

Rajiv Kumar vs State Of Uttar Pradesh on 2 August, 2017

Equivalent citations: AIR 2017 SC 3772, 2017 (8) SCC 791, 2017 CRI. L. J. 4734, AIR 2017 SC(CRI) 1606, (2017) 4 RECCRIR 179, (2017) 68 OCR 378, (2017) 3 CRIMES 346, (2017) 3 DLT(CRL) 783, (2017) 8 SCALE 430, (2017) 177 ALLINDCAS 79 (SC), (2017) 100 ALLCRIC 960, (2017) 4 ALLCRILR 201, (2017) 3 CURCRIR 334, 2017 (3) SCC (CRI) 544, AIR 2017 SUPREME COURT 3772, AIR 2017 SC (CRIMINAL) 1606

Author: R. Banumathi

Bench: R. Banumathi, Kurian Joseph

CA NO.251 OF 2017 WITH CA NO.252 OF 2017

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 251 OF 2017

RAJIV KUMAR

...Appellant

Versus

STATE OF U.P. AND ANR.

...Respondent

With
CRIMINAL APPEAL NO. 252 OF 2017

NEERA YADAV

...Appellant

Versus

C.B.I.

...Respondent

JUDGMENT

R. BANUMATHI, J.

These appeals impugn the common judgment dated 24.02.2016 passed by the High Court of Judicature at Allahabad in Criminal Appeal Nos.4717 of 2012 and 4888 of 2012 upholding the Reason: Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (for short 'the P.C. Act') and also the sentence of CA NO.251 OF 2017 WITH CA NO.252 OF 2017

imprisonment for three years and a fine of Rs.50,000/- imposed on each of the appellants for conviction under Section 120-B IPC. The High Court also confirmed the sentence of imprisonment for three years and fine of Rs.50,000/- imposed on appellant Rajiv Kumar for conviction under Section 13(2) read with Section 13(1)(d) of P.C. Act with default clause.

2. It is a well known fact that New Okhla Industrial Development Authority U.P. (hereinafter referred to as "NOIDA") was established in the year 1976 with the responsibility of developing and managing Asia's largest Integrated Industrial Township for the industrial growth of the area, under the Uttar Pradesh Industrial Area Development Act, 1976 in the National Capital Region. Administration of NOIDA was entrusted to high level public officials so as to develop a planned, integrated, modern Industrial City, well connected to Delhi through a network of roads, national highways and the ultra-modern DND flyover, offering inter-road linkages to all parts of the country. Spread over 20,316 hectares, with many sectors fully developed, NOIDA was to offer a pollution free high standard of living and highly supportive industrial environment with its unique infrastructure providing numerous, matchless facilities. However, the project got marred by CA NO.251 OF 2017 WITH CA NO.252 OF 2017 land allotment scams worth crores of rupees, owing to abuse of position and power by the officials entrusted with the management and control of NOIDA itself. In this connection, several complaints surfaced alleging irregularities in allotments and conversions of land in 'NOIDA'. Explanation was sought in this regard by the then Principal Secretary (Heavy Industries) of the Government of U.P. from appellant Neera Yadav. But, final decision was taken not to initiate any departmental inquiry in the matter against the officials concerned.

3. One 'NOIDA Entrepreneurs Association' sought inquiry by the Central Bureau of Investigation (in short the 'CBI') in the matter and this Court vide order dated 20.01.1998 directed that the matter be investigated by the CBI. Consequently, the CBI registered an F.I.R. being Crime No.RC/3(A)/98-ACU-VII dated 26.02.1998 against Ms. Neera Yadav who was serving as Chairperson and Chief Executive Officer (CCEO) of NOIDA, during the relevant period viz. from 10.01.1994 to 08.11.1995, and some other high officials of NOIDA. The FIR contained allegations to the effect that Ms. Neera Yadav in conspiracy with other officials abused her position while committing grave irregularities in the matters of allotments and conversions of land in NOIDA. It is available on record that appellant CA NO.251 OF 2017 WITH CA NO.252 OF 2017 Neera Yadav held the post of CCEO of NOIDA for the period 10.01.1994 to 08.11.1995.

4. Adverting to appellant Rajiv Kumar in Criminal Appeal No.251/2017, it turns out that he served as Deputy Chief Executive Officer, NOIDA for the period 14.06.1994 to 29.12.1995. Plot no.27 in Sector 14-A, which was reserved for Government Guest House was allotted after conversion to appellant Rajiv Kumar contrary to the rules. Case of the prosecution is that on the application of appellant Rajiv Kumar, Plot No. B-86 of 450 sq.ms. in Sector-51 was allotted to him. Appellant Rajiv Kumar requested for conversion of his plot, even by smaller size in Sector-14A. Accordingly, his allotment was converted to plot No.A-36 in Sector-44. Notably, contrary to the rules, he again got his allotment converted to plot No.27 of 300 sq.ms. in the most prestigious Sector-14A on Delhi border with approval of appellant Neera Yadav on 15.10.1994. Before so getting plot No.27 allotted in his favour, appellant Rajiv Kumar in conspiracy with Neera Yadav converted plot No.27 which was reserved for Government Guest House as residential to obtain pecuniary advantage for Rajiv

Kumar. Lease deed in his favour and in favour of his wife was executed on 27.07.1995. After execution of lease deed, CA NO.251 OF 2017 WITH CA NO.252 OF 2017 on application of wife of appellant Rajiv Kumar on 26.10.1995 for extension of width by 3.5 mts., which was reported to have been found in excess from plot No.28 on 28.10.1995, the proposal for its allotment to appellant Rajiv Kumar by way of enhancement was approved by appellant Smt. Neera Yadav on 05.11.1995 and the same was allotted to Rajiv Kumar and thus the area of plot No.27 allotted to him was enhanced by 105 sq.ms., totalling to 405.00 sq.ms, by getting the note presented through PW-17 Smt. Rekha Devyani, the then Town Planer and PW-16 Sri Tribhuwan Singh, the then Chief Architect Planner. Sanction was obtained under Section 19(1) of P.C. Act and after completion of investigation into the allegations levelled against the appellants, charge sheet was filed against the appellants stating that the appellants entered into a criminal conspiracy, abusing their position as public servants, with an object of procuring pecuniary advantage to appellant Rajiv Kumar.

5. Trial was conducted by the Special Judge, CBI, whereby charges were framed against the appellants. To substantiate the charges, as many as twenty three witnesses were examined by CBI apart from documentary evidence. The statements of appellants under Section 313 Cr.P.C. were recorded and opportunity to adduce CA NO.251 OF 2017 WITH CA NO.252 OF 2017 evidence in their defence was also given. Upon consideration of evidence, the Special Judge CBI, Ghaziabad, vide judgment dated 20.11.2012 in Special Trial No.19 of 2002, convicted the appellants under Section 120-B IPC read with Section 13(2) read with Section 13(1)(d) of P.C. Act and under Section 13(2) read with Section 13(1)(d). For conviction under Section 13(2) read with Section 13(1)(d) of P.C. Act, appellant Rajiv Kumar was sentenced to undergo rigorous imprisonment for a period of three years and fine of Rs.50,000/- with default clause. For conviction under Section 120-B IPC, the trial court sentenced each of the appellants to undergo rigorous imprisonment for a period of three years and fine of Rs.50,000/- was imposed on each of the appellants. As noted earlier, on appeal, the conviction and sentence of imprisonment and fine imposed on each of the accused were affirmed by the High Court.

6. Learned counsel for the appellant Rajiv Kumar, inter alia, raised the following submissions:-

- The present case involves merely one conversion viz. conversion of plot No.B-86 in Sector-51 to plot No.27 in Sector-14A, which is permissible under the rules, as the conversion to plot No.A-36 in Sector-44 was never requested by the appellant. The allegations of the appellant being involved in the illegal conversion of plot CA NO.251 OF 2017 WITH CA NO.252 OF 2017 contrary to the rules; without following due procedure, are misconceived.
- There is no evidence to show that the appellant directed PW-17 Rekha Devyani to put up note for converting plot No.27-Guest House as a residential plot. In any case, conversion of a plot reserved for Guest House to a residential plot, does not amount to change in the nature of use of plot as both fall under the same category of 'residential'. Plot No.27 in Sector-14A, which was allotted to him, was never a guest house rather plot No.28 was the guest house and, hence, the allegation of illegal conversion of the guest house to residential plot is baseless.

- By conversion of plot to Sector-14A, the appellant has actually compromised with the area of the plot and has also paid additional conversion charges and thus, it would be inappropriate to suggest that the appellant caused any loss to NOIDA nor was there any pecuniary advantage to the appellant.

- With regard to allotment of additional area of 105 sq.ms., the appellant paid extra charges for the said land and the High Court erred in holding that there was mis-utilisation of the said area of 105 sq.ms. By getting the said additional land, the appellant had actually benefitted NOIDA, as the concerned piece of land was found in excess of adjoining plot No.28 and it would have been of no use had it not been allotted to the appellant.

- There was no prior meeting of minds nor did exist there any conspiracy between the appellant-Rajiv Kumar and the appellant-Neera Yadav and that the contradictory versions of CA NO.251 OF 2017 WITH CA NO.252 OF 2017 prosecution witnesses have failed to bring home the charge of conspiracy.

7. The learned counsel for the appellant Neera Yadav also contended that the courts below have wrongly arrived at the conclusion that the appellants with dishonest intention entered into criminal conspiracy with each other and committed illegal acts as well as acts by illegal means in conversion of plot No.27 from guest house to residential and allotting the same to the appellant Rajiv Kumar in most developed area. It was further contended that the appellant Neera Yadav, being the CCEO of NOIDA was duty bound to approve the genuine proposals or resolutions brought before her in discharge of ordinary course of her official work and the orders of conversion and allotment of additional plot of 105 sq.ms. were passed in discharge of regular official work and for doing so she may not be held guilty for committing any criminal conspiracy under Section 120-B IPC or for committing any offence of criminal misconduct under Section 13(2) read with Section 13(1)(d) of P.C. Act.

8. Per contra, learned Solicitor General Mr. Ranjit Kumar contended that the courts below have rightly convicted the appellants CA NO.251 OF 2017 WITH CA NO.252 OF 2017 on the charge of committing conspiracy in the matter of illegal and arbitrary allotment of plots in their favour, in favour of their kith and kin as well as in favour of different persons mentioned in F.I.R. by abusing their position as public servants.

9. We have carefully considered the rival submissions advanced on behalf of the parties and have also perused the evidence and documents available on record and the impugned judgment.

10. Section 13 of the P.C. Act in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage, he would be guilty of 'criminal misconduct'. Sub-section (2) of Section 13 speaks of the punishment for such misconduct. Section 13(1)(d) read with Section 13(2) of P.C. Act lays down the essentials and punishment respectively for the offence of 'criminal misconduct' by a public servant. Section 13(1)(d) reads as under:

“13. Criminal misconduct by a public servant.— (1) A public servant is said to commit the offence of criminal misconduct,

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or CA NO.251 OF 2017 WITH CA NO.252 OF 2017

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or” A perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of ‘criminal misconduct’ under Section 13(1)(d).

Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive. Thus, under Section 13(1)

(d)(i) of P.C. Act obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal misconduct. On the same reasoning under Section 13(1)

(d)(ii) of P.C. Act “obtaining a valuable thing or pecuniary advantage” by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct.

11. Allotment of Plot contrary to the Scheme and Dishonest Intention of the Appellants: Appellant Rajiv Kumar was working as Deputy Chief Executive Officer (Dy. CEO) in NOIDA w.e.f. 14.06.1994. He applied for allotment of residential plots under Residential Plots Scheme No. III of 1994 which dealt with allotment of residential plots to various category of persons specified therein, in CA NO.251 OF 2017 WITH CA NO.252 OF 2017 Sectors 41, 49, 51 and 53 only. Appellant Rajiv Kumar had applied on 16.08.1994 (Ex. Ka-13) under Category-VI, as a regular employee of NOIDA, for the larger size plot, “Plot Code-06” measuring 450 sq.ms., for which he had paid registration amount of Rs.50,000/-. Notably, the appellant had made a conscious decision of seeking allotment of a residential plot in Sectors 41, 49, 51 and 53. The lottery was drawn on 21.09.1994 and vide allotment order dated 27.09.1994 (Ex. Ka-29) plot No.B-86 in Sector-51 measuring 450 sq.ms. was allotted to the appellant. The appellant was thus allotted a plot in Sector-51 exactly of the same description as sought for by him.

12. A perusal of the terms and conditions of the Scheme for allotment of residential plots in Sectors 41, 49, 51 and 53 shows that there is no provision for conversion of plots. Even the letter of allotment, Ex. Ka-29 dated 27.09.1994, does not provide for conversion of plots. On the contrary,

Ex. Ka-29 only states that “the allottee (appellant) would have no right to change of plot or refund of earnest money deposited by him in the account stated thereon”. However, on the very same day of allotment i.e. on 27.09.1994, appellant Rajiv Kumar moved an application Ex. Ka-30 and sought conversion of his plot measuring 450 sq.m. in Sector-51 to a smaller CA NO.251 OF 2017 WITH CA NO.252 OF 2017 plot specifically in Sector-14A which is a developed sector, even though, the scheme or the letter of allotment (Ex. Ka-29) did not permit the same. The said letter Ex. Ka-30 addressed to the Chairman reads as under:-

“Ext. Ka-30 To The Chairman NOIDA Madam, It is requested that one plot of 450 sq. mtr. has been allotted to me in Sector 51. This Sector is situated at far distance and is not as per my requirement.

Hence, please allot me one small plot in Sector 14A in place of this plot. For this I shall be grateful to you forever.

Yours faithfully Sd/-

Rajiv Kumar DCEO NOIDA Dated 27.09.1994”

13. Pursuant to the above request of the appellant (Ex.Ka-30) for conversion of plot, his allotment was converted from plot No. B-86 in Sector-51, measuring 450 sq.ms. to plot No. A-36 in Sector-44, measuring 450 sq.ms. by Ex. Ka-31 dated 15.10.1994. Ex. Ka-31 shows that conversion of plot No. B-86 in Sector-51 to plot No. A-36 in Sector-44 was approved by the concerned authorities in Noida. PW-18 G. C. Tiwari has deposed that paper No.8 Ka/96 is carbon copy of the conversion letter which bears the signature of R.P. Kalra, Development Manager (Residential). Paper No.Ka/96 dated 15.10.1994 (Ex. Ka-31) which bears signature of R.P. Kalra, CA NO.251 OF 2017 WITH CA NO.252 OF 2017 Development Manager (Residential) which shows that Rajiv Kumar was allotted plot No.A-36 in Sector-44 in place of B-86, in Sector-51. From the evidence of PW-18, it is thus established that appellant Rajiv Kumar was allotted plot No. A-36 in Sector-44 in place of plot No. B-86 in Sector-51. By the evidence of PW-18, prosecution has proved the first conversion and allotment order i.e. paper No.8 ka/94 as Ex. Ka-33, Note Sheet paper No.8 ka/1 dated 15.10.1994, written by V.K. Sharma, Assistant Development Manager, forwarded to Development Manager Sh. R.P. Kalra and marked to PW-18.

14. Though appellant Rajiv Kumar pleads that there was no double conversion of plot, the same is falsified by his own application (Ex. Ka-32), after the appellant’s request for conversion of plot was acceded to by allotting plot No.A-36 in Sector-44, in place of plot No.B-86 in Sector-51, on the very same date i.e. on 15.10.1994, vide Ex. Ka-32 appellant made another application emphasizing allotment of a smaller plot in Sector-14A. Ex. Ka-32 reads as under:-

“Ext Ka-32 To, The Chairman NOIDA Madam, It is requested that earlier one plot of 450 sq. mts. was allotted to me in Sector 51. After this I had requested on 27.09.1994 for allotment of one small plot in Sector 14A in place of this plot. But I have been allotted plot in Sector 44, in place of Sector 14-A. The plot allotted in Sector 44 is not

according to my CA NO.251 OF 2017 WITH CA NO.252 OF 2017 requirement and I am not in position to pay the conversion charges which being levied.

So, it is again requested that one small plot may be allotted to me only in Sector 14A.

Yours faithfully Sd/-

Rajiv Kumar Dy. Chief Executive Officer Noida Dated 15.10.1994” The above letter Ex. Ka-32 dated 15.10.1994 clearly shows that even as per the version of appellant Rajiv Kumar, he was validly allotted a plot in Sector-44, for which conversion charges were also levied on the appellant and instead of accepting the allotment and paying the conversion charges in lieu thereof, the appellant defiantly declined to abide by the rules of NOIDA.

15. Appellant Rajiv Kumar, in collusion with appellant Neera Yadav has not only overlooked the essentials of the Scheme contained in clause 12 viz. allotment to be made on “As is where is basis” but has flouted the norms of the entire Scheme of allotment of plots by requesting the appellant Neera Yadav to allot a plot only in Sector-14A. It is a clear case of flouting the norms and abuse of his position as a public servant. The irresistible conclusion is that the second application Ex. Ka-32 dated 15.10.1994 given by appellant Rajiv Kumar is only because of the intervening event, that is allotment CA NO.251 OF 2017 WITH CA NO.252 OF 2017 of plot No.A-36 in Sector-44. Two things in Ex. Ka-32 are relevant to be noted:-

(i) the appellant states that the plot allotted to him in Sector-44 is not as per his requirement and that he is not in a position to pay the conversion charges;

(ii) the appellant demands that he may be allotted a smaller plot only in Sector-14A.

Even though the appellant pleads ignorance of knowledge about the said conversion of plot No.B-86, Sector-51 to plot No. A-36, Sector-44, the same is difficult to digest. The appellant as the Deputy CEO, must have been aware of the conversion of his plot to plot No.A-36 in Sector-44. Furthermore, as discussed above in appellant’s own letter Ex. Ka-32, the appellant has stated that allotment of plot in Sector-44 is not according to his requirement and requested for allotment of plot only in Sector-14A.

16. Subsequently, appellant Rajiv Kumar was allotted plot No.27 measuring 300 sq.ms. in Sector-14A in place of plot No.B-86 in Sector-51 vide Ex. Ka-33 (Paper No. 8 Ka/94 dated 17.10.1994). The second conversion of the plot in Sector-14A is contrary to the rules and the scheme. Paper No. 20ga/1 to 20ga/2 contains NOIDA’s office order dated 03.02.1992 which lays down exhaustive rules with CA NO.251 OF 2017 WITH CA NO.252 OF 2017 regard to conversion of residential plots/houses/flats/apartments. The said office order begins with the phrase, “in suppression of all previous orders, conversion of residential plots/houses/flats/ apartments shall be governed by the conditions as given below:”, meaning thereby that all the conversions of residential plots/houses/flats/apartments under NOIDA have to be strictly in compliance with the terms laid

down therein.

17. Of all the conditions relating to conversion policy, two conditions in the office order dated 03.02.1992 are most notable for our purpose. First, as contained in clause 3, the rider of offering only cancelled and surrendered plots in conversion. Second, the restriction of allowing conversion only once, as contained in 3 rd para after clause 7. Clause 3 of the said office order dated 03.02.1992 reads as under:

“3. In case of residential plots, only cancelled and surrendered properties shall be offered for conversion. However, this shall not be applicable for conversion of apartment/flat/house. The details of availability of properties shall be available in the office of Dy. Chief Executive Officer.” A perusal of the above clause shows that in case of residential plots, only cancelled and surrendered plots can be allotted in conversion to an allottee. It is also pertinent to note that being Dy. CEO of NOIDA, all the details of availability of properties were held with the appellant Rajiv Kumar, enabling him to abuse his position to pick and CA NO.251 OF 2017 WITH CA NO.252 OF 2017 manipulate any property for his benefit. The conversion policy prohibiting conversion more than once is contained in 3 rd para after clause 7 which reads as under:-

“Conversion shall not be allowed more than once to any allottee.” However, the above conditions were overlooked by the authorities while allotting plot in favour of appellant Rajiv Kumar. Neither the restriction of allowing conversion only once in respect of an allottee was adhered to, nor was it shown that the plot allotted to appellant Rajiv Kumar viz. plot No. 27 in Sector-14A was a cancelled or surrendered plot.

18. After referring to the evidence of PW-18 G.C. Tiwari and other evidence, the trial court recorded that there was no double conversion but conversion was done only once on the following grounds:

No order of CEO regarding conversion from Sector-51 to Sector-44 has been filed PW-18 G.C. Tiwari has admitted in his cross-examination that in 1994, no plot in Sector-44 in Noida was cancelled nor surrendered and a policy was framed about the plot in Sector-14A which was lying vacant that the allotment of this plot will be carried out by way of conversion.

CA NO.251 OF 2017 WITH CA NO.252 OF 2017 In Ex. Ka-33, it is not mentioned anywhere that conversion is being carried out from Sector-44 to Sector-14A; but it is written that conversion has been done to Sector-14A from Sector-51.

19. In our considered view, on the findings of the trial court as affirmed by the High Court, the courts were not right in saying that there was no double conversion, rather, conversion was done only once. As discussed earlier, in his evidence, PW-18

G.C. Tiwari has clearly proved Ex. Ka-31 (Paper No. 8ka/96), the carbon copy of conversion letter which bears signature of R.P. Kalra, Development Manager (Residential) and states that Rajiv Kumar was allotted plot No.A-36 in Sector-44 in place of plot No. B-86 in Sector-51. It may be that the said conversion letter Ex. Ka-31 dated 15.10.1994, allotting plot No.A-36 in Sector-44 might not have been signed by CCEO Neera Yadav; but there is ample evidence to show that appellant Rajiv Kumar was allotted plot No.A-36 in Sector-44.

20. Another reasoning given by the trial court, that in Ex.Ka-33 instead of stating that conversion is being carried out from Sector-44 to Sector-14A, it is stated that conversion is being carried out from Sector-51 to Sector-14A. Trial court's view affirmed by the High Court that there was only one conversion, may not be a correct view.

CA NO.251 OF 2017 WITH CA NO.252 OF 2017 It is pertinent to note that while referring to Ex. Ka-33, the trial court has itself pointed out that some portion of Ex. Ka-33 was torn and that the signature of Neera Yadav is marked by bracket with red pen. In this regard, there is no plausible explanation from the accused as to how vital part of the document was torn.

21. As noticed earlier, appellant Rajiv Kumar had sought allotment of a residential plot under Residential Plots Scheme, 1994 (III). Clause 12 of the said scheme provides that plots will have to be accepted by the allottee on "As is where is basis" i.e., it is not the prerogative of the allottee to bargain with respect to area, and location of the plots. In clear abuse of position, the said clause and other rules were flouted by the authorities in case of the appellant Rajiv Kumar. After allotting him plot No.B-86 in Sector-51, appellant Rajiv Kumar's allotment was converted to plot No.A-36 in Sector-44 and thereafter his request for the second conversion was immediately acceded to.

22. Conversion of guest house to residential plot and obtaining valuable thing by abusing position: It is the case of the prosecution that plot No.27 in Sector-14A, which was allotted to the appellant Rajiv Kumar and his wife was originally earmarked as CA NO.251 OF 2017 WITH CA NO.252 OF 2017 "guest house" and not a "residential plot" and that the appellants, as per their requirement, conveniently converted the "guest house" to "residential plot" and allotted the same to the appellant Rajiv Kumar. The prosecution showed that such conversion was completely illegal as the same is not envisaged in the rules of NOIDA. However, the appellants have contended that plot No.27 was never a guest house and it was only plot No.28 which was reserved for the guest house. In the alternative, the appellants have also contended that even if plot No.27 was a guest house, conversion of the same to a residential plot will not amount to change of user of land and thus, no dishonest intention could be attributed to the appellants.

23. As discussed earlier, on 21.09.1994, plot No. B-86 in Sector-51 was allotted to the appellant. Instead of accepting the said plot No. A-36 in Sector-44 and paying conversion charges, the appellant Rajiv Kumar moved an application on 27.09.1994 for conversion of his plot to a smaller plot in Sector-14A. Being Deputy CEO of NOIDA, appellant must have been well aware of allotment of plot No. B-86 in Sector-51 in the draw of lots. Knowing fully well that he was allotted plot No.86

in Sector-51, on the very same day of draw of lots i.e. on 21.09.1994, the appellant instructed PW-17 Rekha Devyani to alter CA NO.251 OF 2017 WITH CA NO.252 OF 2017 the user of plot No.27 in Sector-14A from “guest house” to “residential”. On 21.09.1994, on the direction of the appellant, Ex. Ka-17 note was put up by PW-17 Rekha Devyani for conversion of plot No.27 from guest house to residential plot and the same was approved by the co-accused Neera Yadav on 24.09.1994. Plot No.27 in Sector-14A was dishonestly converted to a residential plot and on 17.10.1994, plot No.27 measuring 300 sq.m. was allotted to appellant Rajiv Kumar and lease deed of plot No.27 was executed in favour of appellant Rajiv Kumar and his wife Smt. Neeva Kumar on 27.07.1995. At first, the appellant deliberately converted the character of plot No.27 from guest house to residential and also reduced the areas of the plot to 300 sq.ms. and then he applied for allotment (Ex. Ka-32) of a small plot only in Sector-14A. This clearly manifests appellant’s dishonest intention in seeking allotment of a plot in a developed Sector i.e. in Sector-14A, at less price of Rs.1200/- per sq.m. against higher premium of Rs. 4500/- per sq.m. in that Sector and also establishes lack of bona fide on the part of appellant.

24. Every decision of the State or its agencies like NOIDA represented by its officers must be founded on strong and transparent ground. In the note put up for conversion of “guest CA NO.251 OF 2017 WITH CA NO.252 OF 2017 house” to “residential”, no sound reasons were given. Plot No.27 remained as guest house for quite a long time; while so, what was the necessity to give direction to convert the same as “residential” is nothing but to suit the convenience of the appellant and to gain advantage to himself by getting a plot in the developed Sector.

25. Cuttings in Ex. Ka 16: In order to bring forth the illegality in the act of the appellants and the hidden agenda behind such mala fide conversion of plot No.27 from a guest house to a residential plot, the prosecution has relied upon paper No.Ka/23, which is a photocopy of proposal dated 28.05.1994 presented by PW-19 S.P. Gautam which is the photocopy of the actual proposal of converting plot No.27 from guest house to a residential plot, which existed originally and that Ex. Ka-16 is only a subsequent copy of the proposal which has been altered by the appellants by cuttings and interpolations so as to suit their requirements.

26. Undisputedly, the proposal Ext. A-16 dated 28.05.1994 is marked by cuttings and overwritings over two words and one figure. As pointed out by the High Court, the cuttings, overwritings and interlineations appear to be quite deliberate and forceful which makes CA NO.251 OF 2017 WITH CA NO.252 OF 2017 it impossible to read the underneath writings. We may usefully refer to the following observations of the High Court:-

“no doubt, possibility of human error cannot be ignored in day-to-day affairs, but the manner of cuttings and overwritings do create suspicion in the mind of a reasonable prudent man to suggest that the intention of the appellants lacks bona fide”.

The strong ‘cuttings’ and ‘overwritings’ made in order to make the original words or figures illegible, itself show the dishonest intention behind the cuttings and overwritings. The manner of cuttings in Ex. A-16 itself shows that they are not on account of any clerical mistake or inadvertent error but they are a deliberate attempt

made with ulterior motive to cause benefit to appellants and clearly they have been made so substantially that the matter beneath them may not be read by naked eyes even after efforts.

27. It is the case of prosecution that paper No.23-A is the photocopy of the actual proposal of converting plot No.27 from guest house to a residential plot, which existed originally and that Ex. A-16 is only a subsequent copy of the proposal which has been altered by the appellants by cuttings and interpolations so as to suit their requirements. In order to bring forth the illegality in the act of the appellants and the mala fide conversion of plot No.27 from “guest house” to “residential plot”, by subsequent cuttings and interpolations, CA NO.251 OF 2017 WITH CA NO.252 OF 2017 the prosecution has relied upon paper No.23-A, which is a photocopy of proposal dated 28.05.1994. PW-21 Dev Dutt (the then Dy.CEO) has deposed in the court to the effect that cuttings in Ex. A-16 dated 28.05.1994 were made subsequently. PW-21 Dev Dutt produced a copy of paper No.23-A which does not have any cuttings and overwritings. He deposed that the true photo copy of Ex. A-16 signed by him and approved by CCEO on 31.05.1994 and that its photo-copy was obtained and kept by him even after his retirement in view of repeated re-organization of plots. Notably, during cross-examination of PW-21 Dev Dutt, it was never suggested to him that the copy of paper No.23-A produced by him as true photo copy of original proposal Ex. A-16, is not the true copy of the original or has been fabricated in connivance with prosecution or otherwise. PW-21 has no animosity with the appellants nor has it been suggested so to doubt the veracity of PW-21 Dev Dutt. In the light of his testimony, we find no merit in the arguments of the appellants that prosecution has failed to prove that cuttings or interpolations in Ex. A-16 dated 28.05.1994 were subsequently made by PW-19 S.P. Gautam.

28. Most importantly, the expert evidence on record, proves it beyond doubt that the words and figures, which were hidden beneath CA NO.251 OF 2017 WITH CA NO.252 OF 2017 the strong cuttings and overwritings were the words such as ‘guest house’, ‘re-organisation’ etc. In light of the above evidence, it stands proved that the appellants deliberately and malafidely manipulated the records of NOIDA to conceal their illegal acts. As held by the Courts below, there are no inherent improbabilities in the evidence of PW-21 as the same is well corroborated by the expert evidence.

29. Too many changes made in the site plan of Sector-14A within short span of time: Exhibits A-18 to A-23 maps depict the change in spot position of relevant plots in Sector-14A from July 1984 to November, 1999. A perusal of the exhibited maps shows that from 1984 to 1993, for nearly about a decade, there was no alteration in the area and position of plot Nos. 26, 27 and 28. However, from 10.01.1994 to 08.11.1995 the area and position of the plots were changed at least five times. In the table given in the judgment of the High Court in para No. (22), frequent alteration of plots and dishonest intention of the appellants in altering the plots to their own advantage and reduction of the area of the unnumbered plot is amply evident. We may usefully refer to the said tabular form as given by the High Court which reads as under:-

CA NO.251 OF 2017 WITH CA NO.252 OF 2017 Sl. Plot No. Map No.1 Map No.2 Map
Map No.4 Map No.6 Area of Total area of No. Ext. A-18 Ext.A-19 No.3 Ext.A-21
No.5 Ext.A-23 appurte plot with July 1984 11.2.94 Ext.A-20 28.5.94 Ext.A-22 Latest

nant appurtenant

11.2.94 Before 28.5.94 31.10.99 Green Green Belt (wrongly Cuttings After w.e.f. Belt in showing cuttings 6.11.95 North Road in East) 1 26 630.00 450.00 450.00 562.50 562.50 562.50 783.86 1346.36 2 27 482.50 450.00 450.00 525.00 300.00 405.00 535.15 940.75 3 28 371.25 450.00 450.00 487.50 487.50 487.50 593.4 1080.71 4 Unnumbered NIL 529.35 304.35 90.00 304.35 Trapezium of 49.8 240.75 plot towards (3.16+9.57)/2 West $\times 30 = 231.45$ 5 Green Belt Rectangle Rectangle Rectangl Trapezium Rectangl Trapezium of - 231.45 Area towards of of e of (7.23+7.93)/ e of (7.93+7.50)2 West (7.93 \times 30) (7.93 \times 30= 7.93 \times 30= 2 \times 30=227.4 7.93 \times 30= \times 30=231.45 =237.90 237.90 237.90 237.90 6 Total Area 2311.65 2706.29 2481.89 2493.89 2445.89 2469.74 - 3840.02 Note: As seen from the endorsement in the above maps, the maps have been prepared by the architect and the Chief Architect Planner (30.10.1999) with reference to the letter No. Dy.SP.ACU VII/1999/0603 dated 08.09.1999 and direction given by the SP ACU VII CBI and in the meeting held on 25.10.1999 and 28.10.1999.

30. The data contained in maps Exs. Ka-18, Ka-19, Ka-20, Ka-21, Ka-22 and Ka-23, depicts frequent alterations made in these plots. Ex. Ka-18 shows that in July, 1984, plot Nos. 26, 27 and 28 measured 630 sq.ms., 482.50 sq.ms. and 371.25 sq.ms. respectively. Thereafter, position of plots on 11.02.1994 is depicted through two distinct maps contained in Ex. Ka-19 and Ex. Ka-20. Notably, Ex. Ka-20 contains wrong depiction of plots, as on 11.02.1994; it shows road on the eastern side of plot No.26 which was introduced for the first time on the direction of appellant Neera Yadav vide proposal Ex. A-16 dated 28.05.1994, which was approved by appellant Neera Yadav on 31.05.1994. As per Ex. Ka-19, as on 11.02.1994, plot Nos.26, 27 and 28 measured 450 sq.ms. each and CA NO.251 OF 2017 WITH CA NO.252 OF 2017 additionally unnumbered plot measuring 529.35 sq.ms. was found available and over the time the same was reduced to small area about 96.00 sq.m.

31. Two most notable aspects come out from the said data. First, the fact that there was no alteration in size and position of the plots in Sector-14A from 1984 to 1993 for around a decade; but from 10.01.1994 to 08.11.1995 the area and position of the plots were changed at least five times. Be it noted, the period from 10.01.1994 to 08.11.1995, NOIDA was managed under the chairmanship of appellant Neera Yadav. Second, alteration of size of plot No.27 from 450 sq.ms. to 525 sq.ms. to 300 sq.ms. and finally to 405 sq.ms. (after allotment of additional area) was done without any reasonable justification. The appellants failed to give any reasonable justification for effecting such material alterations in the site plan of plot No.27 number of times, within such a short span of time of one and a half years. Also, the provision of 7.50 ms. wide road to the right of plot No.26 is completely devoid of any justification. As also available on record, appellant Rajiv Kumar and Neera Yadav got allotted plots adjacent to each other viz. plot Nos.26 and 27, followed by about 8 mts. or 26 feet wide green belt and Delhi Border in West about 10 CA NO.251 OF 2017 WITH CA NO.252 OF 2017 meters or 33 feet very wide green belt in North and 40 feet wide road in South. All these alterations in the site plan of Sector-14A reflect nothing but dishonest intention of the appellants to gratify their private interest instead of public interest, which they were lawfully entrusted with to take care of.

32. Alteration of position of plots was not an exercise of power in good faith. In this regard, we may usefully refer to the decision in Noida Entrepreneurs Association v. NOIDA and Ors. (2011) 6 SCC 508, wherein this Court highlighted the nature of powers and duties vested in a public authority in the following words:

“41. Power vested by the State in a Public Authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact-situation of a case. "Public Authorities cannot play fast and loose with the powers vested in them". A decision taken in arbitrary manner contradicts the principle of legitimate expectation. An Authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. (Vide: Commissioner of Police, Bombay v. Gordhandas Bhanji AIR 1952 SC 16; Sirsi Municipality v. Ceceila Kom Francis Tellis (1973) 1 SCC 409; The State of Punjab and Anr. v. Gurdial Singh and Ors. (1980) 2 SCC 471; The Collector (Distt. Magistrate) Allahabad and Anr. v. Raja Ram Jaiswal (1985) 3 SCC 1; Delhi Administration (Now NCT of Delhi) v. Manohar Lal (2002) 7 SCC 222; and N.D. Jayal and Anr. v. Union of India and Ors. (2004) 9 SCC 362).” CA NO.251 OF 2017 WITH CA NO.252 OF 2017

33. Undue haste in conversion and allotment: In the entire sequence of events, starting from applying for allotment of a residential plot under Scheme III of 1994 and securing an allotment in Sector-14A by undergoing two conversions, undue haste shown in getting plot No.27 in Sector-14A allotted is evident from more than one aspect. Firstly, on the very same day i.e., 27.09.1994 on which plot No. B-86 in Sector-51 was allotted to the appellant, he applied for conversion of the plot to a smaller plot in Sector-14A. Secondly, on the very same day i.e. 15.10.1994, when plot No.A-36 in Sector-44 was allotted to him, appellant Rajiv Kumar made application Ex. Ka-32 requesting for allotment of plot in Sector-14A. On the very same date i.e. on 15.10.1994, Ex. Ka-34 was put up for conversion of plot No. A-36 in Sector-44 (450 sq.ms.) to a smaller plot in Sector-14A and the same was approved by Neera Yadav on the very same day i.e. 15.10.1994. It passes one's comprehension as to how quickly everything happened on the same day. That apart, immediately the demand of the appellant was fulfilled and within two days i.e. on 17.10.1994, plot No.27 of 300 sq.ms. in Sector-14A was allotted to him. Undue haste only leads to an adverse inference. CA NO.251 OF 2017 WITH CA NO.252 OF 2017

34. While dealing with the issue of haste, after referring to a number of judgments in Noida Entrepreneurs Association v. Noida and Others, (2011) 6 SCC 508, this Court held as under:-

“28. While dealing with the issue of haste, this Court in Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia (2004) 2 SCC 65, referred to S.P. Kapoor (Dr.) v. State of H.P. (1981) 4 SCC 716 and held that: (Jagdishbhai M. Kamalia case (2004) 2 SCC 65 , SCC p. 75, para 25) “25. ... when a thing is done in a post-haste manner, mala fides would be presumed....”

29. In Zenit Mataplast (P) Ltd. v. State of Maharashtra (2009) 10 SCC 388 this Court held: (SCC p. 399, para 39) “39. Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law....”

30. Thus, in case an authority proceeds in undue haste, the Court may draw an adverse inference from such conduct. It further creates a doubt that if there was no sufficient reason of urgency, what was the occasion for Respondent 4 to proceed in such haste and why fresh tenders had not been invited.” In the present case also, undue haste shown at every stage only leads to an inference of abuse of position and arbitrariness and also the conspiracy.

35. Allotment of additional area: Yet another abuse and misuse of position by the appellants is manifested in allocation of the additional area. After execution of the lease deed, within three months on 26.10.1995, wife of the appellant who is a co-allottee of plot No.27 in Sector-14A, filed a representation stating that due to lesser width of the concerned plot, after leaving space as per prescribed setback, it CA NO.251 OF 2017 WITH CA NO.252 OF 2017 was not possible to construct a house and, therefore, requested that the width of the allotted plot should be increased by 3.50 mtrs. and an additional area of 105 sq.ms. may accordingly be allotted. Here again, within two days, on 28.10.1995, a note was put up (Ex. Paper 79 ka/1) for allotting additional area of 105 sq.ms. in which it was proposed that the required additional area could preferably be taken from the adjacent plot i.e. plot No.28. Ex. Paper 79 ka/1 was approved by Neera Yadav on 05.11.1995. Ex. Paper 79 ka/1 reads as under:-

“Paper No.79Ka/1 Please refer to the application received from Smt. Neeva Kumar allottee of plot no.27/14A. The allottee has been allotted the plot of 300 Sq.M. its dimension is 10 m. × 30 m. As per the principles of planning it will be appropriate that for residential plots, ratio of length and width should be from 1 : 2 to 1 : 2.5, ratio of this plot is 1:3 and after leaving side set back of 3.0 m, it would not be practically possible to construct a house of appropriate design. A demand has been made by the allottee for enhancing its breadth by 3.5 m. From this, the size of plot would be 13.5 m × 30 m (area 405.0 sq.m) and ratio of length and width would become in between 1:2 to 1:1.5. If there is un-allotted plot from amongst the adjoining plots, it can be done by taking additional area from it. By this adjustment, there would be no effect on any aspect of land use, traffic pattern density, etc of Sector lay out. Therefore, in view of planning, there is no objection on it. Forwarded for consideration and approval.

Sd/-

Rekha Devyani T.P. 28.10.1995 C.A.P. Sr. D.M. (R) CA NO.251 OF 2017 WITH CA NO.252 OF 2017
Sd/-

Tribhuwan Singh 28.10.1995 With reference to above this is to inform that plot no. 28/14A is in available list, hence 3.5 mtr × 30 mtr. Area can be given out of this plot.

C.C.E.O Sd/-

(G.C. Tiwari) 05.11.1995 Approved Sd/-

Neera Yadav 05.11.1995”

36. Astonishingly, the additional area requested by the appellant sought to be taken from the adjoining plots, that extra space measuring 3 mtrs., was already available in plot No.27, and the same was supposedly revealed on actual measurement of the site. The relevant note Ex. Ka-27 reads as under:-

“Ext Ka-27 As per the layout plot of Sector-14A the Plot No. 27 is measuring 10 m. × 30 m. and plot No. 28 is measuring 16.25 × 30 m. while on actual measurement of the site it has been found that a 3 M. wide extra length of land is available along the road. As per the discussions held in this regard the boundary wall of the plot No. 28 is being constructed with the dimension of plot as 16.25 × 30 m.

as per shown in the layout plan and the 3 m. wide extra space which is available at site has been included in the dimension of plot No. 27 which will now be measuring 13 × 30 m. It is requested that the same may be finally approved so that the DM(R) and Town Planner could be informed accordingly to finally incorporate the same in their records also.

Submitted please.

Sd/-

(A.K. Goel) PROJECT ENGINEER (III) CCD-III, NOIDA D.C.E.O. CA NO.251 OF 2017 WITH CA NO.252 OF 2017 NOIDA above is approved.

Sd/-

(Rajiv Kumar) D.C.E.O., NOIDA 01-12-95” The appellant’s wife had asked for an additional area of 105 sq.m. vide letter dated 26.10.1995 and surprisingly the same area is stated to be available on ground in Plot No.27. One fails to understand as to how the exact area as requested by the appellant’s wife could actually be available in the plot. However, an additional note in Ex. Ka-27 exists which states that the additional area sought for was already available in plot No.27; this clearly shows that the intention of the appellants was to dishonestly derive benefit from the valuable property of NOIDA. The swiftness with which the appellant got the allotments done in his favour and the undue haste with which the whims and fancies of the appellant was gratified, clearly establish abuse of power in his case, as only an officer of NOIDA could have commanded such a privilege of getting things done with such an ease. The aspect of abuse of power and lack of public interest in the action of the appellant becomes even more manifest when the illegality in conversion of plot is discussed in detail. From the above facts proved on record, it is clear that appellant Rajiv Kumar abused CA NO.251 OF 2017 WITH CA NO.252 OF 2017 his position as a public servant to

obtain for himself a valuable thing which in this case, is the very plot allotted jointly to him and his wife.

37. Obtaining pecuniary advantage for himself: As per clause 6 of the Scheme, the premium amount to be paid for seeking a plot in the above-mentioned Sectors is fixed at Rs.1,200/- per sq.m. for regular plots and Rs. 1,230/- per sq.m. for the corner plots. Clause 6 of the Scheme reads as under:-

“6. Premium of Plot:

(i) The premium of the regular plot will be Rs.1200/- per sq. m.

The premium of plots located at corner or facing park or Green belt facing major road (a road with width of 18 ms. and above) will be Rs.1215/- per sq.m. In the event of the plot having located at corner and facing major road or corner and facing park the premium of plot will be Rs.1230/- per sq.m.

(ii) Any enhancement in land compensation will also be recoverable from the allottees.”

38. Be it noted that the said premium amount of Rs.1,200/- per sq.m. was fixed only for the plots in Sectors 41, 49, 51 and 53 and not for the plots in highly developed Sectors like Sector-14A. It is also pertinent to note here that the appellant had paid the premium amount of Rs.1,200/- per sq.m. while seeking an allotment in Sector-51 and later the same premium amount was held to be sufficient for plot No.27 in Sector-14A; no additional premium amount was paid to match the high premium amounts of plots in developed CA NO.251 OF 2017 WITH CA NO.252 OF 2017 sectors like that in Sector-14A. How high the premium amount of plots in Sector-14A was at that point of time could be ascertained from the fact that for the allotment of additional area of 105 sq.m. in plot No.27 in Sector-14A as per the request of appellant's wife, the appellant himself had paid premium amount of Rs.4,500/- per sq.m.

39. A copy of provisional allotment certificate dated 27.09.1994 w.r.t. plot No.B-86 in Sector-51, as contained in Ex. Ka-29 provides that Plot No.86, Block B, Sector-51 was allotted to appellant Rajiv Kumar on 'as is where is basis' on lease for a period of 90 years from the date of execution of lease deed. In the details of the allotted plot, it was clearly mentioned that a premium amount of Rs.5,40,000/- @ Rs.1200/- per sq.m. needs to be deposited by the allottee. This makes it clear that the plots in Sector-51 were allotted in lieu of a premium amount @ Rs.1200/- per sq.m. It is noteworthy that three category of charges find place in the letter of NOIDA dated 15.10.1994 (Ext. Ka-31) viz. 'cost of additional area', 'conversion charges', and 'location benefit charges'. Although, only conversion charge was applicable in case of conversion of plot No. B-86 in Sector 51 to plot No.A-36 in Sector-44, but it is apparent that 'cost of additional area' and 'location benefit charges' could also be attracted CA NO.251 OF 2017 WITH CA NO.252 OF 2017 in case of conversion. As discussed earlier, appellant Rajiv Kumar was further successful in securing conversion of plot No.A-36 in Sector-44 to plot No.27 in Sector-14A. Plots in Sector-14A were reserved to be allotted by way of conversion only, pursuant to a policy decision reflected in the minutes of the meeting dated 03.01.1986 (Paper No. 317 Kha/2 to 317 Kha/61). Then, plot No.27 in Sector-14A, initially

measuring 300 sq.m. was allotted in favour of appellant Rajiv Kumar and his wife, by imposing a conversion charge of Rs.1,20,000/- at the rate of Rs.400/- per sq.m., as reflected in letter dated 17.10.1994 (Ex. Ka-33). However, the premium amount in lieu of 300 sq.m. was charged at the rate of Rs.1200/- per sq.m. only. Despite clear difference in the rates of the property of two Sectors, same premium amount at the rate of Rs.1200/- per sq.m., as was levied on the appellant at the time of allotment of plot in Sector-51, was levied at the time of allotment of plot No.27 in Sector-14A. More so, in spite of huge difference in locational benefits of a plot in Sector-14A as compared to a plot in Sector-51, no charge under the head 'location benefit charge' was levied on the appellant.

40. Vide letter dated 06.11.1995 (Paper No. 8Ka/70), appellant Rajeev Kumar was informed that area of plot No.27 was enhanced CA NO.251 OF 2017 WITH CA NO.252 OF 2017 by 105 sq.m., in lieu of which a total premium amount of Rs.4,72,500/- at the rate of Rs.4,500/- per sq.m. was levied on the appellant. It thus becomes apparent that rate of premium with respect to plot No.27 in Sector-14A was fixed for the additional area at Rs.4,500/- per sq.m., as was paid by the appellant. On the other hand, in lieu of 300 sq.ms. of plot No.27, the appellant got it converted at Rs.3,60,000 at the rate of Rs.1200/- per sq.m. Ideally, as per actual rate, he ought to have paid Rs.13,50,000/- at the rate of Rs.4,500/- per sq.m. The appellant clearly derived pecuniary advantage of Rs.9,90,000/- which was a huge amount in the year 1994 and thus the appellant obtained a valuable thing for himself i.e. plot No.27 in Sector-14A. This is nothing but abuse of official position for obtaining valuable thing or pecuniary advantage.

41. Insofar as enhancement of the area of plot No.27 in Sector-14A allotted to appellant Rajiv Kumar, by 105 sq.m., it has come on record that the same is in grave violation and disregard of Rules of NOIDA. Clause 11 of 1994 (iii) Scheme states that the area of a plot allotted or handed over may vary from the size of the plots advertised in the scheme and applied for, and a marginal increase or decrease in area upto a maximum of 20% on either side CA NO.251 OF 2017 WITH CA NO.252 OF 2017 may be found and to meet such an eventuality of any difference of area on the spot, no unnecessary dispute may be raised and in case of any such increase or decrease the value of plot allotted will be increased or decreased proportionately. However, in case of increase or decrease in the area of plot allotted is more than 20%, the allottee may refuse to accept allotment on the ground of such variation and will be entitled to refund of his registration money and the authority may not forfeit any part of it, which the authority can, in case of refusal to accept allotment by allottee without any such reason. Enhancement of area of plot No.27 (originally 300 sq.m.) by 105 sq.ms. in the name of extension of width amounts to 35% enhancement of original area of plot No.27, which is ex facie arbitrary and contrary to the rules. Apparently, increase of area of a plot over and above the maximum limit of 20%, as mentioned in clause 11 will fall in the category of fresh allotment which is prohibited in the Rules. In any case, in the alleged conversion policy or anywhere else, there is no provision for enhancement of area of a plot and in any case after execution of lease deed the question of enhancement of area of a plot does not arise, and certainly falls within the category of fresh allotment of a plot. The clause above CA NO.251 OF 2017 WITH CA NO.252 OF 2017 has been rightly interpreted by the courts below in holding that enhancement of area of plot allotted to the appellant was erroneous and illegal.

42. The argument of learned counsel for the appellant justifying enhancement of area of his plot No.27, on the ground that its dimensions were not suitable for construction of a house, lacks force and is tainted with malice. Initially, when he was allotted a plot of bigger size in Sector-51, he sought allotment of a smaller plot and later when a smaller plot is allotted, it is stated that the small plot is insufficient for use. Such an act on the part of the appellant clearly shows the dishonest intention of the appellant and his intention was to gain pecuniary advantage to himself and to cause loss to NOIDA.

43. On behalf of the appellant Neera Yadav, it was contended that there is nothing to prove that appellant Neera Yadav had agreed to do any illegal act and everything was done during the course of discharge of her official duty on the basis of 'Note' put up by the office in her capacity as Chairman-cum-Chief Executive Officer. It was further contended that the appellant signed in the various 'note' put up before her in her official capacity and no dishonest intention could CA NO.251 OF 2017 WITH CA NO.252 OF 2017 be attributed to the appellant Neera Yadav and courts below erred in convicting the appellant Neera Yadav for criminal conspiracy.

44. The essential ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.

45. After referring to Yash Pal Mittal v. State of Punjab, (1977) 4 SCC 540 and Ajay Aggarwal v. Union of India and Others (1993) 3 SCC 609, in State of Maharashtra and Others v. Som Nath Thapa and Others (1996) 4 SCC 659 in para (24), it was held as under:-

“24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the CA NO.251 OF 2017 WITH CA NO.252 OF 2017 goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.” The above judgment was quoted with approval in Ram Narain Popli v. Central Bureau of Investigation (2003) 3 SCC 641.

46. For convicting the appellants under Section 120-B IPC and under Section 13(1)(d)(ii), there must be evidence on record that the accused obtained for himself or any other person any valuable thing or pecuniary advantage. The act of the appellants: (i) double conversion of the plot in violation of the rules and circular; (ii) conversion of “guest house” to “residential” and allotting the same to appellant Rajiv Kumar; (iii) conversion of plot No.B-86 in Sector-51 to the developed Sector-14A at a lower rate of Rs.1200/- plus Rs.400/- per sq.m. as against the huge premium of Rs.4500/- per sq.m. in Sector-14A; and (iv) after getting the allotment of a smaller plot, getting allotment of additional area, frequent alteration of the plots with the dishonest intention of the appellants gaining pecuniary CA NO.251 OF 2017 WITH CA NO.252 OF 2017 advantage to themselves in altering the plots to their own advantage establishes prior concert of the appellants in manipulating the maps/records to suit their convenience. These facts manifest abuse of appellant’s position as public servant obtaining valuable thing and pecuniary advantage for himself. Co-accused appellant Neera Yadav is associated in each and every aspect of these events which clearly bring home the charge of conspiracy of both the accused.

47. So far as the role of co-accused appellant Neera Yadav is concerned, at the relevant time both the appellants were public servants. Neera Yadav played a specific role facilitating the appellant Rajiv Kumar to obtain plot No.27 in Sector-14A at less premium. Being CCEO of NOIDA, appellant Neera Yadav signed various notes put up before her like Ex. Ka-34 (15.10.1994), conversion of “guest house” to “residential” and allotment of plot No.27 in Sector-14A. On perusal of the exhibits, it is clear that appellant Neera Yadav was involved in all the stages of conversion of the “guest house” to “residential”, in violation of rules allotment of plot No.27 to appellant and also allotment of additional area to the appellant Rajiv Kumar. Often conspiracy is hatched in secrecy and for proving this offence substantial direct evidence may not be possible to be obtained. The CA NO.251 OF 2017 WITH CA NO.252 OF 2017 evidence and materials on record amply show that there was a prior concert of minds of the appellants in conversion of the “guest house” into “residential” and allotting the same to appellant by flouting the rules and the circular.

48. On appreciation of evidence and materials on record, both the trial court and the High Court recorded concurrent findings that the appellants acted in clear abuse of position, plot No.27 in the developed Sector-14A was converted from guest house to ‘residential’ and in violation of the norms and circulars, the same was allotted to the appellant to gain pecuniary advantage to him (Rajiv Kumar). The concurrent findings recorded by the courts below are well balanced and we do not find any reason warranting interference.

49. Corruption has spread its tentacles almost on all the key areas of the State and that it is an impediment to the growth and development of the country. After referring to Yash Pal Mittal v. State of Punjab (1977) 4 SCC 540; Ajay Aggarwal v. Union of India and Ors. (1993) 3 SCC 609; State of Maharashtra and Others. v. Som Nath Thapa and Others (1996) 4 SCC 659 and Ram Narain Popli v. Central Bureau of Investigation (2003) 3 SCC CA NO.251 OF 2017 WITH CA NO.252 OF 2017 641, in Criminal Appeal No.253 of 2017 (Neera Yadav v. State of U.P. and Another) in paragraphs (53) to (57), we have observed that there has to be unrelenting stern action by all concerned in particular the Government and that there should be public awareness against corruption.

50. So far as the sentence is concerned, as noticed earlier, for conviction under Section 120-B IPC, the appellants were sentenced to undergo sentence of imprisonment for three years and a fine of Rs.50,000/-. Likewise, for conviction under Section 13(2) read with Section 13(1)(d) of P.C. Act, the appellants were sentenced to undergo imprisonment for three years and a fine of Rs.50,000/- on each of the appellants. Learned Senior Counsel appearing for the appellant Rajiv Kumar submitted that the appellant had been a sincere officer and has an outstanding ACR with unblemished service record that he had unnecessarily been targeted and the sentence of three years of imprisonment imposed on the appellant is harsh.

51. Learned Senior Counsel Mr. Vishwanathan appearing for the appellant Neera Yadav has submitted that the officer appellant Neera Yadav had been the top level officer in the State of Uttar Pradesh and worked as Chief Secretary of the State and in the disciplinary CA NO.251 OF 2017 WITH CA NO.252 OF 2017 proceedings initiated against her, she had been exonerated from the charges and while being so the sentence of imprisonment for three years for the alleged conspiracy is harsh. Learned senior counsel Mr. Vishwanathan further submitted that insofar as the plot allotted to appellant Neera Yadav, the same has been surrendered in December, 2013 and the surrender deed was also executed on 20.12.2013.

52. Occurrence was of the year 1994, the appellants Rajiv Kumar and Neera Yadav are undergoing sentence from 18.04.2016 and 14.03.2016 respectively. With the conviction of the appellants, their job and getting retiral benefits is also in jeopardy. Further, wife of the appellant Rajiv Kumar has filed an affidavit stating that on 06.09.1999, the allotment was cancelled by NOIDA and that the amount deposited against the allotment of the plot has not been refunded so far. It is further averred that the appellant and his family are not interested in getting the aforesaid plot. In the affidavit, it is further averred that the appellant Rajiv Kumar has unconditionally surrendered the said plot. In the facts and circumstances of the present case and considering that the occurrence was of the year 1994 about twenty three years ago and that the appellant Rajiv CA NO.251 OF 2017 WITH CA NO.252 OF 2017 Kumar had offered to surrender the plot and forgo refund and the fact that on account of conviction, his service and retiral benefits are in jeopardy, sentence of imprisonment imposed on the appellant Rajiv Kumar is reduced to two years and necessarily that of Neera Yadav is also to be reduced.

53. In the result, the conviction of the appellants Rajiv Kumar and Neera Yadav is confirmed. The sentence of imprisonment of three years imposed on the appellants is reduced to two years and the appeals are partly allowed with the only modification in sentence.

.....J. [KURIAN JOSEPH]J. [R. BANUMATHI] New Delhi;

August 02, 2017

CA NO.251 OF 2017 WITH CA NO.252 OF 2017

ITEM NO.1502

COURT NO.6

SECTION II

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

CRIMINAL APPEAL NO(S). 251/2017

RAJIV KUMAR

APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH & ANR.

RESPONDENT(S)

WITH

CRL. A. NO. 252/2017 (II)

Date : 02-08-2017

These appeals were called on for pronouncement
of judgment.

For Appellant(s)

Ms. Niharika Ahluwalia, Adv.
Mr. Abhishek Atrey, AOR

Mr. P.V. Dinesh, AOR

For Respondent(s)

Mr. Abhish Kumar, AOR

Mr. Mukesh Kumar Maroria, AOR

Hon'ble Mrs. Justice R. Banumathi pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Kurian Joseph and Her Lordship.

The appeals are partly allowed in terms of the signed judgment.

Pending application(s), if any, shall stand
disposed of.

(NARENDRA PRASAD)
COURT MASTER (SH)

(RENU DIWAN)
ASST. REGISTRAR

(Signed "Reportable" Judgment is placed on the file)