

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice SUJOY PAUL

&

The Hon'ble Justice PARTHA SARATHI SEN

WPA 20959 of 2012
Arunangshu Chakraborty

-Vs-

Kolkata Metropolitan Development Authority
and Others

With

WPA 21739 of 2012

With

CAN 1 of 2013 (Old No. CAN 5825 of 2013)

Maya Majumder

-Vs-

Kolkata Metropolitan Development Authority
and Others

Petitioner-in-person
in WPA 20959 of 2012:

Mr. Arunangshu Chakraborty

For the Petitioner
in WPA 21739 of 2012:

Mr. Arunangshu Chakraborty, Adv.
Mr. Arijit Bera, Adv.
Ms. Zeba Rashid, Adv.
Ms. Saika Amrin, Adv.
Mr. Maheshwar Malo, Adv.

For the K.M.D.A.:

Mr. Ashok Kumar Banerjee, Sr. Adv.
Mr. Satyajit Talukdar, Adv.
Mr. Arindam Chatterjee, Adv.

For the Respondent Nos.5 and 6
in WPA 20959 of 2012:

Mr. Pratik Dhar, Sr. Adv.
Mr. Samir Halder, Adv.
Mr. Snehal Sinha, Adv.

For the State
in WPA 20959 of 2012:

Mr. Tapan Kumar Mukherjee, Sr. Adv.
Mr. Somnath Naskar, Adv.

Hearing concluded on: 09.03.2026
Judgment on: 18.03.2026

PARTHA SARATHI SEN, J. :-

1. In this writ petition which is in the nature of a public interest litigation the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent authorities commanding them to cancel the allotment of plot nos. 8 and 9 in Block BD, Category- GRH at East Kolkata Development Project vide No. 42/KMDA/SECTT/AD-23/2008 dated 02.06.2008 in favour of the respondent no. 6 along with other ancillary reliefs.
2. At the time of hearing Mr. Chakraborty (the petitioner-in-person in WPA 20959 of 2012) at the very outset draws our attention to page no. 15 of the informal paper-book being a copy of the letter dated 12.05.2018 addressed to the Minister-in-charge, Department of Municipal Affairs and Urban Development and Chairman of Kolkata Municipal Development Authority (KMDA in short). It is submitted by Mr. Chakraborty that from the said letter dated 12.05.2008 it would reveal that the respondent no. 6 being the Chief Promoter of one Krishnav Cooperative Housing Society Ltd. (hereinafter referred to as the 'said society' in short) made a request to allot a plot of land in KMDA area for a group of 8 officers and professionals desirous to settle in Kolkata. It is submitted by Mr. Chakraborty that from page nos. 16 to 19 of the paper-book being a copy of the letter dated 02.06.2008 as issued by the respondent no. 4 authority addressed to the respondent no. 6 it would reveal

that the request made by the respondent no. 6 was promptly adhered to and the respondent authorities have decided to allot a plot of land at plot no. BD-8+9 measuring almost 7 cottah at the rate of Rs. 4 lakhs per cottah in favour of the proposed housing cooperative society, subject to fulfillment of certain conditions as have been embodied in the said letter.

3. It is further submitted by Mr. Chakraborty that from page no. 20 of the paper-book it would reveal further that on 08.10.2009 possession certificate in respect of the said two plots of land were given to the said society which has been received by the respondent no. 6. At this juncture, attention of ours is drawn to page nos. 32 to 35 of the paper-book being a copy of the minutes of the meeting of the Land and Flat Allotment Committee (hereinafter referred to as the 'said Committee' in short) as has been held on 20.05.2008 whereby and whereunder the said Committee recommended for allotment of the aforementioned two plots of land in favour of the respondent no. 6.
4. It is further submitted by Mr. Chakraborty that soon thereafter a registered deed of lease dated 23.10.2009 was executed by the KMDA in favour of the respondent no. 6 as would be evident from page nos. 39 to 48 of the paper-book. Drawing attention to page no. 49 of the paper-book being a copy of the letter dated 16.08.2010 as issued by the Administrative Officer and Estate Manager of the respondent no. 1 KMDA addressed to respondent no. 6 it would reveal that under cover of the said letter dated 16.08.2010 a reminder was sent to the respondent no. 6 to furnish the list of all members of the said Cooperative Society along with the relevant affidavit of its members.

5. It is submitted by Mr. Chakraborty that from the chronology of events as would be evident from the aforementioned documents it would reveal that the respondent No. 1 KMDA did not adhere to the established rules of allotment of land under its control which raises a serious doubt in the action of the respondent no. 1 KMDA and its instrumentalities. It is contended by Mr. Chakraborty that on perusal of the application dated 12.05.2008 as submitted by the respondent no. 6 before the then Hon'ble Minister of the said Department it would be evident that such an application for allotment of plots of land was not made in an approved format and on the contrary, the same was done on a plain paper which was allegedly processed with an unexplained haste by the said Committee on the very next day of submission of the said application.
6. It is further contended by Mr. Chakraborty that while issuing the letter of allotment dated 02.06.2008, the execution of the lease deed dated 23.10.2009 in favour of the said society as lessee and the issuance of possession certificate dated 08.10.2009, the respondent no. 1 KMDA and its instrumentalities have miserably failed to abide by the prevalent rules and norms as well as the statutory provisions and thus, the action of the respondent no. 1 KMDA may be regarded as bad in law since the said authority has no right to fritter away Government property in favour of the private person or bodies without adequate consideration and without following the statutory provision and the rules made thereunder. In support of his contention Mr. Chakraborty places

his reliance upon the reported decision in the case of **Lok Prahari Vs. State of Uttar Pradesh and Ors.** reported in **(2016) 8 SCC 389.**

7. It is further submitted by Mr. Chakraborty that from the materials as placed before this Court it would reveal that the respondent no. 1 KMDA while dealing with the application of respondent no. 6 acted with unexplained haste and thus there cannot be any difficulty to hold that the allotment of land as has been made in favour of the respondent no. 6 is arbitrary in nature as well as the same is *mala fide*. In support of his contention Mr. Chakraborty has placed his reliance upon the reported decision in the case of **Mandeep Singh & Ors. Vs. State of Punjab & Ors.** reported in **2025 INSC 834.** Mr. Chakraborty further placed his reliance upon the judgment as passed in the case of **Fuljit Kaur Vs. State of Punjab & Ors.** reported in **(2010) 11 SCC 455.**

8. In course of his argument Mr. Chakraborty further draws attention of this Court to page nos. 144 to 147 of the paper-book being Annexure- R1 to the rejoinder of the respondent nos. 5 and 6 being a copy of the brochure as issued by the respondent no. 1 KMDA in the year 1987. It is submitted by Mr. Chakraborty that from the copy of the said brochure, it appears that the respondent no. 1 KMDA had decided the mode of selection of beneficiary for the purpose of allotment of land and also decided the eligibility criteria for getting allotment from the respondent no. 1 KMDA. It is submitted that on comparative study of the relevant clauses of 'mode of selection of beneficiary' and relevant clauses of the eligibility for getting allotment vis-à-vis the

application dated 12.05.2008 as submitted by the respondent no. 6, it would reveal that the respondent no. 6's application for allotment of land was not in accordance with the prescribed form as has been annexed to the said brochure. It is further argued that the respondent no. 1 KMDA itself violated the mode of selection of beneficiary while allotting the aforementioned land to the respondent no. 6 without making any finding regarding eligibility of the members of the said society of which the respondent no. 6 is the chief promoter.

9. It is thus submitted by Mr. Chakraborty that the aforementioned procedural illegality is apparent on the face of the record and the same is violative of the Article 14 of the Constitution of India since such an action tantamounts to *indirect discrimination*. In this regard, Mr. Chakraborty places his reliance upon the judgment of the Hon'ble Supreme Court in the case of ***State of Andhra Pradesh & Ors. Vs. Dr. Rao, V.B.J. Chelikani & Ors.*** reported in ***2024 INSC 894***.

10. In his next fold of submission Mr. Chakraborty contended that for the sake of argument even if it is admitted that the procedure as mentioned in the brochure of 1987 as referred to above is not applicable in case of allotment of land which is involved in the instant writ petition, even then it would reveal that the respondent no. 1 KMDA made a complete departure from the procedure of allotment of land violating the salutary principle that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

11. It is further submitted by Mr. Chakraborty that in the affidavit-in-opposition of the respondent no. 1 KMDA, no plausible explanation has been given even for non-compliance of the procedure as prescribed in the brochure of 1987 while allotting the land to the said society through respondent no. 6 which suggests *mala fide* on the part of the respondent no. 1 and its instrumentalities in allotting the said land in favour of the said society of which respondent no. 6 is the promoter. For strengthening his contention, Mr. Chakraborty places his reliance upon the judgment as passed in the case of ***Dipak Babaria & Anr. Vs. State of Gujarat & Ors.*** reported in **(2014) 3 SCC 502.**

12. Drawing attention to the copy of the affidavit-in-opposition of the private respondent nos. 5 and 6 as available at page nos. 96 to 125 of the paper-book it is submitted by Mr. Chakraborty that though a case has been made out on behalf of the private respondent nos. 5 and 6 that at that material time there existed a Chairman/ Authorities' quota under which the said Committee recommended the allotment of plots of land or flats however, no such materials could be placed in the instant writ petition showing the existence of any quota as wrongly allotted. It is further submitted by Mr. Chakraborty that for the sake of argument even it is accepted that such quota existed at the time of such allotment however, allotment of land under the said allotted quota as a special case *smacks of arbitrariness* as has been held by the Hon'ble Supreme Court in the case of ***Dipak Babaria (Supra).***

13. It is further submitted by Mr. Chakraborty that the procedure of registration of housing cooperative society and allotment of land etc. as have been urged by the private respondent nos. 5 and 6 in their affidavit-in-opposition are contrary to the provisions of **West Bengal Cooperative Societies Act, 2006** (hereinafter referred to as the 'said Act of 2006' in short). It is further submitted by Mr. Chakraborty that in the affidavit-in-opposition of the respondent nos. 5 and 6 though a case has been made out that the aforementioned allotment of land was done in accordance with the provisions of the **West Bengal Town and Country (Planning and Development) Act, 1979** (the 'said Act of 1979' in short) however, no materials have been placed before this court that such allotment has been made under the said Act of 1979 as wrongly claimed by the private respondent nos. 5 and 6.
14. In his next limb of submission, Mr. Chakraborty further contended that the respondent no. 1 KMDA is basically a statutory agent of the State Government however, by no stretch of imagination it may be presumed that the respondent no. 1 KMDA has got any power of distribution/ allotment of land in as much as the preamble of the **Kolkata Metropolitan Development Authority Act, 1972** (hereinafter referred to as the 'said Act of 1972' in short) clearly postulates that the KMDA was established for the formulation and execution of plans for the development of Kolkata Metropolitan area and for coordination and supervision of the execution of such plans. It is thus submitted by Mr. Chakraborty that from the preamble of the said Act of 1972 it would thus reveal that the respondent no. 1 KMDA has got no power to allot

and/or distribute land over which it carried out the development for which the said authority was established.

15. Placing reliance upon the judgment passed by the Hon'ble Supreme Court in the case of ***The Fruit & Vegetable Merchants Union Vs. The Delhi Improvement Trust*** reported in ***AIR 1957 SC 344*** it is further argued by Mr. Chakraborty that simply because the KMDA was entrusted in the formulation and execution of plans for the development of Kolkata Metropolitan area including the land wherein the aforementioned two plots of land are situated, it does not mean that ownership of the said property is passed to them. It is further submitted by Mr. Chakraborty that in absence of any vesting in favour of the KMDA in respect of the aforementioned two plots of land, the KMDA has no right, title and interest to execute a registered deed of lease in favour of the private respondent no. 6.

16. Placing reliance upon the judgment as passed by the Hon'ble Supreme Court in the case of ***Tata Steel Ltd. Vs. State of Jharkhand & Ors.*** reported in ***(2015) 15 SCC 55*** it is argued by Mr. Chakraborty that it is trite that the Government is not bound by the Transfer of Property Act, 1882, when it seeks to transfer any land vested in it or any interest therein. It is thus submitted by Mr. Chakraborty that when the Government transfers land or any interest therein to any person, such a transaction is not governed by the Transfer of Property Act, 1882 and thus, the rights and obligations flowing from such transfer either a piece to land or an interest therein by the Government cannot be determined on the basis of the rights and obligations specified under the

Transfer of Property Act, 1882. It is thus contended by Mr. Chakraborty that by execution of registered deed of lease dated 23.10.2009 in favour of the respondent no. 6 by the KMDA no right, title and interest over the said two plots of land passed either in favour of the private respondent no. 6 or in favour of the aforementioned society and, therefore, there cannot be any difficulty to issue a writ of mandamus against the respondent authorities to cancel the allotment of Plot Nos. 8 and 9 in the aforementioned development project as well as the certificate of possession as has been issued by the KMDA authorities.

17. In his next limb of submission, Mr. Chakraborty places his reliance upon the judgment as passed by the Hon'ble Supreme Court in the case of ***Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur & Ors.*** reported in **(2013) 5 SCC 427**. It is argued by Mr. Chakraborty that in view of the proposition of law as enunciated in the case of ***Rajasthan State Industrial Development and Investment Corporation (Supra)*** any encumbrance created by the owner or any transfer of the land in question which has been made after the issuance of notification under Section 4 of the **Land Acquisition Act, 1894** would be deemed to be void and would not be binding on the Government. It is thus submitted by Mr. Chakraborty that in view of such there cannot be any difficulty in coming to a logical conclusion that the registered deed of lease dated 23.10.2009 as has been executed by the KMDA (as lessor) in favour of the respondent no. 6 (as lessee) is void ab-initio and thus no right, title and

interest passed either in favour of the private respondent no. 6 or any of the members of the said cooperative society.

18. Placing his reliance upon the judgment as passed by the Hon'ble Supreme Court in the case of ***Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh & Ors.*** reported in ***(2011) 5 SCC 29*** it is further argued by Mr. Chakraborty that since the KMDA allotted the aforementioned two plots of land in favour of the private respondent no. 6 without maintaining a sound, transparent, discernible and well defined policy and in view of the fact such policy was never known to the public by publication in the official gazette or by adopting any other recognized mode of publication, there cannot be any difficulty to hold that such allotment was discriminatory and arbitrary with a sole intention to give some undue benefit to a class of person or persons.
19. It is further argued by Mr. Chakraborty that in the judgment as passed by the Hon'ble Supreme Court in the case of ***Humanity and Anr. Vs. State of West Bengal and Ors.*** reported ***(2011) 6 SCC 125*** the Hon'ble Supreme Court followed the same legal principle regarding the action of the State in giving largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Placing reliance upon the judgment as passed by the Hon'ble Supreme Court in the case of ***Saroj Screens Pvt. Ltd. Vs. Ghanshyam & Ors.*** reported in ***(2012) 11 SCC 434*** it is argued by Mr. Chakraborty that since the KMDA was holding the aforementioned two plots of land directly as a trustee of the public, the alienation as made by the said trust in favour of the private respondent no. 6 without holding any auction or by

inviting the bids would amount to breach of trust and thus appropriate relief/reliefs may be granted to the writ petitioner in terms of the prayer made in the instant writ petition.

20. Placing his reliance upon the judgment as passed by the Hon'ble Supreme Court in the case of **B.K. Srinivasan & Ors. Vs. State of Karnataka & Ors.** reported in **(1987) 1 SCC 658** it is further argued by Mr. Chakraborty that the alleged policy adopted by the KMDA is basically in the nature of the subordinate legislation and, therefore, the same ought to have been published or promulgated in a manner known to law. It is further submitted by Mr. Chakraborty that from the chronology of events as discussed in the foregoing paragraphs it would reveal that the allotment of the aforementioned two plots of land in favour of the private respondent no. 6 vis-à-vis the execution and registration of deed of lease dated 23.10.2009 in favour of the private respondent no. 6 as well as the issuance of certificate of possession also in favour of the private respondent no. 6 have been done in a clandestine manner which by no stretch of imagination can be said to be reasonable. In this regard, Mr. Chakraborty places his reliance upon the judgment as passed by the Hon'ble Supreme Court in the case of **Viraj Impex Pvt. Ltd. Vs. Union of India & Anr.** reported in **2026 INSC 80**.

21. At this juncture, Mr. Chakraborty draws our attention to the affidavit-in-opposition as filed by the respondent no. 1 KMDA as available at page nos. 57 to 94 of the paper-book. It is submitted by Mr. Chakraborty that from internal page no. 3 (page no. 59 of the paper-book) of the said opposition of the KMDA it

reveals that it is the specific case of the KMDA that it generally does allotment of land and flat of any nature through a committee which is known as 'Land and Flat Committee' (hereinafter referred to as the 'said Committee' in short) and the recommendations of the said committee are ratified by the main authorities itself. It is submitted by Mr. Chakraborty that the mode of recommendation as made by the said Committee and the modalities of distribution of land as reveals from the said affidavit-in-opposition are contrary to the rules of equality and proportionality without having any semblance of fairness which amounts to discrimination. In support of such contention, Mr. Chakraborty places his reliance upon the judgment of the Hon'ble Supreme Court in the case of **State of Andhra Pradesh & Ors. Vs. Dr. Rao V.B.J. Chelikani & Ors.** reported in **2024 INSC 894**.

22. Placing reliance upon the judgment as passed in the case of **Gunendra Chandra Dey Vs. The State of West Bengal & Ors.** reported in **1996 SCC OnLine Cal 113: (1996) 1 Cal LJ 541** it is submitted by Mr. Chakraborty that before a Single Bench of this Court in a writ petition involving the legality, propriety and correctness of the allocation of plots by the KMDA in the self-same project as involved in the present *lis*, KMDA had produced one guideline for off-loading of plots. However such guidelines are never placed before this Court in this writ petition which tantamounts to material suppression.

23. Placing his reliance upon the judgment dated 27.09.2021 as passed by a coordinate Bench of this Court in **WPA 579 of 2016 [Humanity, Salt Lake & Anr. Vs. State of West Bengal & Ors.]** a coordinate Bench reiterated the

settled principle of law as enunciated by the Hon'ble Supreme Court in the case of **Akhil Bhartiya Upbhokta Congress (Supra)** and thus opined that the State/ its agencies/ instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities.

24. In course of his argument, Mr. Chakraborty further contended that while passing judgment in the case of **Ramana Dayaram Shetty Vs. The International Airport Authority of India & Ors.** reported in **(1979) 3 SCC 489** the Hon'ble Supreme Court while dealing with power or discretion of the Government in the matter of grant of public largesse came to a finding that such decision must be confined and structured by rational, relevant and non-discriminatory action and in the event of any departure from such standard or norm, the action of the Government would be liable to be struck down unless it is shown on the part of the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

25. In his next limb of submission Mr. Chakraborty places reliance upon the judgment as passed in the case of **Basawaraj & Anr. Vs. Special Land Acquisition Officer** reported in **(2013) 14 SCC 81** wherein the Hon'ble Supreme Court while dealing with the settled legal proposition based on Article 14 of the Constitution of India came to a finding that in the event a wrong is committed in an earlier case, it cannot be perpetuated. It has been held further that equality is a trite, which cannot be claimed in illegality and, therefore, cannot be enforced by a citizen or Court in a negative manner.

26. It is thus submitted by Mr. Chakraborty that for the sake of argument even if this Court finds that similar such illegality was committed by the KMDA in distribution and/or allotment of plots to some other societies and/or individuals, such illegal action cannot come into way in granting relief/ reliefs of the writ petitioner since the private respondents cannot seek any negative equality on the strength that similar such wrong was committed in respect of others and no punitive action has been taken against them.
27. Placing his reliance upon the judgment passed in the case of ***Madhya Pradesh Road Development Corporation Vs. Vincent Daniel & Ors.*** reported in ***2025 INSC 408*** it is submitted by Mr. Chakraborty that the Hon'ble Supreme Court had occasion to consider the methods of ascertaining the market value of the land such as (i) opinion of experts, (ii) the price paid in bona fide transactions for the purchase of adjacent lands having similar advantages and disadvantages and (iii) capitalization of the actual and immediate prospective annual profits from the land while determining land/ or computing the compensation payable under the Land Acquisition Act, 1894.
28. Drawing attention of this Court to page no. 91 of the paper-book being Annexure R2 of the affidavit-in-opposition of KMDA it is submitted by Mr. Chakraborty that from the contents of such annexure being a copy of the minutes of the meeting of the pricing committee held on 12.02.2009 it would reveal that on the day of allotment of the said two plots of land in favour of the private respondent no. 6 on 02.06.2008 there was no basis at all for fixation of premium amount and/or consideration payable to KMDA. It is thus submitted

by Mr. Chakraborty that on account of such illegality and/or irrationality and/or arbitrariness on the part of the KMDA in favour of the private respondent nos. 5 and 6 there cannot be any hesitation to hold that the allotment of the aforementioned two plots of land in favour of the private respondents is violative of Article 14 of the Constitution of India and thus such allotment may be quashed by issuing appropriate writ/ writs.

29. Per contra, Mr. Dhar, learned Senior Advocate appearing on behalf of the private respondent nos. 5 and 6 in his usual fairness submits before this court that admittedly there is no quarrel to the settled principle of law that a State and/or its agencies/instrumentalities cannot give public largesse to any person according to the sweet will and whims of the political entities and further the decision of the Government in the matter of grant of largesse must be confined and structured by rational, relevant and non-discriminatory standard or norm and in the event any departure from the said principle is noticed, there cannot be any hesitation to hold that such a decision of the State is arbitrary in nature where from mala fide would be presumed and such an action is contrary to the settled principle of law as enshrined in the Article 14 of the Constitution of India.

30. Placing his reliance upon the judgment as passed in the case of **Joydeep Mukharjee Vs. State of West Bengal & Ors.** reported in **(2011) 2 SCC 706** it is urged by Mr. Dhar that in the case of **Joydeep Mukharjee (Supra)** the Hon'ble Supreme Court while considering the legality, validity and correctness of the distribution of the plots of land under Chief Minister's discretion quota,

recorded the State Government's conscious decision not to make further allotment under discretionary quota of the Chief Minister. However, by the self-same judgment, the Hon'ble Supreme Court noticing that the rights of the parties appeared to have been settled and attained finality in respect of the allotted plots under the said quota, declined to interfere with such settled rights and grants even in such public interest litigation. It is further submitted by Mr. Dhar that considering the fact that the private respondents and/or its members were allotted land on 02.06.2008 and also considering the fact that the rights of the members of the aforementioned cooperative society have been settled and attained finality with the passage of time, it would be highly unjust if any attempt is made to reopen and/or interfere with such settled rights and grants as has been done by the Supreme Court in a similar case that is in the case of ***Joydeep Mukharjee (Supra)***.

31. In course of his argument, Mr. Dhar draws attention of this Court to page nos. 98 to 100 of the paper-book being part and parcel of the affidavit-in-opposition of the private respondent nos. 5 and 6. It is submitted by Mr. Dhar that from the averments made in paragraph 2(b) of the said affidavit-in-opposition it would reveal that in a similar manner land/lands were allotted in favour of various persons particulars of whom have been given by way of a chart however, the writ petitioner, claimed to be a public spirited person for some obvious reason targeted the private respondent nos. 5 and 6 who is/are the promoters of the aforementioned cooperative society which clearly indicates lack of bona fide on the part of the writ petitioner. It is further submitted that

the omission to question the largesse in favour of various other persons/ societies in the self-same year or immediately preceding or succeeding the said year of 2006 by the self-same authority that is KMDA deprives the writ petitioner for obtaining an equitable relief since such an action raises a serious doubt as to the bona fide of the writ petitioner which has been deprecated by the Hon'ble Supreme Court in the judgment as passed in the case of **Aarsuday Projects & Infrastructure (P) Ltd. Vs. Jogen Chowdhury & Ors.** reported in **2026 SCC OnLine SC 122.**

32. It is further submitted that during the pendency of the instant writ petition the writ petitioner filed IA No. CAN 1 of 2013 (Old CAN 10667 of 2013) whereby and whereunder a prayer was made for impleading the other allottees as party respondents who are similarly circumstanced with the private respondents but for the reason best known to the writ petitioner such an application has been 'not pressed' which again shows that the intention of the writ petitioner is calculative, selective and directed towards the present private respondents only.

33. In course of his submission, Mr. Dhar further draws attention of this Court to Section 17(2) of the **West Bengal Cooperative Societies Act, 2006** (hereinafter referred to as the said Act of 2006 in short) as well as to the Rule 2(d) and 127 of the **West Bengal Cooperative Societies Rules, 2011** (hereinafter referred as the said Rules of 2011 for short). It is submitted that on conjoint perusal of the said section and the said rules it would reveal that the action of the respondent no. 6 being the Chief Promoter/ Chairman of the said

cooperative society while submitting application for allotment shall be construed to be actions taken on behalf of the cooperative society after its registration and thus by no stretch of imagination, it can be said that there was any illegality or infirmity in making the application for allotment at the instance of the private respondent no. 6 even prior to registration of the said housing cooperative society.

34. In course of his submission, Mr. Dhar also places his reliance upon page nos. 91 to 94 of the paper-book being Annexure R2 of the affidavit-in-opposition of the respondent no. 1 KMDA. It is submitted that from the copy of the minutes dated 12.09.2009 it would reveal that the earlier pricing committee of KMDA fixed the price of land at the rate of Rs. 4 lakhs per cottah and thus, it would be preposterous to hold that while allotting the said plots of land there was no standard in fixation of price and/or consideration as wrongfully alleged by the writ petitioner.

35. Drawing further attention of this Court to the affidavit-in-opposition of the KMDA it is further submitted by Mr. Dhar that from the averments of the said affidavit-in-opposition it would reveal that in an earlier round of litigation before this Court the decision of the respondent no. 5 as CEO of KMDA was under challenge whereby and whereunder the private respondent no. 5 being the CEO of KMDA did not adhere to the prayer of the writ petitioner in WPA 21739 of 2012 regarding cancellation of allotment of land at Plot no. 37. It is argued by Mr. Dhar that in the said earlier round of litigation, a coordinate Bench of this Court in a public interest litigation declined to interfere with the

decision of the respondent no. 5 as CEO of KMDA and for the aforesaid reason only the present writ petitioner in the garb of public interest litigation targeted the allotment of land in favour of the aforementioned society wherein the private respondent no. 5 is a member. It is thus submitted by Mr. Dhar that the present writ petitioner has not approached this Court with clean heart, clean mind and clean objective which is/are *sine-qua-non* for a public interest litigation as has been held by the Hon'ble Supreme Court in the judgment in the case of **Ashok Kumar Pandey Vs. State of W.B.** reported in **(2004) 3 SCC 349**.

36. Placing his reliance upon a judgment as passed by a Single Bench of this Court in the contempt case of **Court on its own Motion: Re: Arunangshu Chakraborty** reported in **2025 SCC OnLine Cal 4718** it is further submitted by Mr. Dhar that in the said proceeding the present writ petitioner was found to be guilty of the offence punishable under Section 12 of the **Contempt of Courts Act, 1971**. It is further argued by Mr. Dhar that in the judgment in the case of **Dattaraj Nathuji Thaware Vs. State of Maharashtra & Ors.** reported in **(2005) 1 SCC 590** the Hon'ble Supreme Court expressed its view that the Bar Councils and Bar Association should ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of public interest litigation.

37. In his next limb of submission, Mr. Dhar submits before this Court that there occurred unexplained delay and laches on the part of the writ petitioner to approach this Court by way of filing public interest litigation challenging the

allotment in favour of the private respondents in the year 2008 whereas the instant writ petition was filed in the year 2012. In support of his contention Mr. Dhar places his reliance on the judgments in the cases of ***Mrinmoy Maity Vs. Chhanda Koley & Ors.*** reported in ***(2024) 15 SCC 215***, ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu*** reported in ***(2014) 4 SCC 108***, ***Rabindranath Bose & Ors. Vs. The Union of India & Ors.*** reported in ***(1970) 1 SCC 84*** and ***New Delhi Municipal Council Vs. Pan Singh & Ors.*** reported in ***(2007) 9 SCC 278***.

38. In course of his argument, Mr. Dhar further contended that Section 3(2) of the **Kolkata Metropolitan Development Authority Act, 1972** (hereinafter referred to as the 'KMDA Act' in short) postulates that KMDA shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of the KMDA Act, to acquire, hold and dispose of the property and to contract and may sue and be sued in its name. It is thus submitted by Mr. Dhar that it is preposterous to suggest that the KMDA has no power to dispose of the said two plots in question in favour of the private respondent no.6 by virtue of the lease deed dated 23.10.2009.

39. Drawing attention to Section 14(1) of the KMDA Act it is further submitted by Mr. Dhar that the said section enables the KMDA to constitute as many committees for smooth transaction of business as may be determined by the regulations made in this behalf. Drawing attention to Section 22 of the KMDA Act it is further submitted by Mr. Dhar that the KMDA is empowered to

make such regulations as it may think fit for the exercise of its power and discharge of its functions under the KMDA Act.

40. Drawing attention to page nos. 72 to 77 of the paper-book being a copy of the minutes of the 6th meeting of the Land and Flat Allotment committee (Annexure R-2 of the affidavit-in-opposition of KMDA) held on 20.05.2008 it is submitted by Mr. Dhar that in the said meeting the aforementioned committee recommended for allotment of a plot of land under 'group housing category' at East Kolkata Area Development Project ('EKADP' in short) at the existing rate, terms and conditions and on submission of affidavit. It is thus submitted that in view of the provisions of Sections 3(2), 21 and 14(1) of the KMDA Act, there was no occasion to hold that either the consideration of the committee of KMDA is not in accordance with law or the recommendations as have been done by the said committee pursuant to the regulations made by KMDA is contrary to the provisions of the KMDA Act.

41. It is further submitted by Mr. Dhar that the reported decisions as cited from the side of the writ petitioners are distinguishable from the facts and circumstances as involved in the instant writ petition. It is thus submitted on behalf of the private respondents that the instant writ petition may be dismissed.

42. Mr. Ashok Kumar Banerjee, learned Senior Advocate duly assisted by Mr. Talukdar, learned Advocate appearing on behalf of the KMDA at the very outset draws our attention to the affidavit-in-opposition as filed by the respondent no. 1 KMDA as available at page nos. 57 to 95 of the paper-book. Drawing

attention to the various averments made by the KMDA in the said affidavit-in-opposition, it is submitted by Mr. Banerjee that in such affidavit-in-opposition it has been specifically disclosed as to how Land and Flat committee of KMDA recommended for allotment of a plot of land in EKADP in favour of the private respondent no. 6, as well as other applicants as per the existing rate, terms and conditions and on compliance of required formalities.

43. It is further submitted by Mr. Banerjee that in absence of any denial and/or production of any contrary material, there is hardly any scope to come to a finding that the said allotment of plots at EKADP in favour of the private respondent no. 6 as well as in respect of other cooperative societies as well as other individuals/ persons are contrary to the KMDA Act. Drawing attention to page nos. 61 to 63 of the paper-book being the part and parcel of the affidavit-in-opposition of the KMDA it is further submitted by Mr. Banerjee that the writ petitioner has not approached this Court by filing the instant writ petition with clean heart, clean mind and clean objective in as much as sufficient materials have been placed before this Court by way of filing affidavit-in-opposition by the KMDA that the present petitioner who is a legal practitioner of this Court moved a writ petition for his client one Maya Majumder who is the writ petitioner in WPA 21739 of 2012 wherein he questioned the legality, propriety and correctness of the order dated 07.09.2012 as passed by the then Chief Executive Officer who is the respondent no. 5 herein whereby and whereunder the respondent no. 5 authority declined to cancel the allotment of Plot no. 37 in

Block R, MIG-1, under BP Township Project on account of some inter-se dispute between the said Maya Majumder and her other family members.

44. It is further submitted by Mr. Banerjee that subsequently the present writ petitioner being the learned Advocate for the said Maya Majumder also filed and moved a public interest litigation being WPA 27307 (W) of 2012 which was also dismissed.

45. It is further submitted by Mr. Banerjee that sufficient materials have also been placed that since the present writ petitioner being the Learned Advocate of the said Maya Majumder has miserably failed to obtain a favourable order for his client, he with some oblique motive filed the instant writ petition challenging the allotment in favour of the said society since the respondent no. 5 himself was a member of the said cooperative society and the private respondent no. 6 is the Chief Promoter/ Chairman.

46. It is further submitted by Mr. Banerjee that for the reason best known to him the writ petitioner in this public interest litigation and/or in any other litigation of similar nature made no endeavour to question the allotment as made by the said Committee in favour of the various persons/ cooperative societies by virtue of the minutes of meeting of the said Committee dated 20.05.2008 and on the contrary, he has chosen the action of the KMDA in connection with the allotment of the plot of land in favour of the said society only because of the fact that the respondent no. 5 himself is a member of the said society.

47. Placing his reliance upon the judgment as passed in the case of **Holicow Pictures (Pvt.) Ltd. Vs. Prem Chandra Mishra & Ors.** reported in **(2007) 14 SCC 281** it is argued by Mr. Banerjee that in the judgment of **Holicow Pictures (Supra)** the Hon'ble Supreme Court discarded the practice of approaching the constitutional Court by filing public interest litigation which is basically in the nature of private interest litigation or politics interest litigation considering the fact that the person approaches the Court is/are not acting *bona fide* and having sufficient interest in the proceeding of public interest litigation. It is thus submitted by Mr. Banerjee that since the writ petitioner has miserably failed to prove his *locus standi* and in view of the fact that the writ petitioner has miserably failed to substantiate his *bona fide* in the instant public interest litigation, he is not entitled to any relief as prayed for.

48. Drawing attention to the order dated 27.11.2019 as passed by a Single Bench of this Court in **CO 1244 of 2019 (Sri Gordhan Das Mundra Vs. Sri Partha Sarathi Paul)** it is further submitted by Mr. Banerjee that in the said order dated 27.11.2019 a single Bench of this Court noticed that the present writ petitioner who is the advocate on behalf of the petitioner in CO 1244 of 2019 made some unfounded and direct aspersion not only against an individual Judge but also against the highest judicial authority of the State. It is thus submitted by Mr. Banerjee that considering the background of the present writ petitioner and also considering the fact that the writ petitioner has approached this Court with some oblique consideration, the instant writ petition may be dismissed.

49. In course of his submission Mr. Banerjee further places reliance upon the judgment as passed by the Hon'ble Supreme Court in the case of ***State of Rajasthan Vs. Ganeshi Lal*** reported in ***AIR 2008 SC 690***. He contends that since each case depends upon its own facts, the principle of *ratio decidendi* may be followed since a decision is an authority for what it actually decides and what is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. It is further submitted by Mr. Banerjee that within the four corners of the instant writ petition, no cogent explanation has been furnished by the writ petitioner for challenging the allotment in favour of the said Committee 4 years after such allotment and on account of such unexplained delay and laches on the part of the writ petitioner, the writ petition may be dismissed.

50. Learned Advocate appearing on behalf of the respondent State adopted the argument of Mr. Banerjee. He prays for dismissal of the instant writ petition.

51. In course of his reply, Mr. Chakraborty again placed his reliance upon the reported judgment of ***Akhil Bhartiya Upbhokta Congress (Supra)***. It is submitted by Mr. Chakraborty that in paragraphs 80 and 81 of the said reported decision, the Hon'ble Supreme Court observed that even if a person files a writ petition for vindication of a private interest but raises question of public importance involving exercise of power by men in authority then it is the duty of the Court to enquire into the matter. It is further submitted by Mr.

Chakraborty that sufficient materials have been placed before this Court that the impugned allotment is the outcome of an exercise undertaken by KMDA in gross violation of Article 14 of the Constitution of India and thus, this Court must not be hesitant to quash such allotment since it has been shown by the writ petitioner that such allotment is a glaring example of favouritism and nepotism.

52. It is further submitted by Mr. Chakraborty that since the minutes of the meeting dated 20.05.2008 were never published, there was no occasion on the part of the writ petitioner to come across the resolutions taken in the said meeting and thus the allegation of the KMDA as well as of the private respondents regarding abandonment of the writ petitions against other beneficiaries is not at all relevant especially on account of long passage of time. In this regard, Mr. Chakraborty places his reliance upon the judgment dated 22/23.04.2013 as passed by a coordinate Bench of this Court in WP24542 (W) of 2010.

53. In course of his argument, Mr. Chakraborty made an attempt to distinguish *obiter dicta* and *ratio decidendi* by placing reliance upon the judgment dated 24.04.2023 as passed by the Hon'ble Supreme Court of India in ***Special Leave to Appeal (C) Nos. 7455-7456/2023 (Career Institute Educational Society Vs. Om Shree Thakurji Educational Society)*** wherein the Hon'ble Supreme Court expressed the following view:

“The distinction between obiter dicta and ratio decidendi in a judgment, as a proposition of law, has been examined by several judgments of this Court, but we would like to refer to two, namely, State of Gujarat & Ors. vs.

Utility Users' Welfare Association & Ors. and Jayant Verma & Ors. vs. Union of India & Ors.

The first judgment in State of Gujarat (supra) applies, what is called, "the inversion test" to identify what is ratio decidendi in a judgment. To test whether a particular proposition of law is to be treated as the ratio decidendi of the case, the proposition is to be inverted, i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the ratio decidendi of the case.

In Jayant Verma (supra), this Court has referred to an earlier decision of this Court in Dalbir Singh & Ors. vs. State of Punjab to state that it is not the findings of material facts, direct and inferential, but the statements of the principles of law applicable to the legal problems disclosed by the facts, which is the vital element in the decision and operates as a precedent. Even the conclusion does not operate as a precedent, albeit operates as res judicata. Thus, it is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding as a legal precedent is the principle upon which the case is decided and, for this reason, it is important to analyse a decision and isolate from it the obiter dicta."

54. While replying to the alleged delay and laches on the part of the writ petitioner Mr. Chakraborty draws attention of this Court to page nos. 22 to 24 of the paper-book being a copy of the letter dated 19.05.2012 as written by the writ petitioner addressed to the respondent authorities requesting the said authorities to take appropriate steps for cancellation of the allotment on the ground stated therein.

55. It is thus submitted that on account of non-action and/or inaction on the part of the respondent authorities to take appropriate decision with regard to the representation dated 19.05.2002 as submitted by the writ petitioner, the instant writ petition is filed and thus by no stretch of imagination it can be said

that there was unexplained delay and laches on the part of the writ petitioner in filing the writ petition as wrongly alleged.

56. Placing his reliance upon the judgment as passed by the Hon'ble Supreme Court in the case of ***New India Assurance Company Ltd. Vs. Sonigra Juhi Uttamchand*** reported in ***(2025) 3 SCC 23*** it is submitted that it is trite that when a principle of law is enunciated in a decision by a constitutional Court it is applicable to all cases irrespective of the stage of pendency thereof. It is thus submitted by Mr. Chakraborty that for the sake of argument even if it is assumed that the Hon'ble Supreme Court has framed and/or enunciated a principle of law regarding largesse of Government land during the pendency of the instant writ petition, the said principle of law duly applies in such pending litigation. It is further submitted by Mr. Chakraborty that materials have been placed before this Court that KMDA for the reason best known to them failed and neglected to disclose all the necessary facts before this Court which tantamount to fraud as have been held in the case of ***Union of India & Ors. Vs. Ramesh Gandhi*** reported in ***(2012) 1 SCC 476*** as well as in the case of ***Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif & Ors.*** reported in ***1968 SCC OnLine SC 63 : AIR 1968 SC 1413.***

57. We have meticulously gone through the entire materials as placed before us. We have given our due consideration over the submissions of the learned Advocates for the contending parties.

58. Since in course of his argument Mr. Chakraborty was very vocal with regard to the authority of the KMDA to allot land in favour of the private

respondent no. 6 being the Chief Promoter/ Chairman of the said society, we at the very outset propose to look to the preamble of the KMDA Act which reads as under:

“An Act to provide for the establishment of an Authority for the formulation and execution of plans for the development of the Calcutta Metropolitan Area, for the co-ordination and supervision of the execution of such plans and for matters connected therewith or incidental thereto;”

59. Section 3 of the KMDA Act is also required to be looked into and the same is quoted hereinbelow in verbatim:

“3. (1) As soon as may be after the commencement of this Act, the State Government shall, by notification in the Official Gazette, constitute, for the purposes of this Act, an authority to be called the Calcutta Metropolitan Development Authority (hereinafter referred to as the Metropolitan Authority).

(2) The Metropolitan Authority shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, and to contract, and may sue and be sued in its name.”

60. Section 22 of the KMDA Act is also reproduced hereinbelow in verbatim:

“22. The Metropolitan Authority may make such regulations as it may think fit for the exercise of its powers and discharge of its functions under this Act.”

61. On careful perusal of the aforementioned legislative provisions it appears to us that it is the intention of the legislature while enacting KMDA Act that KMDA would be a body corporate with perpetual succession and a common seal with power to acquire, hold and dispose of the property and to contract and may sue and be sued in its name. At this juncture, if we look to the factual aspects as involved in the instant writ petition, it appears to us that while

executing a deed of lease dated 23.10.2009 in favour of the said society, the KMDA had every authority to execute such deed of lease in favour of the said society as such power is given to the KMDA by the legislatures while enacting KMDA Act.

62. It thus appears to us that the contention of Mr. Chakraborty that in respect of the aforementioned two plots of land the KMDA is mere trustee and thus has no power to dispose of the same in favour of any third party, has no force at all since the KMDA Act authorizes KMDA not only to make formulation and execution of plans for the development of the said project but also KMDA possessed sufficient authority to dispose of the said developed project and to that extent the KMDA is quite competent to enter into a contract.

63. In course of hearing Mr. Chakraborty was also very vocal with regard to the alleged violation of the provisions of the said Act of 2006. It is submitted by Mr. Chakraborty that the allotment as has been done in favour of the respondent no. 6 and/or the said society is per se illegal in as much as the KMDA had failed to notice that the said allotment of land was made even prior to the formation and registration of the cooperative society which was however opposed by Mr. Dhar, learned Senior Advocate for the private respondents in course of his argument. In order to arrive at a logical conclusion with regard to alleged violation of the said Act of 2006 at the instance of the respondent no. 6 and/or the said society, we propose to look to some of the provisions of the said Act of 2006.

64. Section 17 of the said Act of 2006 is quoted hereinbelow in verbatim:

“17. Co-operative society to be body corporate.-(1) *The registration of a co-operative society shall render it a body corporate by the name under which it is registered, having a perpetual succession and a common seal and the co-operative society shall be entitled to acquire, hold and dispose of property, to enter into contracts on its behalf, to institute and defend suits and other legal proceedings, and to do all other things necessary to achieve its objectives.*
(2) *All transactions entered into in good faith prior to registration of the purposes of the co-operative, shall be deemed to be transactions of the co-operative society after registration.”*

65. Section 87 of the said Act of 2006 is as under:

“87. Eligibility for membership of housing co-operative society.-
(1).....
(2) *No person shall be admitted as a member or function as an organiser of a housing co-operative society until he has made a declaration to be sworn by him before an Executive Magistrate or Judicial Magistrate in accordance with the requirements specified in clauses (a) to (f) of sub-section (1):*
Provided that if such declaration is subsequently found to be false in whole or in part, it shall be an offence punishable under this Act.”

66. Section 88 of the said Act of 2006 is as under:

“88. Type of housing co-operative societies to be registered.--*Housing co-operative societies of the following types may be registered under section 16:-*
(a) *a housing co-operative society of which all the members eligible under section 87 have purchased a consolidated land for the purpose of construction of unit houses on separate plots which shall be allotted by the co-operative society and the common services and amenities shall be provided by the co-operative society to all members who may construct their houses either on their own or through the co-operative society:*
Provided that the members opting for construction of houses on their own must undertake construction within three years from the date of possession, failing which he

shall surrender the plot of land in favour of the co-operative society:

Provided further that if he does not surrender, it shall be deemed to have been surrendered by him and the price of land shall be refunded to him by the co-operative society which may re-allot the plot to a new member;

(b) a housing co-operative society of which all members eligible under section 87 have purchased a consolidated land for construction of flats which shall be allotted to each of them by the co-operative society and maintenance, common services and amenities to all members will be provided by the co-operative society;

(c) a housing co-operative society of which all the members eligible under section 87 are the owners of the flats in any building constructed or under construction by any authority or agency and have entered into an agreement to form the co-operative society for providing maintenance, common services and amenities to all members.”

67. Section 89 of the said Act of 2006 is as under:

“89. First general meeting of housing co-operative society.-(1) *Notwithstanding anything contained elsewhere in this Act, the first board of the housing co-operative society shall, within three months from the date of registration under section 16, call the first general meeting of the housing co-operative society for the purposes of-*

(a) electing directors of new board;

(b) placing a report on progress of work and other particulars relating to the project of the co-operative housing society;

(c) apportionment of cost of land, house or flat, if applicable;

(d) placing a report of fund raised from the members, expenses incurred under various heads prior to, and after registration, any resignation and enrolment of members, latest estimate of the project cost and manner of payment towards cost of construction;

(e) appointing architects, contractors and valuers:

Provided such appointment shall be made after inviting application for the same through a daily newspaper, if applicable:

Provided further that no person acting as an architect or contractor or valuer shall act as any of the other two;

*(f) revising allotment of plots of land or flats on the basis of draw of lots if there is any change in the sanctioned plan of the housing project, if applicable:
Provided that if the sanctioned plan is not received before the general meeting, the revision of allotment, if any shall be considered in the next annual or half yearly or special general meeting.*

(2).....”

68. At this juncture, if we look to page 15 of the paper-book being a copy of the letter dated 12.05.2008, it appears that the private respondent no. 6 being the Chief Promoter of the said society under cover of his letter dated 12.05.2008 made an application before the Hon'ble MIC of the Department of Municipal Affairs and Urban Development and Chairman of KMDA for allotment of land in favour of a proposed cooperative housing society to be formed by a group of 8 officers and professionals who were desirous of settling down in Kolkata. On perusal of page nos. 16 to 18 of the paper-book being a copy of the letter dated 02.06.2008 as written by the Special Secretary of KMDA addressed to the private respondent no. 6 it reveals further that the private respondent no. 6 was intimated that pursuant to his application the aforementioned two plots at EKADP were allotted in favour of the proposed housing cooperative society for the purpose of construction of residential plots. It further reveals from page no. 20 of the paper-book that on 08.10.2009, the possession of the aforementioned two plots were given to the private respondent no. 6 being the Chief Promoter of the said Society. On perusal of page no. 123 of the paper-book being Annexure R-2 of the affidavit-in-opposition of the private respondent nos. 5 and 6 it reveals that the competent

authority forwarded a certificate of registration and by-laws of the said society under cover of a letter dated 14.09.2009.

69. At this juncture, the moot question arises for consideration is as to whether submission of an application by the Chief Promoter of the said proposed society for allotment of plot of land prior to the registration of the said society and the allotment of land by the KMDA in favour of a proposed society (which is yet to be registered) in any way contravenes the provisions of the said Act of 2006.

70. On careful perusal of the aforementioned statutory provisions of the said Act of 2006 as quoted in the preceding paragraph it does not appear to us that prior to making an application for allotment of land by the Chief Promoter of a cooperative housing society registration of such society under the said Act of 2006 is mandatory. It rather appears to us that Section 17(2) of the said Act of 2006 clearly mandates that all transactions entered into in good faith prior to the registration of the purposes of the cooperative society deemed to be transactions of the cooperative society after its registration. On perusal of the letter of allotment dated 02.06.2008, the certification of possession dated 08.10.2009, the copy of the registered deed of lease dated 23.10.2009 and the letter dated 14.09.2009 as mentioned in the foregoing paragraphs it appears that though letter of allotment and certificate of possession were given by the KMDA in favour of the private respondent no. 6 prior to registration of the said cooperative society however, the said deed of lease was executed and registered

on 23.10.2009 that is after registration of the said cooperative society which was effected on or before 14.09.2009.

71. In view of the chronology of events and in view of the discussion made hereinabove this Court thus finds that the present writ petitioner has miserably failed to establish that action of the KMDA and/or of the private respondent no. 6 are contrary to the provisions of the said Act of 2006.

72. Since the writ petitioner in the instant public interest litigation had alleged infraction of rules on the part of the KMDA while allotting the aforementioned two plots of land in favour of the private respondent No.6 and/or the said society, we at the very outset propose to look to the law of land regarding distribution of public largesse. In the reported judgment of **Lok Prahari (Supra)** the Hon'ble Supreme Court had occasion to deal with U.P. Ex Chief Minister's Resident Allotment Rule, 1997 which permitted the Ex Chief Ministers to continue in occupation of Government Bungalows for lifetime after demitting office. In doing so the Hon'ble Supreme Court expressed the following view:

“46. One should remember here that public property cannot be disposed of in favour of any one without adequate consideration. Allotment of government property to someone without adequate market rent, in absence of any special statutory provision, would also be bad in law because the State has no right to fritter away government property in favour of private persons or bodies without adequate consideration and therefore, all such allotments, which have been made in absence of any statutory provision cannot be upheld. If any allotment was not made in accordance with a statutory provision at the relevant time, it must be discontinued and must be treated as cancelled and the State shall take possession of such premises as soon as possible and at the same time, the

State should also recover appropriate rent in respect of such premises which had been allotted without any statutory provision.”

73. In the reported decision of **Dipak Babaria (Supra)** the Hon’ble Supreme Court while dealing with the subject of largesse expressed thus:

“61. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor v. Taylor [(1875) LR 1 Ch D 426 at p. 431] was first adopted by the Judicial Committee in Nazir Ahmad v. King Emperor [(1935-36) 63 1A 372; (1936) 44 LW 583; AIR 1936 PC 253] and then followed by a Bench of three Judges of this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [AIR 1954 SC 322; 1954 Cri LJ 910]. This proposition was further explained in para 8 of State of U.P. v. Singhara Singh [AIR 1964 SC 358; (1964) 1 Cri LJ 263 (2)] by a Bench of three Judges in the following words: (AIR p. 361)

“8. The rule adopted in Taylor v. Taylor [(1875) LR 1 Ch D 426 at p. 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

This proposition has been later on reiterated in Chandra Kishore Jha v. Mahavir Prasad [(1999) 8 SCC 266], Dhanajaya Reddy. v. State of Karnataka [(2001) 4 SCC 9; 2001 SCC (Cri) 652] and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. [(2008) 4 SCC 755].”

74. In the reported decision of **Akhil Bhartiya Upbhokta Congress (Supra)** the Hon’ble Supreme Court had again occasion to consider the principle regarding largesse by the State and in doing so the following was held:

“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/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 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. 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.

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 de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for 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.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to

institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution."

[Emphasis Supplied by us]

75. In the reported decision of **Humanity & Anr. (Supra)** the Hon'ble Supreme Court while considering the matter of granting largesse in the light of Article 14 of the constitution of India expressed the following view:

"23. It has been repeatedly held by this Court that in the matter of granting largesse, the Government has to act fairly and without even any semblance of discrimination. Law on this subject has been very clearly laid down by this Court in Ramana Dayaram Shetty v. International Airport Authority of India. A three-Judge Bench in the said decision has recognised that the Government, in a welfare State, is in a position of distributing largesse in a large measure and in doing so the Government cannot act at its pleasure. This Court perusing the new jurisprudential theory of Professor Reich in his article on "The New Property" accepted the following dictum contained therein: (SCC p. 505, para 11)

"11. That Government action be based on standards that are not arbitrary or unauthorised."

"25. In Kasturi Lal Lakshmi Reddy v. State of J&K another three-Judge Bench relied on the dictum in Ramana¹ and held that whenever any governmental action fails to satisfy the test of reasonableness and public interest, it is liable to be struck down as invalid. This Court held that a necessary corollary of this proposition is that the Government cannot act in a manner which would benefit a

private party. Such an action will be contrary to public interest. (See SCC p. 13, para 14 of the Report.) kathas (which is actually 63.04 kathas).”

“30. Admittedly, no advertisement was issued and no offer was sought to be obtained from the members of the public in respect of the new allotment of a much bigger plot. In view of the principles laid down by this Court, the impugned allotment is clearly in breach of the principles of Article 14 explained by this Court in Ramana, Kasturi Lal and other subsequent cases.”

76. In the reported decision of **Saroj Screens Pvt. Ltd. (Supra)** the Hon’ble Supreme Court had again occasion to consider the law regarding largesse and in doing so the following views were expressed:

“32. Though, the exercise of power by the Corporation under the aforesaid section is not hedged with any particular condition except that in a case like the present one, the alienation could not have been made without the previous sanction of the State Government, but in our constitutional scheme compliance with the doctrine of equality enshrined in Article 14 of the Constitution has to be read as a condition precedent for exercise of power by the State Government and the Corporation, more so, when it relates to alienation of public property or any right or interest therein. In this context, it is necessary to emphasise that the Corporation holds the property as a trustee of the public and any alienation of such property or any right or interest therein otherwise than by way of auction or by inviting bids would amount to breach of that trust.

33. The concept of the "State" as it was known before the commencement of the Constitution and as it was understood for about two decades after 26-1-1950 has undergone drastic change in recent years. Today, the State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. Now the Government is a regulator and dispenser of special services and provides to the large public benefits including jobs, contracts, licences, quotas, mineral rights, etc. The law has also recognised changing character of the governmental functions and the need to protect individual interest as well as public interest. The discretion of the Government

has been held to be not unlimited. The Government cannot give or withhold largesse in its arbitrary discretion or according to its sweet will. The Government cannot now say that it will transfer the property (land, etc.) or will give jobs or enter into contracts or issue permits or licences only in favour of certain individuals.

34. *In V. Punnan Thomas v. State of Kerala, K.K. Mathew, J. (as he then was) observed: (AIR p. 90, para 19)*

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

[Emphasis Supplied]

77. In the reported decision of **Dr. Rao, V.B.J. Chelikani (Supra)** the Hon'ble Supreme Court while scrutinizing the legality, validity and correctness of the allotment policy of the Government of Andhra Pradesh in the light of Article 14 of the Constitution of India expressed the following view:

76. *The category of people who have been identified as beneficiaries of this State largesse as "other deserving sections of the society" are: Judges of the Supreme Court and High Court, MPs, MLAs, journalists, State and Central Government employees. It would be apt to note that, not only are these classes of people being allotted land preferentially, the price of such land is also discounted to the basic rate, instead of the prevalent market rate.*

77. *The State of Telangana, in its defence, has contended that the abovementioned category of people forms a distinct class. However, we have already enunciated above that, not only must a distinct classification exist but such classification should not be arbitrary, artificial or artful, and should be rationally tailored to serve the objective.*

78. *In the present case, the principle of arbitrariness, as expounded in E.P. Royappa v. State of Tamil Nadu in its puritan form, is applicable. The classification giving State largesse to Judges of Constitutional Courts, MPs, MLAs, officers of the AIS, journalists, etc. favours a privileged segment of society, which is already better off compared to the vast majority of marginalized and socio-economically disadvantaged individuals. The benefits granted to these privileged and well-off classes come at a cost, as they effectively deprive and deny the essentials to the marginalized and socially vulnerable populations.*

79. *The allocation of land at basic rates to select privileged groups reflects a "capricious" and "irrational" approach. This is a classic case of executive action steeped in arbitrariness, but clothed in the guise of legitimacy, by stating that the ostensible purpose of the policy was to allot land to "deserving sections of society". Shorn of pretence, this policy of the State Government, is an abuse of power meant to cater exclusively to the affluent sections of the society, disapproving and rejecting the equal right to allotment of the common citizen and the socio-economically disadvantaged. It would not be wrong to say that the doctrine of manifest arbitrariness, as expounded in Shayara Bano v. Union of India is applicable.*

[Emphasis Supplied]

78. Keeping in mind the proposition of law in relation to largesse as enunciated by the Hon'ble Supreme Court of India in the aforesaid reported decisions, if we look to the page nos. 134 to 147 of the paper-book being Annexure R-1 of the rejoinder of the writ petitioner against the affidavit of the private respondent nos. 5 and 6 being a copy of a brochure for allotment of residential plots at East Kolkata Township Phase-1, it reveals that the KMDA has decided to select the beneficiary by a mode as has been mentioned therein and the same is quoted hereinbelow in verbatim:

“Mode of Selection of Beneficiary

Initially selection/lottery will be based on the number of applications received against the number of plots

available. If the number of applications received are more than the number of plots available a lottery will be held on a subsequent date and venue to be announced in leading daily newspapers. All applications will be scrutinized subsequently and final selection/allotment will rest on the applicant's fulfilling the prescribed conditions of eligibility."

It thus appears to us that in the said 'brochure' the KMDA has expressed its intention to entertain more than one application for a plot/plots of land and not to entertain one application without following the due process.

79. It further appears from page no. 140 of the paper-book that the KMDA in no uncertain terms indicated in the said brochure that all applications must be in the prescribed application format attracted to the said brochure. At this juncture, if we look to the copy of the application dated 12.05.2008 as has been submitted by the private respondent no. 6 in the capacity of the Chief Promoter of the said society being an application for allotment of plot of land, it appears that such an application has been made in a plain paper though the brochure as published by the KMDA clearly indicates that such an application must be made in the prescribed format as has been annexed to the said brochure. It further appears that such an application dated 12.05.2008 (though not in prescribed format) was duly processed and soon thereafter that is on 02.06.2008 the special Secretary of the KMDA issued allotment letter in respect of the aforementioned two plots of land in favour of the said society. No advertisement was issued inviting applications.

80. In course of his argument Mr. Banerjee, learned Senior Advocate appearing on behalf of the KMDA however could not explain as to how and why the said application dated 12.05.2009 was processed and thereafter a

favourable recommendation has been made in favour of the private respondent no. 6 being the Chief Promoter of the said society. We have already noticed that Section 22 of the KMDA Act empowers the KMDA to make its own regulation as it think fit for the exercise of its power and discharge of its function under the said Act. There is no doubt in the mind of this Court that KMDA published the aforementioned 'brochure' in order to regulate itself which prescribes that all applications for allotment of land shall have to be made in the prescribed format. It thus appears to us that the KMDA had failed to advance any logical explanation as to why being an authority under Article 12 of the Constitution it has made a departure from its own regulation especially in the case of largesse in favour of the private respondent no. 6 being the Promoter of the said cooperative society.

81. In view of the discussion made hereinabove, this Court has no hesitation to hold that the action of the KMDA is contrary to the settled principle of law as has been held in the case of ***Dipak Babaria (Supra)*** wherein it has been specifically held by the Hon'ble Supreme Court that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

82. At this juncture, we again propose to look to Annexure R-2 of the affidavit-in-opposition of the KMDA as available at page nos. 69 to 71 of the paper-book being a copy of the minutes of the 154th authority meeting of the KMDA held on 12.12.2007 wherein the following decisions have been taken:

"The land and flat allotment policy was ratified with the following amendments:

1. *Special allotments of HIG and MIG residential plots may be made by the authority to distinguished personalities from the field of art and craft and public service besides sportspersons and war widows.*
2. *Special allotments of group housing plots may also be made for sportspersons, war widows, distinguished personals from the field of art and craft and public service.*
3. *Special allotments of residential plots to land losers may be made in case projects of KMDA are suffering due to non resolution of land acquisition related issues.*

Action- Special Secretary, KMDA D.S.(W), KMDA.”

[Emphasis Supplied]

83. In order to arrive at a logical conclusion of the instant public interest litigation we also propose to look to the agenda no. 7 of the minutes of the 6th meeting of the Land and Flat Allotment Committee held on 20.05.2008 as available at page nos. 32 to 35 as well as in page nos. 74 to 78 of the paper-book. It reveals that in the said meeting dated 20.05.2008 the following decision has been taken:

| Sl. No. | Name of the Company/ Agency | Recommendation |
|----------------|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. | <i>Sri Vivek Bharadwaj & others.</i> | <i>The Committee recommended for allotment of a plot of land under group housing category at EKADP at the existing rate, terms & conditions and on submission of Affidavit.</i> |

84. It thus appears to us that the Land and Flat Allotment Committee of the KMDA while allotting the aforementioned two plots of land in favour of the private respondent no. 6 though recommended for such allotment however, in

making such recommendation the said Committee of the KMDA made no venture to indicate that such allotment has been made as and by way of 'special allotments' of group housing plots for sports persons, war widows and distinguished personalities from the field of art, craft and public service. It thus appears to this Court that the Land and Flat Allotment Committee of the KMDA itself violated the decision of the KMDA as has been taken in its 154th authority meeting. Putting it differently, it was not spelled out to which category the private respondent fits in.

85. It thus appears to us that while making such recommendation in favour of the private respondent no. 6 the said Committee of the KMDA not only violated its own regulations, but also violated the settled principle of law regarding largesse even being an authority within the meaning of Article 12 of the Constitution of India. In view of the discussion made hereinabove we are unable to accept the contention of Mr. Banerjee that such an action of the KMDA tantamounts to mere irregularity but not an illegality as alleged the writ petitioner.

86. In our considered view, the argument as advanced by Mr. Banerjee has got no significance in as much as it is trite that if any allotment was made not in accordance with a statutory provision, it must be discontinued and must be treated as cancelled and the State shall take possession of such premises as soon as possible as has been held in the case of **Lok Prahari (Supra)**.

87. In view of the discussion made hereinabove, this Court has got no hesitation to hold that the allotment of the aforementioned two plots of land in

favour of the private respondent No.6 and/or in favour of the said society has been done not in fair and equitable manner and thus the element of favouritism or nepotism in favour of the private respondent nos. 5 and 6 cannot be ruled out.

88. As discussed in the foregoing paragraphs, both Mr. Dhar and Mr. Banerjee, learned Senior Advocates for the private respondents and KMDA respectively doubted the bona fide of the writ petitioner on the ground that the writ petitioner for the reason best known to him made no endeavour to question the allotment as made by the said Committee in favour of various persons/ cooperatives by virtue of the minutes of the self-same meeting as held on 20.05.2008. It is submitted on behalf of the respondents that the private respondent no. 5 while posted as CEO of KMDA declined to pass a favourable order as prayed for by one Maya Majumder, the client of the writ petitioner which was unsuccessfully challenged before this High Court. It was thus submitted on behalf of the KMDA that on account of such, the writ petitioner in the garb of public interest litigation practically has filed a private interest litigation. In course of their argument, both Mr. Dhar and Mr. Banerjee thus contended that since the present writ petitioner does not approach this Court with clean heart, clean mind and clean objective, the writ petitioner is not entitled to any equitable relief/ reliefs as prayed for. It is trite that a writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with clean heart,

clean mind and clean objective as has been observed by the Hon'ble Supreme Court in the case of **Ashok Kumar Pandey (Supra)** .

89. At this juncture, the moot question arises for our consideration is as to whether for not challenging the largesse in favour of the other beneficiaries who were allotted plots of land pursuant to the meeting of the said Committee dated 20.05.2008 the writ petitioner is at all entitled to get the reliefs as prayed for in the instant public interest litigation.

90. In order to answer such question we at the very outset propose to look to Article 14 of the Constitution of India which reads as under:

“14. Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

91. In the judgment passed in the case of **Ekta Shakti Foundation Vs. Govt. Of Nct of Delhi** reported in **(2006) 10 SCC 337** the Hon'ble Supreme Court had occasion to consider as to whether Article 14 of the Constitution of India has got any negative application that is to say whether a citizen could claim negative equality by virtue of the Article 14 of the Constitution of India and in doing so the Hon'ble Supreme Court expressed the following view:

“12. *It was submitted that in some other cases, a departure has been made. No definite material has been placed in that regard. In any event,*

“Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to

deny the [similar] benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.”

13.....

14. “If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order [could not] be made the basis of issuing a writ compelling the respondent authority to repeat the illegality [to cause] another unwarranted order. The extraordinary and discretionary power of the High Court [under Article 226] cannot be exercised for such a purpose.” [Chandigarh Admn. v. Jaqjit Singh, (1995) 1 SCC 745, p. 750, para 8.] (emphasis in original) (See Secy., Jaipur Development Authority v. Daulat Mal Jain [Secy., Jaipur Development Authority v. Daulat Mal Jain, (1997) 1 SCC 35, p. 50, para 24.] , SCC p. 51, para 27.)

15. “30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459] held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court.....”

[Emphasis Supplied by us.]

92. In the case of **Basawaraj (Supra)** the Hon'ble Supreme Court had once again considered the scope of seeking negative equality under Article 14 of the Constitution of India and in doing so the following was held:

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705] , Anand Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565] , K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937] .)”

[Emphasis Supplied by us.]

93. Keeping in mind the proposition of law as decided in the case of **Ekta Shakti Foundation (Supra)** and **Basawaraj (Supra)** if we look to the factual aspects of the instant public interest litigation, it appears to us that the bona fide of the writ petitioner in filing the instant public interest litigation ought not to be questioned only because the writ petitioner has chosen not to proceed

against other individuals and/or societies situated in different areas who have been allotted land pursuant to minutes of the meeting dated 20.05.2008. It further appears to us that the allegation against the writ petitioner that he has instituted the instant public interest litigation targeting the private respondent nos. 5 and 6 only on account of his personal grudge and/or interest has no leg to stand upon in as much as nothing could be placed before this court that by the action of the private respondent no. 5 as the then CEO of KMDA, the present writ petitioner is personally aggrieved. Admittedly, at one material point of time the writ petitioner being an advocate of this High Court challenged an order of the present respondent no. 5 as CEO of KMDA on the behalf of his client but by no stretch of imagination it cannot be presumed that the instant public interest litigation at the instance of the writ petitioner lacks bona fide especially when this Court has already noticed serious infraction of rules in largesse in favour of the private respondent nos. 5 and 6.

94. In course of his argument Mr. Chakraborty further contended that the application for allotment of plot of land as made by the private respondent no. 6 was not only as per prescribed proforma as mentioned in the aforementioned brochure but also such application was dealt with by the KMDA with undue haste which smacks arbitrariness. We find sufficient justification in the submission of Mr. Chakraborty in as much as the Hon'ble Supreme Court in the reported judgment of **Mandeep Singh (Supra)** while dealing with a case in the light of Article 14 of the Constitution expressed the following view:

“52. The State and its instrumentalities have a duty and responsibility to act fairly and reasonably in terms of the

mandate of Article 14 of the Constitution. Any decision taken by the State must be reasoned, and not arbitrary. This Court has consistently held that when a thing is done in a post-haste manner, mala fides would be presumed, and further than anything done in undue haste can also be termed as arbitrary and cannot be condoned in law. We may refer here to a few judgments of this Court which lay down this proposition.

[Emphasis Supplied]

95. Similar view was taken by the Hon'ble Supreme Court in the reported decision of **Fuljit Kaur (Supra)** wherein the Hon'ble Supreme Court while dealing with a case involving allotment of land in a hasty manner expressed the following view:

“25. Before parting with the case, it may be pertinent to mention here that the allotment had been made to the appellant within 48 hours of submission of her application though in ordinary cases, it takes about a year. The appellant had further been favoured to pay the aforesaid provisional price of Rs. 93,000 in four instalments in two years, as is evident from the letter dated 8-4-1987. Making the allotment in such a hasty manner itself is arbitrary and unreasonable and is hit by Article 14 of the Constitution. This Court has consistently held that “when a thing is done in a post-haste manner, mala fides would be presumed”. Anything done in undue haste can also be termed as “arbitrary and cannot be condoned in law”. [Vide S.P. Kapoor (Dr.) v. State of H.P. [(1981) 4 SCC 716 : 1982 SCC (L&S) 14 : AIR 1981 SC 2181] , M.P. Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain [(1995) 1 SCC 638 : 1995 SCC (L&S) 364 : (1995) 29 ATC 159], Bahadursinh Lakhubhai Gohil v. Jagdish bhai M. Kamalia [(2004) 2 SCC 65 : AIR 2004 SC 1159] and Zenit Mataplast (P) Ltd. v. State of Maharashtra [(2009) 10 SCC 388] .] Thus, such an allotment in favour of the appellant is liable to be declared to have been made in arbitrary and unreasonable manner. However, we are not inclined to take such drastic steps as the appellant has developed the land subsequent to allotment.”

[Emphasis Supplied]

96. From the materials placed before us we have noticed that the private respondent no. 5 being the Chief Promoter of the said Society made his application before the MIC of the concerned department for allotment of a plot of land on 12.05.2008 and soon thereafter that is on 02.06.2008 such allotment was made, as reveals from the communication of the Special Secretary of the KMDA pursuant to the minutes of the meeting dated 20.05.2008 of the said Committee. In view of such, we have no hesitation to hold that the action the KMDA in allotting the aforementioned two plots of land in favour of the private respondent no. 6 and/or in favour of the said Committee not only suffers from procedural irregularity and unfairness but also the same is a glaring example of the arbitrariness of the KMDA.

97. Since in course of his submission Mr. Dhar, learned Senior Advocate strongly contended that the instant writ petition being a public interest litigation must fail on account of unexplained delay and laches on the part of the writ petitioners and since such contention was vehemently opposed by Mr. Chakraborty in his reply, we feel it obligatory to address the said issue in this judgment.

98. We have occasion to go through some of the celebrated decisions of the Hon'ble Supreme Court regarding applicability of the principle of delay and laches in a public interest litigation. On perusal of the said reported decisions we find that it is the consistent view of the Hon'ble Supreme Court that as regards the applicability of the said principles, public litigations are no exceptions. In the case of ***Bombay Dyeing and Manufacturing Company***

Ltd. Vs. Bombay Environmental Action Group reported in **(2006) 3 SCC**

434 the Hon'ble Apex Court held thus:

“341. Delay and laches on the part of the writ petitioners indisputably have a role to play in the matter of grant of reliefs in a writ petition. This Court in a large number of decisions has categorically laid down that where by reason of delay and/or laches on the part of the writ petitioners the parties altered their positions and/or third-party interests have been created, public interest litigations may be summarily dismissed. Delay although may not be the sole ground for dismissing a public interest litigation in some cases and, thus, each case must be considered having regard to the facts and circumstances obtaining therein, the underlying equitable principles cannot be ignored. As regards applicability of the said principles, public interest litigations are no exceptions. We have heretofore noticed the scope and object of public interest litigation. Delay of such a nature in some cases is considered to be of vital importance. (See Chairman & MD, BPL Ltd. v. S.P. Gururaja [(2003) 8 SCC 567].)”

“345. However, we do not intend to lay down a law that delay or laches alone should be the sole ground for throwing out a public interest litigation irrespective of the merit of the matter or the stage thereof. Keeping in view the magnitude of public interest, the court may consider the desirability to relax the rigours of the accepted norms. We do not accept the explanation in this regard sought to be offered by the writ petitioners. We have no doubt in our mind that the writ petitioners are guilty of serious delay and laches on their part.”

[Emphasis Supplied]

99. Keeping in mind the aforementioned propositions of law as enunciated by the Hon'ble Supreme Court if we again look to the factual aspects of this case, it appears from page nos. 22 to 24 of the paper-book that under cover of his letter dated 19.05.2012 the writ petitioner approached the respondent authorities requesting them to cancel the order of allotment of the

aforementioned two plots in favour of the private respondent no. 6 and/or in favour of the said society. We have noticed that the grievance as agitated by the writ petitioner under cover of his said letter dated 19.05.2012 was never addressed and the writ petitioner was thus compelled to file the instant public interest litigation on account of alleged non-action and/or inaction of the said respondent authorities. In course of his argument Mr. Chakraborty vehemently contended that since the allotment of the aforementioned two plots of land in favour of the private respondent no. 6 and/or the said cooperative society was made in a clandestine manner and such transaction was never made known to the public, there was no occasion on the part of the writ petitioner to come across the factum of allotment of the aforementioned two plots of land in the year 2008 or soon thereafter.

100. We find sufficient justification in the submission of Mr. Chakraborty in as much no materials could be placed before this Court either by the respondent authorities or by the private respondents in order to substantiate that the writ petitioner was well aware regarding allotment of such plots of land in favour of the private respondent no. 6 and/or the said society either at the time of such allotment and/or soon thereafter.

101. In view of the discussion made hereinabove we consider it appropriate not to dismiss the instant public interest litigation merely on the ground of alleged delay and laches and/or hyper technicality especially, when materials have been placed before this court to substantiate that the KMDA allotted the said two plots of land in favour of the private respondent no. 6 and/or the said

society violating the rules and regulations as framed under the said Act of 2006.

102. As discussed in the foregoing paragraphs placing reliance upon the case of **Joydeep Mukharjee (Supra)** it has been argued by Mr. Dhar that considering the propositions of law as enunciated in the said case no adverse order may be passed against the private respondents in as much as the rights of the private respondent no. 5 as well as the other members of the said society have been settled and attained finality with the passage of time. It has been submitted that in the case of **Joydeep Mukherjee (Supra)** considering the magnitude of hardship of the allottees, the Hon'ble Supreme Court declined to interfere with the largesse even noticing that allotment of plots of land from the discretionary quota of the Chief Minister of West Bengal in Saltlake is contrary to the settled principle of law. It is submitted by Mr. Dhar that the *ratio decidendi* of the judgment of the Hon'ble Supreme Court in the case of **Joydeep Mukharjee (Supra)** is equally applicable to the facts and circumstances of the present case.

103. As we have meticulously gone through the judgment of **Joydeep Mukharjee (Supra)** as passed by the Hon'ble Supreme Court, it appears to us that the Hon'ble Supreme Court was not persuaded to interfere with the settled rights and grant of the allottees considering two factors namely:

- (a) The State Government has taken a conscious decision not to make further allotments under the aforementioned discretionary quota even qua those plots,

(b) As far as already allotted plots are concerned, the rights of the parties appeared to have been settled and attained finality.

104. On careful perusal of the entire judgment of **Joydeep Mukharjee (Supra)** it further appears to us that though in the said case allotment of large number of plots in Saltlake City, Kolkata was subject matter of challenge in the said case however, the Hon'ble Supreme Court declined to exercise its high prerogative writ jurisdiction under Article 32 of the Constitution considering the fact that challenging the said largesse different writ petitions and/or intra Court appeal and/or appeal was/were filed before the High Court of Calcutta as well as before the said Court and since the judgments passed in connection with the said writ petitions, intra Court appeals and appeals have already attained finality, they cannot be permitted to be agitated over and over again considering the salutary principles of finality as well as fairness. It thus appears to us that the *ratio decidendi* as involved in the case of **Joydeep Mukharjee (Supra)** is distinguishable from the facts and circumstances as involved in the instant writ petition.

105. Though not argued from the Bar however we deem it fit and proper to consider the facts and circumstances as involved in the instant writ petition from the angle of the *Constitutional Morality*. In order to understand the true meaning and purport of the words 'Constitutional Morality' we propose to look to the judgment as passed by the Hon'ble Supreme Court in the case of **Manoj Narula Vs. Union of India** reported in **(2014) 9 SCC 1** wherein the Hon'ble

Supreme Court had occasion to deal with the principle of ‘Constitutional Morality’ and in doing the same following view has been expressed:

“75. The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building. The traditions and conventions have to grow to sustain the value of such a morality. The democratic values survive and become successful where the people at large and the persons in charge of the institution are strictly guided by the constitutional parameters without paving the path of deviancy and reflecting in action the primary concern to maintain institutional integrity and the requisite constitutional restraints. Commitment to the Constitution is a facet of constitutional morality. In this context, the following passage would be apt to be reproduced:

“If men were angels, no Government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. [James Madison as Publius, Federalist 51] ”

106. A Division Bench of the Hon’ble High Court of Madhya Pradesh in its judgment and order dated 01.10.2018 in **W.P. No. 9733 of 2017 (M/s. Samdariya Builders Pvt. Ltd. Vs. State of M.P. & Anr.)** had an occasion to consider the legality, propriety and correctness of the largesse in favour of the writ petitioner Company and in doing so in the light of the salutary principles of Constitutional Morality as has been dealt in the case of **Manoj Narula (Supra)** as well as the judgment of the Hon’ble Supreme Court in the case of

Niranjan Hemchandra Sashittal Vs. State of Maharashtra reported in **(2013) 4 SCC 642** observed as under:

“135. Looking from any angle, whether based on tender document, promoter agreement and statutory provisions or from the angle of fairness or ‘constitutional morality’, the action of execution of lease deed of land in favour of SBPL cannot be countenanced.”

107. Keeping in mind the salutary principles of the Constitutional Morality as has been dealt with in the case of **Manoj Narula (Supra)** and in the case of **M/s. Samdariya Builders Pvt. Ltd. (Supra)** if we look to the factual aspects of this case, it appears that the KMDA being a functionary of the Government and an authority under Article 12 of the Constitution of India has failed to discharge its function in a fair and reasonable manner which they are duty-bound to exercise in larger public and social interest.
108. It thus appears to us that in the event the recommendation of the said Committee or issuance of letter of allotment by the KMDA in favour of the respondent no. 6 or execution of the deed of lease dated 23.10.2009 are tested in the touchstone of the principles of fairness and/or transparency and/or Constitutional Morality, the largesse in favour of the private respondent no. 6 and/or the said Society also cannot be countenanced.
109. In view of the discussion made hereinabove the instant writ petition succeeds.
110. Consequently the allotment of plot nos. 8 and 9 in Block BD, Category-GRH having an area of 18.00 x 486.00 M² at East Kolkata Development Project vide no. 42/KMDA/Sectt/AD-23/2008 dated June 2, 2008 in favour of

the Chief Promoter “Krishnav Co-Operative Housing Society Ltd.” stands hereby cancelled.

111. Consequently, the registered deed of lease dated 23.10.2009 as has been executed by KMDA (lessor) in favour of Krishnav Co-Operative Housing Society Ltd. (lessee) in respect of plot no. 8 and 9 in Block BD, Category-GRH having an area of 18.00 x 486.00 M² at East Kolkata Development Project vide no. 42/KMDA/Sectt/AD-23/2008 dated June 2, 2008 also stands hereby set aside.

112. The respondent no. 6 and/or Krishnav Co-Operative Housing Society Ltd. is/are hereby directed to hand over the khas and vacant possession of plot no. 8 and 9 in Block BD, Category-GRH having an area of 18.00 x 486.00 M² at East Kolkata Development Project vide no. 42/KMDA/Sectt/AD-23/2008 dated June 2, 2008 together with the erected building thereon in favour of the KMDA within 120 working days from the date of passing of this judgment.

113. The KMDA on receipt of the aforementioned two plots of land and the structure standing thereon from Krishnav Co-Operative Housing Society Ltd. shall return the premium amount of Rs. 28 lakhs together with the present market value of the construction along with 10% interest on the aforementioned amount that is the premium amount as mentioned in the aforementioned deed of lease dated 23.10.2009 and the present market value of the building to the Krishnav Co-Operative Housing Society Ltd. within 60 working days from the date of getting vacant possession of the said two plots of land as well as the construction made thereon.

114. The time limits as fixed by this Court are preemptory and mandatory.
115. WPA 20959 of 2012 is thus allowed in the light of the observation made hereinabove.
116. With the disposal of WPA 20959 of 2012, WPA 21739 of 2012 along with all pending interlocutory applications including I.A. No. CAN 1 of 2013 are also allowed.
117. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, C.J.)

(PARTHA SARATHI SEN, J.)