Manohar Lal (D) By Lrs vs Ugrasen (D) By Lrs. & Ors on 3 June, 2010

Equivalent citations: AIR 2010 SUPREME COURT 2210, 2010 AIR SCW 3648, 2010 (4) ALL LJ 377, (2010) 92 ALLINDCAS 170 (SC), 2010 (6) SCALE 151, (2010) 2 CLR 103 (SC), (2010) 4 ALL WC 3878, (2010) 3 ESC 375, (2010) 3 ICC 832, (2010) 3 UC 1588, (2010) 2 WLC(SC)CVL 151, (2010) 3 KCCR 78, (2010) 8 MAD LJ 151, (2010) 6 SCALE 151, 2010 (81) ALR SOC 48 (SC)

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Bench: Swatanter Kumar, B.S. Chauhan

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 973 of 2007

Manohar Lal (D) by Lrs. ....Appellants

Versus

Ugrasen (D) by Lrs. & Ors. ...Respondents

With

Civil Appeal No. 974 of 2007

Ghaziabad Development Authority ....Appellant

Versus

Ugrasen (D) by Lrs. & Ors. ...Respondents

JUDGMENT

Dr. B. S. CHAUHAN, J.

1. Both these appeals have been preferred by the appellants being aggrieved of the judgment and order of the Allahabad High Court dated 22nd July, 2003 passed in C.M.W.P. No.6644 of 1989 by which the High Court has allowed the Writ Petition filed by respondent No.1-Ugrasen quashing the allotment of land made in favour of appellant-Manohar Lal and further directed to make the allotment of land in favour of the said respondent-Ugrasen.

2. In these appeals, three substantial questions of law for consideration of this Court are involved, they are, namely:

(a) As to whether the State Government - a Revisional Authority under the Statute, could take upon itself the task of a lower statutory authority?;

(b) Whether the order passed or action taken by a statutory authority in contravention of the interim order of the Court is enforceable?; and

(c) Whether Court can grant relief which had not been asked for?

3. Facts and circumstances giving rise to these appeals are that lands owned and possessed by predecessor-in-interest of private appellant Manohar Lal and respondent Ugrasen were acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the `Act'). Notification under Section 4 of the Act was issued on 13.08.1962 covering about 32 acres of land in the Revenue Estates of Kaila Pargana Loni Dist. Meerut (now Ghaziabad). Declaration under Section 6 of the Act in respect of the said land was made on 24.05.1965 along with Notification under Section 17(1) invoking the urgency clause. Possession of the land except one acre was taken on 13.07.1965 and award under Section 11 of the Act was made on 11.05.1970.

The Government of Uttar Pradesh had framed Land Policy dated 30/31.07.1963 to the effect that where a big chunk of land belonging to one person is acquired for planned development, except the land covered by roads, he shall be entitled to the extent of 40% of his total acquired land in a residential area after development in lieu of compensation. The High-Powered Committee dealing with the issue laid down that applications for that purpose be filed within a period of one month from the date of taking the possession of the land which was subsequently changed to within one month from the date of completion of acquisition proceedings.

4. Both the private parties, i.e. Manohar Lal and Ugrasen claimed that they had made applications to claim the benefit under the said policy within time. Shri Ugrasen claimed that he had submitted the application on 31.12.1966 but no action was taken on the said application. Therefore, he filed another application on 7.9.1971. Manohar Lal-appellant claimed to have filed application for the said purpose on 22.6.1969 and was allotted land bearing plot Nos. 5, 7 to 16 and 25 to 33 in Sector 3N vide order dated 27.12.1979 as per the direction of the Chief Minister of Uttar Pradesh. Shri Ugrasen filed Writ Petition No. 1932 of 1980 before Allahabad High Court challenging the said order dated 27.12.1979. Subsequently, vide order dated 7.3.1980, the land allotted to Manohar Lal was changed to Plot Nos. 25 to 33. At the time of consideration of application of Ugrasen by the State Government, the Ghaziabad Development Authority (hereinafter called GDA) vide letter dated 18.3.1980 pointed out that submission of application by Shri Ugrasen was surrounded by suspicious circumstances as it was the last entry made on 31.12.1966 and signature of the receiving clerk had been made by a person who joined service only in 1979. In the meanwhile, Shri Manohar Lal filed Writ Petition No. 4159 of 1980 and the High Court restrained the authorities from making allotment to anyone else from the land allotted to him as per letter dated 7.3.1980.

5. In spite of the said interim order in force, the State Government vide order dated 12.12.1980 directed GDA to make the allotment of land in favour of Shri Ugrasen and thus, in compliance of the same, GDA issued letter of allotment dated 22.12.1980 in his favour. Shri Ugrasen submitted letter dated 1.1.1981 to GDA to give an alternative land as the land covered by Plot Nos. 5 to 16 had been subject matter of the interim order of the High Court in a writ petition filed by Shri Manohar Lal.

6. Shri Ugrasen withdrew his Writ Petition No.1932 of 1980 on 6.3.1981 and deposited the compensation amount, i.e. Rs.32,010.60 on 3.3.1981. GDA allotted the land to Shri Ugrasen in Plot Nos. 36, 38, 39, 44, 46 and 47 vide order dated 02.01.1985, though it was also the land in dispute i.e. covered by the interim order passed by the High Court. Shri Ugrasen refused to take those plots as is evident from letter dated 7.1.1985 as certain encroachment had been made upon the said lands. GDA, vide letter dated 27.3.1989, allotted Plot Nos. 5, 7 to 16 to Shri Manohar Lal. Thus, being aggrieved, Shri Ugrasen filed Writ Petition No. 6644 of 1989 before the High Court for quashing of the said allotment in favour of Shri Manohar Lal.

7. Parties exchanged the affidavits and after hearing the parties and considering the material on record, the High Court allowed the said Writ Petition vide judgment and order dated 22nd July, 2003. Hence, these appeals.

8. Shri P.S. Patwalia, learned Senior counsel appearing for the appellant-Manohar Lal and Shri Vijay Hansaria, learned Senior counsel appearing for GDA have contended that Shri Ugrasen had never filed application for allotment in time. There had been manipulation in registration of the said application and it has been surrounded with suspicious circumstances. The application of Shri Ugrasen had been considered directly by the State Government-the revisional authority, though the State Government could not take the task of GDA upon itself. Land of Shri Ugrasen had been acquired for roads, thus, as per the Land Policy he was not entitled for any benefit of the same. Shri Ugrasen in his writ petition had asked only for quashing the allotment in favour of Manohar Lal and there was no prayer that the said land be allotted to him. Therefore, while issuing a direction for making the allotment in favour of Ugrasen, the High Court has exceeded its jurisdiction. Thus, appeals deserve to be allowed.

9. On the other hand, Shri Debal Banerji, learned Senior counsel appearing for the respondent-Ugrasen and Shri Pramod Swarup, learned Senior counsel appearing for the State of U.P. have vehemently opposed the appeals contending that once a decision has been taken as per the entitlement of the respondent-Ugrasen and the High Court has examined each and every fact, question of re- appreciation of evidence etc. is not permissible in exercise of the discretionary jurisdiction by this Court. Manohar Lal had also been allotted the land by the Chief Minister and not by GDA, thus no fault can be found with allotment in favour of Shri Ugrasen. Appeals lack merit and are liable to be dismissed.

10. We have considered the rival submissions made by learned counsel for the parties and perused the records.

11. In Rakesh Ranjan Verma & Ors. Vs. State of Bihar & Ors., AIR 1992 SC 1348, the question arose as to whether the State Government, in exercise of its statutory powers could issue any direction to the Electricity Board in respect of appointment of its officers and employees. After examining the statutory provisions, the Court came to the conclusion that the State Government could only take the policy decisions as how the Board will carry out its functions under the Act. So far as the directions issued in respect of appointment of its officers was concerned, it fell within the exclusive domain of the Board and the State Government had no competence to issue any such direction. The said judgment has been approved and followed by this Court in U.P. State Electricity Board Vs. Ram Autar and Anr. (1996) 8 SCC 506.

12. In Bangalore Development Authority and Ors. Vs. R. Hanumaiah and Ors. (2005) 12 SCC 508, this Court held that the power of the Government under Section 65 of the Bangalore Development Authority Act, 1976 was not unrestricted and the directions which could be issued were those which were to carry out the objective of the Act and not those which are contrary to the Act and further held that the directions issued by the Chief Minister to release the lands were destructive of the purposes of the Act and the purposes for which the BDA was created.

13. In Bangalore Medical Trust Vs. B.S. Muddappa & Ors. AIR 1991 SC 1902, this Court considered the provisions of a similar Act, namely, Bangalore Development Authority Act, 1976 containing a similar provision and held that Government was competent only to give such directions to the authority as were in its opinion necessary or expedient and for carrying out the purposes of the Act. The Government could not have issued any other direction for the reason that Government had not been conferred upon unfettered powers in this regard. The object of the direction must be only to carry out the object of the Act and only such directions as were reasonably necessary or expedient for carrying out the object of the enactment were contemplated under the Act. Any other direction not covered by such powers was illegal.

14. In Poonam Verma & Ors. Vs. Delhi Development Authority, AIR 2008 SC 870, a similar view has been re-iterated by this Court dealing with the provisions of Delhi Development Authority Act, 1957. In the said case, the Central Government had issued a direction to make allotment of flat out of turn. The Court held as under:

> ".....Section 41 of the Act, only envisages that the respondent would carry out such directions that may be issued by the Central Government from time to time for the efficient administration of the Act. The same does not take within its fold an order which can be passed by the Central Government in the matter of allotment of flats by the Authority. Section 41 speaks about policy decision. Any direction issued must have a nexus with the efficient administration of the Act. It has nothing to do with carrying out of the plans of the authority in respect of a particular scheme.....Evidently, the Central Government had no say in the matter either on its own or under the Act. In terms of the brochure, Section 41 of the Act does not clothe any jurisdiction upon the Central Government to issue such a direction."

15. In State of U.P. Vs. Neeraj Awasthi and Ors. (2006) 1 SCC 667, this Court held as follows in context of Government directions:

> "36. Such a decision on the part of the State Government must be taken in terms of the constitutional scheme, i.e., upon compliance of the requirement of Article 162 read with Article 166 of the Constitution of India. In the instant case, the directions were purported to have been issued by an officer of the State. Such directions were not shown to have been issued pursuant to any decision taken by a competent authority in terms of the Rules of Executive Business of the State framed under Article 166 of the Constitution of India."

16. In The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Ors. AIR 1970 SC 1896, this Court has observed :

> "The power exercisable by the Cane Commissioner under Clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone - not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognised by Clause (6) read with Clause (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner.
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> The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior."

17. In Chandrika Jha Vs. State of Bihar and Ors. AIR 1984 SC 322, this Court while dealing with the provisions of Bihar and Orissa Co-operative Societies Act, 1935, held as under:

> "The action of the then Chief Minister cannot also be supported by the terms of Section 65A of the Act which essentially confers revisional power on the State Government. There was no proceeding pending before the Registrar in relation to any of the matters specified in Section 65A of the Act nor had the Registrar passed any order in respect thereto. In the absence of any such proceeding or such order, there was no occasion for the State Government to invoke its powers under Section 65A of the Act. In our opinion, the State Government cannot for itself exercise the statutory functions of the Registrar under the Act or the Rules."

18. In Anirudhsinhji Karansinghji Jadeja & Anr. Vs. State of Gujarat AIR 1995 SC 2390, it was observed :

> "This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether." (Emphasis added)

19. In K.K. Bhalla Vs. State of M.P. & Ors. AIR 2006 SC 898, this Court has de-lineated the functions of the State Government and the Development Authority, observing that :

> "59. Both the State and the JDA have been assigned specific functions under the statute. The JDA was constituted for a specific purpose. It could not take action contrary to the scheme framed by it nor take any action which could defeat such purpose. The State could not have interfered with the day-to-day functioning of a statutory authority. Section 72 of the 1973 Act authorizes the State to exercise superintendence and control over the acts and proceedings of the officers appointed under Section 3 and the authorities constituted under the Act but thereby the State cannot usurp the jurisdiction of the Board itself. The Act does not contemplate any independent function by the State except as specifically provided therein.... the State in exercise of its executive power could not have directed that lands meant for use for commercial purposes may be used for industrial purposes..... the power of the State Government to issue direction to the officers appended under Section 3 and the authorities constituted under the Act is confined only to matters of policy and not any other. Such matters of policy yet again must be in relation to discharge of duties by the officers of the authority and not in derogation thereof.... The direction of the Chief Minister being de'hors the provisions of the Act is void and of no effect."

20. In Indore Municipality Vs. Niyamatulla (Dead through L.Rs.) AIR 1971 SC 97, this Court considered a case of dismissal of an employee by an authority other than the authority competent to pass such an order i.e. the Municipal Commissioner, the order was held to be without jurisdiction and thus could be termed to have been passed under the relevant Act. This Court held that "to such a case the Statute under which action was purported to be taken could afford no protection".

21. In Tarlochan Dev Sharma Vs. State of Punjab & Ors. (2001) 6 SCC 260, this Court, after placing reliance upon a large number of its earlier judgments, observed as under:

> "In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times

> absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior." (Emphasis added)

22. Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional Authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.

23. In Mulraj Vs. Murti Raghunathji Maharaj, AIR 1967 SC 1386, this Court considered the effect of action taken subsequent to passing of an interim order in its disobedience and held that any action taken in disobedience of the order passed by the Court would be illegal. Subsequent action would be a nullity.

24. In Surjit Singh Vs. Harbans Singh, AIR 1996 SC 135, this Court while dealing with the similar issue held as under:

"In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes."

25. In All Bengal Excise Licensees Association Vs. Raghabendra Singh & Ors, AIR 2007 SC 1386, this court held as under:

> "A party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof..... the wrong perpetrated by the respondents in utter disregard of the order of the High Court should not be permitted to hold good."

26. In Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. & Anr. AIR 1996 SC 2005, this court after making reference to many of the earlier judgments held:

> "On principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

27. In Gurunath Manohar Pavaskar Vs. Nagesh Siddappa Navalgund, AIR 2008 SC 901, this Court while dealing with the similar issues held that even a Court in exercise of its inherent jurisdiction

under Section 151 of the Code of Civil Procedure, 1908, in the event of coming to the conclusion that a breach to an order of restraint had taken place, may bring back the parties to the same position as if the order of injunction has not been violated.

28. In view of the above, it is evident that any order passed by any authority in spite of the knowledge of the interim order of the court is of no consequence as it remains a nullity.

29. In Messrs. Trojan & Co. Vs. RM.N.N. Nagappa Chettiar AIR 1953 SC 235, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:

> "It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

30. A similar view has been re-iterated by this Court in Krishna Priya Ganguly etc.etc. Vs. University of Lucknow & Ors. etc. AIR 1984 SC 186; and Om Prakash & Ors. Vs. Ram Kumar & Ors., AIR 1991 SC 409, observing that a party cannot be granted a relief which is not claimed.

31. Dealing with the same issue, this Court in Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi & Ors., AIR 2010 SC 475 held:

> "Though the Court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

32. In Fertilizer Corporation of India Ltd. & Anr. Vs. Sarat Chandra Rath & Ors., AIR 1996 SC 2744, this Court held that "the High Court ought not to have granted reliefs to the respondents which they had not even prayed for."

33. In view of the above, law on the issue can be summarised that the Court cannot grant a relief which has not been specifically prayed by the parties.

34. The instant case requires to be examined in the light of the aforesaid certain legal propositions.

Section 41 of the U.P. Urban Planning and Development Act, 1973 reads as under:

"41. Control by State Government-(1) The Authority, the Chairman or the Vice-Chairman shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) ..... (3) The State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the authority or Chairman for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:

> Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.
>
> (4) ....."

35. Clause (1) thereof empowers the State Government to issue general directions which are necessary to properly enforce the provisions of the Act. Clause (3) thereof make it crystal clear that the State Government is a revisional authority. Therefore, the scheme of the Act makes it clear that if a person is aggrieved by an order of the authority, he can prefer an appeal before the Appellate Authority i.e. Divisional Commissioner and the person aggrieved of that order may file Revision Application before the State Government. However, the State Government cannot pass an order without giving opportunity of hearing to the person, who may be adversely affected.

36. In the instant case, it is the revisional authority which has issued direction to GDA to make allotment in favour of both the parties. Orders had been passed without hearing the other party. The authority, i.e. GDA did not have the opportunity to examine the case of either of the said parties. The High Court erred in holding that Clause (1) of Section 41 empowers the State Government to deal with the application of an individual. The State Government can take only policy decisions as to how the statutory provisions would be enforced but cannot deal with an individual application. Revisional authority can exercise its jurisdiction provided there is an order passed by the lower authority under the Act as it can examine only legality or propriety of the order passed or direction issued by the authority therein.

37. In view thereof, we are of the considered opinion that there was no occasion for the State Government to entertain the applications of the said parties for allotment of land directly and issue directions to GDA for allotment of land in their favour.

38. Admittedly, the interim order passed by the High Court in favour of Shri Manohar Lal in Writ Petition No. 4159 of 1980 was in force and it restrained the Authorities to make allotment of the land in dispute in favour of anyone else. Indisputably, the State Government as well as the GDA remained fully alive of the factum of subsistence of the said interim order as is evident from the correspondence between them. In view of the law referred to hereinabove, order passed by the State Government in contravention of the interim order, remains unenforceable and inexecutable.

More so, in the writ petition filed by Shri Ugrasen relief sought was limited only to quash the allotment made in favour of Shri Manohar Lal. No relief was sought for making the allotment in favour of the writ petitioner/Shri Ugrasen. However, the High Court vide impugned judgment and order has issued direction to make the allotment in his favour. Thus, we are of the view that issuance

of such a direction was not permissible in law. Even otherwise as Shri Ugrasen's land had been acquired for roads, he could not make application for taking benefit of the Land Policy, particularly, when the Land Policy was not declared to be invalid or violative of equality clause enshrined in Article 14 of the Constitution.

39. The High Court failed to consider objections raised on behalf of GDA in its letter dated 19.4.1980 to the State Government pointing out as follows:

(a) Application of Ugrasen is entered on 31.12.1966 as the last entry in Postal Receipt register.

(b) Entry is at Sl. 15498.

(c) Entry is in different ink.

(d) True copy of application now submitted bears the date 13.12.1966.

(e) There is no signature on the cyclostyled copy.

(f) Application was made in 1971 and was rejected in 1977 by Shri Watal. Decision not challenged. Ugrasen kept quiet till 1980.

(g) Clerk Mr. Jai Prakash was not working before 1979.

40. It is settled legal proposition that burden lies on the person, who alleges/avers/pleads for existence of a fact. Sh. Ugrasen was95 under an obligation to establish the fact of submission of the application in time. Entry in respect of his application has been made in Postal Receipt Register. As said application was sent by post, Sh. Ugrasen could explain as to whether the application was sent by Registered Post/Ordinary Post or under Postal Certificate and as to whether he could produce the receipt, if any, for the same. In such a fact-situation, the application filed by Shri Ugrasen could not have been entertained at all, even if he was entitled for the benefit of the Land Policy.

41. The High Court committed an error observing that if the State Government had allowed the application filed by Ugrasen it was implicit that delay, if any, in making the claim stood95 condoned. Such an observation is not in consonance with law for the reason that if there is a delay in filing application, the question would arise as to whether the authority has a right to condone the delay. Even if, the delay can be condoned, the authority had to examine as to whether there was sufficient cause preventing the applicant to approach the authority in time. But, once the delay has been considered without application of mind, in a fact-situation like in the instant case, the question of deemed condonation would not arise. More so, the High Court could not examine the question of fact as to whether the application was made within time or not, particularly, in view of the fact that the authority had been making the allotment though application had not been made at all in time and it was only manipulation of the record of the authority with the collusion of its staff.

42. In fact, such exercise by the State amounts to colourable exercise of power. In State of Punjab & Anr. Vs. Gurdial Singh & Ors. AIR 1980 SC 319, this Court dealing with such an issue observed as under:

> "Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion."

43. The State Government, being the revisional authority, could not entertain directly the applications by the said applicants, namely, Sh.Ugrasen and Sh. Manohar Lal. The action of the State Government smacks of arbitrariness and is nothing but abuse of power as the State Government deprived GDA to exercise its power under the Act, and deprived the aggrieved party to file appeal against the order of allotment. Thus, orders passed by the State Government stood vitiated. More so, it was a clear cut case of colourable exercise of power.

44. So far as the case of allotment in favour of Manohar Lal is concerned in more than one respect, it is by no means better than the case of Ugrasen as the initial allotment had been made by GDA in his favour consequent to the directions of the Chief Minister of Uttar Pradesh who had no competence to deal with the subject under the Statute and he has already been put in possession of a part of allotted land in commercial area, contrary to the Land Policy.

45. There are claims and counter claims regarding the dates of Section 6 declaration; taking of possession of land; and of making Awards so far as the land of Manohar Lal is concerned. As per the affidavit filed by the Vice-Chairman, GDA, Section 6 declaration was made on 24.5.1965 invoking the urgency clause under section 17(1); possession was taken on 13.7.1965; and Award was made on 11.5.1970. Manohar Lal preferred writ petition no.4159/1980 before the Allahabad High Court stating that Section 6 declaration in respect of his land was made on 30.1.1969, possession was taken on 29.5.1969 and Award was made on 11.6.1971. None of the parties considered it proper to place the authentic documents before the Court so that the real facts be determined. In such a fact situation, we are not in a position to decide as to whether Manohar Lal's application was filed in time as he had claimed in the said writ petition that he filed the First Application on 22.6.1969. However, one thing is clearly evident from the affidavit filed by Vice Chairman, GDA that the land allotted to both of these parties has been part of commercial area and not of residential area. In view thereof, any allotment made in favour of Manohar Lal so far, had been illegal as the application could not have been entertained by the Chief Minister and further appellant could not get allotment

in commercial area. The Land Policy provided only for allotment of land in residential area.

46. The fact of illegal allotment of land in commercial area has been brought to the notice of the Court first time vide affidavit of the Vice-Chairman, GDA dated 27.5.2010. Thus, it is crystal clear that such facts had not been brought on record before the High Court by GDA at any stage in any of the writ petitions nor it had been pointed out to the State Government when applications of both these parties had been entertained directly by the Chief Minister and the State Government. Only explanation furnished by the Vice-Chairman, GDA, in his affidavit is that due to inadvertence it escaped the notice of GDA that the plots had been categorized as commercial in the Master Plan and could not be allotted in favour of any applicant. Even today, the said plots continue to be in commercial area and not in residential area.

47. The present appellants had also not disclosed that land allotted to them falls in commercial area. When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. "Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice." Who seeks equity must do equity. The legal maxim "Jure naturaw aequum est neminum cum alterius detrimento et injuria fieri locupletiorem", means that it is a law of nature that one should not be enriched by the loss or injury to another. (vide The Ramjas Foundation & Ors. Vs. Union of India & Ors. AIR 1993 SC 852; K.P. Srinivas Vs. R.M. Premchand & ors. (1994) 6 SCC 620 and Nooruddin Vs. (Dr.) K.L. Anand (1995) 1 SCC

242).

48. Similarly, in Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors. AIR 1997 SC 1236, this Court observed as under:-

> "The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point.....the interest of justice and the public interest coalesce. They are very often one and the same. ..... The Courts have to weigh the public interest vis-`-
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> vis the private interest while exercising....any of their discretionary powers (Emphasis added).

49. In M/s Tilokchand Motichand & Ors. Vs. H.B. Munshi & Anr. AIR 1970 SC 898; State of Haryana Vs. Karnal Distillery, AIR 1977 SC 781; and Sabia Khan & Ors. Vs. State of U.P. & Ors. AIR 1999 SC 2284, this Court held that filing totally misconceived petition amounts to abuse of the process of the Court. Such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court. A litigant is bound to make "full and true disclosure of facts."

50. In Abdul Rahman Vs. Prasony Bai & Anr. AIR 2003 SC 718; S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors. (2004) 7 SCC 166; and Oswal Fats & Oils Ltd. Vs. Addl. Commissioner (Admn), Bareily Division, Bareily & Ors. JT 2010 (3) SC 510, this Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it.

51. In view of the above, we are of the considered opinion that Shri Manohar Lal did not approach the Court with disclosure of true facts, and particularly, that he had been allotted the land in the commercial area by GDA on the instruction of the Chief Minister of Uttar Pradesh.

52. It is a fit case for ordering enquiry or initiating proceedings for committing criminal contempt of the Court as the parties succeeded in misleading the Court by not disclosing the true facts. However, we are not inclined to waste court's time further in these cases. Our experience has been that the so-called administration is not likely to wake-up from its deep slumber and is never interested to redeem the limping society from such hapless situations. We further apprehend that our pious hope that administration may muster the courage one day to initiate disciplinary/criminal proceedings against such applicants/erring officers/employees of the authority, may not come true. However, we leave the course open for the State Government and GDA to take decision in regard to these issues and as to whether GDA wants to recover the possession of the land already allotted to these applicants in commercial area contrary to the Land Policy or value thereof adjusting the amount of compensation deposited by them, if any.

53. In view of the above, Civil Appeal No. 974 of 2007 filed by GDA is allowed. The Judgment and order of the High Court dated 22.7.2003 passed in Writ Petition No. 6644 of 1989 is hereby set aside. Civil Appeal No. 973 of 2007 filed by Manohar Lal is dismissed. No costs.

.....J. (Dr. B.S. CHAUHAN) .....J. (SWATANTER KUMAR)
New Delhi, June 3, 2010