# K.K. Bhalla vs State Of M.P. & Ors on 13 January, 2006

## Author: S.B. Sinha

## Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:
Appeal (civil) 477 of 2006

PETITIONER:
K.K. Bhalla

RESPONDENT:
State of M.P. & Ors.

DATE OF JUDGMENT: 13/01/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:

J U D G M E N T Appeal (civil) 477 of 2006 [@ S.L.P. (C) No. 12442 of 2003] W I T H CIVIL APPEAL NO. 478 OF 2006 [@ SLP (C) No. 22582 of 2004] S.B. SINHA, J :

Leave granted in S.L.Ps.

Both these appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

Two Writ Petitions in the nature of public interest litigations were filed by the Appellant herein before the High Court questioning allotment of lands measuring 20000 sq. feet and 8000 sq. feet in favour of Sh. Bishambhar Dayal Aggrawal, proprietor Dainik Bhaskar Newspaper, Jabalpur and YMCA, private respondents herein respectively by the State of Madhya Pradesh.

Jabalpur Development Authority (JDA).

The lands in question indisputably come within the Master Plan made in terms of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short 'the 1973 Act") in relation to the town of Jabalpur brought about by the Jabalpur Development Authority (for short "JDA"), a statutory authority constituted thereunder. Prior to coming into force of the 1973 Act, the legislature of the State of Madhya Pradesh enacted the Madhya Pradesh Town Improvement Trusts Act, 1960 (for short "the 1960 Act") in terms whereof Jabalpur Improvement Trust was created for the purpose of carrying out the provisions thereof in the town of Jabalpur wherefor it was

entitled to acquire lands belonging to private parties and obtain such land from the State and others by way of agreement, sale etc. There appears to be some dispute as to whether the lands in question are acquired lands or nazul lands belonging to the State of Madhya Pradesh. However, it is not in dispute that the town planning scheme framed by the said trust was approved by the State and by a notification dated 20th September, 1974, the lands stood vested in the trust in terms of sub-section (2) of Section 71 of the 1960 Act.

The lands in question are situate in the commercial area carved out of the said Master Plan. The authority indisputably was entitled to allot plots in favour of the applicants only in terms of the rules and regulations framed thereunder. Allegedly, pursuant to or in furtherance of a purported policy decisions adopted by it, the State of Madhya Pradesh allotted land to Sh. Bishambhar Dayal Aggrawal, proprietor of 'Dainik Bhaskar', a newspaper inter alia published from Jabalpur for establishment of an industry, i.e., for printing and publication of a newspaper known as Dainik Bhaskar. The said newspaper is published from nine states. Similarly, an application having been made by YMCA which is said to be a charitable organization, 8000 sq. feet of land was allotted to it.

The Appellant herein in the writ petition filed before the High Court inter alia pleaded that a proposal was made for construction of an auditorium and a cinema hall by the authority with the cooperation of the M.P. Films Development Corporation wherefor foundation stone was also laid at the site which has since been allotted in favour of Shri Bishambhar Dayal Aggrawal.

Further contentions of the Appellants before the High Court are as under:-

Such allotment having been made on a pick and choose method without following the procedures laid down therefor and without issuing any advertisement was illegal. Such allotment having moreover been made for industrial purpose, was in contravention of the Master Plan drawn in terms of the provisions of the 1973 Act as thereby change of purpose as regard user thereof has been effected. Even 50% rebate both in respect of the premium and ground rent was given in utter violation of the statutory provisions.

The contention of the Respondent before the High Court, on the other hand, was that the said allotments were made in terms of a policy decision adopted by the State.

The High Court by reason of the impugned judgments dismissed the writ petitions filed by the Appellants herein holding that the grants in favour of the Respondents were made for public purposes which the State was empowered to do in terms of Rule 3 of the Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavanotatha Anya Sanrachnaon Ka Vyayan Niyam, 1975 ( for short "the 1975 Rules").

Mr. Shiv Sagar Tiwari, learned counsel appearing on behalf of the Appellant in Civil Appeal arising out of SLP (C) No. 12442 of 2003, submitted that allotment of valuable commercial land in favour of the Respondent was made in favour of the private Respondent herein by the State in utter violation of the 1973 Act and the 1975 Rules inasmuch as therefor no advertisement was made and by reason thereof a commercial area has been converted into an industrial area. It was urged that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that the State cannot distribute its largess without following the provisions contained in the 1973 Act and the 1975 Rules which is violative of Article 14 of the Constitution of India.

A commercial area, Mr. Tiwari submitted, would mean an area where shops, restaurants, etc. are run and thus the Respondent cannot be entitled to run an industry. It was pointed out that the State directed allotment of the said land without fixing the quantum of the cost of the land, the market value whereof was about Rs.2.50 crores reckoned at the rate of Rs.500/- per sq. ft.

Mr. Prakash Shrivastava, learned counsel appearing on behalf of the Appellant in Civil Appeal arising out of SLP (C) 22582 of 2004, submitted that the High Court committed an error in passing the impugned judgment insofar as it having held that the land in question would come within the purview of Rule 3 of the 1975 Rules proceeded to hold that Rules 19 and 20 thereof shall apply which are applicable only in relation to the land belonging to the authority and not to the State. It was further submitted that even in terms of the 1975 Rules only land measuring upto 5000 sq. feet could have been allotted in favour of YMCA but the land allotted in its favour measures 8000 sq. feet.

Mr. Vivek K. Tankha, learned senior counsel appearing on behalf of the Respondent in Civil Appeal arising out of SLP (C) 12442 of 2003, on the other hand, argued that the Appellant herein did not approach the court with clean hands inasmuch as he had not questioned similar allotments made in favour of other persons similarly situated. It was submitted that the State passed the impugned orders at the instance of the JDA itself in view of the fact that the lands in question being nazul lands, the approval and/ or permission of the State therefor was mandatorily required to be obtained..

Mr. Tankha further drew our attention to the events which took place subsequent to the passing of the impugned order and would submit that keeping in view of the fact that the Respondent had placed orders for printing machinery worth rupees two crores, this is a fit case in which the court should not exercise its discretionary jurisdiction in condoning delay of 156 days in filing the special leave petition and/ or exercise its jurisdiction under Article 136 of the Constitution. The allotment of land in any event having not been found to be arbitrary or mala fide, there is no reason as to why this Court should interfere with the judgment of the High Court.

Mr. Anoop G. Chaudari, learned senior counsel appearing on behalf of YMCA, submitted that the Respondent being a charitable organization, it was entitled for allotment of a piece of land having regard to the fact that other communities similarly situated had been allotted lands. Our attention was drawn to the fact that an application in this behalf was filed by YMCA before the JDA whereupon the Chairman referred the matter to the State of Madhya Pradesh for passing necessary order. It is true that no recommendation was made by the JDA for allotment of land but the said application was not rejected either. Stand of the JDA in this behalf was that it was for the State Government to make allotment. It was in the aforementioned perspective the Government of Madhya Pradesh through its Under Secretary by a letter dated 21.8.1996 communicated as under:

> "Out of the authorities land located in the civic centre, which has been sought by Y.M.C.A. Institution, out of that 8000 sq. feet area should be allotted to the General Secretary Y.M.C.A. Institution.
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> 2. According to the guidelines contained in the Revenue Department Circular No. M-6-173/96/Seven/Sa/2-B/Nazul, dated 31.5.96, the said institution should be given the land at a discount of 50% on the market rate and 50% discount should also be given in the lease rent.
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> The development authority should also work out the requisite terms and conditions."

It was urged that as in the instant case, the procedures prescribed under the Rules had been followed and the discretion vested in the State has been properly exercised, this Court should not exercise its discretionary jurisdiction. It was urged that the JDA was bound to ask for the sanction for such allotment in terms of Rule 3 of the 1975 Rules and as in the instant case a direction has been issued, the same should be considered as sanctioning the proposal of the JDA.

As regard the submission that not more than 5000 sq. feet of land could be allotted, it was urged that no such plea was taken before the High Court. It was further pointed out that part of the land is to be utilized for commercial purposes.

Ms. Vibha Datta Makhija, learned counsel appearing on behalf of the State also supported the impugned judgment and submitted that all actions were taken in terms of the Rules. Legality or otherwise of the allotment of land in favour of the private respondents herein according to the learned counsel must be judged in the context of the law prevailing in this behalf.

Before adverting to the rival contentions as noticed hereinbefore, we may notice relevant provisions of the statutes.

The 1960 Act was enacted to consolidate and amend the law relating to the establishment of Improvement Trusts for the purpose of making and executing Town Improvement Schemes in certain towns of Madhya Pradesh. Jabalpur Improvement Trust was created under the said Act. Improvement Scheme framed by the said Trust in terms of the provisions the statute was required to be implemented. The State has the requisite power to sanction schemes in terms of Section 51 of the 1960 Act. Section 52 postulates that upon such sanction it shall announce, except in the case of a

deferred street scheme, development scheme or town expansion scheme that the Trust shall forthwith proceed to execute the same by notification; and may order that any street, square, park, open space or other land, or any other part thereof, which is the property of the Government and managed by the Central Government or the State Government shall, subject to such conditions as it may impose, vest in the Trust for the purpose of the scheme. Publication of such a notification was to be treated as a conclusive evidence that the scheme has duly been framed and sanctioned.

Chapter V of the 1960 Act provided for acquisition and disposal of land. The Trust in terms of Section 67 was entitled to acquire, by purchase, lease or exchange any land within the area comprised in a sanctioned scheme from any person under an agreement which indisputably would include the State. Section 68 provided for notice of acquisition of land.

The 1960 Act, however, was repealed and replaced by the 1973 Act in terms whereof JDA was created.

The 1973 Act was enacted to make provisions for planning and development and use of land; to make better provision for the preparation of development plans and zoning plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to constitute Town and Country Planning Authority for proper implementation of town and country development plan; to provide for the development and administration of special areas through Special Area Development authority; to make provision for the compulsory acquisition of land required for the purposes connected therewith.

> "Commercial use" has been defined in Section 2(e) to mean "the use of any land or building or part thereof for the purpose of carrying on any trade, business or profession, or sale or exchange of goods of any type whatsoever and includes running of with a view to making profit, hospitals, nursing homes, infirmaries, educational institutions, hotels, restaurants and and boarding houses (not being attached to any educational institution) sarais, and also include the use of any land or buildings for storage of goods or as an office, whether attached to an industry or otherwise."
>
> "Development plan" has been defined in Section 2(g) to include zoning plan and "existing land use map" has been defined in Section 2(i) to mean a map indicating the use to which lands in any specified area or put at the time of preparing the map and includes the register prepared, with the map giving details of land-use.
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> Chapter IV of the 1973 Act provides for planning areas and development plans. The procedures laid down for finalizing a development plan has been laid down therein. Any person aggrieved by any order granting permission on condition or refusing the same is entitled to prefer an appeal thereagainst before the appellate authority in terms of Section 30 thereof. The revisional power in this behalf is vested in the State.
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> Section 49 of the 1973 Act provides for town development schemes. Registration on land use and land development is provided for under Section 53 thereof. Section 58

provides for disposal of land in the following terms:

> "58. Disposal of land, buildings and other development works Subject to such rules as may be made the State Government in this behalf, the Town and Country Development Authority shall by regulation, determine the procedure for the disposal of developed lands, houses, buildings and other structures."

Section 72 of the 1973 Act envisages the State Government's power of supervision and control over the acts and proceedings of the officers appointed under Section 3 and the authorities constituted under the 1973 Act. Section 73 empowers the State Government to give directions in the following terms:

> "73. Power of State Government to give directions. (1) In the discharge of their duties the officers appointed under Section 3 and the authorities constituted under this Act shall be bound by such directions on matters of policy as may be given to them by the State Government. (2) If any dispute arises between the State Government and any authority as to whether a question is or is not a question of policy, the decision of the State Government shall be final."

Section 85 of the 1973 Act provides for rule making power.

The State of Madhya Pradesh in exercise of its power conferred upon it under Sections 58 and 85 of the 1973 Act made rules known as "Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavanotatha Anya Sanrachnaon Ka Vyayan Niyam, 1975".

Rules 3, 4, 5, 19 and 20 of the 1975 Rules which are material for our purpose read as under:

"3. No Government land vested in or managed by the Authority shall be transferred except with the general or special sanction of the State Government given in that behalf.

4. All other land (hereinafter called the "Authority land") shall be transferred in accordance with the following rules.

5. Transfer of the Authority land shall be as under:

> a) By direct negotiation with the party; or
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> b) By public auction; or
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> c) By inviting tenders; or
>
> d) Under concessional terms.

19. The Authority may with the previous approval of the State Government lease out on concessional terms any authority land to any public institution or body registered under any law for the time being in force.

20. Ordinarily, no lease on concessional terms shall be allowed for the purposes of other than charitable purposes such as for hospital educational institutions and orphanages."

The State in terms of the provisions of the 1973 Act and the 1975 Rules is a statutory authority. Its jurisdiction to oversee functions of the authorities of the Board as also power to issue directions are circumscribed by the provisions contained in Sections 72 and 73 of the 1973 Act.

Concededly, the lands in question was either acquired lands or nazul lands. It also stands admitted that in terms of the provisions of Sub-section (2) of Section 71 of the 1960 Act even the nazul lands stand admittedly vested in the authority and having regard to the provisions contained in Section 87(1)(c)(iii) all assets and liability of the Town Improvement Trust shall belong to and be deemed to be the assets and liabilities of the Town and Country Development Authority established in place of such Town Improvement Trust.

The power of disposal of lands, buildings and other developmental works indisputably vests in the Town and Country Development Authority i.e. the JDA. We have, however, not been informed as to whether any regulation has been framed by the authority for regulating the procedures for disposal of developed lands, houses, buildings and other structures. However, the lands in question is a developed land. The right to dispose of such lands, therefore, vests in the JDA. Such right being subject to the rules made by the State, we may closely examine the provisions thereof.

Rule 3 of the 1975 Rules puts an embargo in the power of the JDA to transfer government land vested in or managed by it except with the general or special sanction of the State Government given in that behalf. Rule 4 demonstrates that all other land acquired by the authority become transferable in accordance with the rules following. A distinction, thus, has been made between a government land and the authority land. The rules following Rule 4 refer to the authority lands as contradistinguished from the government land. Rule 5 again categorically refers to the authority land in terms whereof transfer on concessional terms is permissible. Rule 19 empowers the authority to lease out on concessional terms any authority land to any public institution or body registered under any law for the time being in force. Rule 20, however, provides that ordinarily no lease of land on concessional terms shall be allowed for the purposes other than charitable purposes such as for hospital, educational institutions and orphanages.

The right to transfer land on concessional terms, thus, is subject to two limitations, viz., (i) approval of the State is required therefor; and (ii) no lease on concessional terms shall be allowed for purposes other than charitable purposes such as hospital, educational institutions and orphanages; which implies that in a given situation a lease may be granted on concessional terms to any other institution but therefor sufficient and cogent reasons must be assigned.

The JDA, therefore, only had requisite authority to initiate the proceedings for grant of lease of land on concessional terms wherefor only the previous approval of the State was required to be taken. The State, except grant of previous approval to the proposal of the JDA and ultimate grant of lease of its land on concessional terms, has no other role to play. Disposal of the authority land is, thus, within the domain of the JDA, subject only to the previous approval of the State Government.

The State and the J.D.A. being creatures of the statute were bound to act within the four-corners thereof. Procedures for disposal of land having been laid down in the rules, power in that behalf was required to be exercised strictly in conformity therewith and de'hors the same.

The State has formulated a purported policy decision on or about 10.8.1995. The said policy decision is in relation to the land belonging to the State situated in the entire State of Madhya Pradesh. It has been issued by the Revenue Department and not by the Town and Country Planning Department. The said purported policy decision is not a policy decision in terms of the 1973 Act or the rules framed thereunder. State, thus, could not even issue any direction to J.D.A. The Respondent filed an application for allotment of land as far back as in 1986. Further applications are said to have been filed on 4.3.1989 and 7.7.1992. The Respondent filed an application on 7.7.1994 before the Nazul Officer for allotment of land relying on or on the basis of the purported policy decision adopted by the State that the land should be allotted to the said industry. It is not in dispute that the land within Scheme No. 18 was reserved for auditorium and cinema hall (for public and semi public purposes) at city level. Purported policy by the State was adopted on 10.8.1995 only. Pursuant to or in furtherance of the said policy decision, a decision was taken to allot the land on 14.10.1995. It is only on 21st November, 1995 the State allotted the land in question in favour of the private Respondent stating that the land is a government land.

In para 5.18 of the writ petition, the Appellant averred:

> "To the knowledge of the petitioner, the matter of allotment of land to respondent No. 3 was never placed before the State Level Committee constituted vide memo, dated 10.8.1995. There is no mention of the same in the memo of allotment dated 21.11.95. On the contrary, the said memo itself mentions that the matter of payment of premium and ground rent would be decided subsequently by the Committee. It is evidently clear that the State Government by passing its own guidelines and without referring the matter to the said State Level Committee constituted vide memo dated 18.10.95 directed allotment of the land in question to the respondent No. 3 surreptitiously without making it public to the detriment of other similarly situated press owners. Thus, action of the respondents No. 1 & 2 in allotting the land to the respondent No. 3 to the exclusion of others is absolutely arbitrary illegal and discriminatory and the same is liable to be struck down."

In response to the said statements, the State in its counter affidavit averred:

> "The matter was referred to State Level Committee but the State Level Committee did not entertain the matter as the land in question was not a Nazul land and ultimately a

> decision was taken by the Government. There was no need or occasion to publish public. One who needed land could always approach the State Government and the State Government could decide the application on merits. No publicity was needed as suggested."

Thus, there appears to be some contradiction in the said statement. If the land in question was not Nazul land, question of exercising any jurisdiction thereover by the State in any manner whatsoever, does not arise.

It is also accepted that the land was allotted for the purpose of establishing a printing press and publication of newspaper. It is also curious to note that despite allotment, the quantum of premium and annual rent was not fixed.

Establishment of a printing press would be an 'industry'. Even otherwise the said position stands accepted as would appear from the letter dated 4.1.1996 of the Chairman of the JDA addressed to the Deputy Secretary, Chief Minister Secretariat which is in the following terms:

> " The then Chairman (Divisional Commissioner) vide his letter No. 1173 dated 28.11.95 addressed to the Govt. in last para has mentioned that the plot in question land use of which is public/ semi public as approved and adopted by Jabalpur Development Scheme, on which there is a provision for construction of an auditorium for the artist of the city level whereas the use of the press comes under industrial use and this issue has been raised and under those circumstances the permission for change of land use and handing over the advance possession to Dainik Bhaskar Press.
>
> On 13.12.95 you had a talk with reference to said letter with then Chairman (Divisional Commissioner). It was said by you that the Civic Center John premises is for commercial use and at page 246 of the Development Scheme in table No. 16-T-7 in column No. 5 the press-comes within the permissible use under collected industries. In this regard, a letter from the then Chairman No. 1173 dated 28.11.95 was forwarded to you. For ready reference photocopies enclosed herewith. The then Secretary public relations dept. Sh. Lakshmi Narayan told the then Chairman (Divisional Commissioner) on telephone that the Hon'ble Chief Minister has directed to send the proposal for allotment of this land to Dainik Bhaskar Press."

[Emphasis supplied] Yet again by a letter dated 13.12.1995 while directing that the quantum of premium and rent would be determined by a permanent committee, it was stated:

> "This lease will be executed in the name of Bishambar Dayal Aggrawal on the basis of legal entity of Dainik Bhaskar Press, Jabalpur after the decision of the standing committee constituted by the State Govt. This term and condition will be operative on advance possession as well.

> Development permission for advance possession shall have to be obtained within two months period from the Joint Director Nagar Tatha Gram Nivesh, Jabalpur. Prior to obtaining this development permission and Govt. permission no development work will be commenced by you on the concerned land."

From the circular letter dated 1.3.1996, it is manifest that even on 1.3.1996, the quantum of premium and rent had not been fixed. It is only on 21st September, 1998, the decision of the State was communicated to JDA stating:

> "The Govt. of Madhya Pradesh has taken decision that the assessment of the premium for 20,000 sq. ft. land situated at Scheme No. 18 Civil Centre owned by Jabalpur Development Authority allotted by the order dated 30.12.95 passed by the Govt. of Madhya Pradesh to Dainik Bhaskar Press Jabalpur is to be made by extending concession of 50% rate of the market value of the land in the area. This amount will have to be deposited by Dainik Bhaskar Press at one time."

The authority by its letter dated 15.12.1998 fixed the value of the land at the rate of Rs. 255/- per sq. ft. on the basis of the then guidelines treating the rate for the allotted land for the financial year 1994-1995 treating it as industry. It is beyond anybody's comprehension as to how the value of the land could be fixed on the basis of the rate as was prevailing in the financial year 1994-95 although decision to allot the land was taken in the year 1998. The allotment having been made for unauthorized suffers from the vice of malice in law.

So far allotment of land in favour of YMCA is concerned, we may notice that the Revenue Department had also issued a circular dated 31.5.1996 wherein it was stated:

> "Various castes based, Social Institutions from time to time apply for land allotment at concessional rate to the Government. Thus, the State Government after complete deliberation has taken this decision that the institutions will be allotted plots for social purposes on the following rebate and ground rent:-
>
> (1) *** *** (2) *** *** (3) *** *** (4) *** *** (5) Each society will only be allotted a maximum of 5000 sq. feet of land at concessional rate."

The said circular also could not have been issued in terms of the 1973 Act. Even otherwise, not more than 5000 sq. ft. of land could have been allotted thereunder. The impugned order, thus, ex facie suffers from total non-application of mind on the part of the authorities of the JDA and the State. The State moreover has acted beyond its authority.

We have noticed hereinbefore that the State itself opined that the land in question is 'Authority Land'. It, therefore, could not do what is within the domain of the JDA.

Purpose for which allotments were made may be well-meaning, but the allotments being contrary to the provisions of the Act and the Rules were void and of no effect being illegal.

So far as allotment of land is concerned, the purpose for which the same is allotted would be wholly irrelevant if it contravenes the mandatory provisions of the statute or the statutory rule.

Mr. Tankha relied on Oil and Natural Gas Commission v Association of Natural Gas Consuming Industries of Gujarat and Others [1990 (Supp) SCC 397] wherein dictionary meaning of 'public utility' has been stated as under:

> "Public Utility: A privately owned and operated business whose services are so essential to the general public as to justify the grant of special franchises for the use of public property or of the right of eminent domain, in consideration of which the owners must serve all persons who apply, without discrimination. It is always a virtual monopoly.", does not answer the case of the Respondents.
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> Submission of Mr. Tankha to the effect that having regard to the concept of freedom of press, the newspaper industry should be considered to be a public utility in view of the decision of this Court in Oil and Natural Gas Commission (supra) cannot be accepted. Public utility has a definite connotation. Publication of a newspaper does not come within the purview of public utility services.
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> It may be true that newspaper industry has a great role to play in spreading political education and giving of ideas as has been held in Bennett Coleman & Co. and Others v Union of India and Others [(1972) 2 SCC 788] (followed in Indian Express Newspapers (Bombay Private Ltd. and Others v Union of India and Others, (1985) 1 SCC 641), but that would not mean that it would be entitled to allotment of land in contravention of a Town Planning Act.
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> If any preference is to be given to any public utility service, a policy decision therefor was required to be adopted by the J.D.A. if permissible under the statute and not otherwise. Even the State may not have a role to play in the matter under the Act General policy decision adopted by the State in absence of a provision of the statute, cannot ipso facto be held to be applicable to J.D.A. This aspect of the matter has recently been considered in Bangalore Development Authority and Others v R. Hanumaiah & Others [2005 (8) SCALE 80] wherein it was noticed:
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> "Recently in Hindustan Petroleum Corpn. Ltd. Vs. Darius Shapur Chenai & Ors. [2005 (7) SCALE 386], this Court noticed:
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> " In Commissioner of Police, Bombay vs. Gordhandas Bhanji [AIR 1952 SC 16], it is stated :
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> " We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind; or what he intended to do. Public orders made by public authorities are meant to have public effect and

> are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Yet again in Mohinder Singh Gill (supra), this Court observed :

> "The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji."

Referring to Gordhandas Bhanji (supra), it was further observed :

> "Orders are not like old wine becoming better as they grow older."

[The said decisions have been followed by this Court in Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others [(2004) 2 SCC 65]."

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 Development Plan was prepared in terms of the 1973 Act and the rules framed thereunder. Change of user, we have not been shown, is permissible under the Act or the Rules. In absence of such a provision and/ or without following the statutory requirements therefor, if any, 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.

In Friends Colony Development Committee v. State of Orissa and Others [(2004) 8 SCC 733], this Court observed:

> "In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their

> freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified."

Furthermore, in terms of Section 73 of the 1973 Act, 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 State has no power to issue any general direction. The State has furthermore no power to interfere with the day to day functioning of the JDA. Any such direction by the State to the officers must be in discharge of their duties in terms of the provisions of the Act and not otherwise. The direction of the Chief Minister being de'hors the provisions of the Act is void and of no effect.

The purported policy decision adopted by the State as regards allotment of land to the newspaper industries or other societies was not a decision taken by the appropriate Ministry. If a direction was to be issued by the State to the JDA, it was necessary to be done on proper application of mind by the cabinet, the concerned Minister or by an authority who is empowered in that behalf in terms of the Rules of the Executive Business framed under Article 166 of the Constitution of India. Such a direction could not have been issued at the instance of the Chief Minister or at the instance of any other officer alone unless it is shown that they had such authority in terms of the Rules of the Executive Business of the State. We have not been shown that the Chief Minister was the appropriate authority to take a decision in this behalf. We have noticed hereinbefore that the purported policy decision is in respect of the lands belonging to the State and not those belonging to the J.D.A. The said policy decision applies to the entire State of Madhya Pradesh. It is not appreciable in relation to such lands which come within the purview of any Scheme framed under the Act. It was issued by the Revenue Department under Revenue Book Circular Four-1. Evidently therefor not decision has been taken by the State in terms of the provisions of the 1960 Act or the 1973 Act. The concerned Ministry was Ministry of Housing and Environment. The jurisdiction of the State while exercising the power to issue direction in this behalf is extremely limited as has been noticed by this Court in Rakesh Ranjan Verma and Others v. State of Bihar and Others [1992 Supp (2) SCC 343 at 348], U.P. State Electricity Board v. Ram Autar and Another [(1996) 8 SCC 506], Bangalore Development Authority (supra), para 55 and State of U.P. v. Neeraj Awasthi [2005 (10) SCALE 286].

The Private Respondents herein complain of discrimination on the ground that persons similarly situated have been allotted land at a concessional rate but therefore no factual foundation had been

laid. When allotment is illegal, Article 14 which carries with it a positive concept would have no application. [See Jalandhar Improvement Trust v. Sampuran Singh (1999) 3 SCC 494, para 13 and State of Bihar and Others v. Kameshwar Prasad Singh and another, (2000) 9 SCC 94, para 30] In the case of YMCA also, allotment has been directed to be made by the State. It may be that ultimately allotment was made by the JDA. But if the State had no role to play in the matter, even advice given by it would be ultra vires.

The State, as noticed hereinbefore, could not implement its purported policy decision as regard allotment of land on concessional rates. Such a direction or even a policy decision in this behalf is ultra vires being contrary to the statutory rules framed by it. An action by way of policy decision or otherwise at the hands of a statutory authority must be in consonance with the statutory rules and no de'hors the same.

It is difficult to accept the submission of Mr. Chaudari that the orders impugned in the writ petition were not vitiated as the same was not arbitrary or mala fide. Malice may either be on fact or in law. Passing of an order for unauthorized purpose constitutes malice in law. [See Punjab State Electricity Board Ltd. v. Zora Singh and Others, (2005) 6 SCC 776 and U.O.I. the Govt. of Pondicherry & Anr. Vs. V. Ramakrishna & Ors., JT 2005 (9) SC 422].

Furthermore, when the State has framed rules and adopted a procedure for disposal of the land, both the State and the JDA were bound thereby. They could not have taken any action contrary thereto or inconsistent therewith.

Both the State and the JDA had evidently been acting under some misconception. The Board was of the opinion that in relation to nazul land, the State is the final authority to allot land as the power of sanction lies within its domain. We have noticed hereinbefore that the State did not have any such power. The State, even in terms of Rule 3 of 1975 Rules has a limited role to play.

However, there are certain subsequent events which should be taken note of. Whereas the impugned order in the civil appeal arising out of SLP (C) No. 12442 of 2003 was passed on 21.8.2002, the SLP was filed on 7.5.2003. During pendency of the matter, the JDA had issued a circular on 4.6.2003 to the Private Respondent herein asking him to deposit a sum of Rs. 26 lakhs. The said amount is said to have been deposited on 7.6.2003 whereupon a deed of lease has also been executed.

It is stated that the Municipal Corporation granted permission for construction of the building on or about 30.7.2004 subject to the conditions mentioned therein. A notice was issued on 11.7.2003 by this Court. It is stated that the Private Respondent has sent invoices for machines worth Rs. 2 crores for which a sum of RS. 10 lakhs have been paid by way of advance. Submission of Mr. Tankha, in the aforementioned situation, is that the equities between the parties should be adjusted.

We have noticed hereinbefore that on 11.7.2003 notice was issued in the matter. The counsel for Respondent was present on the said date. An order of status quo was present on the said date. The Respondent, therefore, had notice about the pendency o the special leave petition. It might have applied for and granted the permission for construction of building but we find no reason as to how

without constructing any building, orders for delivery of machines should have been issued. It is not the case of the Private Respondent that they had started construction pursuant to or in furtherance of the permission granted in this behalf by Municipal Corporation of Jabalpur.

The Appellant has brought to the notice of the High Court that a malady has been prevailing in the department of the State of Madhya Pradesh and the JDA. It may be true that the Appellant did not file any application questioning similar allotments but it is well-settled if an illegality is brought to the notice of the court, it can in certain situations exercise its power of judicial review suo motu (See Sham Lal (dead) by Lrs. vs. Atme Nand Jain Sabha (Regd.), Dal Bazar (1987) 1 SCC 222 , Chairman & MD, BPL Ltd. Vs. S.P. Gururaja & Ors. Vs (2003) 8 SCC 567 and Guruvayoor Devaswom Managing Committee & Anr. Vs. C. K. Rajan & Ors. (2003) 7 SCC 546). It is also well-settled that the equality clause contained in Article 14 of the Constitution of India cannot be invoked for perpetrating an illegality.

For the reasons aforementioned, the impugned judgments of the High Court cannot be sustained, but, having regard to the facts and circumstances of this case, we are of the opinion that the interest of justice would be subserved if the question as regards allotment of land is left to the Jabalpur Development Authority. The Authority may consider the matter afresh for grant of such allotment in favour of the Private Respondents herein treating the applications filed by them either before it or before the State Government as fresh applications. Such applications must be processed strictly in terms of the provisions of the 1973 Act and the Rules framed thereunder as also keeping in view the Master Plan. Such a decision should be taken by the Competent Authority of the JDA at an early date preferably within a period of two months from the date of receipt of the copy of this order. The JDA shall return the amount deposited by the Private Respondents, if any, within four weeks from date.

These appeals are allowed to the aforementioned extent but in the facts and circumstances of this case there shall be no order as to costs.