

Karnataka High Court Sri. Balaji Amenity Center, ... vs The Chairman, Kiadb, The Chief ... on 16 September, 2006 Equivalent citations: ILR 2007 KAR 2946, 2007 (6) KarLJ 426 Author: A J Gunjal Bench: A J Gunjal ORDER Ajit J. Gunjal, J. Page 1115 1. The matrix of the case can be summarised as follows: The petitioner is a project constituted by the promoters in the name and style of M/S. Balaji Amenity Center. The petitioners case is that the said project is designed to support the growth and developmental activities in the IT Corridor and Export Promotion Industrial Park (for short EPIP) area, which intended to provide facilities such as Lodging, Service Suits (Apartments), Restaurants, Business Center and Executive Club, Banquet Hall and Conference Rooms, Health Club etc. The petitioners through its promoters had applied for allotment of half an acre of Civic Amenities plot in EPIP area, near SAP Labs on 8th April 2004. The said application was accompanied by earnest money forming a part of the price, remitted a total sum of Rs. 12,00,000/- (Rupees Twelve lakhs) through Demand Draft drawn on Vyaya Bank dated 7th April 2004 and another Demand Draft drawn on Indian Overseas Bank dated 8th April 2004. A copy of the said application is at Annexure 'B'. The petitioners would state that they were invited to attend the Screening/Allotment Committee and after a detailed discussion, the Committee members orally informed the petitioners about the price of allotment per acre of Civic Amenity site at Rs. 1,60,00,000/- (Rupees One crore, sixty lakhs) and informed that they have been allotted half an acre of Civic Amenity site in EPIP. The 2nd respondent also assured to consider the request of the petitioner to give a reduction to the extent of 15% out of the total price. The petitioner Page 1116 would state that the said oral intimation was later confirmed pursuant to the letter dated 2nd June 2004. A copy of the said letter is to be found at Annexure 'C'. The petitioners, it appears on the basis of the said communication issued at Annexure 'C' were awaiting further correspondence from the respondents 1 & 2 regarding finalisation of the incidental documentation in the KIADB Standard format of the respondents and requested the respondents through their letter dated 21.09.2004 to expedite the same to enable them to proceed further. It is the case of the petitioners that the arrangement for allotment of half an acre in favour of the petitioner has been approved by the Board as per Annexure 'C'. The petitioners had the fond hope that the respondents would comply with the legal requirement of execution of the document in favour of them and hand-over possession. But however they were shocked and surprised that the respondents had issued a Public Auction Notification dated 29th September 2004 in respect of the said Civic Amenity site. A copy of the said publication is at Annexure 'E'. The petitioner in view to the said auction notification wrote to the respondents and requested that the said auction, which was to be held on 29th September 2004 was unjust. The respondents have responded to the said communication pursuant to Annexure 'G' dated 20.09.2004. The said communication at Annexure 'G' is in the nature that the application of the petitioner is rejected. According to the petitioners, the said communication issued at Annexure 'G' is in the nature of a cancellation of the allotment of half an acre of land in Civic Amenity site No. 128-part of EPIP Area, as the petitioners have already been allotted a plot

measuring half an acre in the said EPIP Industrial area on 11.12.1996 in the trade name of Balaji Corporate Services, wherein a hotel has already been set up. In these circumstances, the respondents have decided to conduct a public auction for disposal of Civic Amenity Plot No. 128-Part. They also informed the petitioners that they could participate in the said public auction. The said communication at Annexure 'G' is questioned in this petition. 2. The relief, which is sought for by the petitioners is in the nature of a writ of mandamus or any other appropriate writ to quash Annexure 'G' and also for a direction to the respondents to complete the documentation and confirm the allotment in their favour. 3. Pursuant to the notice issued, the respondents have entered appearance and have filed their Statement of objections. The respondents have inter alia contended that the said EPIP at White Field, Bangalore was formed in accordance with the Policy and with the financial assistance from Government of India to encourage exports. It is their case that they have invested more than Rs. 70 crores to develop the said EPIP. Any allottee of the said land in EPIP land has to give an undertaking that the allottee will export not less than 30% of the output. In the said EPIP area certain plots however are considered as Civic Amenity sites. But however according to Page 1117 to the respondents, the same cannot be allotted for putting up a hotel as contended by the petitioners. The respondents are involved in acquisition of lands for the purpose of promoting industrial growth in the State of Karnataka and in pursuance of the said object allots the industrial lands in favour of the industries at a very reasonable rates. The respondents further state that the 2nd petitioner had been allotted half an acre of land in the EPIP area, which is a prestigious Industrial Area to Smt. Thilagavathi, who is none other than the wife of one of the promoters of the petitioner-Company, Mr. Kuppu Swamy in the year 1996. A copy of the said allotment letter is produced, which is marked as Annexure R'. On the basis of the Project report submitted by the Balaji Corporate Services, of which Smt. Tilagavathi, who is wife of one of the promoters, the land was allotted, The sum and substance is that the application, which is made for allotment of half an acre of land in Civic Amenity plot No. 128 of EPIP II phase is not a valid application, in as much as it is bereft of necessary information. But however they would admit that it was accompanied by a demand draft for a sum of Rs. 12,00,000/- (Rupees Twelve lakhs). 4. During this interregnum, pursuant to the auction notice at Annexure 'E', the said portion of the land was purchased by one K.C. Shivaram. Consequently, he has filed an application seeking to come on record as additional respondent since he is a necessary and proper party to the said proceedings. The said application is allowed and he has been arrayed as respondent No. 4 in the present proceedings. The 4th respondent has also filed his objections to the main petition inter alia contending and reiterating the stand taken by respondents 1 to 3. In furtherance, they would state that the communication, which is issued by the respondents at Annexure 'C' does not confer any right on the petitioners to get the said part of the land allotted. They would also submit that pursuant to the auction dated 20th September 2004, the 4th respondent has participated in the said auction and was the highest bidder for Rs. 2,62,00,000/- (Rupees Two crores Sixty Two lakhs). The Board

confirmed the auction in favour of the 4th respondent. Pursuant to the said confirmation, he has already paid 25% of the price of Rs. 2,65,00,000/- on the spot in addition to Rs. 1,00,000/-, which was deposited with the respondents to participate in the public auction. Thus according to the 4th respondent, he has already deposited a sum of Rs. 66,50,000/- (Rupees Sixty six lakhs, Fifty thousand) on 16.10.2004. 5. The respondents 1 to 3 and respondent No. 4 would, in tandem justify their action in bringing the said Civic Amenity site in EPIP area for auction. They would state that in order to earn better Revenue, they had issued a notification for sale of the said land by public auction. They would also state that notwithstanding the communication issued by the respondents 1 to 3 at Annexure 'G', the petitioners deliberately kept out and did not participate in the public auction and has approached this Court without any justifiable reason. They would also contend that the prices offered by the petitioners is Rs. 1,62,00,000 (Rupees One crore sixty two lakhs) per Page 1118 acre and the price for half an acre would work out to Rs. 81,00,000/- (Eighty One lakhs). Thus according to the respondents, the Board cannot be deprived of the additional sum it had gathered by way of public auction. In the circumstances, they would submit that the writ petition does not survive for consideration and the same be dismissed. 6. The statute, which operates in respect of the acquisition of the land and disposal thereof is under the Karnataka Industrial Areas Development Act, 1966 and the regulations made therein. The Board is constituted under the Act. In terms of the said Act, the State Government is empowered to acquire certain lands and hand over the same for allotment to the eligible Industries. Pursuant to and in furtherance of the power conferred, Regulations are framed known as Regulation governing the disposal of the land by the Karnataka Area Development Board. 7. Mr. Udaya Holla, learned Sr. Counsel appearing for the petitioners would submit that pursuant to the project report, a copy of which is produced at Annexure 'A', an application was made by the petitioners for allotment of the site. He would submit that the application made to the Board, was accompanied by a demand draft for Rs. 12,00,000/- (Twelve lakhs) which is incidental and earnest money as contemplated under the regulations. He would submit that pursuant to a communication at Annexure 'C', the authorised signatory of the Board has informed that the said application has been accepted. Consequently, it falls under the Doctrine of Legitimate expectation. He would also further submit that pursuant to the said allotment letter, the petitioner has already prepared projects and is waiting for its implementation. He would also submit that the reason for canceling the allotment in favour of the petitioner is not justified in as much as, it is not the first time that the Board has allotted the sites to the same concern twice. He also drew my attention to such allotments, which are given to certain establishments twice. In these circumstances he submits that bringing the civic amenity site for public auction, for which the petitioner had made an application, was not at all justified and submits that this is a fit case where the request of the petitioners is to be granted. 8. Mr. Ravi Varma Kumar, learned Sr. counsel for the 4th respondent-auction purchaser would vehemently contend that in the year 1996 i.e., on 11.12.1996 to be precise, the wife of one of the promoters namely Smt.

Thilagavathi was allotted 2,013 sq.mts. He would submit that the said allotment letter was in favour of Balaji Corporate Services. He would also refer to certain correspondence inter se between the said Balaji Corporate Services and the Board in respect of the execution of the sale deed, change of concern from Proprietor firm to the partnership firm. He pointedly referred to the application for allotment made by the petitioners herein on 07.04.2004, a copy of which is produced at Annexure 'R5' along with the objections of the respondent-Board. He submits that the said application is bereft of any material particulars. He referred to certain clauses in the said application, which according to him have been left blank. He would also submit that as on the date when the application was Page 1119 made by the petitioners for allotment of the land, the Company was not in existence, in as much as nothing is forthcoming in the said application. The prices offered by the petitioners are also much lower than the prices offered in the auction by the 4th respondent. The sum and substance is that the application does not give any particulars much less about the existence of the petitioner-Company. He would also submit that the earnest money to be deposited with the application is only Rs. 500/- and there is no justifiable reason as to why the petitioner deposited a sum of Rs. 12,00,000/- towards earnest money. He would also submit that the column regarding the applicant had earlier applied for the land and particulars of allotment or otherwise or whether the applicant is associated with any other Company, which has been provided with a land is left blank, which would necessarily mean that there is suppression of material facts. In these circumstances, he submits that the petitioner is not entitled for any of the relief, which he has sought. 9. Mr. Arun learned Counsel appearing for the respondent-Board would submit that the said communication was sent by the respondent-Board to the petitioners but however, that by itself is not a concluded contract in as much as there is no offer or acceptance. He would also submit that one of the promoter's wife was already allotted a land measuring 2,013 sq.mts. and consequently there is no justifiable reason as to why the request made by the petitioners should be entertained. He would also submit that the application, which was given by the petitioners for allotment of site was bereft of any material particulars and consequently, the Board could not have allotted the land to a non-existent company. In the circumstances, he submits that for suppression of material facts in the allotment, the petition is liable to be rejected. 10. Having heard the contentions of the learned Counsel appearing for the petitioners and the respondents, the question, which would fall for consideration in this petition would be whether the petitioner is entitled for the reliefs which he has sought on the basis of the Doctrine of Legitimate Expectation and whether the respondent-Board has acted in a manner which would be considered as malice in law. 11. Before adverting to the contentions, it is necessary to refer to the provisions of the Karnataka Industrial Area Development Board Regulations 1969 (for short 'the regulations'). Chapter II of the Regulations would deal with the disposal of the land. Regulation 4 is in respect of form, of application; Regulation 5 is the manner of disposal of land; Regulation 6 is in respect of reservation of plots; Regulation 7 is in respect of inviting applications; Regulation 8 would relate to deposit of quantum of money

that should be paid as initial deposit towards the cost of the land and the development charges on allotment; Regulation 9 would relate to the registration; and more importantly Regulation 10 would relate to the allotment of the land; Regulation 11 is in relation to the decision of the Board; Regulation No. 12 is in respect of revocation of proposal for disposal of land; and Regulation 13 relates to allotment of plots in special cases. These are the only regulations, which would relate to the disposal of the land by the Board. Page 1120 12. Admittedly, in the case on hand, the petitioners made an application for the allotment of the land. The said application is to be found at Annexure 'R5'. A perusal of the said application would clearly disclose that no material particulars are forthcoming regarding certain information, which is sought for in the said application. Referring to certain incomplete information it is to be noticed that in column No. 2 which would refer to name and full address of the applicant, the name of K. Kuppuswamy and B.L. Prabhakar, who are the petitioners is shown. In column No. 4 in respect of the name of Industry and the products manufactured or proposed to be manufactured, the name of the product is stated as not applicable. In the same column the status of the firm is shown as Private Limited Company (yet to be incorporated). In column No. 5(iv) which refers to the extent of land already in possession or in possession of sister/subsidiary associated concern, it is left blank. In column No. 7(a) which would refer to the enclosure of a copy of license of the Central Government or registration, it is stated as not applicable. In column 7(c) which would refer to whether the industry has to be registered either as a medium scale or small scale industry, the information stated is not relevant. In column 8 regarding as to whether the intended machinery is ready for installation, it is stated as not applicable. Certain notings are there at the bottom of the application, which would relate to the amount, which would accompany the said application. Column 2(e) would relate to the extent of earnest money to be deposited, which is at the rate of Rs. 500 per acre or Demand Draft drawn in favour of the Board. In the noting at column 2 (h), it is clearly stated that for non-compliance of any of the conditions stated, the application is liable to be rejected without any notice. The form of application is regulated by Regulation No. 4 of the Regulations. Regulation No. 4(a) reads thus: 4(a) An application for the allotment of land or shed in an Industrial Area shall be made to the Executive Member in the prescribed form (Form 1) obtained from the Board in duplicate along with an earnest money of Rs. 100/-. The earnest money will be either refunded if no allotment is made to the applicant or adjusted towards the sum due on allotment if the payment of the sum is made within one months from the date of receipt of the communication from the Board or forfeited. Regulation 4(c) would specifically deal with a situation where the applications either incomplete or not accompanied by the earnest money fee of Rs. 100/- shall not be considered. If one were to scrutinize, the application filed by the petitioners, it does not confirm to the provisions of Regulation 4(a) & 4(c). Admittedly, the application is incomplete with certain reference to the petitioners and the proposed setting up of an Amenity center. As stated no information is forthcoming in respect of the material particulars. Regulation 5 would deal with the Boards power for disposal of a land. The

Board has retained powers to dispose of the land in several manners i.e., by lease, lease-cum-sale, sale, auction-sale, auction-lease, assignment or otherwise. Regulation 7 would deal with Page 1121 inviting of applications wherein the applications are invited by wide publicity given through the newspapers having circulation in and outside Karnataka State. It is not in dispute that the Board did not advertise nor it had invited applications for the allotment of any site. The petitioner on its own volition has made an application for allotment of a site. Even in the application, it is not stated as to what is the extent of the land, which is required for setting up of an Amenity center. It is rather startling to note as to why the petitioner should deposit a sum of Rs. 12,00,000/- (Rupees Twelve lakhs) with the respondent-Board, when the actual amount, which is required to be deposited as earnest money is only Rs. 100/-. Apparently, it appears that the petitioner wanted to speculate and if in the bargain, he could be allotted a land. 13. This takes us to the next question whether the petitioner can invoke the Doctrine of Legitimate Expectation. The petitioners have relied upon a communication issued by the Board, a copy of which is produced at Annexure 'C'. The moot question would be whether the petitioners would derive any benefit from the said communication. It is useful to refer to the said communication issued by the respondent-Board to the petitioners. The first paragraph in the said communication would relate to certain discussions, which the petitioner is stated to have with the Members of Allotment Committee on 22.05.2004. The second paragraph of the said communication would relate to the allotment of half an acre (C.A. plot) of land in EPIP Industrial Area for setting-up of unit for manufacturing of Hotel & Amenity Complex (Service Industry). What is significant is the last paragraph of the said communication, which reads as follows: Detailed terms and conditions of allotment and the location of land allotted to you will be intimated in due course. 14. Apparently, a perusal of this communication does not give an indication that indeed an allotment has been made in respect of a particular C.A. site in EPIP Industrial area, The said two paragraphs is qualified by the latter paragraph in the communication, which is referred to above, which would necessarily mean that it is an incomplete communication regarding allotment of a C.A. site. The details regarding terms and conditions regarding allotment having been not worked out and even the location of land to be allotted is also not finalized. Whenever an allotment of a land is communicated by the Board, the said allotment would necessarily indicate the terms and conditions of allotment and also the location of land allotted to the allottee. However, in the case on hand, it is clear that the alleged allotment letter did not accompany the terms and conditions. The identity of the land was also not mentioned. In the absence of any concrete proposal regarding allotment, the petitioners cannot base their claim that the land has been allotted to them. Even assuming that the said communication would give an indication that there is an allotment of the land in favour of the petitioner, but however, the said allotment of land in favour of the petitioners, which is contrary to Regulations does not give any right. If the allotment is wrongly made, they are liable for cancellation. Page 1122 15. The Apex Court in the case of Jalandhar Improvement Trust v. Sampuran Singh has extensively

dealt with the scope of Section 115 of the Evidence Act, 1872. It is useful to extract the observations made by the Apex Court in the said decision: Here the Courts below have failed to notice the Legal principle that there is no estoppel against law. The allotment of plots by the Trust is controlled by the statutory rules. Any allotment contrary to those Rules will be against the law. Since the allotment made in favour of the some of the respondents was based on wrong application of the reservation made for “local displaced person” those allotments were contrary to law. Hence, the principle of Promissory/Equitable estoppel cannot be invoked to protect such illegal allotments. 16. The Apex Court has reiterated the same principle in the case of Delhi Development Authority v. Ravindra Mohan Aggarwal and Anr. . While dealing with a similar, if not identical situation, has observed thus: There is no estoppel against statute and when the considerations of public interest are involved. The acceptance was not communicated by Delhi Development Authority to the respondents and therefore, the acceptance was not complete. 17. It is to be noticed that there is no transfer of land made in favour of the petitioners by the respondent-Board. The fact that the Board has accepted the sum of Rs. 12,00,000/- (Rupees Twelve lakhs) which accompanied the said application certainly will not give any right or does not constitute a right seeking transfer of the property. In fact the petitioners cannot in law have a claim. Even the equitable consideration would not justify a public authority like the respondent-Board being directed to allot a Civic Amenity site in the EPIP area to the petitioners. In fact any communication of allotment has to be with a concrete proposal as to the exact area which has been allotted to the petitioners. In the case on hand Annexure ‘C’ the communication does not disclose the measurement of the land to be allotted to the petitioners. In the circumstances, it cannot be said that the petitioners can invoke the Doctrine of Legitimate expectation. Clear Statutory Regulations override any legitimate expectation. 18. It is to be noticed that the petitioners had valued land, which is to be allotted to them at Rs. 1,62,00,000/- (Rupees One crore Sixty Two lakhs) per acre which would work out to Rs. 81,00,000/- (Rupees Eighty One lakhs) for half an acre which is required by the petitioners. However, it is to be noticed that half an acre of land in the said EPIP area was auctioned for a sum of Rs. 2,62,00,000/- (Two crores Sixty Two lakhs) and the 4th respondent Page 1123 was the highest bidder. When that is the case, the Board cannot be expected to suffer loss. The said communication does not confer any right. 19. It is also to be noticed that the Board has not taken any decision for allotting the land to the petitioners and any decision of the Board assuming that it has been taken was not at all communicated. Regulation 10 of the Regulations would deal with the allotments. Prima facie, the Board is to be satisfied with the person, a firm or a company, which has made an application and which is likely to start production within a reasonable period is entitled for allotment. In the case on hand, it is not so. In fact the petitioners do not satisfy the requirement of Regulation 10. The Regulation 10 would stress that the Company or a person or a Firm where the land has been allotted is likely to start production within a reasonable period. Apparently, when the application for allotment was made, the Company was not at all in existence. In fact no

worthwhile information was forthcoming in the allotment application regarding the functioning of the said Company. It is no doubt true that during the course of hearing the petitioners have produced the certificate issued by the Registrar of the Companies regarding Company having been registered. But however, it is to be noticed that the Registration of the said Company is sometime in the second week of December 2005. Apparently, a specific contention is taken by the respondent-Board that as on the date of the application, the Company was not at all in existence. Even assuming that the said Registration of the Company has come into existence, subsequent to the filing of an application, which would certainly not ensure to the benefit of the petitioners. As observed earlier, to my mind, it is only a speculative investment, which is sought to be made by the petitioners. 20. Another factor which prompted the respondent-Board from withdrawing the said alleged allotment was on the ground that the petitioner has already been allotted a land ad measuring 2,013 sq. mts. earlier in favour of Balaji Corporate Services. It is also not in dispute that, the 2nd petitioner's wife was the Proprietrix of the said Company, of course which was later converted into firm. It is to be noticed that in the project report under the heading of Background of promoter in the earlier company/firm it is stated that "Smt. K. Thilagavathi W/o. Kuppu Swamy is aged about 42 years. She is Science graduate with over 10 years experience in trading activities. She is also involved in liaisoning works with various Governmental agencies. The Proprietrix will be assisted actively by Sri. R. Muralidhan, who is a Management Consultant with vast experience in the field of business and industry. Besides the proprietrix can always bank on the rich and varied experience of her husband Sri. K. Kuppuswamy (Petitioner No. 2) who is a Greenfield management expert, as and when the situation arises." In the project report one can see that the land had been allotted in the name of the wife of 2nd petitioner for setting up a Restaurant and Convention centre. But the 2nd petitioner was infact taking care of the business of the land. This is further evidenced by the two communications issued by the 2nd petitioner to the Board, a copy of which is produced at Annexures Page 1124 R3 & R4. It is relevant to refer to these two communications of the 2nd petitioner to the respondent-Board. Annexure 'R3' would relate to the execution of absolute sale deed in respect of plot No. 12. The said communication is signed by the 2nd petitioner as partner of Sri Balaji Corporate services, requesting the respondent-Board to abridge the lease period and to approve execution of absolute Sale Deed in respect of plot No. 12. Annexure R4 is another communication issued to the respondent-Board by petitioner No. 2 on behalf of Balaji Corporate services. This is in respect of change of the concern from Proprietary to Partnership. If one were to take into consideration these allotments and the allotment of the earlier plot to the firm, it is to be noticed that the petitioners have suppressed material facts for making an application and have left the Column blank in respect of the information, which is sought regarding allotment on an earlier occasion. The fact that the said application was accompanied by a Demand Draft for Rs. 12,00,000/- (Rupees Twelve lakhs) does not necessarily give a right of the petitioners to seek a writ of mandamus to respondents for allotment of a site. Another factor which



is forthcoming in the application is column No. 16 which is meant to furnish the name and address in the application. The name of the 1st applicant is seen. The address therein is No. 12 EPIP near ITPL, Whitefield, Bangalore. The plot No. 12 EPIP in the one, which is allotted to the wife of the 2nd petitioner. It is to be noticed that by the communication on which the petitioner relies also does not disclose the price at which the land has to be allotted and also that was not finalised. The allotment is done under a standard format, which is also not forthcoming in the case on hand. 21. The scope of judicial review has been stated by the Apex Court in innumerable decisions. The Judicial review under Article 226 of the Constitution of India is set at rest. This Court can interfere with an administrative action only when it is shown that the decision making process is wrong but not when the decision itself is wrong. The scope of interference in these matters, which would fall within the realm of contract are not open to judicial review. The Apex Court in the case of *Tata Cellular v. Union of India* reported in (1994)6 SCC 651, has stated the following principles in respect of judicial review. The principle enumerated from the above are the modern traits in administrative action. Note: The Court does not sit as a Court of appeal as it reviews in the manner in which the decision was made. The Government must have freedom of contract. In other words, a fair claim is necessarily concomitant from administrative body functioning or quasi-administrative sphere. However, the decision is not only tested by the *Wednesbury* principle of unreasonableness (including its other facts) must be free from arbitrariness and not affected by bias actuated by malafides. Quashing of decisions may impose heavy administrative burden on the un-objected expenditure. If one were to keep these principles in mind, judicial intervention in the present proceedings is not at all called for. Page 1125 22. In the facts and circumstances of the case, I do not find that the Board has committed any illegality, which can be the subject matter of judicial review. The Apex Court in the case of *Chairman and Managing Director, B.P.L. Ltd., v. S.P. Gururaja and Ors.* has ruled as under: Undue haste also is a matter which by itself would not have been a ground for exercise of power of judicial review unless it is held to be malafide. What is necessary in such matters is not the time taken for allotment but the manner in which the action had been taken. The Court, it is trite, is not concerned with the merit of the decision but the decision making process. In absence of any finding that any legal malice was committed, the impugned allotment of land could not have been interfered with. What was only necessary to be seen was as to whether there had been a fair play in action. 23. It is noticed that after due deliberations, the Board thought it fit that the land requires to be auctioned so as to offset any loss, which the Board would suffer. Apparently, the difference between the price offered by the petitioners and the price fetched in the auction is enormous. The Board will not stand to benefit but stand to loose considerable amount of money if Annexure 'C' is construed as an unconditional allotment in favour of the petitioner. 24. Coming to the impugned order, the Board had intimated the petitioners to participate in the said auction. In fact when posed with a question regarding the policy of the Board regarding auctions of the plots and the sites an affidavit is filed by the

Secretary of the Board to the effect that the Board has no permanent policy of auctioning of sites when the decision is taken by a Competent Authority on a basis. The affidavit filed by the Secretary of the Board would read as follows: That the KIADB, has no permanent policy for auctioning of sites. The decision is taken by the competent authority on a case to case basis. The prime plots in developed industrial area are normally auctioned to realize the loss incurred by the KIADB otherwise. EPIP area, where the plot that is in question in the above writ petition is situated, was formed by the KIADB to promote export promotion industries and the plots are primarily allotted to only export oriented industries. However, as the present plot was not allotted to an export oriented industry, the same was decided to be auctioned in order to set right the loss incurred elsewhere by the KIADB. 25. It is no doubt true that the counter affidavit is filed by the petitioners to the said affidavit inter alia stating that when there is no statutory provision to take a decision on a case to case basis, the plot cannot be auctioned. It is once again relevant to refer to regulation No. 5. Regulation No. 5 of the Regulations is an answer to the said counter filed by the Page 1126 petitioners. Admittedly, the Board can decide the manner of disposal of land by lease, lease-cum-sale etc., which would also include auction sale. In the case on hand that has been done. Consequently, the auction of plot cannot be faulted. 26. Having given my anxious consideration to the submissions made, I am of the view that the relief, which is sought for by the petitioner, cannot be granted. There is no merit in this petition. Petition stands dismissed.