

Jasbir Singh Chhabra & Ors vs State Of Punjab & Ors on 9 March, 2010

Equivalent citations: 2010 AIR SCW 1804, 2010 (4) SCC 192, AIR 2010 SC (SUPP) 682, (2010) 2 RECCIVR 474, (2011) 1 MAD LJ 607, (2010) 1 WLC(SC)CVL 481, (2010) 2 LANDLR 350, (2010) 3 ICC 369

Author: G.S. Singhvi

Bench: B.S. Chauhan, G.S. Singhvi

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2228 OF 2010
(Arising out of S.L.P. (C) No.1969 of 2006)

Jasbir Singh Chhabra and others

... Appellants

Versus

State of Punjab and others

... Respondents

With

Civil Appeal No.2229 of 2010 [Arising out of SLP(C) No.2786 of 2006]
Civil Appeal No. 2230 of 2010 [Arising out of SLP(C) No.3874 of 2006]
Civil Appeal No. 2231 of 2010 [Arising out of SLP(C) No.4761 of 2006]
Civil Appeal No.2232 of 2010 [Arising out of SLP(C) No.14133 of 2006]
Civil Appeal No. 2233 of 2010 [Arising out of SLP(C) No.15967 of 2006]
Civil Appeal No. 2234 of 2010 [Arising out of SLP(C) No.13609 of 2007]

JUDGMENT

G.S. Singhvi, J.

1. Leave granted.

2. Whether the appellants in these appeals except the appeal arising out of SLP(C) No. 14133/2006 are entitled to allotment of residential plots in Phases VIII-A and VIII-B, Mohali, Punjab developed by the Punjab Small Industries and Export Corporation Ltd. (for short, 'the Corporation') and whether the State Government's refusal to sanction change of land use from industrial to residential is vitiated by arbitrariness and malafides are the questions which arise for determination in these

appeals filed against orders dated 23.9.2005 and 28.7.2006 passed by the Division Bench of the Punjab and Haryana High Court.

3. The Corporation is a government company within the meaning of Section 617 of the Companies Act, 1956. It was created for developing infrastructure necessary for industrialization of the identified areas of the State. Between 1994 and 1996, the State Government acquired land in Phases VIII-A and VIII-B, Mohali and handed over the same to the Corporation. After carrying out necessary development, the Corporation allotted the plots to industrial entrepreneurs. As there was no provision in the extant industrial policy for earmarking some land in the focal points/growth centres developed by the Corporation, which could be allotted to the industrial entrepreneurs and the workers employed in the industries, the Corporation submitted a proposal to the State Government to allow it to earmark 20-30% area in the existing/coming up focal points/growth centres for Industrial Housing. After due deliberations, the State Government approved the proposal. This was conveyed to the Corporation vide Memo No.1/2001-61B/5329 dated 26.12.2001, paragraph 2 whereof reads as under:

"Government agrees to your proposal to earmark 20-30% area for Industrial Housing as matter of policy in the existing/coming up focal points and growth centres developed by PSIEC, depending upon circumstances of each area for facilitating speedy growth especially in industrial backward area."

4. Although, the above mentioned decision of the State Government did not provide for change of land use from industrial to residential, the Corporation, on its own, framed a policy for disposal of residential plots in the existing and up-coming industrial focal points/industrial estates/growth centres. The relevant portions of that policy are extracted below:

"1. PROCEDURE FOR INVITING APPLICATIONS:

Application for allotment of plots of free hold basis be invited by PSIEC through press advertisement. In case number of eligible applicants exceed those of available plots in respect size/category, allotment will be made through draw of lots.

2. ELIGIBILITY:

Any Indian or NRI who have not been allotted any residential plot in any Urban Complex developed by the GOVT./GOVT. undertaking in Punjab is eligible to apply.

5. PREFERENCE:

Preference in allotment of plots shall be in following order in respective focal point/growth center/industrial Estate: -

a) Allottees of industrial plots whose units are under production in the respective area

b) Allottees of industrial plots whose units are under construction in the respective area

c) Workers/Employees employed in the units under production and set up in respective area.

The reservation for different categories for allotment of residential plots will be followed as under:

a)	Scheduled caste	10%
b)	Backward Class	5%
c)	Ex-Service men/war widows	5%
d)	Non resident Indian	5%

If the number of eligible application are less than those of available plots under the specified reserve category(s). The unallotted plots, thereof, will be transferred for allotment under General Category."

5. Thereafter, the Corporation advertised 138 freehold plots in focal point, Mohali and allotted the same to those who were declared successful in the draw held on 8.10.2002.

6. Some of the industrial entrepreneurs to whom large plots were allotted in focal point, Mohali could not fully utilize the same and surrendered the surplus land. In Phase VIII-B, the demand for industrial plots was less than what was anticipated by the Corporation. The issue relating to disposal of surplus land in Phases VIII-A and VIII-B, focal point, Mohali was considered in the meeting of Plan Approval Committee of the Corporation held on 15.12.2003 and it was decided that such land may be utilized for carving out residential pockets. This was subject to approval of change of land use under the Punjab Regional and Town Planning and Development Act, 1995 (for short, 'the Act'). The relevant portions of the decision taken in that meeting are reproduced below:-

"Lay-out plans of 3 residential pockets in Phase VIIIA and B, Indl. Focal Point, Mohali were discussed in details and following decisions were taken:

1. Pocket consisting of Business center Phase-VIIIB, Mohali:

It was explained by STP, PSIEC that originally pocket comprising of about 11.83 Acres was earmarked for proposed business center in Phase VIII B, Mohali. However, due to inadequate demand for commercial sites, it is proposed to reduce the area of business center to 2.33 acres. Balance about 9.50 acres is proposed to be sub-divided into residential plots of one kanal each. Green buffers of 90 ft. width has been provided around the plots to segregate from Industrial plots.

Lay out plan was discussed in details and it was proposed by the committee that open space opposite Indl. Plot No.D-174 to D-177 may be sub-divided into plots so as to avoid encroachment by the allottees at a later stage. The lay out plan was approved after incorporating the proposed modification.

2. 30 Acres plot No.A-43 surrendered by the allottee:

It was explained by the STP that two categories of plots i.e. 16 marla and 10 marla have been planned by sub-dividing 30 acres plot. The green buffer of 100 ft. width has been provided between ICI paint factory and proposed residential plots. The lay out plan was discussed in details and it was observed by the committee that open space at both the end corners abutting 80 ft. wide road and adjacent to Indl. Plot No.C-165 and D-179 may not be left as such for the similar reasons that the same may not be encroached upon and instead plot of 16 marla category may be planned in this open space. In lieu of above, a sizable open space in the center of the pocket may be provided by suitably amending the lay out plan. The lay out plan was thus unanimously approved with above modification duly incorporated.

With the provision of residential plots in above 2 pockets, total percentage of residential area in Phase-VIII B comes to about 17% which is well within percentage approved by the Govt.

3. About 43 acres land surrendered by M/s. Ranbaxy in Phase-VIII A, Mohali.

It was explained by the STP, PSIEC that plots of 2 categories i.e. one kanal and 16 marla have been planned in this pocket. Besides this, a small commercial area to cater to the needs of the residential population as well as Indl. Area on V-4 road and a site measuring 3.75 acres has also been planned for School. It was observed by the Committee that the service lane along 100 ft. sector road dividing Sector 75 (VIII-A) and Sector 76 may be provided and plots of one kanal categories may be opened on the service land. Secondly, site for School may not be provided as PUDA has made ample provision of School sites in the adjoining sectors developed by PUDA. Instead plots of one kanal size may be planned in this pocket. Lay out plan was approved after making suitable modifications as proposed above.

It was pointed out by Sh. Rajinder Sharma, STP o/o Chief Town Planner, Punjab that as per Punjab Regional and Town Planning and Development Act 1995, permission for change of land use from industrial to residential/non industrial use is required to be taken from the competent authority. However, STP, PSIEC explained that the proposal to earmark 20% to 30% for Housing as a matter a policy in the existing as well as coming up Indl. Focal points/Growth centers developed by PSIEC stands approved by the Govt. and the area earmarked for housing in Phase-VIII A and B, Mohali is well within the prescribed norms. Layout plans were approved subject to approval of change of land use under the PRTPD Act."

(emphasis supplied)

7. The matter was then considered in the meeting of the Allotment Committee under 'Off-The-Shelf Scheme' (hereinafter referred to as, 'the Allotment Committee') held on 5.2.2004 under the Chairmanship of Chief Secretary (the meeting was also attended by Shri Arun Goel, the then Managing Director of the Corporation) and the following recommendations were made:

"Before taking up the regular agenda items, the Committee discussed the agenda notes on policy issues circulated by Industries Department vide their letter dated 27.1.2004 and made following recommendations:-

(i) Industrial Policy 2003 - Amendments to facilitate investment in Industrial Infrastructure.

Detail given in the background note were perused and provisions of Industrial Policy 2003 with regard to development of Industrial Park and status of Multiplex Complexes were discussed at length. After detailed discussions following recommendations were made:-

a) Industrial Parks/Estates/Agro Parks/IT Parks fulfilling the criteria for such parks as prescribed in Government of India's scheme may be considered for allotment of land in Industrial Focal Points.

b) Multiplex Complexes constitute a distinct category and may not be equated with Industrial Park for allotment of land.

c) Price for allotment of land for Industrial parks etc. may be fixed at level that gives a return of 20% to the developer on his investment.

d) For Multiplex Complexes price calculated as per criteria at (c) above should be treated as reserved price and allotment of land may be made through auction.

e) Existing allottees of industrial land may be permitted to change land use upto three acres for Multiplex on payment of the difference between the prevailing allotment price for the industry and five times that of price for allotment of developed industrial plots. There may not be any concession in price for sick units. However, payment schedule may be relaxed in case of sick units.

It was recommended that Industrial Policy may be got amended by the Department at appropriate level to incorporate above provisions in the Policy.

(ii) Availability of Industrial land in Mohali Position indicated in the background note was perused. It was felt that in view of limited availability of land with PSIEC, the available land should be utilized for setting up of industrial units/industrial parks which can generate more revenue and employment for the State instead of housing activity which will neither generate employment nor revenue for the State exchequer. The financial needs of PSIEC can be met by allotting the land for industrial parks/Multiplex complexes which will generate greater revenue in view of higher allotment price for such land as indicated at (i) above. It was, therefore, recommended that no allotment may be made by PSIEC for housing purposes.

(emphasis supplied) The Allotment Committee then considered regular agenda items and took the following decisions:

"Item No. 21.1 Confirmation of Minutes of 20th meeting of Allotment Committee held on 23.12.2003.

Confirmed.

Item No. 21.2 Allotment of 46 Acres of land to M/s Quark at Focal Point, Phase VIII, Extension, Mohali.

It was decided to allot 46 acres of land at Mohali to M/s. Quark for setting up an industrial Park, in view of approval of their project as mega project by the Empowered Committee under Industrial Policy 2003 and thereafter by the Cabinet. Contents of letter No. Spl./114/SHUD dated 4.2.2004 from Secretary, Housing Urban Development highlighting the possible implications of the restraint orders of Punjab and Haryana High Court regarding 'Change in Land Use' were also brought to the notice of the Committee. It was decided that allotment to M/s. Quark will be subject to legal advice to be obtained by the Housing Department. The allotment will also be subject to fulfillment of following conditions:-

- i) M/s. Quark were allotted 5 acres of land in Phase VIII-B, Mohali by PSIEC and they are defaulter in making payment of cost enhancement amounting to Rs.1.18 crore and applicable interest. The company will make payment of this amount before fresh allotment is made.
- ii) Punjab Infotec Corporation will get the formal approval for change in land use for the area proposed to be allotted to the company from competent authority.
- iii) Zoning and building by-laws of PSIEC as applicable in that area will apply.
- iv) No polluting industry will be set up in the industrial zone as the park will also comprise of residential and commercial area.

Item No. 21.3 Allotment of 40-50 Acres of land at Mohali to M/s.

A.B. Motions (Pvt.) Ltd.

Item No. 21.4 Payment terms in respect of allotment to M/s. A.B. Motions (Pvt.) Ltd.

It was decided to defer these items till amendment in Industrial Policy as recommended by the Committee at (i) above."

8. The State Government accepted the recommendation of the Allotment Committee in respect of the land at Mohali and decided not to allow change of land use from industrial to residential. This is evident from the contents of Memo dated 5.8.2004, which reads as under:

"To The Managing Director, Punjab Small Industries & Export Corporation Limited, Udyog Bhawan, Sector 17, Chandigarh.

Memo No.US/CO(PSIEC)/2500 Dated Chandigarh, the 5th August, 2004 Subject: Change of Land Use from Industrial to Housing.

The matter regarding conversion of industrial land into residential use in Mohali, by Punjab Small Industries & Export Corporation has been considered by the Government. It has been decided that in the overall interest of the State, it would not be desirable to change the land use from industrial to residential. The Corporation should, therefore, immediately withdraw the scheme for allotment of residential plots and refund the application money of the applicants so that there are no legal complications.

Sd/-"

9. About two months prior to consideration of the issue relating to disposal of surplus land by Plan Approval Committee of the Corporation, an advertisement was issued, which was published in 'The Tribune' dated 20.10.2003 inviting applications for 280 residential plots in Phases VIII-A and VIII-B, focal point, Mohali under the Industrial Housing Scheme. In the application form issued by the Corporation, the following stipulation was incorporated:

"The acceptance of application form and earnest money does not place the corporation under any obligation to allot you a plot."

10. About 3500 persons including those who filed writ petitions before the High Court applied for allotment of residential plots in Mohali. After five months, another advertisement was issued on 23.3.2004 under the authority of the Managing Director of the Corporation-cum-Chairman, Allotment Committee informing the applicants that draw of lots for allotment of residential plots in Phases VIII-A and VIII-B, Mohali, focal point, Patiala and Phase VIII (Jeevan Nagar), Ludhiana will be held on 31.3.2004. That advertisement carried the following note:

"The above draw of lots for allotment of residential plots under Industrial Housing Scheme in Phase VIII A and B at Focal Point, Mohali is being held provisionally and the applicants declared successful will be placed on a provisional list for allotment of plots subject to the final decision on the aforesaid Industrial Housing Scheme at Focal Point, Mohali. It is clarified that placement of successful applicants on the provisional list for allotment of plots will not confer any legal right either to claim interest on the earnest money remaining with the Corporation or for the allotment of residential plots on the basis of their having been declared successful in the draw of lots and no claim in this behalf shall be entertainable on any account whatsoever. It is further clarified that any applicant found successful in the draw of lots and not agreeable to above conditions, may seek refund of their earnest money any time till the letter of allotment is issued by PSIEC."

(emphasis supplied)

11. All the writ petitioners were declared successful in the draw and their names were placed in the provisional list of successful applicants. However, allotment letters were issued only to those who had applied for plots in focal point, Patiala and Phase VIII (Jeevan Nagar), Ludhiana. Some of the petitioners, who had applied for the plots in focal point, Mohali filed Writ Petition No.12396/2004 with the complaint that they have been arbitrarily discriminated in the matter of allotment of plots. However, they withdrew the writ petition with liberty to challenge the stipulation contained in the advertisement that the acceptance of application form or earnest money will not place the Corporation under an obligation to allot a plot to the applicant. Thereafter, a batch of writ petitions was filed questioning the legality of the stipulation contained in the application form, note incorporated in advertisement dated 23.3.2004 and the decision contained in Memo dated 5.8.2004. The writ petitioners invoked the doctrines of promissory estoppel and legitimate expectation and pleaded that on being declared successful in the draw of lots, they have acquired a right to be allotted plots in focal point, Mohali and the Corporation is bound to fulfill the promise made by issuing advertisement dated 20.10.2003. They pleaded that the State Government does not have the power to direct the Corporation to abandon the policy of allotting residential plots in the industrial focal points and the decision contained in Memo dated 5.8.2004 is vitiated due to malafides because the same was designed to favour some individuals who wanted to utilize the land for commercial purpose by building multiplex complexes. They further pleaded that the Corporation's failure to issue allotment letters has resulted in discrimination and violation of their fundamental right to equality guaranteed under Article 14 of the Constitution. In the written statements filed on behalf of the State Government and the Corporation, it was pleaded that the decision contained in Memo dated 5.8.2004 was in consonance with policy of the State Government to promote industrialization of the State, which was expected to give impetus to the economy of different areas and generate employment. It was further pleaded that in its capacity as owner of the land, the State Government was entitled to take appropriate policy decision and the writ petitioners are not entitled to claim allotment of plots merely because they had applied pursuant to advertisement dated 20.10.2003 or their names were included in the provisional list of successful applicants. The Corporation relied upon Article 90 of its Memorandum of Association and pleaded that the State Government is empowered to issue directions on policy matters and its refusal to sanction change of land use in Phases VIII- A and VIII-B, Mohali falls within the ambit of Article 90. According to the Corporation, advertisement dated 23.3.2004 was issued for holding draw of lots because the Government's decision on the proposal for change of land use from industrial to residential was getting delayed and it was felt that the earnest money deposited by those who may be ultimately unsuccessful should not be retained for a long time. The parties filed further pleadings in the form of rejoinder and supplementary affidavits reiterating their respective stand.

12. After advertng to the pleadings of the parties and arguments of the learned counsel, the Division Bench of the High Court framed the following questions:

"a) Whether the holding of a draw of lots for allotment of residential plots confers a right on the petitioners for the allotment of the plots on the principle of promissory estoppel and legitimate expectations?

b) Whether in any case a concluded contract has come into existence between the parties and if so, whether the petitioners can enforce the same by way of writ petition?

c) What is the power of the State Government to issue directive to the PSIEC in terms of Article 90 of the Memorandum of Association of the PSIEC and if so, what is its binding effect? Besides, whether only the governor can issue such directive in his personal capacity and not the State Government?

d) What is the scope of judicial review of the policy decision of the State Government whereby it has vide its impugned decision dated 5.8.2004 (Annexure P-12), decided not to be desirable to change the land use from industrial to residential and whether such policy decision is amenable to the writ jurisdiction of this Court?"

13. The Division Bench of the High Court first considered whether the writ petitioners were entitled to invoke the doctrines of legitimate expectation and promissory estoppel, referred to the judgments of this Court in *Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries* (1993) 1 SCC 71, *Union of India v. Hindustan Development Corporation and others* (1993) 1 SCC 499, *National Building Construction Corporation v. S. Raghunathan* (1998) 7 SCC 66, *Pawan Alloys and Casting Private Limited v. U.P. State Electricity Board and others* (1997) 7 SCC 251, *Kasinka Trading and another v. Union of India and another* (1995) 1 SCC 274 and held that even though the State Government and the Corporation, which is an instrumentality of the State, are expected to act fairly and reasonably in their dealing with the members of public, mere inviting of applications and draw of lots by the Corporation did not create a right in favour of the writ petitioners and they cannot invoke the doctrines of legitimate expectation and promissory estoppel for compelling the Corporation to allot plots to them in Phases VIII-A and VIII-B, focal point, Mohali because in the format of application, it was clearly mentioned that acceptance of the application form and earnest money will not place the Corporation under an obligation to allot plot to the applicant.

14. The Division Bench then referred to Article 90 of the Memorandum of Association of the Corporation, noticed the judgments of this Court in *Rakesh Ranjan Verma and others v. State of Bihar and others* (1992) Supp. 2 SCC 343, *Gujarat Housing Board Engineers Association and another v. State of Gujarat and others* (1994) 2 SCC 24, *Chittoor Zilla Vyavasayadarula Sangham v. A.P. State Electricity Board and others* (2001) 1 SCC 396, *Chairman and MD, BPL Limited v. S.P. Gururaja and others* (2003) 8 SCC 567 and two judgments of the High Court in CWP No.9626 of 2002 - *Punjab State Industries and Export Corporation v. State of Punjab* decided on 14.5.2004 and *Punjab Financial Corporation Employees Welfare Association v. Punjab Financial Corporation* 2004 (2) ILR (P & H) 113 and held the decision of the Government not to sanction change of land use from industrial to residential was in the nature of a direction which could be issued under Article 90 of the Memorandum of Association of the Corporation.

15. The Division Bench finally considered the question whether the policy decision contained in Memo dated 5.8.2004 is arbitrary, irrational and illogical or is vitiated due to malafides. After noticing the broad parameters of judicial review of policy decisions, the Division Bench referred to

minutes of the meeting of the Allotment Committee held on 5.2.2004, notings dated 9.6.2004 and 20.6.2004 recorded by Principal Secretary, Industries and Commerce that the possibility of using the land in a manner which may generate maximum revenue may be explored rather than choosing the easy way out of changing land use to residential and held that the apprehension expressed by learned counsel for the petitioners that the policy has been changed only to accommodate M/s. A.B. Motions (Pvt.) Limited which was intending to set up multiplexes on the land in question is not entirely without basis. The Division Bench opined that the recommendations made by the Allotment Committee on 5.2.2004 have direct bearing on the final decision taken and conveyed vide Memo dated 5.8.2004 and, therefore, the same is liable to be quashed.

16. Shri P.S. Patwalia and Shri C.A. Sundaram, senior advocates and other learned counsel appearing for the writ petitioners-appellants extensively referred to the pleadings of the parties and documents produced by them and argued that the High Court committed an error by declining to invoke the doctrine of legitimate expectation despite the fact that the policy decision contained in Memo dated 26.12.2001 for earmarking 20-30% area for Industrial Housing was acted upon more than once by carving out residential plots in different focal points and allotting the same to the successful applicants. Learned counsel relied upon the ratio of judgments in Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries (supra) and Union of India v. Hindustan Development Corporation and others (supra) and argued that refusal of the State Government to approve utilization of some portions of land in focal point, Mohali for carving out residential pockets was wholly arbitrary and the Division Bench was not at all justified in declining relief to the writ petitioners only on the ground that at the time of submitting applications, they knew that the Corporation will not be obliged to allot plots to the successful applicants and that draw of lots was held with a clear indication that the same would be provisional. Learned senior counsel emphasized that residential pockets were carved out by the Corporation in focal point, Mohali in consonance with the policy contained in Memo dated 26.12.2001 and when the Division Bench held that the decision contained in Memo dated 5.8.2004 is vitiated due to malafides, a direction ought to have been given for allotment of residential plots to the successful applicants. Learned counsel further argued that even though the draw held in furtherance of advertisement dated 23.3.2004 was provisional, after having treated the same as final and allotted residential plots to those who had applied for plots in focal points at Patiala and Ludhiana, the Corporation cannot refuse to fulfill its promise of allotting plots to those who had applied for the plots in focal point, Mohali.

17. Learned counsel appearing for the State and the Corporation argued that the writ petitioners are not entitled to invoke the doctrines of promissory estoppel and legitimate expectation because at the time of submitting applications, they were very much aware of the stipulation contained in the format of application that the Corporation will not be obliged to allot plots to them and this was made more explicit by incorporating a note in advertisement dated 23.3.2004 that the draw of lots will be provisional and the same would not confer any right upon the successful applicants to claim allotment of plot or interest on the earnest money. Learned counsel submitted that inclusion of the writ petitioners' name in the provisional list of the successful applicants did not confer a right upon them to seek allotment of plots because the decision of Plan Approval Committee of the Corporation to approve the layouts of residential pockets in Phases VIII-A and VIII-B, Mohali was subject to sanction of change of land use and the Allotment Committee had categorically opined that no

allotment may be made by the Corporation for housing purposes. Learned counsel then submitted that the State Government's decision to approve the Corporation's proposal for earmarking 20-30% land for Industrial Housing did not result in change of the land use which continued to be industrial and the Corporation had no right to suo motu change the land use from industrial to residential. Learned counsel submitted that any change of land use is required to be approved by the competent authority constituted under the 1995 Act and the State Government rightly declined to approve change of land use from industrial to residential because the same would have seriously undermined the object of industrialization of different parts of the State. Learned counsel assailed the quashing of the decision contained in Memo dated 5.8.2004 by arguing that the Division Bench committed serious error in declaring that the said decision is vitiated due to malafides merely because the Allotment Committee had considered the possibility of utilizing land in Phases VIII-A and VIII-B, Mohali for commercial purposes including construction of multiplexes. Learned counsel laid considerable emphasis on the fact that the State Government had not accepted the recommendations made by the Plan Approval Committee of the Corporation or the Allotment Committee and submitted that this, by itself, was indicative of the fact that ultimate decision of the Government was not influenced by any extraneous consideration. Learned counsel lastly argued that the Corporation cannot, on its own, allot land in any focal point for a purpose other than industrial and, in any case, land use cannot be changed from industrial to residential without complying with the relevant provisions of the 1995 Act.

18. We have considered the respective arguments/submissions and scrutinized the records. We shall first consider whether the State Government's refusal to sanction change of land use from industrial to residential is vitiated due to malafides or arbitrary exercise of power. The Division Bench of the High Court answered this question in negative by relying upon notings dated 9.6.2004 and 20.6.2004 recorded by Principal Secretary, Industries and Commerce, minutes of the meeting of Allotment Committee held on 5.2.2004 wherein a conditional decision was taken to allot 46 acres of land at Mohali to M/s. Quark and proposal for allotment of 40-50 acres of land to M/s. A.B. Motions (Pvt.) Limited was considered. In the opinion of the Division Bench, refusal of the Government to sanction change of land use had close link/nexus with the decision taken and/or recommendations made by the Allotment Committee, which gave an impression that the State Government wanted to favour those who were intending to set up multiplex complexes.

19. In our view, the aforesaid conclusion of the Division Bench of the High Court is not based on correct appreciation of the factual matrix and the background in which the Government declined to sanction change of land use from industrial to residential. It is not in dispute that the State Government acquired land and handed over the same to the Corporation which, as mentioned above, was created for developing infrastructure necessary for industrialization of different areas of the State. The land placed at the disposal of the Corporation was meant to be used for industrial purposes. After carrying out necessary development, the Corporation allotted land to those interested in setting up industrial units. In December 2001, the State Government approved the proposal of the Corporation for earmarking 20-30% of the land for Industrial Housing in the existing and coming up focal points and growth centres developed by the Corporation. The object underlying this policy decision was to provide some land for residential purpose to those who had set up or were intending to set up industrial units and the workers already employed or to be

employed in such units. It was felt that the availability of residential facility within the focal point or growth centre will help in accelerating industrialization of the area. This is the reason why the phrase 'Industrial Housing' was used in contrast to the term 'residential' in Memo dated 26.10.2001. This is also the reason why Plan Approval Committee of the Corporation had, while approving layouts of residential pockets in Phases VIII-A and VIII-B had made it subject to approval of change of land use under the 1995 Act. In its meeting held on 5.2.2004, the Allotment Committee did recommend amendments in Industrial Policy 2003 to facilitate development of industrial parks/estates/agro-parks/I.T. parks and multiplex complexes, but unequivocally opposed the idea of allotment of land for housing purposes. The issue was then considered by the State Government and an unequivocal decision was taken not to allow change of land use from industrial to residential. The record produced before the High Court and the documents produced before this Court do not show that the State Government had sanctioned change of land use in Phases VIII-A and VIII-B, Mohali from industrial to commercial and allowed setting up of multiplex complexes within the focal points or growth centres. The writ petitioners have also not placed any material before this Court to show that the State Government had approved conditional allotment of land to M/s. Quark by the Allotment Committee or accepted the tentative recommendation made by it for allotment of land to M/s. A.B. Motion (Pvt.) Ltd.. Rather, the events which followed the State Government's refusal to sanction change of land use from industrial to residential demonstrate that the said decision was in consonance with the policy of industrialization which was unquestionably in public interest. In August 2004, the Corporation issued an advertisement which was published in 'The Tribune' dated 13.8.2004, inviting applications for 65 industrial plots. In its meeting held on 13.12.2005, the Allotment Committee decided to allot 39.3 acres land in Phase VIII-A, focal point, Mohali to M/s. Wipro Limited for setting up its unit of Software and I.T. Enabled Services because the same was expected to attract investment of Rs.1336 crores and generate employment opportunities for more than 9000 people. The Committee also decided to allot 25 acres land to M/s. Tata Consultancy Services for setting up their Software Development Centre by making an investment of Rs.25 crores with an employment potential of 575 persons. The High Court appears to have been unduly influenced by the fact that the Allotment Committee had considered a proposal for allotment of land to M/s. A.B. Motions (Pvt.) Ltd.. However, in the absence of any tangible or substantive evidence to show that the State Government had taken a conscious decision to allot the surplus land in Phases VIII-A and VIII-B, Mohali for construction of multiplex complexes or for any purpose other than industrial, the Division Bench of the High Court was not at all justified in recording a finding that the decision contained in Memo dated 5.8.2004 is vitiated due to malafides.

20. It is trite to say that while exercising power of judicial review, the superior courts should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of malafides is always on the person who moves the Court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to malafides and the courts should resist the temptation of drawing dubious inferences of malafides or bad faith on the basis of vague and bald allegations or inchoate pleadings. In such cases, wisdom would demand that the Court should insist upon furnishing of some tangible evidence by the petitioner in support of his/her allegations. It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the

Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by malafides or is influenced by extraneous considerations. The Court is duty bound to carefully take note of the same. In this context, reference can usefully be made to the decision of the Constitution Bench in *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3. In that case, the petitioner, who was, at one time holding the post of Chief Secretary of the State, questioned the decision of the Government to post him as an Officer-on-Special Duty. One of the grounds on which he attacked the decision of the Government was that the Chief Minister of the State, Shri K. Karunanidhi was ill-disposed against him. While dealing with the question whether the transfer and posting of the petitioner was vitiated due to malafides, Bhagwati, J. speaking for self and Y.V. Chandrachud and V.R. Krishna Iyer, JJ., observed:

"Now, when we examine this contention we must bear in mind two important considerations. In the first place, we must make it clear, despite a very strenuous argument to the contrary, that we are not called upon to investigate into acts of maladministration by the political Government headed by the second respondent. It is not within our province to embark on a far-flung inquiry into acts of commission and omission charged against the second respondent in the administration of the affairs of Tamil Nadu. That is not the scope of the inquiry before us and we must decline to enter upon any such inquiry. It is one thing to say that the second respondent was guilty of misrule and another to say that he had *malus animus* against the petitioner which was the operative cause of the displacement of the petitioner from the post of Chief Secretary. We are concerned only with the latter limited issue, not with the former popular issue. We cannot permit the petitioner to side track the issue and escape the burden of establishing hostility and *malus animus* on the part of the second respondent by diverting our attention to incidents of suspicious exercise of executive power. That would be nothing short of drawing a red herring across the trail. The only question before us is whether the action taken by the respondents includes any component of *mala fides*; whether hostility and *malus animus* against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

Secondly, we must not also overlook that the burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all

the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up--these considerations are wholly irrelevant in judicial approach--but because otherwise, functioning effectively would become difficult in a democracy."

(Emphasis supplied)

21. The issue deserves to be considered from another angle. Section 79 of the 1995 Act, the applicability of which to the case in hand has not been questioned by the writ petitioners-appellants, mandates that after coming into operation of any Master Plan in any area, no person shall use or permit to be used any land or carry out development in that area otherwise than in conformity with such Master Plan. Proviso to this section empowers the competent authority to allow continuance of any use of any land for a maximum period of 10 years for the purpose for which it was being used on the date of enforcement of the Master Plan. Section 81 of that Act lays down the procedure for change of land use. In terms of sub-section (2) of Section 81, even a department of the State Government or the Central Government or a local authority is required to notify to the competent authority of its intention to carry out any development in respect of any land or change of use. The competent authority can object to such development or change of land use. In that event, the matter is required to be considered and decided by the State Government. In view of these provisions, the State Government was well within its power to take appropriate decision on the proposal made by the Corporation to change the land use from industrial to residential and we do not find any fault with its decision not to sanction such change.

22. We shall now deal with the question whether the writ petitioners are entitled to allotment of residential plots in Phases VIII-A and VIII-B, Mohali. As noted herein above, the writ petitioners had invoked the doctrines of promissory estoppel and legitimate expectation and urged that even though the application form contained a stipulation that acceptance of application and earnest money will not put the Corporation under an obligation to allot a plot to the applicant, they were reasonably sure of getting residential plots because in 2002 the Corporation had undertaken a similar exercise and allotted 138 freehold plots in focal point, Mohali by inviting applications and holding draw of lots.

23. We are in complete agreement with the Division Bench of the High Court that no promise much less an enforceable promise was made by the Corporation to the prospective applicants that by making an application pursuant to the advertisement and on being declared successful in the draw

of lots, they will get residential plots. Rather, being conscious of the fact that in terms of the approval accorded by the State Government vide Memo dated 26.12.2001, it could utilize 20-30% area of the focal point only for Industrial Housing, the Corporation had made it clear to the prospective applicants that there is no certainty of their getting residential plots in Phases VIII-A and VIII-B, Mohali. The decision taken by Plan Approval Committee of the Corporation to approve the layouts of residential pockets in Phases VIII-A and VIII-B, Mohali was not final. The same was subject to sanction of change of land use in accordance with the provisions of the 1995 Act. The Allotment Committee made a clear recommendation against utilization of surplus land for housing purposes. The writ petitioners were very much aware of the tentative character of the initial advertisement as also the advertisement issued for holding draw of lots. By incorporating note in the second advertisement, which has been reproduced herein above, the Corporation had made it known to every one that the entire exercise was provisional and those who did not want to participate in that exercise were at liberty to seek refund of the earnest money. To put it differently, the Corporation did not make any representation to the prospective applicants which induced them to part with their money or adversely change their position. Therefore, the High Court rightly refused to invoke the doctrine of promissory estoppel in favour of the writ petitioners.

24. In *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*, (1979) 2 SCC 409, a two-Judge Bench of this Court discussed the doctrine of promissory estoppel in great detail and laid down the various propositions including the following:

"The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

[extracts from paragraph 8] "The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution."

[extracts from paragraph 15]

25. A contrary view was expressed by another two-Judge Bench in *Jit Ram v. State of Haryana* (1981) 1 SCC 11, but the law laid down in *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.* (supra) was reiterated in *Union of India v. Godfrey Philips India Ltd.* (1985) 4 SCC 369, which was

decided by a three-Judge Bench. Bhagwati, C.J. with whom the other two members of the Bench agreed on the exposition of law relating to the doctrine of promissory estoppel, observed:

"Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills* case that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or, power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in *Motilal Sugar Mills* case and we find ourselves wholly in agreement with what has been said in that decision on this point."

26. In *Hira Tikoo v. Union Territory, Chandigarh* (2004) 6 SCC 765, this Court considered whether the High Court was justified in refusing to invoke the doctrine of promissory estoppel for issuing a mandamus to the respondent-Chandigarh Administration to allot industrial plots to the petitioners, who had applied in response to an advertisement issued in 1981. The Court noted that some of the successful applicants were given possession of the plots but majority of them were not given allotment letters on the ground that the land formed part of the reserved forest and partially approved the decision of the High Court by making the following observations:

"Surely, the doctrine of estoppel cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a statute and therefore, against general public interest. The question, however, is whether the parties or individuals, who had suffered because of the mistake and negligence on the part of the statutory public authorities, would have any remedy of redressal for the loss they have suffered. The "rules of fairness" by which every public authority is bound, require them to compensate loss occasioned to private parties or citizens who were misled in acting on such mistaken or negligent advice of the public authority. There are no allegations and material in these cases to come to a conclusion that the action of the authorities was mala fide. It may be held to be careless or negligent. In some of the English cases, the view taken is that the public authorities cannot be absolved of their liability to provide adequate monetary compensation to the parties who are adversely affected by their erroneous decisions and actions. But in these

cases, any directions to the public authorities to pay monetary compensation or damages would also indirectly harm general public interest. The public authorities are entrusted with public fund raised from public money. The funds are in trust with them for utilisation in public interest and strictly for the purposes of the statute under which they are created with specific statutory duties imposed on them. In such a situation when a party or citizen has relied, to his detriment, on an erroneous representation made by public authorities and suffered loss and where the doctrine of "estoppel" will not be invoked to his aid, directing administrative redressal would be a more appropriate remedy than payment of monetary compensation for the loss caused by non-delivery of the possession of the plots and consequent delay caused in setting up industries by the allottees."

27. The plea of the writ petitioners that they had legitimate expectation of being allotted residential plots in Phases VIII-A and VIII-B in Mohali because in 2002 138 plots were allotted to the successful applicants sans merit. At the cost of repetition, it is necessary to mention that the writ petitioners had submitted applications knowing fully well that the same would not obligate the Corporation to allot plots to them. It is rather intriguing that even though approval of the layouts of residential pockets in Phases VIII-A and VIII-B, Mohali by Plan Approval Committee of the Corporation was subject to approval being accorded by the competent authority under the 1995 Act for change of land use from industrial to residential, and the Allotment Committee in which Managing Director of the Corporation had taken part, made a negative recommendation in the matter of allotment of land for housing purposes, the same officer authorized issue of advertisement dated 23.3.2004 for holding provisional draw of lots. In our view, this exercise was wholly unnecessary and uncalled for. If the concerned officer had not acted in haste and waited for the decision of the competent authority on the issue of change of land use, the parties may not have been forced to fight this unwarranted litigation. Be that as it may, the writ petitioners cannot, by any stretch of imagination, claim that they had a legitimate expectation in the matter of allotment of plots despite the fact that change of land use was yet to be sanctioned.

28. The doctrine of legitimate expectation has been described in Halsbury's Laws of England 4th Edn. in the following words:

"A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice."

29. In *Food Corporation of India v. Kamdhenu Cattle Feed Industries* (supra), this Court considered whether by submitting tender in response to notice issued by the Food Corporation of India for sale of stocks of damaged food grains, the respondent had acquired a right to have its tender accepted and the appellant was not entitled to reject the same. While approving the view expressed by the High Court that rejection of the highest tender of the writ petitioner-respondent was legally correct, this Court observed:

"The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

30. In *Union of India v. Hindustan Development Corporation* (supra), the doctrine of legitimate expectation was explained in the following words:

"... For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

31. The same principle has been stated and reiterated in *Punjab Communications Ltd. v. Union of India* (1999) 4 SCC 727, *Dr. Chanchal Goyal v. State of Rajasthan* (2003) 3 SCC 485, *J.P. Bansal v. State of Rajasthan* (2003) 5 SCC 134, *State of Karnataka v. Uma Devi* (2006) 4 SCC 1, *Kuldeep Singh v. Government of NCT of Delhi* (2006) 5 SCC 702, *Ram Pravesh Singh v. State of Bihar* (2006) 8 SCC 381 and *Sethi Auto Service Station v. DDA* (2009) 1 SCC 180. In the last mentioned judgment, the Court referred to various precedents and observed:

".....the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest

comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

32. The plea of discrimination raised by the appellants is being mentioned only to be rejected because no similarity has been pointed out between their cases and the cases of those who had applied for allotment of plots in focal point, Patiala and Phase VIII (Jeevan Nagar), Ludhiana except that a common draw was held in furtherance of advertisement dated 23.3.2004. In any case, in view of our interpretation of the policy decision contained in Memo dated 26.12.2001, the allotment made in two other focal points, cannot enure to the appellants' advantage and a mandamus cannot be issued in their favour because that would result in compelling the competent authority to sanction change of land use from industrial to residential in contravention of the policy decision taken by the State Government.

33. In the result, the appeals arising out SLP(C) Nos.1969/2006, 2786/2006, 3874/2006, 4761/2006, 15967/2006 and 13609/2007 are dismissed and the one arising out of SLP (C) No.14133/2006 filed by the State of Punjab is allowed. Consequently, all the writ petitions filed before the High Court shall stand dismissed. The parties are left to bear their own costs.

.....J. [G.S. Singhvi]J. [Dr. B.S. Chauhan] New Delhi, March 09, 2010.