

A CITY INDUSTRIAL DEVELOPMENT THR. ITS MANAGING
DIRECTOR

v.

PLATINUM ENTERTAINMENT AND OTHERS
(Civil Appeal No. 9264 of 2014)

B SEPTEMBER 26, 2014

[M.Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

C *Town Planning – Government action – Allotment of*
government land by the State or its agencies – Requirement
of fairness and equity – Three plots of Government land
allotted by appellant-CIDCO (City and Industrial Development
Corporation) – Cancellation of the allotment – Validity – Held:
D *Authorities of CIDCO showed undue favour and managed to*
allot the Government land in favour of one person knowing
fully well that the proprietor of the Company, in different
capacity and in dummy names, sought allotments of plots –
Arbitrariness had a role to play in the matter – Action on the
E *part of CIDCO was nothing but favouritism based on nepotism*
and was irrational and unreasonable and functioning in a
discriminatory manner – Order passed by the CIDCO
cancelling the allotments made in favour of the respondents
accordingly upheld – Maharashtra Regional and Town
F *Planning Act, 1966 – New Bombay Disposal of lands*
Regulations, 1975 – New Bombay Road Disposal Rules,
1975 – Constitution of India, 1950 – Art. 14.

Allowing the appeals, the Court

G **HELD:1. State and its agencies and instrumentalities**
cannot give largesse to any person at sweet will and
whims of the political entities or officers of the State.
However, decisions and action of the State must be
founded on a sound, transparent and well defined policy
which shall be made known to the public. The disposal

of Government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favoritism or nepotism influences the exercises of discretion. Even assuming that if the Rule or Regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the Rule of Law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt pick and choose method while allotting the Government land. [Para 49] [738-E-G]

2. It is more evident and clear that arbitrariness had a role to play in the matter while allotting the three plots in favour of one group of persons which certainly would come within the meaning of arbitrariness on the part of CIDCO and against the public policy. Such an action on the part of CIDCO is nothing but a favouritism based on nepotism and was irrational and unreasonable and functioning in a discriminatory manner. [Para 51] [739-D-E]

3. The authorities of CIDCO showed undue favour to the respondents and managed to allot the Government land in favour of one person knowing fully well that the aforesaid proprietor of the Company, in different capacity and in dummy names, sought allotments of plots. CIDCO was thus justified in cancelling all the allotments made in favour of the respondents. [Paras 54, 55] [740-F-G; 741-B]

Raman Dayaram Shetty vs. International Airport Authority of India & Ors. (1979) 3 SCC 489: 1979 (3) SCR 1014; *Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh & ors.* (2011) 5 SCC 29: 2011 (5) SCR 77; *Kasturi Lal Lakshmi Reddy & Ors. vs. State of Jammu and Kashmir & Anr.* (1980) 4 SCC 1: 1980 (3) SCR 1338; *State of Haryana vs. Jage Ram* (1983) 4 SCC 556: 1983 (3) SCR 917; *Sachidanand Pandey & Anr. vs. State of West Bengal & Ors.*

- A (1987) 2 SCC 295: 1987 (2) SCR 223; *Padma vs. Hiralal Motilal Desarda* (2002) 7 SCC 564 and *Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1: 2012 (3) SCR 147 and *Humanity and Anr. vs. State of West Bengal and Ors.* (2011) 6 SCC 125: 2011 (8) SCR 653 –
B relied on.

- Popcorn Entertainment & Anr. vs. City Industrial Development Corpn. & Anr.* (2007) 9 SCC 593: 2007 (3) SCR 17; *Kasturi Lal Laxmi Reddy vs. State of Jammu & Kashmir* 1980 (4) SCC 1: 1980 (3) SCR 1338; *Chairman and MD, BPL Ltd. vs. S.P. Gururaja and others* 2003 (8) SCC 567: 2003 (4) Suppl. SCR 587 and *Sunil Pannalal Banthia vs. City & Industrial Development Corpn. of Maharashtra Ltd.* (2007) 10 SCC 674: 2007 (3) SCR 798 – referred to.

D Case Law Reference:

	2007 (3) SCR 17	referred to	Para 13
	1980 (3) SCR 1338	referred to	Para 20
E	2003 (4) Suppl. SCR 587	referred to	Para 21
	2007 (3) SCR 798	referred to	Para 23
	1979 (3) SCR 1014	relied on	Para 37
	2011 (5) SCR 77	relied on	Para 38
F	1980 (3) SCR 1338	relied on	Para 39
	1983 (3) SCR 917	relied on	Para 40
	1987 (2) SCR 223	relied on	Para 41
G	(2002) 7 SCC 564	relied on	Para 42
	2012 (3) SCR 147	relied on	Para 43
	2011 (5) SCR 77	relied on	Para 50
H	2011 (8) SCR 653	relied on	Para 53

CIVIL APPELLATE JURISDICTION : Civil Appeal No. A
9264 of 2014.

From the Judgment & Order dated 01.09.2009 of the High
Court of Judicature at Bombay in Writ Petition No. 9468 of
2005.

WITH

C.A. Nos. 9265 & 9266 of 2014.

B.H. Marlapalli, A.S. Bhasme for the Appellant.

Vikas Singh, J.P. Cama, Venkatesh, Deepika Kalia,
Kapish Seth, Dhruv Chopra, Anuj Agarwala, Lakshmi Raman
Singh, Shankar Chillarge, Aniruddha P. Mayee, Asha Gopalan
Nair for the Respondents.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted.

2. These appeals are directed against the common
judgment and final order dated 01.09.2009 passed by the High
Court of Judicature at Bombay whereby Division Bench of the
High Court has allowed three Writ Petitions being W.P.Nos.
9467, 9468 of 2005 and 3423 of 2006 preferred respectively
by M/s. Popcorn Entertainment Corporation (in short, 'M/s.
Popcorn'), M/s. Platinum Entertainment (in short, 'M/s.
Platinum') and M/s. Platinum Square Trust (in short, 'M/s.
Platinum Square'). By way of these writ petitions, the writ
petitioners had challenged orders of appellant- 'The City &
Industrial Development Corporation' (in short 'CIDCO') by
which allotment of plot of lands to M/s. Popcorn and M/s.
Platinum Entertainment for erecting entertainment complex in
Navi Mumbai and the allotment of plot of land to M/s. Platinum
Square for establishment of country club were cancelled.

3. The facts giving rise to aforesaid writ petitions and

A consequently present appeals are almost similar. However, for the sake of clarity factual matrix of each appeal has been mentioned here separately.

B 4. The respondent- M/s. Popcorn Entertainment (SLP (C) No.1290 of 2010) in the appeal by special leave arising out of Writ Petition No.9467 of 2005, by way of an application made a request for allotment of plot in Airoli for setting up multiplex-cum-auditorium-cum-entertainment centre. On CIDCO's instructions, respondent submitted detailed project report. C CIDCO, by their letter of intent, requested the respondent herein to pay an Earnest Money Deposit of Rs.20,77,000/- within 15 days from the receipt of the letter to enable the Board to consider the allotment in favour of the respondent. The respondent, accordingly made EMD on 29.6.2004. On D 29.7.2004, CIDCO approved the allotment of a plot in favour of the appellant as the Board had not got any response for similar plots in public tender. The total lease premium in respect of the plot was Rs.2,07,70,000/- and the respondent was directed to pay the balance amount of Rs.1,86,93,000/- by E 14.9.2004. The allotment was allegedly made in terms of the New Bombay Land Disposal Regulations, 1975 and also in terms of the Land Pricing and Disposal Policy of CIDCO under which the land could be allotted to any person by considering individual application at the reserved price fixed by CIDCO. F Thereafter, by making balance payment including additional amount due to the marginal increase in the demarcation of the plot, M/s. Popcorn Entertainment made a total payment of Rs.2,98,22,420/- being the full and final payment in respect of allotment in favour of the respondent as demanded by CIDCO. G An agreement to lease was entered into with CIDCO in respect of the plot allotted to the respondent.

H 5. However, on 1.8.2005, appellant CIDCO issued a show cause notice to the respondent regarding the plot at Airoli seeking cancellation of the agreement to lease executed in favour of the respondent. The respondent submitted reply to the

show cause notice and also sought information from CIDCO under the Right to Information Act regarding allotment to various parties and the details thereon. The Agreement of Lease was repudiated and rescinded, against which the respondent approached the High Court by way of a writ petition.

6. The respondent- M/s. Platinum Entertainment in the appeal by special leave (SLP(C)No.1117/2010) arising out of Writ Petition No.9468 of 2005, by way of an application made a request for allotment of plot for construction of a multiplex at Kharghar Railway Station. Upon being asked by the appellant CIDCO, M/s. Platinum deposited EMD of Rs.20 lakh being 10% of the tentative price of the plot in order to consider the application of the respondent. Thereafter, CIDCO approved the allotment in favour of the respondent considering the fact that there was no multiplex in the area and the earlier effort of CIDCO to advertise for such plots had met with no response. CIDCO issued allotment letter in favour of the respondent asking the petitioner to pay Rs. 1,80,00,000/- being the balance price of the plot. The respondent made two separate payments of Rs.90 lakh each towards the balance price of the plot on 16.8.2004 and 19.8.2004. The respondent paid a sum of Rs.20,00,600/- being the other charges demanded by the appellant. The respondent was asked to pay a further sum of Rs.65,096/-, which the respondent paid immediately. CIDCO unilaterally decided to ask the respondent to pay a further sum of Rs.20 lakh by enhancing the rate at which the plot was to be allotted to the respondent from Rs.2500/- per square meter as demanded in the allotment letter to Rs.2750 per square meter because the plot of the respondent was on a 24 meter road. The respondent herein on 17.11.2004 paid a further payment of Rs.20 lakh along with Rs.2,96,078/- plus Rs.4957/- being the additional cost and the other charges. On 14.1.2005, the respondent paid a further sum of Rs.19,828/- being the sum demanded. The respondent on 17.1.2005 entered into an agreement to lease with the appellant for the allotment of plot.

- A On 28.2.2005, CIDCO being the development authority of the area issued commencement certificate to the respondent permitting the respondent to start construction. However, on 14.7.2005, the respondent received a show cause notice seeking cancellation of the allotment in favour of the respondent
- B on the ground that the allotment was void in view of Section 23 of the Contract Act as being opposed to public policy. The main ground in the show cause notice was that the allotment was without issuance of tender and was opposed to public policy. The respondent submitted reply to the show cause notice. On
- C 16.12.2005, CIDCO issued an order cancelling the agreement to lease and sought to resume the possession of the plot, against which the respondent approached the High Court by way of writ petition.

- D 7. The respondent- M/s. Platinum Square Trust in the appeal by special leave petition (SLP(C)No.1215/2010) arising out of Writ Petition No.3423 of 2006, by way of an application made a request for allotment of plot of land admeasuring 80,000 sq.mtr. at Kharghar hill for establishment of country club. CIDCO
- E having a plot of land earmarked for similar purpose, considered the request of the respondent and called upon the respondent to pay Rs.39.52 lakh on or before 20th April, 2004 constituting 10% of the value of the plot as EMD so as to enable the CIDCO to place the proposal of the respondent before the Board of
- F Directors. CIDCO further requested the respondent to submit registration certificate either under the Trust Act or the Society Registration Act before allotment/ possession of the land so that the case of the respondent could be considered for allotment at subsidized rate in terms.of the policy; otherwise
- G commercial rates were to attract for such allotment. The respondent in terms of the letter of CIDCO deposited a sum of Rs.39.52 lakh with them. The respondent got its trust deed registered on 14th May, 2004; wherein six Trustees were appointed. Amongst others, objectives of the Trust are to
- H establish and support, maintain and run sports club,

gymnasium, health club, amusement park, yoga centre, water sports etc. and to carry out activities relating thereto. A

8. The respondent herein was allotted 50,350 sq.mtr. land by CIDCO for a total sale consideration of Rs. 3,43,70,800/-. Out of the said amount of consideration, the respondent had already deposited Rs.39.52 lakh as such the appellant was directed to deposit Rs. 1,52,09,400/- in two installments i.e. on 30th July, 2004 and 29th August, 2004 being the balance lease premium payable in respect of the subject plot. In the allotment letter, it was specifically mentioned that payment of lease premium in a stipulated period is an essence of concluded contract. It was further provided in the allotment letter that extension of time could be granted which would be up to 3 months for payment of the first installment and up to 16 months for the payment of the second installment. It was provided therein that up to 3 months the respondent would be charged 13% interest and beyond 3 months the respondent would be charged 16% interest for the extended period of time. The respondent on 15th September 2004, paid the first installment of Rs.1,52,09,400/- within the extended time permitted under the allotment. The respondent on 3rd May, 2005, wrote letter to the CIDCO for extension of time for making payment of second installment up to December, 2005. Clearly in terms of the allotment letter, the respondent could ask extension of second installment up to 29th December, 2005. The respondent Trust was registered under the Bombay Public Trust Act, 1950 on 19th April, 2005. The respondent submitted documents to CIDCO on 25th May, 2005 evidencing registration of the Trust. However, on 20th July, 2005 the respondent received show cause notice seeking cancellation of the allotment made in favour of the respondent on the basis of Shankaran Report. B
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9. The respondent, on 3rd August, 2005, submitted its detailed reply to the show cause notice challenging the cancellation of allotment of plot, reiterating that the allotment was in accordance with law as such it could not be cancelled. H

- A The respondent, on 29th December, 2005, wrote letter to the Marketing Manager of CIDCO requesting him to accept payment of second installment being the last date up to which the extension could be granted under the allotment. However, CIDCO refused to accept the payment. The respondent on the
- B same date wrote another letter recording the fact that CIDCO has refused to accept the second installment and that the respondent would not be liable to pay any further interest from the said date and that the allotment could not be cancelled on the ground that the payment has not been made by the
- C respondent.

- 10. The respondent was served with the order dated 28th April, 2005 cancelling allotment of plot made in favour of the respondent. Being aggrieved by the aforesaid order of
- D cancellation, the respondent herein approached the High Court by way of writ petition filed under Article 226 of the Constitution of India.

- 11. With the aforesaid factual matrix, it is also necessary to note that State of Maharashtra, who is having ultimate
- E authority and power to control and regulate the activities of planning and development under the Maharashtra Regional and Town Planning Act, 1966 (in short, 'MRTP Act'), in 1971 appointed appellant-CIDCO as new town planning authority for the new town - Navi Mumbai. In exercise of powers conferred
- F by sub-clause (a) of clause (1) of section 159 of the MRTP Act, the CIDCO has with the previous approval of the State Government published in July 1979 the New Bombay Disposal of Lands Regulations, 1975 (in short, 'the Regulations'). The aforesaid regulations, inter alia, provide for the demarcation of
- G plots vested in the Government by CIDCO into disposable plots having regard to their size and use. The said regulations also make provision for conditions of lease, mode of disposal and for grant of land for religious, educational, charitable and public
- H 4 of Chapter IV, according to which the Corporation may

dispose of plots of land by public auction or tender or by considering individual applications as the Corporation may determine from time to time. A

12. It is the case of the appellant CIDCO that the aforesaid contesting respondents had been made allotment of lands by the appellant pursuant to a direct application being made to the office of the then Chief Minister and in other similar cases a number of public interest litigation were filed in the High Court. Accordingly, the Government, to ascertain whether the allotments made were bonafide, directed the then Additional Chief Secretary to conduct an enquiry to find out whether the Board of Directors of CIDCO disposed of lands in accordance with law. Enquiry was conducted by the Additional Chief Secretary and submitted the report (called Shankaran Report). The enquiry inter alia revealed that subject allotment was illegal, arbitrary and the appellant had suffered a financial loss in crores. Therefore, the appellant issued notice to the contesting respondents and ultimately cancelled the subject allotments, which led to filing of the writ petition. The writ petitions were dismissed by the High Court on the ground that alternative remedy was available to the writ petitioners by filing suits and therefore writ jurisdiction cannot be invoked. B C D E

13. Aggrieved by the decision of the High Court, respondents approached this Court by way of appeals by special leave. Those Civil Appeals being Civil Appeal Nos. 940-941 of 2007 were disposed of by this Court remitting the matters back to the High Court for deciding the writ petitions on merits. The said order is reported in *Popcorn Entertainment & Anr. vs. City Industrial Development Corpn. & Anr.*, (2007) 9 SCC 593. In the order of remand this Court made some observations with regard to the merits of the case. For better appreciation, para 41 and 47 are reproduced herein below:- F G

“41. At the time of hearing, it was suggested by the learned Senior Counsel for the respondent that the allotment was H

A made without any justification and that there was a huge demand for such plot, it is submitted by learned counsel for the appellant that the appellant has sought information from CIDCO under the Right to Information Act as to whether there was no application pending with them for allotment of the said plot prior in time to the application of the appellant. CIDCO in reply has clearly stated that there was no application prior to the application of the appellant. Even the allotment in favour of the appellant was a reasoned allotment taking into consideration the lack of entertainment facilities in the area and the said issue was also discussed in the board meeting before the allotment and these facts are clear from the information provided to the appellant under the Right to Information Act. Our attention was also drawn to the noting in the file while considering the case of the appellant and before making the allotment that

(i) "There is no cinema/multiplex facility available today for the residents of CBD Belapur, Kharghar and Kalamboli residents.

(ii) From accessibility and land use compatibility point of view, Plot No. 1, Sector 2, Kharghar admeasuring about 8000 sq m is an ideal location for multiplex.

(iii) This building will be visible from highway and will add to the image of the city.

(iv) Adjoining Plot 1 of Sector 1 attached to railway station admeasuring 5600 m² (not demanded yet) is earmarked for city mall."

47. We have given our careful consideration to the rival submissions made by the respective counsel appearing on either side. In our opinion, the High Court has committed a grave mistake by relegating the appellant to the alternative remedy when clearly in terms of the law laid

down by this Court, this was a fit case in which the High Court should have exercised its jurisdiction in order to consider and grant relief to the respective parties. In our opinion, in the instant case, 3 of the 4 grounds on which writ petitions can be entertained in contractual matter were made out and hence it was completely wrong of the High Court to dismiss the writ petitions. In the instant case, 3 grounds as referred to in *Whirlpool Corpn. (1998) 8 SCC 1*, have been made out and accordingly the writ petition was clearly maintainable and the High Court has committed an error in relegating the appellant to the civil court.”

14. However, this Court took the view that the matter needs to be remanded back to the High Court, so that the High Court will consider all the submissions made by the parties and dispose of the same afresh.

15. The High Court on receipt of the remand order proceeded with the hearing of the writ petitions and after hearing both the parties allowed the writ petitions by passing the impugned order and quashed the orders passed by the appellant-CIDCO cancelling the allotment. The High court while passing the impugned order has gone through the merits of the case of both the parties but held that the observations made by this Court in the remand order (41, 43, 47, 48 and 49) relating to non-observations of rule and regulations causing substantial loss to the CIDCO operate as obiter and is binding on the High Court and, therefore, the High Court has to fall in line with the view expressed by this Court. Para 97 of the impugned order is quoted hereinbelow.

“97. As already stated hereinabove, so far as categorical and unequivocal observations made by the Apex Court revolving around the issues relating to non-observation of rule and regulations causing substantial loss to the CIDCO since no tenders were invited and interpretation of Section

A 23 of the contract Act are concerned, they operate as obiter binding on us as such we have to fall in line with the view expressed by the Apex Court."

16. We have heard learned counsel on either side at length. Mr. B.H. Marlapalli, learned senior counsel appearing for the appellant-CIDCO, contended that the High Court has misconstrued and misinterpreted order passed by this Court in the case of *Popcorn Entertainment* (supra) in the first round of litigation whereunder the matter was remanded to the High Court for fresh consideration on merits keeping all contentions open. However, the High Court chose to restrict itself to consider only the ground for cancellation of the allotment taken in the final show cause notice and recorded in the final order. The High Court would have considered the matter on merits without being fettered or constrained by any observation of the Apex Court. It has been further contended on behalf of the appellant that this Court has declared the law that the disposal of the State owned or public property by auction or tenders is a rule and such disposal by private negotiation is an exception to be carved for cogent and compelling reasons to be recorded in writing at the time of disposal. The law so declared is mandatory in its application, warranting absolute and implicit adherence thereto at the peril of any act or commission in contravention thereof being illegal and non est.

17. Mr. B.H. Marlapalli, learned senior counsel further submitted that in order to find out whether the Board of Directors of CIDCO disposed off its lands in Navi Mumbai in accordance with law, the State Government had directed the then Additional Chief Secretary - Dr. D.K. Shankaran to hold a discreet enquiry in the affairs of CIDCO. The CIDCO cancelled the allotments due to the arbitrary manner in which the plots were allotted and the loss caused to CIDCO, and the basis for computing the loss was the report of Dr. Shankaran, which has referred to several allotments in the vicinity and the offer made to BARC and as such, in the writ jurisdiction, the High Court cannot decide the

price prevailing in the area at the time of allotment. It is further contended on behalf of the appellant that as per Shankaran Report it was necessary to allot the plots by inviting tenders and testing the market. Had it been done so, these plots would have fetched at least five times greater value than the actual value received. Further Mr. Nilesh Gala, who is the proprietor of M/s. Platinum Entertainment, has used the same modus operandi for obtaining allotment of plots for country club at Kharghar and another multiplex plot in Kharghar and the CIDCO was found to have suffered a loss of Rs.10 crores in this case. Show cause notice was issued mentioning three grounds, viz. favoritism, non-issuance of tender and loss caused to the Corporation. It is further urged that the order of cancellation of the allotment specifically states that the Board of Directors of the Corporation found itself in substantial concurrence with the findings recorded by Dr. Shankaran.

18. Learned senior counsel sought to justify the action of CIDCO on the basis of Sections 154 and 118 of MRTP Act contending that the purpose of constituting CIDCO is to develop a town by making allotment, and in case the allotments are allowed to be made in arbitrary manner and if such allotments are sustained, then it amounts deviation from the purpose of the Act. It is further urged that Section 23 of the Contract Act also envisages cancellation on account of the allotment/ agreement, if it is opposed to public policy and this Court may sustain the cancellation being opposed to public policy. The allotment made without inviting tenders leads to presumption of nepotism etc. and it can only be justified by citing compelling reasons. Whereas in the present case, no reasons were mentioned and allotments were made surreptitiously to one person.

19. Rival submissions have been made by Mr. Vikas Singh and Mr. J.P. Cama, learned senior counsel appearing on behalf of contesting respondents, contending that the allotment made in favour of these respondents was cancelled

- A by the appellant by issuing show cause notices referring to Shankaran report and alleging that CIDCO had suffered losses and mentioning the ground that there was non-issuance of tender before making allotment, the same being void under Section 23 of the Contract Act was opposed to the public
- B policy. According to them, the Apex Court, while remanding the matter in the first round of litigation, in para 48 of the judgment reported in (2007) 9 SCC 593 (*supra*) set aside the order of CIDCO seeking to resile from a concluded contract in favour of the contesting respondents. It is submitted on behalf of the
- C respondents that the New Bombay Land Disposal Rules are the specific rules governing the disposal of land to be done by CIDCO. Rule 4 of the said Rules clearly provided that CIDCO has the authority to dispose plots of land by public auction or tender or by considering individual application as the
- D Corporation may determine from time to time. Mr. Vikas Singh, learned senior counsel contended that once an allotment is made in favour of a party, CIDCO has no right to cancel the allotment on the ground that no tenders had been invited. A development authority while allotting land can allot plot of land
- E without calling for tender or without inviting offers from the general public if the statutory regulations regarding disposal of land by public authority permit the authority to do so. It is further urged that CIDCO has been relying upon the aforesaid rule to justify, in various cases, the allotments made in favour of
- F commercial complexes, societies as well as sports complexes saying that such allotment made without issuance of tender were justified as being within the power vested in CIDCO under Rule 4 of the aforesaid Rules.

- G 20. In support of his contention, Mr. Vikas Singh cited the portion of a paragraph of the decision of this Court in *Kasturi Lal Laxmi Reddy vs. State of Jammu & Kashmir*, 1980 (4) SCC 1, which is reproduced here:

- H "22.We do not think the State is bound to advertise and tell the people that it wants a particular industry to be

set up within the State and invite those interested to come up with proposals for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn out to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry. The State is not obliged to tell such party: "Please wait I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should let you set up the industry."

21. Referring to the case of *Chairman and MD, BPL Ltd. vs. S.P. Gururaja and others*, 2003 (8) SCC 567, Mr. Singh contended that 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. The power of cancellation under Section 23 of the Contract Act is only available to the Court and on the concept of separation of power the said power is not exercisable by executive unilaterally without referring to the Court. It has been further contended that although through the impugned order the High Court had quashed the cancellation order, only CIDCO has preferred appeal whereas the State of Maharashtra accepted the impugned order and has no grievance with the quashing of the order cancelling the contesting respondents' allotment.

22. It has further been contended that the rules provide for three methods of disposal i.e. by tender, by public auction or by considering individual applications and CIDCO vide various board resolutions have specifically provided the exact method of disposal for various types of plots. CIDCO has accordingly framed the Land Pricing and Land Disposal Policy as approved by various board resolutions wherein various categories of plots are mentioned. In the case of commercial plots where FSI 1.5

- A is permitted the land price rate determined under the policy is 450% of the reserve price and the method of disposal is by tender and in the alternative at fixed rate. Similarly for allotment of multiplex, the rate specified under the policy is at reserve price and the method of disposal is upon request at fixed rate
- B or by competitive bidding. The two different methods of disposal between a commercial allotment and the allotment for multiplex is significant because in the case of commercial allotment, by tender is the first method of disposal prescribed and at fixed rate is the alternative method of disposal
- C prescribed whereas in the case of allotment for multiplex/ auditorium on request at fixed rate is the first method and by competitive bidding is the alternative method of allotment. Furthermore, allotment in the case of M/s. Platinum Square Trust the land price of open area/running track is specified to
- D be 10% of the reserve price and of area used for construction is to be at 50% of the reserve price and the method of disposal is only upon request at fixed rate from the registered trust/ registered under the Public Trust Act. Learned senior counsel contended that allotments in favour of the respondents were
- E clearly in conformity with the rules and also in conformity with the Land Pricing and Land Disposal Policy framed by CIDCO for allotment of various types of land in the Navi Mumbai area.

23. It has been submitted that in a similar case where allotment had also been cancelled on the only ground that the
- F same had been made without inviting tenders, the Apex Court in *Sunil Pannalal Banthia vs. City & Industrial Development Corpn. of Maharashtra Ltd.*, (2007) 10 SCC 674, has held that once an allotment had been made in favour of a party, CIDCO has no right thereafter to cancel the allotment on the ground that
- G no tenders had been invited. CIDCO had power to make allotment without calling for tender under Rule 4 and it could not be said that the allotment in favour of Sunil Pannalal Banthia was in any manner contrary to the rules for making such
- H allotment.

24. It has also been contended on behalf of the contesting respondents that according to the information provided to the respondents under the Right to Information Act, a public utility plot has never been put to tender by CIDCO during the period when aforesaid allotments had been made in favour of the respondents. According to the information provided, allotment to 56 allottees have been made without inviting tenders as per Land Pricing and Land Disposal Policy and the price charged is as per the policy as approved by Board resolutions. These allotments were not scrutinized by Dr. Shankaran and not formed part of the enquiry report. Furthermore, Shankaran report had been prepared ex-parte i.e. without issuing notice to the respondents. Copy of said report was not furnished to the respondents either along with show cause notice or before cancellation order was passed although demanded by the respondents in their reply, in which it was specifically mentioned that the final reply could be given only after the entire report was given to them along with the methodology used by Shankaran to arrive at the alleged losses. It is contended that the cancellation order is vitiated being in violation of principles of natural justice, for having been passed without giving a copy of the Shankaran report, which had been prepared behind the back of the contesting respondents.

25. Upon perusal of notice it is clear that its contents are similar in all these appeals. The appellant CIDCO referred the Shankaran Report in which it was observed that the allotments were made in favour of the respondents in an arbitrary manner without calling upon to show cause as to why such allotment should not be repudiated having become void on the thrust of Section 23 of the Indian Contract Act, 1872. For better appreciation para 14 of the show cause notice is reproduced hereinbelow:-

"The Board of Directors of the Corporation at its meeting held on 6th June, 2005 considered the recommendations of Dr. D.K. Shankaran, the then

A additional Chief Secretary and directions of the State government and as directed me to call upon you to show cause why the Corporation should not rescind or repudiate such allotment having become void on the thrust of Section 23 of Contract Act 1872 which declares that an Agreement having its object or consideration to defeat provision of the law or opposed to public policy as declared by the Hon'ble Supreme Court as aforesaid is vitiated by illegality and is liable to be declared void".

C 26. Section 23 of the Indian Contract Act, 1872 reads as under:-

"What consideration and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless –

D It is forbidden by law; or

is such of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

E involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

F In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

G 27. Before dealing with the legality and validity of the notice aforesaid, we shall first wish to mention some of the relevant facts:-

A. Indisputably applications were made by the respondents to the then Chief Minister for allotment of plots of land in question.

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B. On the application submitted on behalf of M/s. Platinum Entertainment, through its proprietor Nilesh Gala, for the allotment of plot for constructing multiplex at Kharghar railway Station, the appellant was allotted the plot at Kharghar Railway Station;

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C. The said person Nilesh Gala as proprietor of M/s Popcorn Entertainment Corporation made another application for allotment of plot for the construction of multiplex-cum-entertainment centre at Airoli. The appellant CIDCO acceded to the request of Mr. Nilesh Gala and allotted the plot followed by lease agreement;

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D. The same person Nilesh Gala formed a Trust called Platinum Square Trust through one of its Trustees Damji Kunwarji Gala and made a third application for allotment of plot at Kharghar Hill for the construction of country club and paid part of the amount fixed for such allotment and rest of the amount was to be paid in instalments. The matter is pending and final lease deed has not been executed.

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28. Now the important question that needs consideration is as to whether the allotments of valuable land by CIDCO to one person in different capacity for the purposes mentioned above, that too by entertaining private applications, are arbitrary, illegal and fraudulent and against the public policy as contemplated under Section 23 of the Indian Contract Act.

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29. In the course of argument, Mr. Vikas Singh, learned senior counsel appearing for the respondents in all the three appeals filed a compilation of different documents including Rules and Regulations.

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30. Regulation 4 lays down the mode and manner of disposal of land by the Corporation. The said provision empowers the Corporation to dispose of lands by public auction or tender or considering individual applications as the

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A Corporation may determine from time to time. Regulation 4 reads as under:-

B “Manner of disposal of land – The Corporation may dispose plots of land by public auction or tender or by considering individual applications as the Corporation may determine from time.”

C 31. The land Pricing and Land Disposal Policy of CIDCO would show that the commercial plots with FSI 1.5, that is plots for offices, shop, restaurant, showrooms etc., is to be disposed of by tender/at fixed price. Similarly, plots for auditorium, multiplex, theatre complex etc., shall be disposed of on request at fixed rate/by competitive bidding. For better appreciation, the relevant allotment policy of CIDCO is reproduced hereunder:-

D “Commercial Plots (with FSI 1.5)

E	Plots for offices, Shop + Res. and pure commercial Show Rooms/Show Windows all types of Banks etc. (FSI-1.5)	a. At 450% of RP in Developed Nodes b. At 400% of RP in Developing Nodes c. At 300% of RP in New Nodes	By tender/At fixed price
F	Plots for Auditorium/ Multiplex theatre complex to be developed in Private Sector	At Reserve Price	On request at fixed rate By competitive bidding

G 32. From the compilation, it reveals that Respondent M/s. Popocorn Entertainment Corporation sought information under the Right to Information Act, by mentioning some queries. One of the questions asked by the respondent was as to what is

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the method of disposal of plot for multiplex as per Land Pricing and Disposal Policy during the said period. It was answered that methodology as per the current land pricing policy approved by the Board is on request at fixed rate/by competitive bidding. In another query made by the proprietor of M/s. Platinum Entertainment was as to whether any other application has been made for allotment of the said plot for the same purpose and the answer was that no other application prior to this allotment for the same purpose was pending.

33. It further appears that an audit objection was raised by the office of the Accountant General, Mumbai to the effect that there was lack of transparency in the allotment of plot to M/s. Platinum Entertainment as no tenders were called for the sale of the plot. In the clarification letter dated 21.4.2006 issued by the Managing Director of the Appellant-CIDCO, it was admitted that no such tender was called for. In the explanation, it is stated that global tender/tender was called for allotment of plot near Vashi Station. It was not fruitful and, therefore, it was thought fit for allotting plot at Airoli to a competent and resourceful party on evaluation of the project report for multiplex and auditorium and entertainment centre. Similar explanation was given as against the audit objection in respect of allotment of plot to M/s. Popcorn Entertainment Corporation.

34. On perusal of the aforesaid documents, it is manifest that although allotment of plot for the purposes mentioned above was either at a fixed price or by competitive bidding, but no procedure was adopted by the appellant for allotment of these plots either by tender or by competitive bidding. It has also come on record that as against these plots allotted to the respondents, no other application was either invited or received from interested persons. Obviously, when the tender was not advertised or any notice inviting applications were made then there was no occasion for any person to apply for allotment of these plots.

A 35. As noticed above, the main person viz. Nilesh Gala as
 proprietor of two different companies viz., M/s Platinum
 Entertainment and M/s Popcorn Entertainment Corporation, by
 making private applications to the then Chief Minister got
 allotment of two valuable plots in two different areas for setting
 B up multiplex-cum-auditorium-cum-entertainment centre and for
 multiplex theatre. This is not the end of the matter. The same
 proprietor formed a Trust consisting of trustees in the name of
 M/s Platinum Square Trust and filed application for allotment of
 another plot for the purpose of establishing country club. These
 C three applications filed by the respondents were considered by
 the appellant-CIDCO and the Board accorded sanction for
 allotment of plots in these three places.

D 36. We, therefore, after having considered facts detailed
 hereinabove, are prima facie of the view that no transparency
 has been maintained by the appellant-CIDCO in making these
 allotments of Government land.

E 37. It is well settled that whenever the Government dealt
 with the public establishment in entering into a contract or
 issuance of licence, the Government could not act arbitrarily on
 its sweet will but must act in accordance with law and the action
 of the Government should not give the smack of arbitrariness.
 In the case of *Raman Dayaram Shetty vs. International Airport
 Authority of India & Ors.*, (1979) 3 SCC 489, this Court
 F observed as under:-

G “11. 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.
 H These valuables which derive from relationships to

Government are of many kinds. They comprise social A
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 B
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 C
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
acres of public land valuable for mining and other D
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
governmental functions as we move closer to a welfare E
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. But on that account, can it be said that they
do not enjoy any legal protection? Can they be regarded F
as gratuity furnished by the State so that the State may
withhold, grant or revoke it at its pleasure?"

"12.It must, 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 G
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 H

- A 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.”

- C 38. In the case of *Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh & ors.*, (2011) 5 SCC 29, this Court while considering the question of legality of allotment of land by the State or its agencies on the basis of applications made by individual, observed as follows:-

- D “65. What needs to be emphasised 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/
- E decision of the 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 recognised modes of
- F publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc.
- G by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

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66. 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, organisations or institutions dehors 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 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 favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

39. In the case of *Kasturi Lal Lakshmi Reddy & Ors. vs. State of Jammu and Kashmir & Anr.*, (1980) 4 SCC 1, this Court observed as under:-

"14. 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 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

- A but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people 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
- B only illustratively, for there may be an infinite variety of considerations which may have to be taken into account 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,
- C that the court would have to decide whether the action of the Government is reasonable and in public interest. But 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
- D validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy 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
- E unreasonable or without public interest because, as we said above, there are a large number of policy 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
- F ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so 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
- G one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by 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
- H 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.

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in *Ramana D. Shetty v. International Airport Authority of India* that the Government is not free, like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well-established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largess, 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 some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the court as a rule of administrative law and it was also validated by the court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The court

A referred to the activist magnitude of Article 14 as evolved in *E.P. Royappa v. State of Tamil Nadu* and *Maneka Gandhi* case, (1978) 1 SCC 248 and observed that it must follow

B as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly
C circumstanced, but it must act in conformity with some standard or principle which meets that test of reasonableness and non-discrimination and any
D departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional
E scheme and structure."

40. In the case of *State of Haryana vs. Jage Ram*, (1983) 4 SCC 556, the auction of liquor vends by excise department was challenged. Deciding the question this Court in para 8
F held:-

".....When a rule requires 'publicity' to be given to an auction-sale, what is necessarily implied is that due steps must be taken to give sufficiently advance intimation of the intended sale and its material terms to the members
G of the public or, at least, to that section of the public which normally engages in the kind of business which is the subject-matter of the auction-sale. Even the five special invitees would have found it difficult to come prepared to take part in the resale which was held on May 23. They
H were not invited to a wedding feast. They were invited to

attend the resale of a liquor vend and it is well known that a certain amount has to be paid by the successful bidder on the fall of the hammer. We are also unable to appreciate that the Excise Authorities of the Government of Haryana should have picked and chosen some five particular persons as recipients of the notice of reauction. How their names transpired and what is their particular status, respectability and standing in the liquor trade, are matters on which no light is thrown. There is no material before us on which to doubt the integrity of the authorities who were connected with the reauction. But their conduct must be above suspicion.”

41. In the case of *Sachidanand Pandey & Anr. vs. State of West Bengal & Ors.*, (1987) 2 SCC 295, this Court after considering various decisions on this point came to the following conclusion:-

“40. On a consideration of the relevant cases cited at the Bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.”

42. In the case of *Padma vs. Hiralal Motilal Desarda*, (2002) 7 SCC 564, the process adopted by the City-Industrial

A Development Corporation for disposal of land by bulk sell came for consideration before this Court, when it held as under:-

B “34. There is yet another angle of looking at the propriety of the questioned bulk sale of land by CIDCO and the manner in which it was done. The land acquired and entrusted to CIDCO cannot just be permitted to be parted with guided by the sole consideration of money-making. CIDCO is not a commercial concern whose performance is to be assessed by the amount it earns. Its performance would be better assessed by finding out the number of needy persons who have been able to secure shelter through CIDCO and by the beauty of the township and the quality of life for the people achieved by CIDCO through its planned development schemes. So long as such objectives are fulfilled CIDCO’s operation on “no-profit-no loss” basis cannot be found fault with. There should have been no hurry on the part of CIDCO in disposing of the balance land and that too guided by the sole consideration of earning more money. Even that object CIDCO has not been able to achieve for at the end it has parted with land at a price less than Rs 1500 per square metre — the reserved price. Even if a sale of leftover land was a felt necessity it should have satisfied at least two conditions: (i) a well-considered decision at the highest level; and (ii) a sale by public auction or by tenders after giving more wide publicity than what was done so as to attract a larger number of bidders.”

G 43. In the case of *Centre for Public Interest Litigation vs. Union of India*, (2012) 3 SCC 1, this Court observed as under:-

H “75. The State is empowered to distribute natural resources. However, as they constitute public property/ national asset, while distributing natural resources 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. Like any other A
State action, constitutionalism must be reflected at every
stage of the distribution of natural resources. In Article
39(b) of the Constitution it has been provided that the
ownership and control of the material resources of the B
community should be so distributed so as to best subserve
the common good, but no comprehensive legislation has
been enacted to generally define natural resources and a
framework for their protection. Of course, environment laws
enacted by Parliament and State Legislatures deal with
specific natural resources i.e. forest, air, water, coastal C
zones, etc.

xxxxxxx

80. In *Jamshed Hormusji Wadia*, (2004) 3 SCC 214 case, D
this Court held that the State's actions and the actions of
its agencies/instrumentalities must be for the public good,
achieving the objects for which they exist and should not
be arbitrary or capricious. In the field of contracts, the State
and its instrumentalities should design their activities in a E
manner which would ensure competition and non-
discrimination. They can augment their resources but the
object should be to serve the public cause and to do public
good by resorting to fair and reasonable methods."

44. The High Court in the impugned order took notice, in F
paragraph 85, that the appellant-CIDCO tried to justify their
action of cancellation of allotment of plots on the following
reasons.

"1. Mr. Nilesh Gala, the proprietor of M/s. Platinum G
entertainment has used same modus operandi for
obtaining allotment of plots meant for country club and
another plot for multiplex in Kharghar.

2. An application was made by the petitioners to the H
Hon'ble Chief Minister and the same was considered

A favourably by the Board of CIDCO.

B 3. The undue haste is shown in allotment of Plots resulting in illegal and arbitrary allotment with malafide intention to cause wrongful gain to the individual person. It is a case of favouritism supported by the Report of Dr. D.K. Shankaran.

C 4. The agenda note and the resolutions demonstrate no discussion about the individual merits of the allottees except need for multiplexes sought to be justified during the case of discussion without indicating any reason for choosing group of petitions for allotment of plots.

D 5. Absence of official members in the Board Meeting wherein the decisions of allotment of plots to the petitioners were taken.

E 6. The allotment of plots of land are factually for commercial purposes in the garb of construction of multiplexes and country club with a view to inure profit to the allottees.

F 7. The multiplex policy whereby certain tax benefits were granted with effect from year 2002 were ignored while making the allotment of plots to the petitioners overlooking the demand for multiplexes due to concessions granted by the government.

8. No reasons are to be found to justify allotment of three plots in favour of one group of persons.

G 9. Refusal on the part of comptroller of Auditor General to accept the reasons given by CIDCO justifying absence of law suffered by CIDCO by virtue of the subject allotments of plots to the petitioners.

H 10. Dr. D.K. Sankaran report is the basis for calculation of loss suffered by CIDCO.

11. Justification of the powers of the state government directing cancellation of allotment of plots on the basis of sections 118 and 154 of the M.R.T.P. Act. A

12. Surreptitious arbitrary allotment made without inviting tenders leads to the presumption of nepotism and bias etc. B

13. The petitioners M/s. Platinum Entertainment were not registered as a charitable trust yet their application for allotment was considered by CIDCO favourably.

14. Failure on the part of the petitioner to produce any valuation report to justify at which rate the allotment was made by the CIDCO." C

45. The High Court instead of looking into these aspects of the matter, completely ignored the same on the ground that in the show cause notice none of the grounds were made basis of the order of cancellation of allotment. In our considered opinion, the High Court while exercising power of judicial review is supposed to have gone into the question as to how the three plots were allotted in favour of one group of persons. The High Court has lost sight of the admitted fact that by entertaining private applications of the same person three different valuable plots have been allotted in different names. The High Court fell in error in holding that the allotment of plots of land to the same person but in the names of trust is also justified. D
E

46. Chapter 5 of New Bombay Road Disposal Rules, 1975 provides for allotment of land for religious, educational, charitable etc. purposes and though the allotment of plots of land for construction of multiplex are treated as allotment for public utility purposes, in substance, the allotment qua these allottees was for commercial purpose. The allotments which are made for the social, educational, charitable purposes do not entail any profit to the allottees. However, multiplex is for commercial exploitation, which ensures profit to the allottees and the manner of disposal of lands enumerated in the said F
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- A policy by and large suggests that most of the allotments have to be made by inviting tenders or bids.

47. The document on record clearly demonstrates that there was no discussion about individual merits of the allottees and was only general consideration, which resulted in making arbitrary allotment without going through the tender process. The report of the Comptroller and Auditor General would show that the reasons given by CIDCO are not acceptable and there is loss caused to the Corporation by virtue of the said allotment made to the respondents.

48. The High Court ought to have seen the action of the then Board of Directors of CIDCO demonstrating that in the first meeting of the Board itself they cleared the special proposals without considering the individual merits. In the meeting, hardly any official members were present when the allotments were made to the respondents.

49. State and its agencies and instrumentalities cannot give largesse to any person at sweet will and whims of the political entities or officers of the State. However, decisions and action of the State must be founded on a sound, transparent and well defined policy which shall be made known to the public. The disposal of Government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favoritism or nepotism influences the exercises of discretion. Even assuming that if the Rule or Regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the Rule of Law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt pick and choose method while allotting the Government land.

50. Furthermore, this Court has already stated in *Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh*

& Ors., (2011) 5 SCC 29, that the State or its agencies or instrumentalities must give largesse founded on a sound, transparent, discernible and well-defined policy, which should be made known to the public at large and further held that a rational policy of allotting land on the basis of individual applications cannot de hors an invitation or advertisement by the State or its instrumentality, bringing it to the knowledge of public at large so that the eligible persons should not be excluded from lodging their competitive claims.

51. The action of cancellation of allotment of plots, as tried to be justified by CIDCO, would show that the High Court failed to appreciate such cogent reasons in deciding the matter while exercising the power of judicial review. It is more evident and clear that arbitrariness had a role to play in the matter while allotting the three plots in favour of one group of persons which certainly would come within the meaning of arbitrariness on the part of CIDCO and against the public policy. Such an action on the part of CIDCO, it appears to us, is nothing but a favouritism based on nepotism and was irrational and unreasonable and functioning in a discriminatory manner as voiced by this Court in the case of *Raman Dayaram Shetty* (supra).

52. Rule 4, to which our notice was drawn by the learned counsel appearing on behalf of the respondents, although provided an authority to dispose of plots of land by public auction or by tender or by considering individual applications as the Corporation would determine from time to time, but such action on the part of the Corporation should have been taken rationally and after applying the methods which are more rational and reflect non-arbitrariness and would not be smacked under the clout of favouritism and/or nepotism or being influenced by political personalities. In our opinion, although CIDCO had the power to allot the land in any one of the manners stated in Rule 4 above, but the conduct of such allotment should have been more clear and transparent and

- A without presence of any element of favouritism and/or nepotism and without being influenced by any such thing in exercising the discretion conferred upon CIDCO.

B 53. In the case of *Humanity and Anr. vs. State of West Bengal and Ors.*, (2011) 6 SCC 125, this Court observed that in the matter of granting largesse, the Government has to act fairly and without even any semblance of discrimination. It was held as under:

C "It is axiomatic that in order to achieve a bona fide end, the means must also justify the end. This Court is of the opinion that bona fide ends cannot be achieved by questionable means, specially when the State is involved. This Court has not been able to get any answer from the State why on a request by the allottee to the Hon'ble Minister for Urban Development, the Government granted the allotment with remarkable speed and without considering all aspects of the matter. This Court does not find any legitimacy in the action of the Government, which has to act within the discipline of the constitutional law, explained by this Court in a catena of cases. We are sorry to hold that in making the impugned allotment in favour of the allottee, in the facts and circumstances of the case, the State has failed to discharge its constitutional role."

F 54. We take serious note and express our anguish, the way the authorities of CIDCO showed undue favour to the respondents and managed to allot the Government land in favour of one person knowing fully well that the aforesaid proprietor of the Company, in different capacity and in dummy names, sought allotments of plots. The way CIDCO has been dealing with the Government property, it is high time, we observe, that notwithstanding Regulation 4, as contained in the Regulations, the appellant CIDCO may take all endeavour to make allotments of plots by open tender or competing bids and shall not take any decision for allotment of Government land at

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the instance of the Ministers and High Dignitaries for any purposes whatsoever. A

55. Taking into consideration the entire facts of the case and the law discussed hereinabove, we have no hesitation in holding that the CIDCO was justified in cancelling all the allotments made in favour of the respondents. B

56. For the reasons aforesaid, these appeals are allowed and the judgment and order passed by the High Court in the writ petitions are set aside. Consequently, we uphold the order passed by the CIDCO cancelling the allotments made in favour of the respondents. C

Bibhuti Bhushan Bose

Appeals allowed.