2005 (the Central Act of 2005, for short) and in pursuance of Rule 8 of the Special Economic Zones Rules, 2006, notified 76.10 hectares in revenue village Kalawara, Tehsil Sanganer, District *Jaipur* and Nevta as a Special Economic Zone. Thus by filing reply what is pointed out by respondent Nos. 2 and 3 is that the matter regarding establishment of Special Economic Zone at *Jaipur* by Mahindra and Mahindra was considered by BIDI as well as Inter-Departmental Steering Committee after which a decision was taken by the State Government to allow development of SEZ through Special Purpose Vehicle, a Company incorporated in the name and style of Mahindra World City (*Jaipur*) Limited which cannot be regarded as illegal and as there is no large scale scam as

alleged by the petitioner, the petition should be dismissed.

4. While dealing with the case of the petitioner that the provisions of Section 6 of the State Act of 2003 have been violated, what is pointed out in the reply is that by virtue of Section 51 of the Central Act of 2005, the Central legislation prevails over the State legislation in its operation so far as establishment, development and management of SEZs are concerned and, therefore, neither MoU nor lease deed nor notification issued under Section 4(1) of the Act of 1894 are liable to be set aside. It is further informed in the reply that the MoU which was executed on July 4, 2005 deals with land available with JDA near *Jaipur*-Ajmer National Highway and as more land was needed for setting up of SEZ, the JDA had submitted proposal dated August 3, 2005 to the State Government for acquisition of land and after the receipt of the said proposal, the Cabinet took decision dated November 17, 2005 to establish SEZ near *Jaipur*-Ajmer National Highway and directed that the land meant for SEZ shall be utilized in accordance with the guidelines issued by the Government of India. It is also mentioned in the reply that the State Government received request dated December 2, 2005 from the JDA to acquire land in nine revenue villages near *Jaipur*-Ajmer National Highway in Sanganer Tehsil which is in consonance with the provisions of Section 45 of the JDA Act and, therefore, after being satisfied, notification dated December 20, 2005 was issued under Section 4 of the Act of 1894 which was published in the Official Gazette. It is further stated that after publication of notification issued under Section 4(1) of the Act of 1894 in the Official Gazette as well as newspapers, necessary enquiry as contemplated by Section 5-A of the Act of 1894 was made and on receipt of report, a declaration under Section 6 of the said Act was made which was published in the Official Gazette on May 8, 2006. After emphatically denying the allegations of the petitioner that the land for SEZ was not identified, it is pointed out in the reply that the approval has been granted by the Central Government on April 7, 2006 in accordance with the provisions of Section 3 of the Central Act of 2005 and, therefore, the petition should be dismissed.

5. The respondent No. 4 has filed reply stating that the petitioner has made averments on oath in the petition without any factual basis and as the petitioner has failed to produce reliable evidence on the record of the petition to substantiate baseless allegations, the petition should be dismissed. It is pointed out in the reply that the Deputy Commissioner Zone-II of JDA had prepared a proposal dated June 9, 2005 for the purpose of establishing Information Technology City, Bio-Technology City, Knowledge City and SEZ by offering the land admeasuring 3927.82 hectares situated

on the southern side of National Highway of *Jaipur*-Ajmer after leaving a strip of 1 km. from the centre of the National Highway which is in the public interest. It is emphasized in the reply that the respondents have not taken any action *mala fide* and the land allotted to RIICO at the prevailing DLC rates cannot be regarded as illegal because the lands allotted were agricultural lands. It is further mentioned in the reply that the notification issued under Section 4(1) of the Act of 1894 as well as declaration made under Section 6 are in consonance with the provisions of the Act of 1894 and are not liable to be set aside. What is mentioned in the reply is that out of the total land admeasuring 1839.67 hectares for the establishment of SEZ an area admeasuring 1340.40 hectares of land is non-irrigated/unirrigated whereas only land admeasuring 499.27 hectares of land is irrigated and as land admeasuring 1341 hectares is not fit for agriculture, neither the price at which the lands have been leased out nor execution of lease deed can be regarded as *mala fide* exercise of powers. It is further pointed out in the reply that the average price as per DLC rates comes to Rs. 3,82,338/- per bigha which is not low as suggested by the petitioner and, therefore, the petition should be dismissed.

6. The respondent No. 5, i.e. M/s. Mahindra World City (*Jaipur*) Limited has filed reply to the petition and stated that subsequent to the execution of the MoU, other agreements have been executed between RIICO and M/s. Mahindra World City (*Jaipur*) Limited which are not challenged in the petition as a result of which the petition seeking quashment of the MoU is rendered in fructuous. After pointing out that on April 7, 2006, the Central Government has granted its formal approval for the development operation and maintenance of the *Jaipur* SEZ as a sector specific SEZ, it is stated in the reply that the contention of the petitioner that the *Jaipur* SEZ is being developed without requisite approval is baseless and, therefore, the petition should be dismissed on this ground alone. It is mentioned in the reply that after grant of approval by the Central Government, further steps have been taken pursuant to which the main investors i.e. Infosys has agreed to invest Rs. 240 crores in three phases while Wipro has agreed to invest Rs. 100 crores in two phases and, therefore, the petition should be dismissed. After emphatically denying the allegation of the petitioner that the land has been transferred free of cost to Mahindra Group, it is mentioned that vague as well as baseless allegations, without confirming factual position, have been leveled in a petition which is filed under Article 226 of the Constitution and, therefore, the petition should be dismissed.

7. On service of notice, the respondent No. 6 has filed reply pointing out that in terms

of the provisions of the Central Act of 2005, an application was submitted by respondent No. 5-Company on February 20, 2006 for setting up SEZ at *Jaipur* which was accepted by the Central Government and as land was transferred on September 27, 2006 to respondent No. 5 on leasehold basis by RIICO for a sum of Rs. 61,17,40,727/-, the instant petition which is baseless, should be dismissed. It may be mentioned that the other averments raised in the petition are dealt with in detail by respondent No. 6. However, it is not necessary to refer to them in detail and, therefore, detailed reference to the same is avoided.

8. The respondent No. 1 has filed reply controverting the averments made in the petition and reiterated what is pointed out by the other respondents in their respective reply and, therefore, detailed reference to the reply filed by respondent No. 1 is not made by the Court.

9. The petitioner has filed consolidated affidavit rejoinder to the replies filed by the respondents. Basically what is stated in the petition is reiterated in the rejoinder and hence, detailed reference to the same is avoided.

10. Mr. G. S. Bapna, learned counsel for the petitioner contended that the Government of India introduced SEZ scheme in April 2000 with a view to providing an international competitive environment for export whereas on the directions of the Government of India, the State of Rajasthan enacted the State Act of 2003 and as the provisions of Section 6 of the Act have not been complied with, the petition should be accepted. It was argued that it was incumbent for the State Government to comply with the provisions of Section 6 of the State Act of 2003 before any proposal could have been forwarded to the Central Government for approval and as the provisions of Section 6 of the State Act of 2003 are not complied with, the MoU as well as the lease deed and notification issued under Section 4 (1) of the Act of 1894 should be set aside. What was asserted by the learned counsel for the petitioner was that there is no overlapping in the provisions of Central legislation as well as State legislation and, therefore, the principles contained in Article 254 of the Constitution would not be applicable to the facts of the present case. It was argued that the allotment of land made under Rule 15-B of the Rules of 1974 is illegal inasmuch as, under the provisions of the JDA Act and the Rules framed there under, the State Government has no power to issue direction to allot land in individual cases because the Government is empowered only to lay down guidelines and, therefore, the allotment of land by the JDA on the directions of the State Government, should be regarded as illegal. It was contended that allotment of the land for establishment of SEZ is purely a

commercial project and, therefore, the land could not have been given to a private company at the DLC rates but the land should have been allotted at the prevailing market value which is more than Rs. 1 crore per bigha and, therefore, the reliefs claimed in the petition should be granted. It was argued that the State Government as well as the RIICO and JDA have not only completely flouted the provisions of law but have also committed fraud in exercise of their powers by adopting a procedure not known to law and, therefore, the petition should be allowed. According to the learned counsel for the petitioner, there should have been open invitation to all the entrepreneurs for entering into a partnership so that best possible terms and conditions could have been obtained for the purpose of setting up SEZ, but, in the present case, the State Government had entered into MoU on July 04, 2005 which is illegal and, therefore, the petition should be accepted. In support of these submissions, the learned counsel for the petitioner placed reliance on the decisions in (1) *Ganga Retreat and Towers Limited and Anr. v. State of Rajasthan and Ors.,* [1] *K.K. Bhalla v. State of M.P. and Ors.,* [2] The *Purtapore Co. Ltd. v. Cane Commissioner of Bihar and Ors.,* [3] *Pyrmont Ltd. and Anr. v. Lucila Schott,* [4] *Commissioner of Police, Bombay v. Gordhandas Bhanji,* [5] *State of Assam and Anr. v. Keshab Prasad Singh Anr.,* [6] *Mohammad Hussain Gulam Mohammad and Anr. v. State of Bombay and Anr.,* [7] *State of Punjab and Anr. v. Hari Kishan Sharma,* [8] *Sadiq Bakery v. State of A.P. and Ors.,* [9] and (10) *Jan Mohammad Noor Mohammad Bagban v. State of Gujarat and Anr.,* [10]

11. Mr. G. E. Vahanvati, learned Solicitor General with Mr. Bharat Vyas, learned Additional Advocate General for the respondent Nos. 2 and 3 contended that the argument that the provisions of Section 6 (1) of the State Act of 2003 ought to have been followed is misconceived inasmuch as, Section 3 (1) of the Central Act of 2005 clearly contemplates a proposal to the Board of Approval directly and in view of Section 51 of the Central Act of 2005, the provisions of Central Act of 2005 shall prevail over the State Act of 2003. It was pointed out that a person who intends to set up SEZ, after identifying the area, at his option, may make a proposal directly to the Board for the purpose of setting up SEZ and in such a case, the Board may grant approval wich would enable the applicant to set up SEZ and as the record shows that the State Government had, at every stage supported the proposal and entered into the State Support Agreement on June 25, 2006, the misconceived petition should be dismissed. The learned counsel for respondent Nos. 2 and 3 argued that merely because Section 6 (1) of the State Act of 2003 provides that the developer has to be identified by the State Government, this does not mean that once a developer is identified the State then has to throw the project open for auction. After explaining as

to what is the role of a developer, it was argued by the learned counsel for respondent Nos. 2 and 3 that a developer identifies and promotes a project to develop integrated infrastructure offering a package of incentives to attract foreign and domestic investments for export-led growth and, therefore, SEZ to be set up by respondent-Company is an engine of development, the petition directed against development should be dismissed. It was contended that Article 254 of the Constitution has no application to the facts of the present case, but Section 51 of the Central Act of 2005 is applicable because even if there be any conflict between the State Act of 2003 and Central Act of 2005, the latter would prevail. According to the learned counsel for respondent Nos. 2 and 3, the Central Act of 2005 had received assent of the President of India on June 23, 2005 and as the approval by the Board is the foundation of the MoU dated July 04, 2005, it cannot be regarded as illegal because it is in consonance with the provisions of Section 3 (10) of the Central Act of 2005. It was asserted that it is not open to the petitioner, acting in alleged public interest, to stall a development project of national public importance particularly when no other potential developer has made any grievance whatsoever of the declaration of respondent No.5's SEZ by the Central Government and, therefore, the petition should be dismissed. It was argued that Section 7 (2) of the State Act of 2003 does not require Rules to be prescribed, but it talks of the State Government prescribing terms and conditions ad, therefore, it is wrong to contend that in absence of Rules, further steps for the purpose of establishment of SEZ could not have been taken by the respondents. It was emphatically pointed out to the Court that apart from the oral arguments which were advanced by the learned counsel for the petitioner, the argument with reference to Section 90 (2) of the JDA Act has not been taken in the petition and, therefore, the same should not be entertained by the Court. It was pointed out that reliance placed by the learned counsel for the petitioner on the decision rendered in thhe case of *Poonam Chand Bhandari v. The State of Rajasthan and Ors.* [10] is misconceived inasmuch as, in the said case what was emphasized was that exercise of power generally under Rule 15-B should be subject to some guidelines but sufficient guidelines are available from the Central Act of 2005 and, therefore, the petitioner is not entitled to reliefs on the basis of the decision rendered in Poonam chand Bhandari's case (supra). It was pleased that the JDA has not abdicated its functions and assistance given by JDA to the State Government including allotment of land which can never be described as distribution of State largesse and, therefore, the petition should be dismissed.

It was pointed out to the Court that SEZ is foundation of the State's future development which will generate employment as well as investment in the State and,

therefore, the petition should be dismissed.

12. Mr. Soli Sorabjee, learned Senior counsel for respondent Nos. 5 and 6 contended that the Central Act of 2005 is a Parliamentary legislation covering the field of Special Economic Zones which is subsequent to the State Act of 2003 and, therefore, by virtue of the doctrine of parliamentary supremacy, the plea raised by the learned counsel for the petitioner that execution of MoU etc. is in contravention of the provisions of Section 6 of the State Act of 2003 should not be accepted by the Court. After pointing out to the Court that the substratum of the writ petition is the alleged violation of the State Act of 2003; it was argued that there are no factual averments or grounds relating to violation of the Central Act of 2005 and as challenge to the allotment of land to respondent No. 5 proceeds on a fundamental legal misconception, the petition should be dismissed. The learned Senior Counsel for respondent Nos. 5 and 6 pointed out that there is no challenge in the writ petition to (a) the approval dated April 07, 2006 granted by the Central Government; (b) the sanction accorded on August 17, 2006 for allotment of 1000 acres of land to RIICO; the lease deed dated September 27, 2006 by RIICO to respondent No. 5; (d) the notification dated April 10, 2007 published under Section 4 (1) of the Central Act of 2005 and, therefore, the petition, which is misconceived, should be dismissed. It was argued that an auction is not an invariable mode of disposal of the State property and as the Central Act of 2005 contemplates that any person can make proposal for the purpose of setting up SEZ, inviting of tenders is not *sine qua non* for allotment of land needed for setting up SEZ. After pointing out that the allegations of mala fides and *favor*itism are totally ill-founded, it was argued that no person other than respondent No. 5 had made a proposal under Section 3 of the Central Act of 2005 and, therefore, the charge of *favor*itism should be regarded as baseless. It was pointed out that no person has complained of *favor*itism or being discriminated against, on the ground that his proposal was disapproved and, therefore, the plea based on mala fides should not be accepted by the Court. While meeting with the argument advanced by the learned counsel for the petitioner that the Government land has been disposed of at throw away prices, it was argued that this argument betrays the basic misconception about the nature and purpose of transaction which is not purely commercial but an integral step in achieving the purpose and object of the Central Act of 2005 and should be considered in that perspective. According to the leared counsel for respondent Nos. 5 and 6, there are stringent conditions in the lease deed breach of which entitles the JDA to resume the land without any notice or compensation and no case is made out by the petitioner to set aside the same. It was argued that having regard to the element of

public interest involved in setting up SEZ and public benefits arising there from, the decision to set up SEZ is not liable to be set aside on considerations of price and, therefore, no relief should be granted to the petitioner. According to the learned counsel for the respondents, the respondents have deposited a sum of Rs. 61,17, 40,727/- with RIICO and therefore the allegation made by the petitioner that not single paisa has been paid by the respondents-Company stands falsified and, therefore, the petition should be dismissed.

13. The learned counsel for the other respondents have by and large adopted the arguments advanced by the learned counsel for respondent Nos. 2 and 3 and, therefore, detailed reference to the same is avoided.

14. As noticed earlier, several authorities have been cited at the Bar by the learned counsels for the parties for guidance of this Court. However, detailed reference to the same is avoided to see that the judgment which has even otherwise become lengthy is not unnecessarily burdened.

15. The contention that in view of the provisions of Section 6 of the State Act of 2003, the reliefs claimed in the petition should be granted is devoid of merits. Reference in this connection may be made to Section 51 of the Central Act of 2005 which reads as under:-

> "51. Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything in consistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

16. Though Section 6 of the State Act of 2003 contemplates that the State Government shall identify and notify the area to be developed as a Special Economic Zone whereas sub-section (2) of the said section provides that the State Government shall select a developer for the purpose of development of the zone and the procedure for the selection of the developer shall be such as may be prescribed by the State Government, this Court finds that in view of the provisions of sub-section (2) of Section 3 of the Central Act of 2005, any person who intends to set up Special Economic Zone after identifying the area is entitled to make a proposal to the State Government concerned for the purpose of setting up Special Economic Zone whereas under sub-section (3) of Section 3 of the said Act any person who intends to set up Special Economic Zone after identifying the area is entitled, at his option, to make a proposal directly to the Board for the purpose of setting up Special Economic Zone.

These provisions are inconsistent with the provisions contained in Section 6 of the State Act of 2003 and, therefore, in view of the provisions of Section 51 of the Central Act, the reliefs claimed by the petitioner cannot be granted on the basis that the MoU or for that purpose lease deed or publication of notification issued under Section 4(1) of the Act of 1894 are contrary to the provisions of Section 6 of the State Act of 2003. It is rightly pointed out by the learned counsel for the respondents that the petitioner has neither challenged the approval dated April 07, 2006 for allotment of 1000 acres of land to RIICO nor challenged the notification dated April 10, 2007 published under Section 4(1) of the Central Act of 2005 and, therefore, the reliefs which are misconceived cannot be granted.

17. The argument of the learned counsel for the petitioner that according to Section 6 of the State Act of 2003, identification and notification of the area has to precede the selection of a developer by the State Government as per the procedure of selection prescribed by the State Government is noticed to be rejected only. With the enactment and enforcement of the Central Act of 2005 w.e.f. February 10, 2006 a complete new procedure for setting up such zone has been given in Section 3 of that enactment. It is now no longer necessary to first identify and notify the area to be developed and then select the developer. The Parliament has, keeping in view the international competitive environment for exports and for attracting substantial investments for promoting export-led growth, has in the new legislation simplified the procedure. Now Section 3 of the Central Act of 2005 provides that such zone may be established under the said Act, either jointly or severally by the Central Government, State Government, or any person for manufacture of goods or rendering services or for free trade and warehousing zone. Sub-section (2) of Section 3 provides that any person, who intends to set up a SEZ, may, after identifying the area, make a proposal to the State Government concerned for that purpose and sub-section (3) of Section 3 provides that notwithstanding anything contained in sub-section (2), any person, who intends to set up SEZ, may, after identifying the area, at his option, make a proposal directly to the Board of Approval for the purpose of setting up the SEZ, provided that where such proposal has been received directly from a person under this sub- section, the Board may grant approval and after receipt of such approval, the person concerned shall obtain the concurrence of the State Government within the prescribed period. The very requirement of identification and selection of a developer has thus been done away with and now a person can directly approach either the State Government or the Board of Approval.

18. The contention that there should have been an auction or advertisement before grant of lease to respondent No. 5 is totally misconceived. As noticed earlier, any person who intends to set up Special Economic Zone, after identifying the area is entitled to make a proposal to the State Government concerned for the purpose of setting up Special Economic Zone. On receipt of such a proposal, the State Government has to consider the question as to whether the proposal put forth is viable or not. The State Government cannot turn down the proposal on the ground that better proposals for setting up SEZ are likely to be received. It is relevant to notice that under the scheme of the Central Act of 2005, Special Economic Zone may be established either jointly or severally by the Central Government, the State Government or any person and it is not necessary that before permitting any person to set up SEZ tender should be invited or advertisement should be published as would be in case of disposal of ordinary property belonging to the State. By now, it is well settled that auction is not an invariable mode for disposal of the State property and as is laid down by the Division Bench of this Court in Poonam Chand Bhandari's case (supra), some guidelines should be laid down for disposal of property belonging to the State. Here this Court finds that sufficient guidelines are available from the Statute itself as to how the land should be allotted to enable a person to set up SEZ. Further, auction and advertisement are incompatible with the object and scheme of the Central Act of 2005 which, as noticed earlier, contemplates that any person can make a proposal for the purpose of setting up SEZ. This situation is basically different from the situation in case of inviting tenders for works etc., and therefore, the petitioner is not entitled to claim any relief on the ground that neither auction nor advertisement had taken place before decision was taken to allot the land to the respondents-Companies.

19. The contention that the action of allotment of land to the respondent Nos. 5 and 6 is *mala fide* is totally ill-founded. It is relevant to notice that respondent No. 5 had made a proposal under Section 3 of the Central Act of 2005. Therefore, the charge of *mala fide* and *favor*itism is *ex facie* baseless. It is significant to note that no person has come forward before the Court and complained of *favor*itism or being discriminated against, on the ground that his proposal was disapproved though was better than that of respondent Nos. 5 and 6 and, therefore, the charge of mala fides cannot be upheld.

20. The contention that the Government land has been disposed of at throw away price and, therefore, the allotment of land made in *favor* of respondent Nos. 5 and 6 should be cancelled has no substance. As is pointed out by the concerned respondents, they

have paid more than Rs. 61 crores as consideration for lease of the land executed by RIICO. It is relevant to notice that this is not purely a commercial transaction but an integral step in achieving the purpose and object of the Central Act of 2005 and should be considered in that perspective. It therefore cannot be considered in the nature of an ordinary allotment of land, for the objective of the SEZs is to make available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments with a view to promoting export-led growth. Mere allotment of land is not therefore sufficient to attain that objective. The developer has to create a whole range of infrastructure defined under Rule 2(s) of the Rules of 2006, which "means facilities needed for development, operation and maintenance of a Special Economic Zone and includes industrial, business and social amenities like development of land, roads, buildings, sewerage and effluent treatment facilities, solid waste management facilities, port, including jetties, single point moorings, storage tanks and inter-connecting pipelines for liquids and gases, Inland Container Depot or Container Freight Stations, warehouses, airports, railways, transport system, generation and distribution of power, gas and other forms of energy, telecommunication, data transmission network, information technology network, hospitals, hotels educational institutions, leisure, recreational and entertainment facilities, residential and business complex, water supply, including desalination plant and sanitation facility." The SEZ in question is proposed to be developed on public-private partership basis and the Government has, therefore, committed itself in the MoU to be a collaborator in the development of this integrated SEZ pursuant to which Project Company in the name and in the Style of M/s. Mahindra World City (*Jaipur*) Limited was incorporated with RIICO, which is a Company wholly owned by the Government of Rajasthan, holding 26% of its share capital and it is in lieu thereof that the land in question, which was initially transferred by JDA to RIICO, was in turn made available to the Project Company i.e. respondent No. 5. Further, there are stringent conditions in the lease deed breach of which entitles the JDA to resume the land without any notice or compensation and, therefore, the grant of land to respondent No. 5- Company cannot be termed as arbitrary so as to warrant interference of this Court in the instant petition.

21. The contention that the JDA has acted on the dictates of the State Government in the matter of allotment of land to respondent No. 5 and, therefore, the lease deed executed in *favor* of respondent No. 5-Company should be set aside, cannot be accepted. The record would indicate that the JDA is an important participant in the

matter of establishment of SEZ at *Jaipur*. The decision to allot the land to RIICO was taken by the JDA in the public interest. So also the notification issued under Sction 4 (1) of the Act of 1894 is for public purpose. An SEZ is conceived of as an engine to economic growth of the country with a view to attracting investment into the country and generation of foreign exchange through export of goods and services. Therefore, this Court is of the opinion that it is not open to the petitioner, acting in alleged public interest, to stall the development project of national public importance particularly when no other potential developer has made any grievance whatsoever of the declaration of respondent No. 5's SEZ by the Central Government.

22. Insistence of the petitioner that originally the proposal of the developer to set up SEZ was received when the State Act of 2003 was in vogue and the Central Act of 2005 was nowhere in sight and, therefore, it should be processed and taken to its logical conclusion only in that enactment, does not appeal either to reason or logic. As noticed earlier, the State Government has all along been supporting the proposal to permit respondent No. 5 to set up SEZ. In fact, the Chief Secretary of the Government of Rajasthan by his letter dated November 23, 2005 addressed to the Additional Secretary, Ministry of Commerce, Government of India, New Delhi requested that such proposal be considered by Board of Approval for grant of 'in-principle approval' for the proposed IT/ITES SEZ. When the proposal received consideration of the Board of Approval which was hitherto functioning on the basis of the policy guidelines contained in EXIM policy of the Government of India 2002-07, the Parliament with a view to lending enough confidence to investors to commit substantial funds for development of infrastructure and for setting up SEZ, enacted the Central Act of 2005 which was notified on February 10, 2006. At that stage, respondent No. 5 submitted a fresh application which is available at Annexure R/2/6 of the record of this case, on pro forma prescribed at FORM-A under Rule 3 of the Rules of 2006, to the Government of India. It is on that application that the proposal of the Project Company was processed and on the basis of concurrence already given by the State Government in terms of proviso 3 to sub-section (3) of Section 3, the Government of India vide its letter dated April 07, 2006 granted formal approval to the proposal. This order of approval carries stipulation in condition No. 3 (i) mentioned therein to the effect that the developer shall develop, operate and maintain SEZ in terms of the Central Act of 2005 and the Rules made there under and further in condition No. 3(v) of that order, it is stated that the project shall be implemented and operated in terms of the Central Act of 2005 and the Rules and order made there under. With the new enactment having been enforced and the matter processed there under, there was no question of still

processing the matter under the old Act of 2003.

23. The contention that in absence of Rules prescribed by the State Government, neither MoU could have been signed nor lease deed could have been executed nor respondent Nos. 5 and 6 could have been allotted land to enable them to set up SEZ, is devoid of merits. As pointed out earlier, the provisions of Section 6 of the State Act of 2003 are inconsistent with the provisions of Central Act of 2005 where there is no requirement that the procedure for the selection of the developer shall be prescribed by the State Government. Section 6(3) of the State Act of 2003 provides that the procedure for selection of the developer shall be such as may be prescribed by the State Government whereas sub-section (2) of Section 7 of the said Act *inter alia* provides that for the purposes of the Act, the State Government may transfer the land owned, acquired or controlled by it to the developer on such terms and conditions as the State Government may prescribe. Under the State Act of 2003, strictly speaking, it is not necessary for the State Government to prescribe such terms and conditions only by means of Rules, on which the State Government may transfer a land owned, acquired or controlled by it to the developer. The terms and conditions envisaged in that provision need not necessarily be prescribed by the Rules. It is so because the Central Act of 2005 under Section 3 has opened the field wide open for any person to come forward and make a proposal for setting up the SEZ directly, either to the State Government or to the Board of Approval. These two enactments shall have to be therefore harmoniously construed so as to make the legislative scheme workable. When an individual has been given the liberty to directly make a proposal for setting up the SEZ, what terms and conditions should the State Government prescribe while transferring the land owned, acquired or controlled by it to such developer, will depend on the nature of the proposal and conditions on which such proposal is accepted by the Government which may vary from case to case. There can be therefore no generalization of such terms and conditions in the shape of rules as is being insisted upon by the petitioner. There are, in the present case, several such specific terms and conditions including one with regard to 26% equity participation of RIICO, the Government owned Company, with hosts of other conditions reflected from the various documents such as the MoU, State Support Agreement and different Government orders.

24. Even otherwise the record would indicate that the respondents have acted in a transparent manner before allotting the land for setting up SEZ. The matter has been scrutinized at different levels in the Government. Initially it was examined by the

Inter-departmental Steering Committee headed by the Chief Secretary. The BIDI, which is the highest policy-making body of the State Government for deciding upon the issues relating to economic development and investment promotion in the State, also upon scrutiny cleared the proposal. This body is headed by the Chief Minister with Ministers from various major departments of the State as its members and Chief Secretary of the Government as Member-Secretary and then finally it was approved by the State Cabinet.

25. The record thus does not indicate that the land was allotted in a surreptitious or clandestine manner. Nor does the record show that there is any scam as is sought to be made out by the petitioner. It would not be out of place to state that so-called scam is a figment of the imagination of the petitioner which has no factual basis at all. s noticed earlier, several decisions taken under the Central Act of 2005 are not challenged by the petitioner at all. Therefore, the Court will have to proceed on the footing that those decisions are valid. Once the decisions taken under the Central Act of 2005 are treated to be valid, this Court finds that nothing remains to be done in the instant public interest litigation. The petition will have to be carried to its logical conclusion by dismissing the same.

26. For the foregoing reasons, the petition fails and is dismissed. Notice issued to the respondents is discharged. There shall be no order as to costs.

Petition dismissed.

Cases Referred.

1. (2003) 12 SCC 91; (2)
2. (2006) 3 SCC 581: AIR 2006 SC 898
3. (1969) 1 SCC 308: AIR 1970 SC 1896
4. AIR 1939 PC 74
5. AIR 1952 SC 16
6. AIR 1953 SC 309
7. AIR 1962 SC 97
8. AIR 1966 SC 1081
9. AIR 1988 SC 322
10. (D.B. Civil Writ Petition (PIL) No. 850/2006 disposed of on May 11, 2007)