[Reportable]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7184-7185 OF 2013

J.S. Luthra Academy & Another .....Appellants

Versus

State of Jammu and Kashmir & Others .....Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

The judgment of the Division Bench of the High Court of Jammu and Kashmir at Jammu in L.P.A. (OW) No. 38/2008 and L.P.A. (OW) No. 39/2008 dated 01.04.2009 is the subject matter of these appeals.

2. The brief facts leading to these appeals are that the Appellant-J.S. Luthra Academy (hereinafter referred to as the 'Academy'), an educational institution, initially was situated on a Wakf property in Jammu. Vide order dated 27.12.1995 of the

authority constituted under the J&K Wakf Act, 1978, the said educational institution was ordered to be evicted from the Wakf property. Against the said order, the Academy approached the Jammu & Kashmir Special Tribunal, and an interim order of stay on eviction was granted by the tribunal on 09.01.1996. During the interregnum, the Academy made representations to the State Government requesting for allotment of a piece of land at any place mentioned in the representations for shifting and running the school. The concerned minister in the meeting dated 14.1.1998 considered the question of allotment of land in favour of the Academy. Subsequently, a note was prepared by the Managing Director of the J & K Housing Board on 25.1.1999, proposing that the Board had 4 kanals of land in Sector 2 of Channi Himmat, Jammu earmarked for schools which could be considered for allotment to the Appellant at Rs. 8,00,000/- per kanal. In a subsequent meeting on 29.4.1999 after completion of formalities, four kanals in Sector 2 of Channi Himmat were alloted to the Academy at Rs. 8,00,000/- per kanal on lease for 40 years and the Academy was directed to deposit 50% of the said amount, the remaining amount to be deposited subsequently. In a meeting dated 28.6.2000, a decision was

taken by the J & K Housing Board in pursuance of the orders of the Chief Minister, that two kanals of land would be allotted to the Academy at the rate of Rs. 8,00,000/- per kanal and the other two kanals free of cost. Further, in a Cabinet meeting dated 18.8.2000, it was decided that the Jammu Development Authority was to be compensated for the free allocation of land in the form of allotment of alternate land to the Authority. The allotment of land to the Academy was sanctioned by the Principal Secretary, Government of J&K, vide letter dated 24.8.2000. The Academy finally paid a total of Rs.16,00,000/- for two kanals of land and obtained two more kanals free of cost. A lease deed was executed, and possession was handed over on 12.12.2001. The Academy constructed the school building thereon and the school is being run on this premises, having shifted from the wakf property.

3. The residents of Channi Himmat vide Writ Petition No. 1093 of 2002 questioned the allotment made in favour of the Academy, on the ground that the piece of land was meant for a playground but the same was allotted to the Academy in violation of the original scheme and plan of the Channi Himmat Housing Colony.

One Mr. Naresh Kumar, a proprietor of the United Public School situated at Channi Himmat, filed a writ petition being O.W.P. No. 10/2003, questioning the allotment made in favour of the Academy on the ground that the property ought to have been auctioned by the Government, so that he could have also applied for the allotment of the plot, which he required for the upgradation of his school to the higher secondary level. Both the writ petitions were clubbed, heard and decided together by the learned Single Judge of the High Court and were dismissed. However, the Division Bench by the impugned judgment set aside the order of the Single Judge and allowed the writ petitions and consequently quashed the allotment made in favour of the Academy with the following observations:

> "The board is directed to hold public auction of the land for the purpose of leasing the same out on the same terms and conditions it had leased it to the private respondent, except that the premium thereof shall be fixed at the highest price to be obtained at such auction to be held by inviting people interested in setting up of a secondary school on the plot of land in question by publishing at least two advertisements in newspapers widely circulated in Jammu and also published therefrom. The Board is directed to fix the minimum bid price at Rs.16.00 lacs plus the cost of construction ascertained in the manner as above. In the event the bid to be had at the public auction does not exceed the minimum reserved bid price, the Board

> shall execute a fresh lease in favour of the private respondent upon obtaining payment of Rs.16.00 lacs from him. In the event the bid price to be had at the auction exceeds the minimum reserved bid price and the same is not given by the private respondent, the Board shall give an opportunity to the private respondent to meet the same and, if he meets the same, to execute the lease in favour of the private respondent upon accepting the amount of such bid, less the cost of construction ascertained in the manner as above, as premium. In the event the private respondent fails to match the bid price, the Board shall grant the lease in favour of the highest bidder and from the amount so to be received, first pay the cost of construction ascertained in the manner as above to the private respondent."

4. The contesting respondents herein, i.e., the original writ petitioners who were before the learned Single Judge and the Division Bench, have chosen to remain absent before this Court despite service of notice on them. Heard the learned counsel for the Academy, the State and the Housing Board. Learned counsel for the Academy taking us through the material on record submitted that the allotment of the site was done following due procedure. The Academy was asked to vacate the wakf property, where it was running the school earlier, since the wakf wanted the property for its personal purposes. As the school was catering to the needs of hundreds of students and as it was being run successfully, the Managing Committee of the Academy did not

want to close the academy, inasmuch as the closure would have been detrimental to the interests of the students. The Cabinet being competent to allot the land had duly considered the matter and had taken the decision on 18.8.2000 to allot the land to the Appellant keeping in mind the plight of the students and urgency of the matter inasmuch as the school had to be shifted at an early date. The sum and substance of the argument of the Academy, the State and the Housing Board is that the allotment was made keeping in mind the public interest at large and the personal interest of any personality involved in running the Academy was not given any importance at all.

5. Learned Advocate for the State of Jammu and Kashmir submitted that the allotment of 2 Kanals of land to the Appellant free of cost was a policy decision of the Government inasmuch as such allotment was in the nature of an exchange for eviction of the Appellant, who was running a school on the Wakf land in the main city area. The object was twofold, *firstly*, to ensure continuity of the school/public purpose, and *secondly*, to expeditiously evict the appellant from the wakf land and consequently, free such land from prolonged litigation. He

further submitted that neither was there any violation of any policy for allotment of land to educational institutions in the State of Jammu and Kashmir at the relevant time, nor was there any loss caused to the State qua the 2 Kanals of land (out of total 4 Kanals of land) that was allotted to the Appellant. Under such facts and circumstances of the case, he argued that the judgment of this Court in the case of *Institute of Law Chandigarh v. Neeraj Sharma,* (2015) 1 SCC 720 wherein the allotment of land to an educational institution without inviting competitive bidding was cancelled is distinguishable on two counts:

a) At para 32 of the judgment, the Development authority was found not to have adhered to the applicable policy, i.e. the allotment of land to Educational Institutions (Schools), etc. on lease hold basis in Chandigarh Scheme, 1996 for allotment of land.

b) At Para 17 of the judgment it is recorded that the audit department of the UT Chandigarh Administration found that the allotment caused a loss of Rs.139 crores to the public exchequer.

Lastly, he submitted that the allotted land was earmarked for schools and playfields in the Master Plan and hence, there was no violation of the Master Plan in allotment of land to the Appellant.

6. This Court in a series of cases including *Centre for Public Interest Litigation v. Union of India,* 2012 3 SCC 1 (popularly known as the "2G case"), in *Natural Resources Allocation, In Re. Special Reference* No. of 1/2012, (2012) 10 SCC 1, *Manohar Lal Sharma v. Principal Secy.*, (2014) 9 SCC 516, *Bharti Airtel Limited v. Union Of India*, (2015) 12 SCC 1, and *Goa Foundation v. Sesa Sterlite Ltd.*, (2018) 4 SCC 218 has formulated the guidelines for allocation of natural resources by the State. In *Bharti Airtel Ltd. v. Union of India*, (2015) 12 SCC 1, this Court summed up the principles governing the allocation of natural resources by the State laid down in *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1 ("the 2G case") as follows:

> "41. The licensor/Union of India does not have the freedom to act whimsically. As pointed out by this Court in 2G Case [Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1] in the above-extracted paragraph, the authority of the Union is fettered by two constitutional limitations:
>
> *firstly, that any decision of the State to grant access to natural resources, which belong to the people, must ensure that the people are adequately compensated and, secondly, the process by which such access is granted must be just, non-arbitrary and transparent, vis-à-vis private parties seeking such access.*"

(emphasis supplied)

Referring to the observations in the 2G case, the Court also highlighted that the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest, and that it must always adopt a rational method for disposal of public property, and ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in national/public interest.

The principles governing the distribution of natural resources by the State were also discussed in the decision of the constitutional bench of this Court in *Natural Resources Allocation, In Re, Special Reference No. 1 of 2012*, (2012) 10 SCC 1. In para 149 thereof, the Court observed as follows:

> "149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than

> those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution."

This decision emphasised that the ultimate goal to be served was that of the public good, and all methods of distribution of natural resources that ultimately served the public good would be valid, as reflected in the following observations:

> "120. …There is no constitutional imperative in the matter of economic policies—Article 14 does not predefine any economic policy as a constitutional mandate. Even the mandate of Article 39(*b*) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."

It would be useful to note at this juncture that in this decision, the Court assessed the position of law developed through a catena of decisions, including *Netai Bag* & Ors. *v. State of W.B. & Ors.*, (2000) 8 SCC 262, *5 M&T Consultants v. S.Y. Nawab*, (2003) 8 SCC 100, and *Villianur Iyarkkai Padukappu Maiyam v. Union of*

India, (2009) 7 SCC 561, wherein it has been held that non-floating of tenders or holding of auction by itself is not sufficient to hold that the exercise of power was arbitrary. It would be useful to reproduce the following observations from *Netai Bag* (supra), which were also relied upon by the Court in *Natural Resources Allocation, In Re* (supra) to highlight that the ultimate test is only that of fairness of the decision-making process and compliance with Article 14 of the Constitution:

> "19. … There cannot be any dispute with the proposition that generally when any State land is intended to be transferred or the State largesse decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people. That would be a sure method of guaranteeing compliance with the mandate of Article 14 of the Constitution. Non-floating of tenders or not holding of public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner. Making an exception to the general rule could be justified by the State executive, if challenged in appropriate proceedings. The constitutional courts cannot be expected to presume the alleged irregularities, illegalities or unconstitutionality nor can the courts substitute their opinion for the bona fide opinion of the State executive. The courts are not concerned with the ultimate decision but only with the fairness of the decision-making process."

The above principles were also reiterated in *Manohar Lal Sharma* (supra), wherein this Court observed at para 110:

> "It is not the domain of the Court to evaluate the advantages of competitive bidding vis-à-vis other methods of distribution/disposal of natural resources. However, if the allocation of subject coal blocks is inconsistent with Article 14 of the Constitution and the procedure that has been followed in such allocation is found to be unfair, unreasonable, discriminatory, non-transparent, capricious or suffers from favouritism or nepotism and violative of the mandate of Article 14 of the Constitution, the consequences of such unconstitutional or illegal allocation must follow."

In *Ajar Enterprises (P) Ltd.* v. *Satyanarayan Somani*, (2018) 12 SCC 756, this Court affirmed the above principles in the following terms:

> "49. …Where a public authority exercises an executive prerogative, it must nonetheless act in a manner which would subserve public interest and facilitate the distribution of scarce natural resources in a manner that would achieve public good. Where a public authority implements a policy, which is backed by a constitutionally recognised social purpose intended to achieve the welfare of the community, the considerations which would govern would be different from those when it alienates natural resources for commercial exploitation. When a public body is actuated by a constitutional purpose embodied in the Directive

> Principles, the considerations which weigh with it in determining the mode of alienation should be such as would achieve the underlying object."

The position of law developed through these decisions was summed up in the following manner by this Court in *Goa Foundation v. Sesa Sterlite Ltd.*, (2018) 4 SCC 218, after adverting to the various decisions referred to above:

> "80.1. It is not obligatory, constitutionally or otherwise, that a natural resource (other than spectrum) must be disposed of or alienated or allocated only through an auction or through competitive bidding;
>
> 80.2. Where the distribution, allocation, alienation or disposal of a natural resource is to a private party for a commercial pursuit of maximising profits, then an auction is a more preferable method of such allotment;
>
> 80.3. A decision to not auction a natural resource is liable to challenge and subject to restricted and limited judicial review under Article 14 of the Constitution;
>
> 80.4. *A decision to not auction a natural resource and sacrifice maximisation of revenues might be justifiable if the decision is taken, inter alia, for the social good or the public good or the common good*;
>
> 80.5. *Unless the alienation or disposal of a natural resource is for the common good or a social or welfare purpose, it cannot be dissipated in favour of a private entrepreneur virtually free of cost or for a*

consideration not commensurate with its worth without *attracting Article 14 and Article 39(b) of the Constitution.*"

(emphasis supplied)

From the above decisions, the following principles may be culled out:

(i) Generally, when any land is intended to be transferred by the state, or any state largesse is to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people. The state must ensure that it receives adequate compensation for the allotted resource. However, non-floating of tender or non-conducting of public auction would not be deemed in all cases to be an arbitrary exercise of executive power. The ultimate decision of the executive must be the result of a fair decision-making process.

(ii) The allocation must be guided by the consideration of the common good as per Article 39(b), and must not be violative of Article 14. This does not necessarily entail *auction* of the resource; however, allocation of natural resources to private persons for commercial exploitation solely for private benefit, *with no social or welfare purpose*, attracts higher judicial scrutiny and may be held to be violative of Article 14 if done by non-competitive and non-revenue maximizing means.

Keeping in mind the aforementioned principles formulated by this Court in the aforementioned judgments, we have considered the entire material on record. It must be determined as to whether the allocation made in favour of the Academy fell foul of the above principles. In the instant case, the allocation has evidently been done to a private educational institution by non-revenue maximizing means. Assuming that the Academy is engaged in commercial activities while engaging in its main activity of imparting education to students, two questions remain to be seen: first, whether there was any social or welfare purpose underlying the allocation, i.e., if the furtherance of the public good was the ultimate goal of the allocation so as to justify the non-auctioning of the land, and second, if the allocation is bad for lack of adequate compensation.

7. As far as the underlying objective of the allocation is concerned, in our considered opinion, the Division Bench of the High Court was not justified in rejecting the submission of the Academy that the allocation of land was done keeping in mind the plight of the students of the school. One of the reasons assigned by the Division Bench in rejecting this contention was

that there was no discussion about the plight of the students in the correspondence between the Appellant-Academy and the Government. However, a mere lack of explicit statements to that effect does not imply that the action was not motivated by welfare considerations, inasmuch as the displacement and uprooting of several hundreds of students from their school was the obvious underlying concern in the representation made by the Appellant and the order passed by the State Government. It would be appropriate at this stage to quote the following observation made by this court in *Shrilekha Vidyarathi vs. State of U.P.,* (1991) 1 SCC 212:

> "36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness."
>
> (emphasis supplied)

As a corollary of the above, it is evident that an executive action would not be arbitrary merely because the action is not explicitly stated to have been taken for a particular reason or based on a particular principle which in itself is reasonable; rather, it would be open to the Court to see whether such a reasonable principle is discernible from the facts and circumstances of the case. Just like the Court has the power to look into the underlying purpose of an executive action to determine whether it is motivated by extraneous reasons while examining it for arbitrariness, so also the Court may determine whether there is a germane objective being served through the execution of the action, by examining the surrounding facts and circumstances in which the executive action was effected. Though the Appellant is a private educational institution, it cannot be said that the action of the government was not backed by a welfare purpose merely because it is not stated in so many words in the correspondence between the Academy and the State Government that the alternative land sought for allotment was to protect the interests of children studying at the school. This is because the same is clearly discernible from the facts and circumstances of the case. It has been stated that the Appellant

was evicted from the wakf land not because of any wilful default or unauthorized use, but because the wakf required the land for its own use. In such circumstances, having no other alternative, the Appellant approached the government for allotment of suitable land for running the school. It seems that the State Government also preferred to peacefully settle the issue of getting the school vacated from the wakf property, at an early date, without disturbing the education of the students and peace in the locality.

8. Articles 38 and 39 of the Constitution of India provide that the State must strive to promote the welfare of the people of the State by protecting all their economic, social and political rights. These rights may cover means of livelihood, health and the general well-being of all sections of the people in the society, of which education is an important aspect.

9. Imparting basic education is a constitutional obligation on the State as well as societies running educational institutions. Children are the future of our nation. Education is a basic tool for individuals to lead an economically productive life and is one of the most vital elements for the preservation of the democratic

system of government. The Constitution of India bestows considerable attention to the field of education. It recognizes the need for regulating the various facets of activity of education and also the need for not only establishing and administering educational institutions but also providing financial support for educational institutions run by private societies. (See: *Secretary, Mahatama Gandhi Mission v. Bhartiya Kamgar Sena*, (2017) 4 SCC 449, paras 33-36 and 39).

Thus, in our considered opinion, the State Government proceeded to allot the land in favour of the Appellant keeping in mind the public interest in the education of hundreds of children as well as considering the urgency of the matter and it cannot be said that the action was not backed by a social or welfare purpose. It is worth emphasizing that the test of Article 14 must be applied from the perspective of substantive rather than formal equality, and must be mindful of the effect of the action or rule that is being tested. While under ordinary circumstances, the usual practice of allocation of sites on the basis of advertisements or auction was being followed, the instant situation warranted a deviation from the standard procedure to prevent prejudicing the

future of the children studying at the Academy. In our view, taking a holistic view of the matter, the action taken by the State Government did not suffer from the vice of arbitrariness insofar as it was backed by a welfare purpose.

10. In addition, we do not find any reason to reject the contention of the State Government that the allotment of 4 Kanals of land to the Appellant was in the nature of an exchange, inasmuch as the State Government wanted to evict the Appellant who was running a school at Wakf land situated in the main city area. Such a decision seems to have been taken by the State Government to avoid any unrest in the locality or city. In such circumstances, we do not find any arbitrariness in the decision taken by the State in allotting 4 Kanals of property. On the other hand, we are of the opinion that the action of the State was fair, reasonable, transparent, unbiased, without favourtism and nepotism.

11. We now turn to the second question, regarding the adequacy of compensation recovered by the State. In this respect,

we note the following observations made by Khehar J. in his concurring opinion in *Natural Resources Allocation, In Re* (supra):

> "200. I would, therefore, conclude by stating that no part of the natural resource can be dissipated as a matter of largesse, charity, donation or endowment, for private exploitation. *Each bit of natural resource expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or may be to "best subserve the common good". It may well be the amalgam of the two.* There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable."
>
> (emphasis supplied)

Thus, the impugned transaction must be probed to determine whether it leads to an adequate consideration being received by the State.

12. In our view, the action of the authorities can be assailed to the extent that the allotment of two kanals free of cost was bad in law. It is evident that the consideration paid by the Appellant was only with respect to two kanals and the remaining two

kanals of land were allotted for free to the Appellant. It is not in dispute that Rs. 8,00,000/- per kanal was the average auction sale price which was fetched around the time of allotment. Keeping this figure in mind, the State Government fixed the allotment price at Rs. 8,00,000/- per kanal. It is clear that there was no arbitrariness in fixing the price at Rs. 8,00,000/- per kanal. However, we are unable to accept the contention that the allotment of 2 Kanals of land for free was justified. This is all the more significant in light of the absence of any material on record to show that the school was being run purely for charitable and educational purposes. In this regard it would be pertinent to refer to the observations of this Hon'ble Court in the matter of *Union of India and another v. Jain Sabha, New Delhi and another*, (1997) 1 SCC 164 wherein the following observations are made:

> "11. Before parting with this case, we think it appropriate to observe that it is high time the Government reviews the entire policy relating to allotment of land to schools and other charitable institutions. Where the public property is being given to such institutions practically free, stringent conditions have to be attached with respect to the user of the land and the manner in which schools or other institutions established thereon shall function. The conditions imposed should be consistent with public interest and should always stipulate that in case of violation of

> any of those conditions, the land shall be resumed by the Government. Not only such conditions should be stipulated but constant monitoring should be done to ensure that those conditions are being observed in practice. While we cannot say anything about the particular school run by the respondent, it is common knowledge that some of the schools are being run on totally commercial lines. Huge amounts are being charged by way of donations and fees. The question is whether there is any justification for allotting land at throw-away prices to such institutions. The allotment of land belonging to the people at practically no price is meant for serving the public interest, i.e., spread of education or other charitable purposes; it is not meant to enable the allottees to make money or profiteer with the aid of public property. We are sure that the Government would take necessary measures in this behalf in the light of the observations contained herein."

The aforementioned observations suggest that while in the case of a non profit-oriented educational institution serving the public interest, public property can be allotted to it at a concessional price or for free by imposing stringent conditions for the use of the land, it is questionable whether the same can be done for profit-oriented institutions.

13. Thus, in our considered opinion, there is a loss to the public exchequer to the extent of Rs.16,00,000/- for two kanals as on the date of allotment. However, having regard to the fact that the

Appellant-Academy has been running on the allotted site since many years, after constructing a new building, the transfer may be saved by giving the transferee an opportunity to make good the shortfall in the consideration. In this context, it is relevant to note certain observations made by this Court in the case of *ITC Limited vs. State of U.P.*, (2011) 7 SCC 493 :

> "107.1 If the transferee had acted bona fide and was blameless, it may be possible to save the transfer but that again would depend upon the answer to the further question as to whether public interest has suffered or will suffer as a consequence of the violation of the regulations:
>
> (i) If public interest has neither suffered, nor is likely to suffer, on account of the violation, then the transfer may be allowed to stand as then the violation will be a mere technical procedural irregularity without adverse effects.
>
> (ii) On the other hand, if the violation of the regulations leaves or is likely to leave an everlasting adverse effect or impact on public interest (as for example when it results in environmental degradation or results in a loss which is not reimbursable), public interest should prevail and the transfer should be rescinded or cancelled.
>
> (iii) But where the consequence of the violation is merely a short-recovery of the consideration, the transfer may be saved by giving the transferee an opportunity to make good the shortfall in consideration.
>
> 107.2 The aforesaid exercise may seem to be cumbersome, but is absolutely necessary to protect

> the sanctity of contracts and transfers. If the Government or its instrumentalities are seen to be frequently resiling from duly concluded solemn transfers, the confidence of the public and international community in the functioning of the Government will be shaken. To save the credibility of the Government and its instrumentalities, an effort should always be made to save the concluded transactions/transfers wherever possible, provided (i) that it will not prejudice the public interest, or cause loss to public exchequer or lead to public mischief, and (ii) that the transferee is blameless and had no part to play in the violation of the regulation.
>
> 107.3 If the concluded transfer cannot be saved and has to be cancelled, the innocent and blameless transferee should be reimbursed all the payments made by him and all expenditure incurred by him in regard to the transfer with appropriate interest. If some other relief can be granted on grounds of equity without harming public interest and public exchequer, grant of such equitable relief should also be considered."
>
> (emphasis supplied)

14. On an examination of the facts and circumstances of the case in the light of the above observations, it is evident that it is appropriate to give the Appellant the opportunity to make good the shortfall in consideration, as the loss to the public exchequer caused by the free allocation cannot be said to have had an everlasting effect or impact on public interest. Moreover, we do not find any high-handedness on the part of the Appellant in seeking the allotment in its favour, as it acted in a bona fide

manner. This would also be in consonance with the principle stated by us in the beginning of the judgment that the public must be adequately compensated for the alienation of natural resources by the State.

15. Therefore, the Appellant should pay consideration for two kanals of land received gratuitously, at the rate of Rs. 8,00,000/- per kanal, which was the average auction price prevailing at the time of allocation. The Appellant is also liable to pay interest at the rate of 6% per annum from the date of the allotment till the date of payment. The payment should be made within three months from this date.

16. In view of the above, the appeals are allowed, the impugned judgment passed by the Division Bench dated 01.04.2009 is set aside and the judgment of the learned Single Judge dated 25.04.2008 passed in O.W.P No. 1093 of 2002 and O.W.P No.10 of 2003 is restored, with the aforementioned modification.

.....J.
(N.V. RAMANA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

New Delhi,
October 30, 2018