AKHIL BHARTIYA UPBHOKTA CONGRESS A

v.

STATE OF MADHYA PRADESH AND ORS.

(Civil Appeal No. 2965 of 2011)

APRIL 6, 2011 B

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Constitution of India, 1950:

Article 14 – Principle of equality – Exercise of power by C
political entities and officers/officials – Scope of – Held: For achieving the goals of Justice and Equality set out in the Preamble, the State and its agencies/instrumentalities have to function through political entities and officers/officials at different levels – The exercise of power by political entities and D
officers/officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for public good and in a rational and judicious manner without any discrimination against anyone – In Indian constitutional E
structure, no functionary of the State or public authority has an absolute or unfettered discretion – The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of rule of law – Administrative law. F

Part III; IV; Article 39(b) – Role of the State – Discussed.

Administrative law: State and/or its agencies/ instrumentalities – Action/decision of, to give largesse or G
confer benefit on any person – Held: Must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-

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A *discriminatory or non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy – Distribution of largesse such as allotment of land by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of*
B *favoritism or nepotism should not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State – By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse, the State cannot*
C *exclude other eligible persons from lodging competing claim – The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process*
D *of allotment, whether by way of auction or otherwise – The allotment of land which carry the tag of caste, community or religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines – The allotment of land*
E *to such bodies/organisations/institutions on political considerations or by way of favoritism or nepotism is constitutionally impermissible – In the instant case, reservation and allotment of land to respondent no.5 was not preceded by any advertisement in the newspaper or by any other recognized mode of publicity inviting applications from*
F *organizations/institutions for allotment of land and everything was done by the political and non-political functionaries of the State as if they were under a legal obligation to allot land to respondent No.5 – The advertisements issued by the State functionaries were only for inviting objections against the*
G *proposed reservation and/or allotment of land in favour of respondent no.5 and not for participation in the process of allotment – Therefore, allotment of land to respondent No.5 was not done by following a procedure consistent with Article 14 of the Constitution.*

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Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973: A

Object of its enactment – Discussed.

s.23-A – Development Plan – Modification of – Whether notifications by which the Bhopal Development Plan was modified and land use was changed were ultra vires the provisions of s.23-A – Held: The power of modification of development plan can be exercised only for specified purposes – In terms of s.23-A(1)(a), the development plan can be modified by the State Government either suo motu or at the request of the Authority for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project relating to development of the State or for implementing a scheme of the Authority – In the instant case, in the Bhopal Development plan, the use of land which was reserved and allotted to respondent No.5 was shown as public and semi-public (health) – State Government modified the plan by invoking s.23-A(1)(a) for facilitating establishment of an institute by respondent No. 5 – The exercise undertaken for the change of land use, which resulted in modification of the development plan was an empty formality because land was allotted to respondent No.5 almost two years prior to the issue of notification u/s.23–A (1)(a) and the objects for which respondent No.5 was registered as a trust had no nexus with the purpose for which modification of development plan could be effected under that section – Therefore, modification of the development plan was ultra vires the provisions of s.23–A(1)(a) – Urban development. B C D E F

Madhya Pradesh Revenue Book Circular: Unregistered societies and private trusts are not eligible for allotment of land. G

Writ petition: Locus standi – Held: Even if a person files H

A *a writ petition for vindication of his private interest but raises question of public importance involving exercise of power by men in authority then it is the duty of the Court to enquire into the matter.*

B **On 18.6.2004, one 'KJ' made a written request to the Principal Secretary, Housing describing himself as a Convenor of a Memorial Trust for reservation of 30 acres land comprised in village Bawadiya Kalan, in favour of the Memorial Trust to enable it to establish an All India Training Institute. Although said letter was addressed to** C **the Principal Secretary, Housing, the same was handed over to the then Minister of Housing who forwarded it to the Principal Secretary, Housing for immediate action. Subsequently, 'KJ' applied for registration of the trust in the name of respondent No. 5. The certificate of** D **registration was issued on 24.12.2004. In the meanwhile, 'KJ' sent letter dated 11.8.2004 to the Principal Secretary, Housing wherein he described himself as the Managing Trustee of respondent No.5 and submitted fresh proposal for reservation of 30 acres land out of Khasra Nos.82/1** E **and 83 of village Bawadiya Kalan in favour of respondent No.5.**

The Director, Town Planning (Respondent No.3) informed the Principal Secretary, Housing stating that in F **the Bhopal Development Plan, 2005, land comprised in Khasra No.82 of Bawadiya Kalan village was earmarked for public and semi-public (health) purpose and land comprised in Khasra No.83 was earmarked for residential purpose and if land was to be allotted to the Memorial** G **Trust, then the earlier land use would be required to be cancelled. However, without effecting change of land use by following the procedure prescribed under the Act, the State Government issued order reserving 30 acres land comprised in Khasra Nos. 82/1 and 83 of village Bawadiya Kalan in favour of the Memorial Trust.**

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In view of the directive issued by the State Government , Tehsildar, Capital Project (Nazul) issued advertisement dated 4.10.2004 and invited objections against the proposed allotment to the Memorial Trust. The same was published in newspaper. However just after two days, the Collector (respondent No.4) submitted proposal for allotment of 30 acres land to the Memorial Trust wherein it clearly indicated that the land fell within the limits of Bhopal Municipal Corporation and, as such, in terms of Chapter IV-1 of the Madhya Pradesh Revenue Book Circular (RBC), the same should not be allotted at a price less than the minimum price. He also indicated that price of the land would be Rs.7,84,8000/-, of which 10 per cent should be deposited as a condition for allotment. After 2½ months, respondent No. 4 sent letter to the Additional Secretary, Revenue Department informing about non-deposit of 10 per cent of the premium by the Memorial Trust. On coming to know about the said communications, 'KJ' sent letters to respondent No. 4 and Secretary, Revenue Department respectively assuring that the premium would be deposited immediately after the allotment of land. After about 8 months of the submission of proposal for allotment of land to the Memorial Trust, 'KJ' sent letter to respondent No. 4 mentioning therein that the institute would require only 20 acres land. Thereupon, Nazul Officer sent letter informing 'KJ' that the premium of 20 acres land would be Rs.5,22,72,000/- and 10 per cent thereof i.e. Rs.52,27,200/- should be deposited as earnest money. However, the deposit of only Rs. 25,00,000/- was made on behalf of respondent No. 5. For next about seven months, the matter remained under correspondence between different departments of the State Government. During the interregnum, the Minister of Housing became Chief Minister of the State. On 24.10.2005, Chief Minister of the State directed that matter relating to allotment of

A land to respondent No.5 be put up in the next meeting of the Cabinet scheduled to be held on 26.10.2005. On the same day, Secretary, Revenue Department submitted a detailed note and suggested that keeping in view the limited resources available with the State Government, B land should be auctioned so that the administration may garner maximum revenue. His suggestion was not accepted by the Council of Ministers, which decided to allot 20 acres land in the name of the Memorial Trust at the rate of Rs.40 lakhs per hectare. The decision of the C State Government was communicated to respondent No. 4. As a sequel to the allotment of land, Nazul Officer called upon 'KJ' to deposit Rs. 55,94,000/-. However, instead of depositing the amount 'KJ' addressed letter to the Revenue Minister with the request that the premium D may be waived because the Institute was being established in public interest and would be training the elected representatives and undertaking research on important issues and it would have no source of income. The political set up of the State Government readily obliged him inasmuch as the issue was considered in the E meeting of Council of Ministers held and it was decided that the amount of Rs. 25,00,000/- may be treated as the total premium and land be given to the Memorial Trust by charging annual lease rent of Re.1 only. Subsequently, on a representation made by 'KJ', earlier orders/ F communications were amended and the name of respondent No. 5 was inserted in place of the Memorial Trust. Thereafter, lease agreement was executed between the State Government and Secretary of respondent No.5 in respect of 20 acres land for a period ending on G 05.12.2037 at a premium of Rs. 25,00,000/- and an yearly rent of Re.1. Since the use of land comprised in Khasra Nos. 82/1 and 83 of village Bawadiya Kala was shown in the Bhopal Development Plan as public and semi-public (health) and the same could not have been utilized for the

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purpose of respondent No. 5, the State Government issued notification dated 6.6.2008 under Section 23-A(1)(a) of the Act proposing change of land use from public and semi-public (health) to public and semi public and invited objections/suggestions. The notification was published in the Official Gazette and two newspapers. Objections were filed by various persons against the proposed change of land use which were held untenable after giving opportunity of hearing. Thereafter, final notification dated 5.9.2008 was issued under Section 23-A(2) of the Act.

The appellant, engaged in public and consumer welfare activities challenged the allotment of land to respondent No.5 in writ petition on the grounds of violation of Article 14 of the Constitution and arbitrary exercise of power. The High Court summarily dismissed the writ petition by observing that land belonged to the Government and it was for the Government to decide whom the same should be allotted as per its policy and that no case of violation of any legal or constitutional right was made out.

The question which arose for consideration in the instant appeal was whether the decision of the State Government to allot 20 acres land comprised in Khasra Nos. 82/1 and 83 of village Bawadiya Kalan, Tehsil Huzur, District Bhopal to the Memorial Trust without any advertisement and without inviting other similarly situated organisations/institutions to participate in the process of allotment was contrary to Article 14 of the Constitution and the provisions of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 and whether modification of the Bhopal Development Plan and change of land use was ultra vires the mandate of Section 23A of the Act.

Allowing the appeal, the Court

A HELD: 1.1. The Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (the Act) was enacted to make provisions for planning and development and use of land; to make better provisions for the preparation of development plans and zoning plans with a view to B ensure that town planning schemes are made in a proper manner and they are effectively executed. The Act also provides for constitution of Town and Development Authority for proper implementation of Town and Country Development Plan and for the development and C administration of special areas through Special Area Development Authority and also to make provisions for the compulsory acquisition of land required for the purpose of the development plans and for achieving the objects of the Act. In exercise of the powers conferred upon it under Section 58 read with Section 85, the State D Government framed the Rules. There is no provision in the Act or the Rules for disposal and/or transfer of land in respect of which a regional plan or development plan or zonal plan has been prepared. The only provision which has nexus with the Government land is contained E in Rule 3 which imposes a bar against the transfer of Government land vested in or managed by the Authority except with the general or special sanction of the State Government. [Paras 10, 11, 12] [108-F-H; 116-C-H; 117-A-B]

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1.2. Part IV of the RBC deals with the management and regulation of Nazul land falling within the limits of municipal corporations, municipal councils and notified areas; and transfer thereof by lease, sale etc. In terms of G paragraph 13(1), permanent lease can be granted either by auction or without auction. Paragraph 13(2) enumerates the contingencies in which permanent lease cannot be granted by auction. If the plot of land is to be sold by auction then the same is required to be H advertised or publicized by a recognized method.

Paragraph 21 prescribes the mode of auction of lease rights. Any person desirous of participating in the auction is required to deposit 10 per cent of the premium. Once the bid is approved by the competent authority, the bidder has to deposit the balance amount within 30 days. Paragraph 24 lays down the procedure to be followed for disposal of plot without auction. If any plot is proposed to be transferred at a concessional premium then the approval of the State Government is sine qua non. In case, the Collector is satisfied that the plot of land should be given without auction then the allottee is required to pay premium equivalent to average market price determined on the basis of the sale instances of last five years. Paragraph 26 lays down that when Nazul land is allotted to non-government organisations or persons on favourable terms then the conditions specified therein should be scrupulously observed and there should be rigorous scrutiny of the proposal. Under this paragraph, land can be allotted to educational, cultural and philanthropic institutions/organisations or Cooperative Societies, Housing Board and Special Area Authority constituted by the State Government. However, unregistered societies and private trusts are not eligible for allotment of land. [Para 13] [117-B-E; 118-A-H]

1.3. The concept of 'State' has changed in recent years. In all democratic dispensations the State has assumed the role of a regulator and provider of different kinds of services and benefits to the people like jobs, contracts, licences, plots of land, mineral rights and social security benefits. In his work "The Modern State" MacIver (1964 Paperback Edition) advocated that the State should be viewed mainly as a service corporation. When the Constitution was adopted, people of India resolved to constitute India into a Sovereign Democratic Republic. The words 'Socialist' and 'Secular' were added by the

A Constitution (Forty-second Amendment) Act, 1976 and also to secure to all its citizens Justice - social, economic and political, Liberty of thought, expression, belief, faith and worship; Equality of status and/or opportunity and to promote among them all Fraternity assuring the dignity
B of the individual and the unity and integrity of the Nation. The expression 'unity of the Nation' was also added by the Constitution (Forty-second Amendment) Act, 1976. The idea of welfare State is ingrained in the Preamble of the Constitution. Part III of the Constitution enumerates
C fundamental rights, many of which are akin to the basic rights of every human being. This part also contains various positive and negative mandates which are necessary for ensuring protection of the Fundamental Rights and making them real and meaningful. Part IV contains 'Directive Principles of State Policy' which are
D fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. Article 39 specifies certain principles of policy which are required to be followed by the State. Clause (b) thereof provides that the State shall, in particular, direct
E its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good. Parliament and Legislatures of the States have enacted several laws and the governments have, from time to
F time, framed policies so that the national wealth and natural resources are equitably distributed among all sections of people so that have-nots of the society can aspire to compete with haves. For achieving the goals of Justice and Equality set out in the Preamble, the State
G and its agencies/instrumentalities have to function through political entities and officers/officials at different levels. The laws enacted by Parliament and State Legislatures bestow upon them powers for effective implementation of the laws enacted for creation of an

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egalitarian society. The exercise of power by political entities and officers/officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for public good. In principle, no exception can be taken to the use of discretion by the political functionaries and officers of the State and/or its agencies/instrumentalities provided that this is done in a rational and judicious manner without any discrimination against anyone. In Indian constitutional structure, no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of rule of law. [Paras 15, 16, 18] [119-H; 120-D-H; 121-A-B; 122-C-E]

R.D. Shetty v. International Airport Authority of India **(1979) 3 SCC 489 – relied on.**

Ugar Sugar Works Ltd. v. Delhi Administration **(2001) 3 SCC 635;** *State of U.P. v. Chaudhary Ram Beer Singh* **(2005) 8 SCC 550;** *State of Orissa v. Gopinath Dash* **(2005) 13 SCC 495;** *Meerut Development Authority v. Association of Management Studies* **(2009) 6 SCC 171;** *State of Uttar Pradesh v. Bansi Dhar* **(1974) 1 SCC 447;** *Canbank Financial Services Ltd. v. Custodian* **(2004) 8 SCC 355;** *Harsh Dhingra v. State of Haryana* **(2001) 9 SCC 550 – referred to.**

Administrative Law' **(6th) Edition, Prof. H.W.R. Wade – referred to.**

1.4. The State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State

A and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy B must be implemented/executed by adopting a non-discriminatory or non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State C and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State. There cannot be any D policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for E grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be F treated as arbitrary, discriminatory and an act of favoritism and nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in G educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any

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such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution. The allotment of land by the State or its agencies/ instrumentalities to a body/organization/institution which carry the tag of caste, community or religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organisations/institutions on political considerations or by way of favoritism or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible. [Paras 31-34] [134-C-H; 135-A-G]

S.G. Jaisinghani v. Union of India **AIR 1967 SC 1427 – relied on.**

Padfield v. Minister of Agriculture, Fishery and Food **(1968) A.C. 997;** *Breen v. Amalgamated Engineering Union* **(1971) 2 QB 175;** *Laker Airways Ltd. v. Department of Trade* **1977 QB 643;** *V. Punnen Thomas v. State of Kerala* **AIR 1969 Ker. 81 (Full Bench);** *Eursian Equipments and Chemicals Ltd. v. State of West Bengal* **(1975) 1 SCC 70;** *Kasturi Lal Lakshmi Reddy v. State of J And K* **(1980) 4 SCC 1;** *Common Cause, A Registered Society v. Union of India* **(1996) 6 SCC 530;** *Shrilekha Vidyarthi v. State of U.P.* **(1991) 1 SCC 212;** *L.I.C. of India v. Consumer Education & Research Centre* **(1995) 5 SCC 482;** *New India Public School*

A *v. HUDA* **(1996) 5 SCC 510**; *Seven Seas Educational Society v. HUDA* **AIR 1996 P&H) 229 – referred to.**

2.1. Admittedly, the application for reservation of land was made by 'KJ', in his capacity as convener of the Memorial Trust. The respondents have not placed on record any document to show that on the date of application, the Memorial Trust was registered as a public trust. During the course of hearing also no such document was produced before the Court. It is also not in dispute that respondent No. 5 was registered as a public trust only on 6.10.2004 i.e. after the order for reservation of land in favour of the Memorial Trust was passed. The allotment was also initially made in the name of trust, but, later on, the name of respondent No. 5 was substituted in place of the Memorial Trust. The exercise for reservation of 30 acres land and allotment of 20 acres was not preceded by any advertisement in the newspaper or by any other recognized mode of publicity inviting applications from organizations/institutions like the Memorial Trust or respondent No.5 for allotment of land and everything was done by the political and non-political functionaries of the State as if they were under a legal obligation to allot land to the Memorial Trust and/or respondent No.5. The advertisements issued by the State functionaries were only for inviting objections against the proposed reservation and/or allotment of land in favour of the Memorial Trust and not for participation in the process of allotment. Therefore, allotment of land to respondent No.5 was not done after following a procedure consistent with Article 14 of the Constitution. [Para 35] [135-H; 136-A-F]

2.2. Although, the objectives of respondent No. 5 are laudable and the institute proposed to be established by it is likely to benefit an important segment of the society but the fact remains that all its trustees are members of a particular party and the entire exercise for the reservation

and allotment of land and waiver of major portion of the premium was undertaken because political functionaries of the State wanted to favour respondent No. 5 and the officers of the State at different levels were forced to toe the line of their political masters. [Para 36] [136-G-H]

2.3. There is no provision in the Act or the Rules and even in the RBC for allotment of land without issuing advertisement and/or without inviting applications from eligible persons to participate in the process of allotment. If there would have been such a provision in the Act or the Rules or the RBC the same could have been successfully challenged on the ground of violation of Article 14 of the Constitution. The argument that the impugned allotment may not be annulled because the State has a definite policy of allotting land to religious, social, educational and philanthropic bodies, organisations/institutions without any advertisement or inviting applications and without even charging premium is liable to be rejected. From the lists annexed with the affidavits, it did appear that the State and its functionaries have allotted various parcels of land to different institutions and organizations between 1982 to 2008. Large number of these allotments were made to the departments/establishments of the Central Government/ State Governments and their agencies/instrumentalities. Some plots were allotted to the hospitals and charitable institutions. Some were allotted to different political parties, but quite a few were allotted to the caste/ community based bodies. Allotments were also made without charging premium and at an annual rent of Re. 1/- only. These allotments cannot lead to an inference that the State Government has framed a well-defined and rational policy for allotment of land. The RBC also does not contain any policy for allotment of land without issuing any advertisement and without following a procedure in which all similarly situated persons can

A stake their claim for allotment. Part IV of the RBC contains the definition of Nazul land and provides for allotment of land at market price or concessional price. The authorities competent to allot land for different purposes have also been identified and provisions have
B been made for scrutiny of applications at different levels. However, these provisions have been misinterpreted by the functionaries of the State for several years as if the same empowered the concerned authorities to allot Nazul land without following any discernible criteria and in
C complete disregard to their obligation to act in accordance with the constitutional norms. Unfortunately, the High Court overlooked that the entire process of reservation of land and allotment thereof was fraught with grave illegality and was nothing but a blatant act of
D favoritism on the part of functionaries of the State and summarily dismissed the writ petition. [Paras 37 to 39] [137-A-H; 138-A-C]

3.1. Whether notifications dated 6.6.2008 and 5.9.2008 by which the Bhopal Development Plan was
E modified are ultra vires the provisions of Section 23-A of the Act.

3.1. A reading of the provisions contained in Chapter-IV of the Act would make it clear that a
F development plan shall take into account the draft-five year and annual development plan of the district, if any, prepared under the Madhya Pradesh Zila Yogana Samiti Adhiniyam and broadly indicated the land use proposed in the planning area, allocation of areas or zones of land
G for residential, industrial, commercial or agricultural purpose; open spaces, parks and gardens, green-belts, zoological gardens and playgrounds; public institutions and offices and other special purposes as the Director may deem it fit. The development plan prepared under Chapter IV is the foundation of development of the
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particular area for a specified number of years. No one can use land falling within the area for which the development plan has been prepared for a purpose other than for which it is earmarked. Section 23-A was inserted in 1992 and amended in 2005 with a view to empower the State Government to modify the development plan or zoning plan. However, keeping in view the basic objective of planned development of the areas to which the Act is applicable, the Legislature designedly did not give blanket power to the State Government to modify the development plan. The power of modification of development plan can be exercised only for specified purposes. In terms of Section 23-A(1)(a), the development plan can be modified by the State Government either suo motu or at the request of the Authority for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project relating to development of the State or for implementing a scheme of the Authority. Under clause (b), the State Government can entertain an application from any person or association of persons for modification of development plan for the purpose of undertaking any activity or scheme which is considered by the State Government or the Director, on the advice of the committee constituted for this purpose, to be beneficial to the society. This is subject to the condition that the modification so made shall be an integral part of the revised development plan. Section 23-A(2) provides for issue of public notice inviting objections against the proposed modification of the plan. Such notice is required to be published along with the modified plan continuously for two days in two daily newspapers which are on the list of the Government and which have circulation in the area. A copy of the notice is also required to be affixed in a conspicuous place in the office of the Collector. After considering the objections and

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A suggestions, if any received, and giving reasonable opportunity of hearing to the affected persons, the State Government can confirm the modification. [Para 40] [138-D-H; 139-A-F]

B 3.2. It is not in dispute that in the Bhopal Development plan, the use of land which was reserved and allotted to respondent No.5 was shown as public and semi public (health). The State Government modified the plan by invoking Section 23-A(1)(a) of the Act for the C purpose of facilitating establishment of an institute by respondent No. 5 and not for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project relating to development of the State or for implementation of the Town Development Scheme. As a matter of fact, the D exercise undertaken for the change of land use, which resulted in modification of the development plan was an empty formality because land had been allotted to respondent No.5 almost two years prior to the issue of notification under Section 23–A (1)(a) and the objects for E which respondent No.5 was registered as a trust have no nexus with the purpose for which modification of development plan can be effected under that section. Therefore, modification of the development plan was ultra vires the provisions of Section 23–A(1)(a) of the Act. [Para F 41] [139-G-H; 140-A-C]

3.3. The challenge to the locus standi of the appellant merits rejection because it has not been disputed that the appellant is a public spirited organization and has G challenged other similar allotment made in favour of Punjabi Samaj, Bhopal. Even if a person files a writ petition for vindication of his private interest but raises question of public importance involving exercise of power by men in authority then it is the duty of the Court to enquire into the matter. [Para 42] [140-D-E]

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Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi **(1987) 1 SCC 227 – relied on.**

3.4. The argument that the doctrine of prospective overruling should be invoked and the allotment made in favour of respondent No.5 may not be quashed sounds attractive but cannot be accepted because that the impugned allotment was held to be the result of an exercise undertaken in gross violation of Article 14 of the Constitution and was an act of favoritism and nepotism. The impugned order of the High Court is set aside and the writ petition filed by the appellant is allowed. The allotment of 20 acres land to respondent No.5 is declared illegal and quashed. Notifications dated 6.6.2008 and 5.9.2008 issued by the State Government under Section 23-A(1)(a) and (2) are also quashed. The Commissioner, Town and Country Planning, Bhopal is directed to take possession of the land and use the same strictly in accordance with the Bhopal Development Plan. The State Government is directed to refund the amount deposited by respondent No.5 within a period of 15 days. [Paras 43-45] [140-F-H; 141-A-E]

S.R. Dass v. State of Haryana **(1988 PLJ 123) – referred to.**

Case Law Reference:

(2001) 2 SCR 630	**referred to**	**Para 7**
(2005) 8 SCC 550	**referred to**	**Para 7**
(2005) 5 Suppl SCR 699	**referred to**	**Para 7**
(2009) 6 SCC 663	**referred to**	**Para 7**
(1974) 1 SCC 447	**referred to**	**Para 7**
(2004) 4 Suppl SCR 60	**referred to**	**Para 7**
(2001) 3 Suppl SCR 446	**referred to**	**Para 8**

A	(1968) A.C. 997	referred to	Para 20
	(1971) 2 QB 175	referred to	Para 21
	1977 QB 643	referred to	Para 22
B	1967 SCR 703	relied on	Para 23
	AIR 1969 Ker. 81	referred to	Para 24
	(1975) 2 SCR 674	referred to	Para 25
	(1980) 3 SCR 1338	referred to	Para 25
C	(1996) 6 Suppl SCR 719	referred to	Para 26
	(1990) 1 Suppl SCR 625	referred to	Para 28
	(1995) 1 Suppl SCR 349	referred to	Para 29
D	(1996) 3 Suppl SCR 597	referred to	Para 30
	AIR 1996 P&H) 229	referred to	Para 30
	(1987) 1 SCC 227	relied on	Para 42
E	(1988 PLJ 123)	referred to	Para 43

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2965 of 2011.

From the Judgment & Order dated 10.03.2008 of the High F Court of Judicature at Jabalpur (MP) in Writ Petition No. 10617 of 2007.

Raju Ramchandran, Santosh Kumar for the Appellant.

Ravi Shankar Prasad, Ranjit Kumar, B.S. Banthia, Vikas G Upadhyay, Navin Chawla, Tushar Singh for the Respondents.

The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. Leave granted.

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2. Whether the decision of the Government of Madhya Pradesh to allot 20 acres land comprised in Khasra Nos. 82/1 and 83 of village Bawadiya Kalan, Tehsil Huzur, District Bhopal to late Shri Kushabhau Thakre Memorial Trust (for short, "the Memorial Trust")/Shri Kushabhau Thakre Training Institute (respondent No. 5) without any advertisement and without inviting other similarly situated organisations/institutions to participate in the process of allotment is contrary to Article 14 of the Constitution and the provisions of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short, "the Act") and whether modification of the Bhopal Development Plan and change of land use is ultra vires the mandate of Section 23A of the Act are the questions which arise for consideration in this appeal filed against the order of the Madhya Pradesh High Court dismissing the Writ Petition filed by the appellant.

3. That facts necessary for deciding the aforementioned questions have been culled out from the pleadings of the parties and the records produced by the learned counsel for the State. The same are enumerated below:

(i) On 18.6.2004, Shri Kailash Joshi made a written request to the Principal Secretary, Housing Department, Government of Madhya Pradesh (for short, "the Principal Secretary, Housing") by describing himself as a Convenor of the Memorial Trust for reservation of 30 acres land comprised in Khasra Nos.83, 85/1 and 85/2 of village Bawadiya Kalan, in favour of the Memorial Trust to enable it to establish an All India Training Institute in the memory of late Shri Kushabhau Thakre.

(ii) Although, letter dated 18.6.2004 was addressed to the Principal Secretary, the same was actually handed over to Shri Babu Lal Gaur, the then Minister, Housing and Environment, Madhya Pradesh. He forwarded the same to the Principal Secretary for immediate action. The latter directed that steps be taken for placing the matter before the reservation committee. Simultaneously, letters were issued to

A Commissioner-cum-Director, Town and Country Planning, Bhopal (respondent No.3) and Collector, Bhopal (respondent No. 4) to send their respective reports.

(iii) Respondent No.3 submitted report dated 8.7.2004 indicating therein that as per Bhopal Development Plan, land comprised in Khasra Nos.83 and 85/1 was reserved for residential and plantation purposes and Khasra No.85/2 was non government land. After going through the same, the Principal Secretary, Housing opined that land cannot be reserved for the Memorial Trust. However, Shri Rajendra Shukla, State Minister, Housing and Environment recorded a note that he had requested the Coordinator of the trust to send a revised proposal to the Government and directed that the new proposal be put up before him.

(iv) In his report dated 26.7.2004, respondent No. 4 mentioned that land measuring 11.96 acres comprised in Khasra No.86 and land measuring 22.06 acres comprised in Khasra No.85/1 (total area 34.02 acres) was Nazool land and the same was recorded in the name of the State Government and Khasra No.85/2 belonged to Bhoomidar. He also mentioned that the land in question is covered by the Capital Project but there are no trees, religious structure or electricity lines, though a road was proposed by the Town and Country Planning Department.

(v) While the process initiated for reservation of land was at a preliminary stage, Shri Kailash Joshi submitted an application dated 31.7.2004 to the Registrar, Public Trust, Bhopal (for short, 'the Registrar') under the Madhya Pradesh Public Trusts Act, 1951 (for short 'the 1951 Act') for registration of a trust in the name of respondent No. 5 by escribing himself and S/Shri M. Venkaiah Naidu, Lal Krishna Advani, Balwant P. Apte and Sanjay Joshi as Trustees. In the application, Shri M. Venkaiah Naidu was shown as the first President of the trust and Shri Kailash Joshi as its Secretary and Managing Trustee.

(vi) After complying with the procedure prescribed under the 1951 Act, the Registrar passed order dated 6.10.2004 for registration of the trust. The certificate of registration was issued on 24.12.2004.

(vii) In the meanwhile, Shri Kailash Joshi sent letter dated 11.8.2004 to the Principal Secretary, Housing by describing himself as Managing Trustee of respondent No.5 and submitted fresh proposal for reservation of 30 acres land out of Khasra Nos.82/1 and 83 of village Bawadiya Kalan in favour of respondent No.5.

(viii) By letter dated 20.9.2004, respondent No. 3 informed the Secretary, Housing and Environment Department (respondent No.2) that 4665 acres land of villages Bawadiya Kalan and Salaiya had already been notified in Madhya Pradesh Gazette dated 2.5.2003 for town development scheme at Misrod. He also indicated that land in Khasra Nos.82 and 83 is included in the Scheme and notice to this effect had already been published under Section 50 of the 1973 Act.

(ix) After some time, respondent No.3 sent letter dated 3.9.2004 to the Principal Secretary, Housing and pointed out that in the Bhopal Development Plan, 2005, land comprised in Khasra No.82 of Bawadiya Kalan village is earmarked for public and semi-public (health) purpose and land comprised in Khasra No.83 is earmarked for residential purpose. He also indicated that out of the total area of Khasra No.83 i.e. 11.96 acres, 24 metre wide road is proposed and 33 metres land adjacent to the bank of Kaliasot river is included in the green belt and out of 6 acres land for residential purpose, 2 acres had been reserved for office of the Madhya Pradesh Sanskrit Board and thus, only 4 acres land was available. He sent another letter dated 21.9.2004 to the Principal Secretary, Housing mentioning therein that use of land comprised in Khasra No. 82/1 of village Bawadiya Kalan is shown as "health under public and semi-public" in the Bhopal Development Plan

A 2005 and use of the land comprised in Khasra No.83 is shown as residential and if land is to be allotted to the Memorial Trust, then the earlier land use will be required to be cancelled.

(x) However, without effecting change of land use by following the procedure prescribed under the Act, the State Government issued order dated 25.9.2004 and reserved 30 acres land comprised in Khasra Nos. 82/1 and 83 of village Bawadiya Kalan in favour of the Memorial Trust in anticipation of approval by the land reservation committee, which was duly granted.

(xi) As a sequel to the reservation of land, Deputy Secretary, Revenue Department vide his letter dated 30.9.2004 directed respondent No.4 to immediately send proposal to respondent No.3 for allotment of land to the Memorial Trust.

(xii) In view of the directive issued by the State Government, Tehsildar, Capital Project (Nazul), Bhopal, on being instructed to do so, issued advertisement dated 4.10.2004 and invited objections against the proposed allotment of 30 acres land to the Memorial Trust from Khasra Nos.82/1 and 83 of village Bawadiya Kalan. The same was published in "Dainik Pradesh Times". However just after two days, respondent No.4 vide his letter dated 8.10.2004 submitted proposal for allotment of 30 acres land to the Memorial Trust. In paragraph 6 of his letter, respondent No.4 clearly indicated that the land falls within the limits of Bhopal Municipal Corporation and, as such, in terms of Chapter IV-1 of the Madhya Pradesh Revenue Book Circular (for short, "the RBC") , the same should not be allotted at a price less than the minimum price. He also indicated that price of the land would be Rs.7,84,8000/-, of which 10 per cent should be deposited as a condition for allotment. After 2½ months, respondent No. 4 sent letter dated 23.12.2004 to the Additional Secretary, Revenue Department and informed him that the Memorial Trust has not deposited 10 per cent of the premium.

(xiii) On coming to know the aforesaid communications, Shri Kailash Joshi sent letters dated 19.2.20005 and 20.3.2005 to respondent No. 4 and Secretary, Revenue Department respectively and assured that the premium will be deposited immediately after the allotment of land.

(xiv) After about 8 months of the submission of proposal for allotment of 30 acres land to the Memorial Trust, Shri Kailash Joshi sent letter dated 16.5.2005 to respondent No. 4 mentioning therein that the institute would require only 20 acres land. Thereupon, Nazul Officer, Capital Project, Bhopal sent letter dated 24.6.2005 to Shri Kailash Joshi and informed him that the premium of 20 acres land would be Rs.5,22,72,000/- and 10 per cent thereof i.e. Rs.52,27,200/- should be deposited as earnest money. However, the needful was not done and only Rs. 25,00,000/- were deposited on behalf of respondent No. 5.

(xv) For next about seven months, the matter remained under correspondence between different departments of the State Government. During the interregnum, Shri Babu Lal Gaur became Chief Minister of the State. On 24.10.2005, he directed that matter relating to allotment of land to respondent No.5 be put up in the next meeting of the Cabinet scheduled to be held on 26.10.2005. On the same day, Secretary, Revenue Department submitted a detailed note and suggested that keeping in view the limited resources available with the State Government, land should be auctioned so that the administration may garner maximum revenue. His suggestion was not accepted by the Council of Ministers, which decided to allot 20 acres land in the name of the Memorial Trust at the rate of Rs.40 lakhs per hectare. The decision of the State Government was communicated to respondent No. 4 vide order dated 27.1.2006.

(xvi) As a sequel to the allotment of land, Nazul Officer, Capital Project vide his letter dated 29.2.2006 called upon Shri

A Kailash Joshi (Secretary of respondent No. 5) to deposit Rs. 55,94,000/-. However, instead of depositing the amount Shri Kailash Joshi addressed letter dated 31.3.2006 to the Revenue Minister with the request that the premium may be waived because the Institute was being established in public interest B and will be training the elected representatives and undertaking research on important issues and it will have no source of income. The political set up of the State Government readily obliged him inasmuch as the issue was considered in the meeting of Council of Ministers held on 9.5.2006 and it was C decided that the amount of Rs. 25,00,000/- may be treated as the total premium and land be given to the Memorial Trust by charging annual lease rent of Re.1 only. This decision was communicated to respondent No. 4 vide letter dated 19.6.2006.

D (xvii) Subsequently, on a representation made by Shri Kailash Joshi, orders/communications dated 25.9.2004, 27.1.2006 and 19.6.2006 were amended and the name of respondent No. 5 was inserted in place of the Memorial Trust. Thereafter, lease agreement dated 6.1.2007 was executed E between the State Government and Secretary of respondent No.5 in respect of 20 acres land for a period ending on 05.12.2037 at a premium of Rs. 25,00,000/- and an yearly rent of Re.1.

F (xviii) Since the use of land comprised in Khasra Nos. 82/1 and 83 of village Bawadiya Kala was shown in the Bhopal Development Plan as public and semi-public (health) and the same could not have been utilized for the purpose of respondent No. 5, the State Government issued notification G dated 6.6.2008 under Section 23-A(1)(a) of the Act proposing change of land use in respect of 19.75 acres land of Khasra No.82/1(part) of Village Bawadiya Kalan from public and semi-public (health) to public and semi public and invited objections/ suggestions. The notification was published in the Official Gazette and two newspapers, namely, "Dainik Bhaskar" and H

"Sandhya Prakash" dated 9th and 10th June, 2008. Five persons representing Bawadiya Uthaan Samiti, "Sangwari" - Society for the Resource Companion, Koshish Society, Neeraj Housing Society, Satpura Vigyan Sabha and Swadesh Developers and Colonizers filed their objections against the proposed change of land use. They were given opportunity of hearing by Deputy Secretary, Housing and Environment Department, who opined that the objections were untenable. Her recommendation was approved by the Secretary, Housing and Environment Department and the concerned Minister. Thereafter, final notification dated 5.9.2008 was issued under Section 23-A(2) of the Act.

4. The appellant, who is engaged in public welfare activities in general and consumers welfare in particular and claims to have received awards for good and meritorious performance including Swami Vivekananda Award challenged the allotment of land to respondent No.5 in Writ Petition No.10617 of 2007, on the grounds of violation of Article 14 of the Constitution and arbitrary exercise of power. The Division Bench of the High Court summarily dismissed the Writ Petition by observing that land belongs to the Government and it is for the Government to decide whom the same should be allotted as per its policy and no case of violation of any legal or constitutional right has been made out by the petitioner.

5. In response to the notice issued by this Court, counter dated 23.3.2010 was filed on behalf of respondent Nos.1 to 4 with an affidavit of Shri Kishore Kanyal, Nazul Officer/SDO, T.T. Nagar, Bhopal. After the arguments were heard on 3.1.2011, additional affidavit dated 10.1.2011 was filed by Shri Umashankar Bhargav, Nazul Officer, Bhopal giving the details of various proceedings which culminated in the allotment of land to the Memorial Trust, subsequent change in the name of the allottee and change of land use under Section 23-A. *Along with* his affidavit, Shri Umashankar Bhargav enclosed list showing allotment of land to various institutions, organizations and

A individuals and copy of order dated 28.10.2009 passed by the Division Bench of the High Court in Writ Petition No.4088 of 2009. In paragraph 13 of his affidavit, the deponent made a categorical statement that neither the petitioner nor any member of the public submitted any objection against the proposed
B change of land use.

On 13.1.2011, the Court directed the State Government to file an affidavit to show as to how many allotments have been made at an yearly rent of Re. 1/-. Thereupon, Shri Anil Srivastava, Principal Secretary, Revenue Department,
C Government of Madhya Pradesh filed an affidavit along with list of 69 institutions and organizations to whom land was allotted at an annual rent of Re. 1 only without charging any premium.

After the arguments were concluded, another affidavit of
D Shri Umashankar Bhargav was filed on 18.1.2011. He tendered apology for making a wrong statement in paragraph 13 of affidavit dated 10.1.2011 and filed copies of the following documents:

E i) Application dated 18.09.2007 made by Shri Kailash Joshi for erection of building in Khasra No. 82/1, Bawadiya Kalan;

ii) Letter dated 04.02.2008 sent by respondent No.3 to the Principal Secretary, Housing, proposing change of land use of
F Khasra No.82/1 (part) from public and semi public (health) and road to public and semi public and road;

iii) Paper publications dated 09.06.2008 and 10.06.2008;

G iv) Notice dated 04.08.2008 issued to the objectors;

v) Note-sheets dated 01.09.2009 and 02.09.2009 of the Housing and Environment Department;

vi) Letter dated 13.09.2006 sent by respondent No.4 to the
H Principal Secretary, Housing, letter dated 06.10.2006 issued

by the State Government for amending memo dated 25.09.2004 and letter dated 02.11.2006 sent by the State Government to respondent No.4 for amendment of orders dated 27.01.2006 and 19.06.2006. A

Learned counsel for the appellants also placed on record xerox copy of the cover page of Writ Petition No. 933 of 2005 filed by the appellant by way of public interest litigation challenging the allotment of land, which was reserved for park, lawn, parking and open spaces by Madhya Pradesh Housing Board to Punjabi Samaj, Bhopal as also copy of the interim order passed by the High Court whereby the allottee was restrained from raising further construction. B C

Arguments:

6. Shri Raju Ramchandran, learned senior counsel for the appellant, criticized the impugned order and argued that the High Court committed serious error by summarily dismissing the writ petition without examining and adjudicating the important questions of law relating to violation of Article 14 of the Constitution and the provisions of the Act and the Rules. Learned senior counsel submitted that the exercise undertaken by the State Government for reservation of land and allotment of a portion thereof to respondent No.5 without any advertisement and without adopting a procedure consistent with the doctrine of equality enshrined in Article 14 of the Constitution and waiver of a substantial portion of the premium are acts of gross favoritism and, therefore, the allotment in question should be declared as nullity. Shri Ramchandran then argued that the notifications issued by the State Government for change of land use are liable to be quashed because the same are ultra vires the provisions of Section 23A(1) and (2) of the Act. Learned senior counsel referred to notification dated 06.06.2008 to show that the same did not contemplate modification of Bhopal Development Plan for any proposed project of the Government of India or the State Government and D E F G H

its enterprise or for any proposed project relevant to development of the State or for implementing a scheme framed by the Town and Country Development Authority (for short 'the Authority') and argued that the development plan cannot be modified under Section 23A(1) for the benefit of a private individual, or group of persons or organization or institution. Learned senior counsel submitted that the notice issued under Section 23A(2) was incomplete inasmuch as the draft modified plan was not published so as to enable the members of public to effectively oppose the proposed modification of the development plan. In the end, Shri Ramchandran argued that the decision of the State Government to indirectly reserve the land in favour of Respondent No.5 with retrospective effect is liable to be quashed because as on the date of reservation the said respondent had not been registered as a trust.

7. Shri Ravi Shanker Prasad, learned senior counsel appearing for the State of Madhya Pradesh and other official respondents, challenged the locus standi of the appellant on the premise that the averments contained in the writ petition were vague to the core and the High Court rightly refused to entertain the same as a petition filed in public interest. Learned senior counsel then referred to the provisions of the Act, the Madhya Pradesh Government Rules of Business, the RBC and argued that the impugned allotment cannot be termed as arbitrary or vitiated due to violation of Article 14 because the State Government has a long standing policy of allotting land to social, cultural, religious, educational and other similar organizations/ institutions without issuing advertisement or inviting applications from the public. In support of this argument, learned senior counsel referred to the list of the allottees annexed with affidavit dated 10.1.2011 of Shri Umashankar Bhargav. Learned senior counsel relied upon the judgments of this Court in *Ugar Sugar Works Ltd. v. Delhi Administration* (2001) 3 SCC 635, *State of U.P. v. Chaudhary Ram Beer Singh* (2005) 8 SCC 550, *State of Orissa v. Gopinath Dash* (2005) 13 SCC 495 and *Meerut Development Authority v. Association of Management*

Studies (2009) 6 SCC 171 and argued that the Court cannot exercise the power of judicial review to nullify the policy framed by the State Government to allot Nazul land without advertisement. Shri Ravi Shanker Prasad referred to paragraph 26 of the RBC and argued that the State Government is possessed with the power to make allotment without charging premium or waive the same. Learned senior counsel then relied upon a passage from Chapter IV of the Law of Trusts and Charities by Atul M Setalvad, judgments of this Court in *State of Uttar Pradesh v. Bansi Dhar* (1974) 1 SCC 447 and *Canbank Financial Services Ltd. v. Custodian* (2004) 8 SCC 355 and argued that intention to create a trust was sufficient for making an application for reservation and allotment of land in favour of respondent No.5. He submitted that while making request for reservation of land in favour of the Memorial Trust, Shir Kailash Joshi had made it clear that the same will be used for establishing a training institute in the name of late Shri Khushabhau Thakre and this was a clear indication to the State Government that a trust will be created for managing the institute.

8. Shri Ranjit Kumar, learned senior counsel appearing for respondent No.5, submitted that this Court should not interfere with the impugned allotment because at every stage of the proceedings i.e. reservation of land, formation of trust and change of land use, objections were invited from public but at no stage the appellant had filed any objection. The learned counsel extensively referred to the RBC, the provisions of the Act and Madhya Pradesh Nagar Tatha Gram Nivesh Viksit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 (for short 'the Rules') and argued that the allotment of land to respondent No.5 and change of land use are not vitiated due to violation of any constitutional or legal principle warranting interference by the Court. Shri Ranjit Kumar relied upon Sections 3,5 and 6 of the Indian Trusts Act, 1882 and Sections 2,4,5,6,8,11,32 and 33 of the 1951 Act and argued that intention to create trust was sufficient to enable Shri

A Kailash Joshi to make applications for reservation and allotment of land in the name of the institute and, in any case, the appellant cannot take advantage of non-registration of the trust up to 6.10.2004 because on the date of actual allotment i.e. 27.01.2006 the trust stood registered. Learned senior counsel B also emphasized that once the trust was registered, the factum of registration will relate back to the date of application i.e. 31.07.2004, which was prior to the reservation of land by the State Government. In the end, Shri Ranjit Kumar submitted that the Court may not nullify the impugned allotment at the instance C of the appellant because it did not question hundreds of similar allotments made in favour of other organizations/institutions. Learned senior counsel also relied upon the judgment of this Court in *Harsh Dhingra v. State of Haryana* (2001) 9 SCC 550 and argued that the impugned allotment may not be quashed and the law which may be laid down by this Court should govern D the allotments, which may be made in future.

9. We have considered the respective submissions. For deciding the questions arising in the appeal, it will be useful to notice the relevant provisions of the Act, the Rules and the E RBC.

10. The Act was enacted to make provisions for planning and development and use of land; to make better provisions for the preparation of development plans and zoning plans with F a view to ensure that town planning schemes are made in a proper manner and they are effectively executed. The Act also provides for constitution of Town and Development Authority for proper implementation of Town and Country Development Plan and for the development and administration of special areas through Special Area Development Authority and also to make G provisions for the compulsory acquisition of land required for the purpose of the development plans and for achieving the objects of the Act. Chapter IV of the Act (Sections 13 to 19) contains provisions relating to planning areas and development plans. Under Section 13(1), the State Government is

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empowered to constitute planning areas for the purposes of the Act and define limits thereof. In terms of Section 13 (2), the State Government can alter the limits of the planning area, amalgamate two or more planning areas, divide any planning area into two or more planning areas and also declare that whole or part of the area constituting the planning area shall cease to be so. Section 14 casts a duty on the Director of Town and Country Planning to prepare an existing land use map, a development plan and do other activities specified in clauses (d) and (e) of that section. Section 15 contains the procedure for preparation of existing land use map. Section 16 lays down that after publication of the existing land use map under Section 15 no person shall change the use of any land or carry out any development of land for any purpose other than those indicated in the existing land use map without prior permission of the Director. It also lays down that no local authority or any officer or other authority shall grant permission for change in use of land in violation of the existing land use map. Section 17 (as amended by M.P. Act No. 8 of 1996) lays down that a development plan shall take into account any draft five-year and Annual Development plan of the district prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995 in respect of the planning area and shall broadly indicate the land use proposed in the planning area; allocate broadly areas or zones of land, keeping in view the regulations of natural hazard prone areas, for residential, industrial, commercial or agricultural purposes; open spaces, parks and gardens, green-belts, zoological gardens and playgrounds; public institutions and offices and such special purposes as the Director may consider proper. Other factors enumerated in clauses (c) to (j) are also required to be taken into consideration while preparing a development plan. Section 17-A(1) mandates the constitution of a Committee consisting of various persons specified in clauses (a) to (i) thereof. The role of the Committee is to hear the objections received after publication of the draft development plan under Section 18 and suggest modifications or alterations, if any. Section 18 provides for publication of the

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A draft development plan for inviting objections and suggestions from public. The objections and suggestions, if any, received are required to be placed before the Committee constituted under Section 17-A(1) which shall, after giving opportunity of hearing to the affected persons, suggest appropriate B modifications in the draft development plan. After receiving the report of the Committee, the Director is required to submit the development plan for approval of the Government. Section 19 provides for approval of the development plan with or without modifications by the State Government. In a given case the C State Government can return the development plan with a direction that fresh development plan be prepared. Where the State Government approves the development plan with modification, a notice is required to be published in the Gazette inviting objections and suggestions in respect of such D modification and final plan is to be published after considering the objections and suggestions, if any, received and giving opportunity of hearing to those desirous of being heard. In terms of sub-section (5) of Section 19 the development plan comes into operation from the date of publication of the notice in the Gazette. Chapter V deals with zoning plan. Section 20 lays E down that the local authority may, on its own motion, prepare a zoning plan after publication of the development plan. If the State Government sends a requisition for that purpose then also the local authority is required to prepare a zoning plan. Section 21 specifies the matters which are to be incorporated in the F zoning plan. By virtue of Section 22, the provisions of Sections 18 and 19 have been made applicable for the purpose of preparation, publication, approval and operation of zoning plan. Section 23(1) empowers the Director to undertake a review and evaluation of the development plan either on his own motion G or in terms of the directions given by the State Government. Likewise, under Section 23(4) the local authority can undertake review and evaluation of the zoning plan on its own motion or as per the direction of the State Government or the Director. Section 23-A was inserted in the Act by M.P. Act 22 of 1992

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and was substituted by M.P. Act 22 of 2005. In terms of Section 24(1), the overall control of development and use of land in the State vests in the State Government. Section 24(2) lays down that subject to the control of the State Government under sub-section (1) and the rules made under the Act, the overall control of development and use of land in the planning area shall vest in the Director from the date appointed by the State Government by notification. Sub-section (3) empowers the State Government to make rules to regulate control of development and use of land in planning area. Section 25(1) lays down that after coming into force of the development plan, the use and development of land shall be in accordance with the development plan. Section 26 lays down that after coming into operation of the development plan, no person shall change the use of any land or carry out any development without written permission of the Director. Proviso to this section contains some exceptions in which works can be carried out without prior permission of the Director. Chapter VII (Sections 38 to 63A) provides for establishment of Town and Country Development Authority and its status as a body corporate, constitution of the Authority, tenure and remuneration etc. of Chairman and Vice Chairman, appointment of Chief Executive Officer and other officers and servants. Section 49 specifies the factors which may be included in a town development scheme. Section 50 regulates preparation of a town development scheme and publication thereof in the Gazette etc. Section 58 empowers the authority to make regulation for disposal of developed lands, houses, buildings and other structures. This is subject to the rules which may be made by the State Government in this behalf. Section 85, which finds place in Chapter XI, confers power upon the State Government to make rules for carrying out the purposes of the Acts. For the sake of reference, Sections 14(a), (b), 15, 17(a), (b), 23-A, 25(1), 26 and 58 of the Act are reproduced below:

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> "14. **Director to prepare development plans.** —Subject to the provisions of this Act and the rules made thereunder,

A the Director shall, —

(a) prepare an existing land use map;

(b) prepare a development plan;

B **15. Existing land use maps -**

(1) The Director shall carry out the survey and prepare an existing land use map indicating the natural hazard prone areas] and, forthwith publish the same in such manner as may be prescribed together with public notice of the C preparation of the map and of place or places where the copies may be inspected, inviting objections and suggestions in writing from any person, with respect thereto within thirty days from the date of publication of such notice.

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(2) After the expiry of the period specified in the notice published under sub-section (1), the Director may, after allowing a reasonable opportunity of being heard to all such persons who have filed the objections or suggestions, E make such modifications therein as may be considered desirable.

(3) As soon as may be after the map is adopted with or without modifications the Director shall publish a public notice of the adoption of the map and the place or places F where the copies of the same may be inspected.

(4) A copy of the notice shall also be published in the Gazette and it shall be conclusive evidence of the fact that the map has been duly prepared and adopted.

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17. Contents of development plan.— A development plan shall take into account any draft five-year and Annual Development plan of the district prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995 (No. H 19 of 1995) in which the planning area is situated and shall,

(a) indicate broadly the land use proposed in the planning area;

(b) allocate broadly areas or zones of land, keeping in view the regulations for natural hazard prone areas, for–

(i) residential, industrial, commercial or agricultural, purpose;

(ii) open spaces, parks and gardens, green-belts, zoological gardens and playgrounds;

(iii) public institutions and offices;

(iv) such special purposes as the Director may deem fit;

23-A. Modification of Development Plan or zoning Plan by State Government in certain circumstances.–

(1)(a) The State Government may, on its own motion or on the request of a Town and Country Development Authority, make modification in the development plan or the zoning plan for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project related to development of the State or for implementing a scheme of a Town and Country Development Authority and the modification so made in the development plan or zoning plan shall be an integral part of the revised development plan or zoning plan.

(b) The State Government may, on an application from any person or an association of persons for modification of development plan or zoning plan for the purpose of undertaking an activity or scheme which is considered by the State Government or the Director, on the advice of the Committee constituted by the State Government for this purpose, to be beneficial to the society, make such modification in the development plan or zoning plan as may be deemed necessary in the circumstances of the

A case and the modification so made in the development plan or zoning plan shall be an integral part of the revised development plan or zoning plan.

(2) The State Government shall publish the draft of modified plan together with a notice of the preparation of the draft B modified plan and the place or places where the copies may be inspected, continuously for two days in such two daily newspapers which are in the approved list of Government for advertisement purpose having circulation in the area to which it relates and a copy thereof shall be C affixed in a conspicuous place in the office of the Collector, inviting objections and suggestions in writing from any person with respect thereto within fifteen days from the date of publication of such notice.

D After considering all the objections and suggestions as may be received within the period specified in the notice and shall, after giving reasonable opportunity to all persons affected thereby of being heard, the State Government shall confirm the modified plan.

E (3) The provisions of Sections 18, 19 and 22 shall not apply for modification made by the State Government."

25. Conformity with development plan. –(1) After the coming into force of the development plan, the use and F development of land shall conform to the provisions of the development plan:

[Provided that the [Director] may, as its discretion, permit the continued use of land for the purpose for which it was G being used at the time of the coming into operation of the development plan:]

Provided further than such permission shall not be granted for a period exceeding seven years from the date of coming into operation of the development plan.

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26. Prohibition of development without permission.- After the coming into operation of the development plan, no person shall change the use of any land or carry out any development of land without the permission in writing of the Director.

Provided that no such permission shall be necessary,-

(a)for carrying out works for the maintenance, repair or alteration of any building which does not materially alter the external appearance of the building;

(b)for carrying out of work for the improvement or maintenance of a highway, road or public street by the Union or State Government or an authority established under this Act or by a local authority having jurisdiction, provided that such maintenance or improvement does not change the road alignment contrary to the provisions of the development plan;

(c)for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes, cables, telephone or other apparatus including the breaking open of any street or other land for that purpose;

(d) for the excavation or soil-shaping in the interest of agriculture;

(e) for restoration of land to its normal use where land has been used temporarily for any other purposes;

(f) for use, for any purpose incidental to the use of building for human habitation, or any other building or land attached to such building;

(g) for the construction of a road intended to give access to land solely for agricultural purposes:

[Provided further that in a planning area to which rules made under sub-section (3) of Section 24 are made

A applicable, such permission may be given by such authority as may be provided in the said rules.]

58. Disposal of land, buildings and other development works.- Subject to such rules as may be made by 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."

11. In exercise of the powers conferred upon it under Section 58 read with Section 85, the State Government framed the Rules. Rule 3 declares that no Government land vested in or managed by the Authority shall be transferred except with the general or special sanction of the State Government. Rule 4 lays down that all other land i.e. "the Authority Land" shall be transferred in accordance with the following rules. Rule 5 prescribes four modes of transfer of the Authority land. These are:

(a) By direct negotiations with the party; or

(b) By public auction; or

(c) By inviting tenders; or

(d) Under Concessional terms."

Rules 5-A to 27 enumerate the steps required to be taken for transfer of land by different modes. Rule 28 lays down that transfer of the Authority land under Rule 27 shall be made on such terms and conditions as may be fixed by the Authority. Rules 29 to 48 provide for matters ancillary to the transfer of the Authority land i.e. execution of lease, payment of rent by the transferee etc.

12. What is significant to be noted is that there is no provision in the Act or the Rules for disposal and/or transfer of land in respect of which a regional plan or development plan

or zonal plan has been prepared. The only provision which has nexus with the Government land is contained in Rule 3 which, as mentioned above, imposes a bar against the transfer of Government land vested in or managed by the Authority except with the general or special sanction of the State Government.

13. We may now notice the relevant provisions of the RBC some of which have been relied upon by the learned senior counsel appearing for the respondents to justify the reservation and allotment of land in favour of respondent No. 5. Part IV of the RBC deals with the management and regulation of Nazul land falling within the limits of municipal corporations, municipal councils and notified areas; and transfer thereof by lease, sale etc. Paragraph 12 of this part lays down that Nazul land can be disposed of by way of permanent lease, temporary lease, on Bedawa karar, annual licence and also by transfer to the State Administration and department of any other State Government or Government of India or by vesting in any local authority. In terms of paragraph 13(1), permanent lease can be granted either by auction or without auction. Paragraph 13(2) enumerates the contingencies in which permanent lease cannot be granted by auction. These include when the land in question is used for religious, educational, co-operative, public or social purposes. Paragraph 14 provides for reservation of the plots which are sold with the approval of the State Government on the conditions separately decided for each such plot. Paragraph 17 specifies the authorities who are competent to pass orders in respect of Nazul land. Under this paragraph, the power to grant lease of Nazul land for educational institutions, playgrounds, hospitals and other public purposes on concessional rate as also the power to grant lease of Nazul land for 30 years or less with a right of renewal vests with the State Government, if the mode of disposal is otherwise than auction. The residuary power also vests with the State Government. Paragraph 18 lays down that a petition can be submitted to the higher authority against any order which may be passed by an officer subordinate to the State Government. Paragraph 19

A lays down that every application for permanent lease of Nazul land should be made to the District Collector along with the relevant documents, maps etc. Under paragraph 20, the Collector is empowered to reject the application by recording reasons. If the application is not rejected then the Collector has
B to adopt the procedure specified in clauses (a), (b), (c), (d), (e) and (f) of this paragraph. If the plot of land is to be sold by auction then the same is required to be advertised or publicized by a recognized method. Paragraph 21 prescribes the mode of auction of lease rights. Any persons, desirous of participating
C in the auction is required to deposit 10 per cent of the premium. Once the bid is approved by the competent authority, the bidder has to deposit the balance amount within 30 days. This paragraph also provides for forfeiture of the premium and recovery of the amount from the defaulter. Paragraph 23
D specifies the minimum premium for different categories of plots. Paragraph 24 lays down the procedure to be followed for disposal of plot without auction. If any plot is proposed to be transferred at a concessional premium then the approval of the State Government is sine qua non. In case, the Collector is
E satisfied that the plot of land should be given without auction then the allottee is required to pay premium equivalent to average market price determined on the basis of the sale instances of last five years. In terms of paragraph 25, the Collector is required to submit report to the Commissioner or to the Government through the Commissioner after scrutiny of
F the matter at different stages. Paragraph 26 lays down that when Nazul land is allotted to non-government organisations or persons on favourable terms then the conditions specified therein should be scrupulously observed and there should be rigorous scrutiny of the proposal. Under this paragraph, land
G can be allotted to educational, cultural and philanthropic institutions/organisations or Cooperative Societies, Housing Board and Special Area Authority constituted by the State Government. However, unregistered societies and private trusts are not eligible for allotment of land. This paragraph also

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contemplates allotment of land for religious purposes or to Jain Temple, Mosque, Church, Gurdwara etc. provided that there is no similar place within two kilometers of the site proposed to be allotted. Clause 1(a) and (b) of this paragraph prescribes the premium required to be paid by different types of bodies and institutions. Clause 3 prescribes the condition relating to construction of the building and Clause 5 provides for resumption of land in certain eventualities. By Circular No.6/16/91/Sat/SA/2B, the Government prescribed the revised rates for allotment of Nazul land to caste and non-caste based social, religious and philanthropic organizations, the organizations engaged in welfare of women, educational and cultural organizations, public hospitals, co-operative societies, agriculture market committee, municipal corporation etc. By Circular No. F.6-173/96/Sat/SA/2B/Nazul dated 31.5.1996, the State Government prescribed the premium and rent to be charged for allotment of land to caste based and social institutions. By Circular No. F No. 6-140/07/SAT/Nazul dated 31.8.2007, the State Government decided to allot land without charging any premium at an annual rent of Re. 1/- for housing schemes meant for slum dwellers.

14. We shall now consider whether the State Government could allot 20 acres of land to respondent No.5 without issuing an advertisement or adopting a procedure consistent with the doctrine of equality so as to enable other similar organizations/institutions to participate in the process of allotment.

15. The concept of 'State' has changed in recent years. In all democratic dispensations the State has assumed the role of a regulator and provider of different kinds of services and benefits to the people like jobs, contracts, licences, plots of land, mineral rights and social security benefits. In his work "The Modern State" MacIver (1964 Paperback Edition) advocated that the State should be viewed mainly as a service corporation. He highlighted difference in perception about the theory of State in the following words:

A "To some people State is essentially a class-structure, "an organization of one class dominating over the other classes"; others regard it as an organisation that transcends all classes and stands for the whole community. They regard it as a power-system. Some view
B it entirely as a legal structure, either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence, as a community "organised for action under legal rules". Some regard it as no more than a mutual insurance society,
C others as the very texture of all our life. Some class the State as a great "corporation" and others consider it as indistinguishable from society itself."

16. When the Constitution was adopted, people of India resolved to constitute India into a Sovereign Democratic
D Republic. The words 'Socialist' and 'Secular' were added by the Constitution (Forty-second Amendment) Act, 1976 and also to secure to all its citizens Justice - social, economic and political, Liberty of thought, expression, belief, faith and worship; Equality of status and/or opportunity and to promote among
E them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation. The expression 'unity of the Nation' was also added by the Constitution (Forty-second Amendment) Act, 1976. The idea of welfare State is ingrained in the Preamble of the Constitution. Part III of the Constitution
F enumerates fundamental rights, many of which are akin to the basic rights of every human being. This part also contains various positive and negative mandates which are necessary for ensuring protection of the Fundamental Rights and making them real and meaningful. Part IV contains 'Directive Principles
G of State Policy' which are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. Article 39 specifies certain principles of policy which are required to be followed by the State. Clause (b) thereof provides that the State shall, in particular, direct its policy
H towards securing that the ownership and control of the material

resources of the community are so distributed as best to subserve the common good. Parliament and Legislatures of the States have enacted several laws and the governments have, from time to time, framed policies so that the national wealth and natural resources are equitably distributed among all sections of people so that have-nots of the society can aspire to compete with haves.

17. The role of the Government as provider of services and benefits to the people was noticed in *R.D. Shetty v. International Airport Authority of India* (1979) 3 SCC 489 in the following words:

> "Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of

A acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largesse and with the increasing magnitude and range of
B governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges....."

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18. For achieving the goals of Justice and Equality set out in the Preamble, the State and its agencies/instrumentalities have to function through political entities and officers/officials at different levels. The laws enacted by Parliament and State Legislatures bestow upon them powers for effective
D implementation of the laws enacted for creation of an egalitarian society. The exercise of power by political entities and officers/officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for
E public good. In principle, no exception can be taken to the use of discretion by the political functionaries and officers of the State and/or its agencies/instrumentalities provided that this is done in a rational and judicious manner without any discrimination against anyone. In our constitutional structure, no
F functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of rule of law.

G 19. In his work 'Administrative Law' (6th) Edition, Prof. H.W.R. Wade, highlighted distinction between powers of public authorities and those of private persons in the following words:

"... The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered

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discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, no absolutely - that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms."

Prof. Wade went on to say:

"..... *The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.*

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law; it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities: it applies no less to ministers of the Crown. Nor is it confined to the sphere of administration: it operates wherever discretion is given for some public purpose, for example where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly this can have no application in public law.

For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is

A capable of abuse, and that legal limits to every power are to be found somewhere."

(emphasis supplied)

20. *Padfield v. Minister of Agriculture, Fishery and Food* B (1968) A.C. 997, is an important decision in the area of administrative law. In that case the Minister had refused to appoint a committee to investigate the complaint made by the members of the Milk Marketing Board that majority of the Board had fixed milk prices in a way that was unduly unfavourable to C the complainants. The Minister's decision was founded on the reason that it would be politically embarrassing for him if he decided not to implement the committee's decision. While rejecting the theory of absolute discretion, Lord Reid observed:

D "Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a E matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reasons, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if F persons aggrieved were not entitled to the protection of the court."

21. In *Breen v. Amalgamated Engineering Union* (1971) 2 QB 175, Lord Denning MR said:

G "The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevantly. It its decision is influenced by extraneous considerations which H it ought not to have taken into account, then the decision

cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by Padfield v. Minister of Agriculture, Fisheries and Food which is a landmark in modern administrative law."

22. In *Laker Airways Ltd. v. Department of Trade* 1977 QB 643, Lord Denning discussed prerogative of the Minister to give directions to Civil Aviation Authorities overruling the specific provisions in the statute in the time of war and said:

"Seeing that prerogative is a discretion power to be exercised for the public good, it follows that its exercise can be examined by the Courts just as in other discretionary power which is vested in the executive."

23. This Court has long ago discarded the theory of unfettered discretion. In *S.G. Jaisinghani v. Union of India* AIR 1967 SC 1427, Ramaswami, J. emphasised that absence of arbitrary power is the foundation of a system governed by rule of law and observed:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey-"Law of the Constitution" - Tenth Edn., Introduction ex.). 'Law has reached its finest moments', stated Douglas, J. in United States v. Underlick (1951 342 US 98:96 Law Ed 113),

A "when it has freed man from the unlimited discretion of some ruler..... Where discretion is absolute, man has always suffered'. It is in this sense that the rule of law maybe said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of
B John Wilkes (1770 98 ER 327),'means sound discretion guided by law. It must be governed by rule, not humour it must not be arbitrary, vague and fanciful"

24. In *Ramana Dayaram Shetty v. International Airport Authority of India* (supra), Bhagwati, J. referred to an article by
C Prof. Reich "The New Property" which was published in 73 Yale Law Journal. In the article, the learned author said, "that the Government action be based on standard that are not arbitrary or unauthorized." The learned Judge then quoted with approval the following observations made by Mathew, J. (as he then was)
D in *V. Punnen Thomas v. State of Kerala* AIR 1969 Ker. 81 (Full Bench):

"The Government is not and should not be as free as an individual in selecting recipients for its largesses. Whatever
E its activities, the Government is still the Government and will be subject to the restraints inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal."

F Bhagwati, J. also noticed some of the observations made by Ray, C.J. in *Eursian Equipments and Chemicals Ltd. v. State of West Bengal* (1975) 1 SCC 70 who emphasized that when the Government is trading with public the democratic form of Government demands equality and absence of arbitrariness
G and discrimination in such transactions and held:

".....This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must,
H therefore, be taken to be the law that where the Government

is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. *The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.*"

(emphasis supplied)

25. In *Kasturi Lal Lakshmi Reddy v. State of J And K* (1980) 4 SCC 1, Bhagwati J. speaking for the Court observed:

"Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government *cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so.* Such

A considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people
B deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account
C by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But
D one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy
E one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy
F considerations which must necessarily weigh with the Government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. *But where it is so*
G *satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by*
H *the rule of law that governmental action must be kept*

> *within the limits of the law and if there is any transgression, the court must be ready to condemn it.* It is a matter of historical experience that there is a tendency in every Government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides."
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> (emphasis supplied)

26. In *Common Cause, A Registered Society v. Union of India* (1996) 6 SCC 530 the two Judge Bench considered the legality of discretionary powers exercised by the then Minister of State for Petroleum and Natural Gas in the matter of allotment of petrol pumps and gas agencies. While declaring that allotments made by the Minister were wholly arbitrary, nepotistic and motivated by extraneous considerations the Court said:

> "The Government today — in a welfare State — provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people."

A 27. The Court also referred to the reasons recorded in the orders passed by the Minister for award of dealership of petrol pumps and gas agencies and observed:

> "24.....While Article 14 permits a reasonable
> B classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/ procedure has to be evolved so that the choice among the
> C members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is
> D available, there should be clear, transparent and objective criteria/procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the
> E stage of calling for the applications up to the stage of passing the orders of allotment."

28. In *Shrilekha Vidyarthi v. State of U.P.* (1991) 1 SCC 212, the Court unequivocally rejected the argument based on
F the theory of absolute discretion of the administrative authorities and immunity of their action from judicial review and observed:

> ".... We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the
> G professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are

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different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals..... A B

Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14. C D

It can no longer be doubted at this point of time that Article of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See *Ramana Dayaram Shetty v. The International Airport Authority of India* [(1979) 3 SCR 1014: AIR 1979 SC 1628] and *Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir* [(1980) 3 SCR 1338: AIR 1980 SC 1992], In *Col. A.S. Sangwan v. Union of India* [(1980 (Supp) SCC 559 : AIR 1981 SC 1545], while the discretion to change the policy in exercise of the executive power, when not trammelledly the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action E F G H

A qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose."

B 29. Similarly, in *L.I.C. of India v. Consumer Education & Research Centre* (1995) 5 SCC 482, the Court negatived the argument that exercise of executive power of the State was immune from judicial review and observed:

C "..... Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element becomes open to challenge. If it is shown that the exercise D of the power is arbitrary, unjust and unfair it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their E actions as private citizens, similicitor, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by traditional or irrelevant considerations.....

This Court has rejected the contention of an instrumentality F or the State that its action is in the private law field and would be immune from satisfying the tests laid under Article 14. The dichotomy between public law and private law rights and remedies, though may not be obliterated by any straight jacket formula, it would depend upon the G factual matrix. The adjudication of the dispute arising out of a contract would, therefore, depend upon facts and circumstances in a given case. The distinction between public law remedy and private law filed cannot be demarcated with precision. Each case will be examined H on its facts and circumstances to find out the nature of the

activity, scope and nature of the controversy. The distinction between public law and private law remedy has now become too thin and practicably obliterated..... A

In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest." B C D

30. In *New India Public School v. HUDA* (1996) 5 SCC 510, this Court approved the judgment of the Division Bench of the Punjab and Haryana High Court in *Seven Seas Educational Society v. HUDA* AIR 1996 (P&H) 229 : (1996) 113 PLR 17, whereby allotment of land in favour of the appellants was quashed and observed: E

".... A reading thereof, in particular Section 15(3) read with Regulation 3(c) does indicate that there are several modes of disposal of the property acquired by HUDA for public purpose. One of the modes of transfer of property as indicated in Sub-section (3) of Section 15 read with sub-regulation (c) of Regulation 5 is public auction, allotment or otherwise. When public authority discharges its public duty the word "otherwise" would be construed to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration. It would F G H

A depend upon the nature of the scheme and object of public purpose sought to be achieved. In all cases relevant criterion should be pre-determined by specific rules or regulations and published for the public. Therefore, the public authorities are required to make necessary specific B regulations or valid guidelines to exercise their discretionary powers, otherwise, the salutory procedure would be by public auction. The Division Bench, therefore, has rightly pointed out that in the absence of such statutory regulations exercise of discretionary power to allot sites C to private institutions or persons was not correct in law."

31. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the D State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be E implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/ F instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

G 32. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land H

or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

33. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/ organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.

34. The allotment of land by the State or its agencies/ instrumentalities to a body/organization/institution which carry the tag of caste, community or religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organisations/ institutions on political considerations or by way of favoritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible.

35. We may now revert to the facts of this case. Admittedly,

A the application for reservation of land was made by Shri Kailash Joshi, in his capacity as convener of Memorial Trust. The respondents have not placed on record any document to show that on the date of application, the Memorial Trust was registered as a public trust. During the course of hearing also B no such document was produced before the Court. It is also not in dispute that respondent No. 5 was registered as a public trust only on 6.10.2004 i.e. after the order for reservation of land in favour of the Memorial Trust was passed. The allotment was also initially made in the name of trust, but, later on, the name C of respondent No. 5 was substituted in place of the Memorial Trust. The exercise for reservation of 30 acres land and allotment of 20 acres was not preceded by any advertisement in the newspaper or by any other recognized mode of publicity inviting applications from organizations/institutions like the D Memorial Trust or respondent No.5 for allotment of land and everything was done by the political and non-political functionaries of the State as if they were under a legal obligation to allot land to the Memorial Trust and/or respondent No.5. The advertisements issued by the State functionaries were only for inviting objections against the proposed E reservation and/or allotment of land in favour of the Memorial Trust and not for participation in the process of allotment. Therefore, it is not possible to accept the argument of Shri Ranjit Kumar that land was allotted to respondent No.5 after following a procedure consistent with Article 14 of the F Constitution.

36. Although, the objectives of respondent No. 5 are laudable and the institute proposed to be established by it is likely to benefit an important segment of the society but the fact G remains that all its trustees are members of a particular party and the entire exercise for the reservation and allotment of land and waiver of major portion of the premium was undertaken because political functionaries of the State wanted to favour respondent No. 5 and the officers of the State at different levels H were forced to toe the line of their political masters.

37. At the cost of repetition, we consider it necessary to reiterate that there is no provision in the Act or the Rules and even in the RBC for allotment of land without issuing advertisement and/or without inviting applications from eligible persons to participate in the process of allotment. If there would have been such a provision in the Act or the Rules or the RBC the same could have been successfully challenged on the ground of violation of Article 14 of the Constitution.

38. The argument of Shri Ravi Shanker Prasad that the impugned allotment may not be annulled because the State has a definite policy of allotting land to religious, social, educational and philanthropic bodies, organisations/institutions without any advertisement or inviting applications and without even charging premium is being mentioned only to be rejected. From the lists annexed with the affidavits of Shri Uma Shankar Bhargav and Shri Anil Srivastava it does appear that the State and its functionaries have allotted various parcels of land to different institutions and organizations between 1982 to 2008. Large number of these allotments have been made to the departments/establishments of the Central Government/State Governments and their agencies/instrumentalities. Some plots have been allotted to the hospitals and charitable institutions. Some have been allotted to different political parties, but quite a few have been allotted to the caste/community based bodies. Allotments have also been made without charging premium and at an annual rent of Re. 1/- only.

39. In our view, these allotments cannot lead to an inference that the State Government has framed a well-defined and rational policy for allotment of land. The RBC also does not contain any policy for allotment of land without issuing any advertisement and without following a procedure in which all similarly situated persons can stake their claim for allotment. Part IV of the RBC contains the definition of Nazul land and provides for allotment of land at market price or concessional price. The authorities competent to allot land for different

purposes have also been identified and provisions have been made for scrutiny of applications at different levels. However, these provisions have been misinterpreted by the functionaries of the State for several years as if the same empowered the concerned authorities to allot Nazul land without following any discernible criteria and in complete disregard to their obligation to act in accordance with the constitutional norms. Unfortunately, the Division Bench of the High Court overlooked that the entire process of reservation of land and allotment thereof was fraught with grave illegality and was nothing but a blatant act of favoritism on the part of functionaries of the State and summarily dismissed the writ petition.

40. The next question which needs consideration is whether notifications dated 6.6.2008 and 5.9.2008 by which the Bhopal Development Plan was modified are ultra vires the provisions of Section 23-A of the Act. A reading of the provisions contained in Chapter-IV of the Act makes it clear that a development plan shall take into account the draft-five year and annual development plan of the district, if any, prepared under the Madhya Pradesh Zila Yogana Samiti Adhiniyam and broadly indicate the land use proposed in the planning area, allocation of areas or zones of land for residential, industrial, commercial or agricultural purpose; open spaces, parks and gardens, green-belts, zoological gardens and playgrounds; public institutions and offices and other special purposes as the Director may deem it fit. The development plan shall also lay down the pattern of National and State Highways connecting the planning area with the rest of the region, ring roads, arterial roads and the major roads within the planning area etc. The development plan prepared under Chapter IV is the foundation of development of the particular area for a specified number of years. No one can use land falling within the area for which the development plan has been prepared for a purpose other than for which it is earmarked. Section 23-A was inserted in 1992 and amended in 2005 with a view to empower the State Government to modify the development plan or zoning plan.

However, keeping in view the basic objective of planned development of the areas to which the Act is applicable, the Legislature designedly did not give blanket power to the State Government to modify the development plan. The power of modification of development plan can be exercised only for specified purposes. In terms of Section 23-A(1)(a), the development plan can be modified by the State Government either suo motu or at the request of the Authority for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project relating to development of the State or for implementing a scheme of the Authority. Under clause (b), the State Government can entertain an application from any person or association of persons for modification of development plan for the purpose of undertaking any activity or scheme which is considered by the State Government or the Director, on the advice of the committee constituted for this purpose, to be beneficial to the society. This is subject to the condition that the modification so made shall be an integral part of the revised development plan. Section 23-A(2) provides for issue of public notice inviting objections against the proposed modification of the plan. Such notice is required to be published along with the modified plan continuously for two days in two daily newspapers which are on the list of the Government and which have circulation in the area. A copy of the notice is also required to be affixed in a conspicuous place in the office of the Collector. After considering the objections and suggestions, if any received, and giving reasonable opportunity of hearing to the affected persons, the State Government can confirm the modification.

41. It is not in dispute that in the Bhopal Development plan, the use of land which was reserved and allotted to respondent No.5 was shown as public and semi public (health). The State Government modified the plan by invoking Section 23-A(1)(a) of the Act for the purpose of facilitating establishment of an institute by respondent No. 5 and not for any proposed project

A of the Government of India or the State Government and its enterprises or for any proposed project relating to development of the State or for implementation of the Town Development Scheme. As a matter of fact, the exercise undertaken for the change of land use, which resulted in modification of the B development plan was an empty formality because land had been allotted to respondent No.5 almost two years prior to the issue of notification under Section 23–A (1)(a) and the objects for which respondent No.5 was registered as a trust have no nexus with the purpose for which modification of development C plan can be effected under that section. Therefore, there is no escape from the conclusion that modification of the development plan was ultra vires the provisions of Section 23–A(1)(a) of the Act.

D 42. The challenge to the locus standi of the appellant merits rejection because it has not been disputed that the appellant is a public spirited organization and has challenged other similar allotment made in favour of Punjabi Samaj, Bhopal, That apart, as held in *Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi* (1987) 1 SCC 227 even if a person files a writ E petition for vindication of his private interest but raises question of public importance involving exercise of power by men in authority then it is the duty of the Court to enquire into the matter.

F 43. The argument of Shri Ranjit Kumar that the doctrine of prospective over ruling should be invoked and the allotment made in favour of respondent No.5 may not be quashed sounds attractive but cannot be accepted because we have found that the impugned allotment is the result of an exercise undertaken in gross violation of Article 14 of the Constitution and is an act G of favoritism and nepotism. The judgment in *Harish Dhingra v. State of Haryana* (supra) on which reliance was placed by Shri Ranjit Kumar is clearly distinguishable. In that case the Court had noted that plots had been allotted by the Chief Minister out of his discretionary quota in the backdrop of an H

earlier judgment of the Division Bench of the High Court in *S.R. Dass v. State of Haryana* (1988 PLJ 123) and several allottees had altered their position. A

44. In view of the above discussion, we do not consider it necessary to deal with the argument of Shri Ravi Shanker Prasad and Shri Ranjit Kumar that the land could have been allotted to the Memorial Trust even though it has not been registered as a trust under the 1951 Act or the Indian Trusts Act. B

45. In the result, the appeal is allowed. The impugned order of the Division Bench of the High Court is set aside and the writ petition filed by the appellant is allowed. The allotment of 20 acres land to respondent No.5 is declared illegal and quashed. Notifications dated 6.6.2008 and 5.9.2008 issued by the State Government under Section 23-A(1)(a) and (2) are also quashed. Commissioner, Town and Country Planning, Bhopal is directed to take possession of the land and use the same strictly in accordance with the Bhopal Development Plan. The State Government is directed to refund the amount deposited by respondent No.5 within a period of 15 days from today. C D E

D.G. Appeal allowed.