HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR

Writ Petition No.7344 of 2012 (PIL)

Parishram Samaj Evam Kalyan Samiti

petitioner

versus

State of Madhya Pradesh & others

respondents

Coram :
Honâ□□ble Shri Justice S.K. Gangele &
Honâ□□ble Shri Justice Ashok Kumar Joshi.

Shri Siddharth Gupta, learned counsel for the petitioner.

Shri Sanjay Dwivedi, learned Deputy Advocate General for the State.

Shri V.K. Tankha, learned Senior Counsel assisted by Shri Ajay Gupta, learned counsel for the respondent No.3.

Shri P.K. Kourav with Shri Tabrez Sheikh, learned counsel for the respondent No.7.

Whether approved for reporting : Yes/No

n : 15.07.2016

JUDGMENT

(Pronounced on : 21 .07.2016)

Per S. K. Gangele J.

The petitioner is a society registered under the provisions of M.P. Societies Registration Act, 1973. This public interest litigation has been filed by the petitioner society against granting lease of land bearing khasra No.71, 73 and 76 situate at village Bhainsakhedi, district Bhopal vide order dated 30.08.2008 in favour of the respondent No.3. The petitioner also challenged subsequent lease deed executed by the State Government in favour of respondent society on 17.09.2008 and the notification dated 28.01.2009 issued under Section 23(A) of M.P. Nagar tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred as â□□the Act of 1973â□□) by which the land use of the land under challenge has been changed from â□□agricultureâ□□ to â□□public semi public purpose.â□□

2. Prior to 2001, there was no private medical college in the State of Madhya Pradesh. Only government medical colleges at Bhopal, Jabalpur, Rewa, Gwalior and Indore were imparting medical education. There was a need of more doctors in the State of Madhya Pradesh to cater the medical facilities in the State. Hence, the

Government had framed a policy vide executive instructions to allot government land for opening of new private medical/dental colleges in the State of Madhya Pradesh. An executive instruction in this regard was issued on 03.10.2002. It is mentioned in the circular dated 03.10.2002 issued by the Revenue Department that the Government had taken a decision to allot land free of cost to the semi government institutions/private institutions who would like to open private medical college in the State in accordance with the criteria fixed by the Indian Medical Council. It is further mentioned in the notice that the institution had to provide free medical service and other concerned facilities including medical tests and free medicine to the poor persons in lieu of providing free land.

3. One Bharadwaj Ratan Family Foundation Charitable Trust had agreed to establish Indo U.S. College of Medical Science and Research Center at Bhopal in the State of Madhya Pradesh and the memorandum of understanding was signed between the Government and the aforesaid institution. The said foundation did not carry out the memorandum of understating and backed out. Secretary of the respondent No. 3 Mr. Ajay Goenka

submitted an application to the Collector, Bhopal for allotment/reservation of government land at village Bhainsakhedi on 19.5.2008. It is mentioned in the application that Chirayu Charitable Foundation is a society registered under the M.P. Societies Registration Act, 1973. It is not a profit making institution. The object of the society is to open charitable hospitals/ other free medical relief centers. The society is engaged in counseling the patients/attendants providing treatment, rehabilitation and ancillary activities. It works on charitable basis. The society has a strong financial background and it wants to run a medical college and also hospital in order to provide medical service to the society. The medical and dental colleges would be equipped with 750 bed hospital. The project would run by Chirayu Charitable Foundation on no profit no loss basis. The society prayed that it be allotted 32 acres government land situate at Bhainsakhedi near Bairagarh for the purpose of establishing medical college and hospital.

4. The Collector Bhopal on 24.05.2008 forwarded the application of respondent No.3 to the Principal Secretary, State of Madhya Pradesh, Housing and

Environment Department with his recommendation for allotment of land. It is mentioned in the proposal that government land area 31.90 acres comprising khasra Nos.71, 73 and 76 situate at village Bhainsakhedi is available for allotment. It is recorded in the revenue record as nazul land. East side of the land there is a vacant government land, West side there is a nala, North side there is Bhopal-Ujjain railway line and South side there is a private land, thereafter, Bhopal-Indore Highway (four lane) is there. The land is 200 fts. away from the railway line. There is no water source on the land, neither there is any religious construction. There is no encroachment on the land. The land is required for establishment of medical college and hospital in accordance with the circular memo of Revenue Department dated 03.10.2002. 25 acres of land could be allotted free of cost for the purpose of establishment of medical college and rest of the land could be allotted on an yearly premium of Rs. 13,09,381/-. Hence, the matter be placed before the Secretary Level Land Reservation Committee.

5. The Secretary Level Land Reservation Committee reserved the land for allotment. Thereafter, the Collector,

Bhopal vide another letter dated 12.08.2008 written to Principal Secretary, Revenue Department, State of Madhya Pradesh again sent a proposal for allotment of land in favour of the respondent No.3 society. It is mentioned in the letter that the land was required for establishment of medical college and the dental college. As per the policy of the Government, the land can be allotted for educational purposes and the annual premium was also fixed by the Collector. It is further mentioned in the letter that a notification was published in the newspaper â□□Nai Duniyaâ□□ Bhopal edition on 26.07.2008 and in another newspaper â□□Deshbandhu Rajdhaniâ□□ on 26.07.2008. Objections were invited within 15 days from the date of publication of the notice. However, no objection was received. The Municipal Corporation, Bhopal had given no objection in regard to allotment. The Bhopal Development Authority also gave its consent for allotment on the ground that no scheme of the development authority was invogue in regard to aforesaid land and it can be allotted. Consultation from other departments was also done. The Town and Country Planning Department vide letter dated 02.08.2008 had given no objection. The Superintendent of

Police vide letter dated 31.07.2008 and Public Works Department vide letter dated 30.07.2008 had given no objection. There is no objection from Public Heath Engineering Department. The owners of the surrounded land had also given no objection. As per the audit report of the society, it had cash of near about Rs.92 lacs and the society further informed that it would secure a loan of Rs.60 crores from the bank. The society is running a hospital in the name of Chirayu Hospital. Consultation from other departments was received and they had no objection. Detailed information was sent by the Collector to the Government.

6. On the basis of recommendations of the Collector, the revenue department vide letter dated 30.08.2008 issued a letter of allotment of land area 31.90 acres in favour of the respondent No.3 for establishment of medical and dental hospital consisting 750 beds. The respondent No.3 deposited the premium of the rent of Rs. 33.16 lacs and a lease was executed between the respondent No.3 and the Government on 09.09.2008. The aforementioned land was given to respondent No.3 for establishment of medical and dental hospital consisting 750 beds on the

following terms and conditions :

â□□Â¼1Â½ Hkwfe dk mi;ksx fu/kkZfjr mi;ksx ds vfrfjDr vU; mi;ksx ds fy, ugha gksxk vU;Fkk vukf/kd`r dCtsnkj ekudj Hkwfe 'kklu esa fufgr dj yh tkosxhA

Â¼2Â½ ;fn dHkh Hkh mDr Hkwfe mi;ksx mDr iz;kstu ds fy, mi;ksx ugh gksrk gS ;k ckn esa dHkh cUn dj fn;k tkrk gS rks Hkwfe rFkk ml ij fufeZr Hkouksa ,oa lEifRr;ksa ds lkFk 'kklu esa fufgr gks tk,xh vkSj vkoafVrh dks mldk eqvkotk ns; ugha gksxkA

Â¼3Â½ Hkwfe ds fdlh Hkh mi;ksx ;k bl ij fdlh Hkh fuekZ.k ds iwoZ lHkh vkoâ□□;d vuqefr;kW] vuqeksnu ,oa vukifRr;kW lEcfU/kr LFkkuh; laLFkkvksa uxj fuxe] uxj RkFkk xzkeh.k fuosâ□□k vkfn ls vkoafVrh dks ysuk gksxh rFkk ekLVj Iyku o i;kZoj.k laj{k.k vf/kfu;e lEcU/kh izko/kkuksa vkfn dk iw.kZ ikyu fd;k tkosxkA

Â¼4Â½ 'kklu ds izfrfuf/k] vf/kd`r O;fDr rFkk ftyk dysDVj ;k mlds vf/kd`r izfrfuf/k;ksa dks Hkwfe ds lgh mi;ksx rFkk 'krksZa ds ikyu dk ijh{k.k djus ds fy, dHkh Hkh

Hkwfe rFkk ml ij fufeZr ifjlj ds fujh{k.k dk vf/kdkj gksxkA

2@& vknsâ□□k tkjh gksus dh frfFk ls vkosnd@laLFkk ls izC;kft dh laiw.kZ jkfâ□□k o Hkw&ukVd dh jkfâ□□k 6 ekg ds vUnj tek djkos] ;fn os fu/kkZfjr vof/k rd izC;kft o Hkw&ukVd tek ugh djrs gaS rks vkoaVu vknsâ□□k Loeso fujLr ekuk tkosxkAâ□□

7. The respondent No.3 filed application for change of land use. The department issued a notice and it was published in two newspapers inviting objections for proposed land use i.e. in â□□Nai Duniya and Deshbandhuâ□□ on two consecutive dates i.e. on 23rd and 24th of September, 2008. No objection was received by the department or from the petitioner, Mr. Anup Kumar submitted objection in proposed change of land use. It was mentioned in the objection that there were nearly 3000 trees on a portion of the land, hence, use of the land could not be changed. Thereafter, reports from the Collector, Bhopal and the Director, Town and Country Planning and the Conservator of Forest, Bhopal were received. The authorities pointed out that there was a plantation of trees on 7.5 acres of land and the existing plantation could not

be cut or destroyed. Thereafter, the State Government considered the facts and objection raised, and permitted change of land use in exercise of powers under Section 23(A) of the Act of 1973 in regard to 24.40 acres of land out of total area 31.90 acres. Notification was issued by the State Government in this regard under Section 23(A) of the Act of 1973 and it was published in the official gazette dated 28.01.2009. It was mentioned in the gazette notification that the Government had approved land use of 24.40 acres, except 7.50 acres, from â□□agricultureâ□□ to â□□public semi public purpose.â□□

8. Thereafter, the respondent No.3 submitted application before Town and Country Planning Department for grant of development permission. The competent authority after following procedure granted development permission vide letter dated 18.02.2009 alongwith approved layout plan map. The authority imposed number of conditions.

9. Petitions were filed against allotment of land, first, before this Court, by Association of Socio Environmental Assistance & Action (ASEAA) against the allotment of land. It was registered as W.P.

No.5284/2011(PIL), however, it was withdrawn. An application before the National Green Tribunal was filed, which was registered as O.A. No.13/2011. It was rejected.

10. Another petition was also filed. The petitioner raised following objections and grounds in the petition in regard to allotment of land in favour of the respondent No.3 and change of land use from agriculture to public semi public purpose. The petitioner pleaded that the allotment of land is arbitrary and illegal. It has been done without following any objective and transparent selection of the beneficiaries. The allotment is illegal in view of law laid down by the Apex Court in the matters of *Akhil Bhartiya Upbhokta Congress vs. State of M.P.* reported in *(2011) 5 SCC 29* and *Humanity & others vs. State of West Bengal* reported in *(2011) 6 SCC 125*. The allotment is contrary to the mandatory procedure provided under Clause 26, Chpater 4(i) of the Revenue Book Circulars and the allotment has been done on the basis of false report prepared by the Sub-ordinate Revenue Officers. The allotted land was part of â□□submergence zone/full tank levelâ□□ of the upper lake Bhopal. This fact has not been taken into consideration by the competent authorities. The

allotment of land was made without change of land use in accordance with Section 23(A) of the Act of 1973. The notification under Section 23 of the Act of 1973 was notified without following the statutory provisions in letter and spirit. In support of aforesaid grounds, the petitioner filed various documents and detailed pleadings have been made in the writ petition. Amendment was also filed in the writ petition.

11. The respondent-State in the return denied the pleadings of the petitioner and pleaded that the land was allotted in accordance with the policy of the Government. Each and every step was taken by the Government and provisions of law have been followed. It is further pleaded by the State that the allotment of land was done in a transparent manner. There was no favour to the respondent No.3. The State also raised preliminary objection about maintainability of the petition on the ground of delay and latches. It is pleaded by the State that up to the complete construction of the hospital, the petitioner did not raise any objection in regard to allotment of land. It is further pleaded by the State that at the time of change of land use one objection was received

and that was considered in detail by the concerned department and, thereafter, area of 7.5 acres of land was left out as no change. Where there was plantation, no change was ordered.

12. The respondent No.3 also raised preliminary objection in regard to maintainability of the petition. The respondent pleaded that the petition has not been filed in public interest. It has been filed to harass the answering respondent. Earlier, also on the same fact, petitions were filed before this Court. The matter is concluded by the order of the National Green Tribunal. It is further contended by the answering respondent that there was total transparency in regard to allotment of land to the society. The land was never a part and parcel of the lake as alleged by the petitioner. There are so many establishments on the other side of the main highway i.e. right hand side of the highway. There is a four lane highway Indore-Bhopal which divides the lake and the land which was allotted to the answering respondent, there are educational institutions, office of Krishi Upaj Mandi Samiti and office of Government projects. It is further pleaded by the respondent that at the same time the State also

allotted lands at Bhopal for establishment of two medical colleges in the same manner, hence, there is no merit in this petition.

13. Learned counsel for the petitioner has submitted that a fraud has been played at the time of allotment of land in favour of the answering respondent. The land in question is a part and parcel of the lake and it is within the catchment area of the lake. There were number of trees on the land planted by the Forest Department. Hence, the land was not eligible for allotment. The change of use of the land from agriculture to public semi public purpose under the provisions of the Act of 1973 is also illegal. The learned counsel has submitted that the petitioner has obtained the copies of the documents and thereafter, filed the petition and there is no delay in filing the petition. In support of his contentions learned counsel relied on the following judgments:

1) *(2012) 3 SCC 619, Manohar Joshi vs. State of Maharashtra & others.*

2) *(2011) 10 SCC 608, Royal Orchid vs. G. Jayaram Reddy.*

3) *(2008) 13 SCC 170, Central Bank of India vs.*

Madhulika Guruprasad & others.

4) *(2005) 7 SCC 690, Bank of India vs. Avinash D. Mandivkar & others.*

5) *(2011) 5 Akhil Bartiya, Upbhokta Congress vs. State of M.P. & others.*

6) *(1999) 6 SCC 464, MI Builders vs. Radheshyam & others.*

7) *(1996) 4 SCC 212, Balmokand Khatri Educational and Industrial Trust, Amritsar vs. State of Punjab & others.*

14. Learned Senior counsel appearing on behalf of the respondent No.3 has contended that the petition is not maintainable. It is filed belatedly after construction of medical college. Petitioner never raised any objection in regard to allotment of land or change of user. The land was never part and parcel of submergence area which is clear from the revenue records and various reports of the revenue authorities and the point relating to environment has already been decided by the National Green Tribunal and the counsel for the petitioner had made a statement that he would not press the aforesaid claim. Learned

Senior Counsel has further submitted that a proper procedure was followed in allotment of the land and it is in accordance with the policy of the State Government. The policy has been upheld by the Division Bench of this Court. The Constitution Bench of the Supreme Court has specifically held that the State has power to allot the land apart from auction. The answering respondent made a huge investment in construction of medical college and hospital buildings. There is 750 bedded hospital and students are getting education in M.B.B.S. course. It is recognized by the M.C.I. The answering respondent had taken a loan of Rs.130 crores from the bank and the answering respondent had invested near about Rs.30 crores from its own. Hence, there is no merit in this petition. It has to be dismissed. The learned counsel for the State adopted arguments of learned Senior Counsel.

15. The Apex Court has held as under in regard to scope of Pubic Interest Litigation in the case of *State of Uttaranchal vs Balwant Singh Chaufal & others* reported in *(2010) 3 SCC 402:*

> *181. We have carefully considered the facts of the present case. We have also examined the law declared by this court and*

other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the

correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.â□□

16. This Court has to examine the points raised in this

petition within the parameters of public interest litigation as held by the Apex Court in the aforesaid judgment.

17. It is an admitted fact that the present petition was filed in the month of May, 2012. The respondent No.3 was allotted the land vide allotment letter dated 30.08.2008. Thereafter, user of the land was changed from agriculture to public semi public purpose under the provisions of the Act of 1973. Thereafter, answering respondent was also granted building permission and started medical college in the year 2011. After that the petitioner filed the petition in the year 2012. Petitioner pleaded in the petition that he had tried to obtain various papers and when those papers were received, the petitioner filed this petition. However, the fact remains that the petitioner did not raise objection at the time of allotment of the land when the notices were published in the newspapers. At the time of change of the user, although the notices were published in the newspapers and at the time of grant of permission for construction of the building, the petitioner did not raise objection, hence, there is a delay on the part of the petitioner in filing the petition.

18. Learned counsel for the petitioner has contended

that a fraud was played in the matter of allotment of land. Hence, delay has no meaning. The arguments of the learned counsel are in accordance with law, however, it has to be ascertained in view of the facts of the case that whether any fraud was played in allotment of land. The Apex Court in the case of *Dr. Vimla vs The Delhi Administration,* reported in *AIR 1963 Supreme Court 1572 (V 50 C 232)* has held as under in regard to fraud :

> *â□□(8) As regards the nature of this injury, in Kenny's Outline of Criminal Law,15th Edn., at p. 333, it is stated that pecuniary detriment is unnecessary.*
>
> *(9) In Haycraft v. Creasy, observed (1801) 2 East 92 LeBlanc, J., observed :*
>
> "*by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial.*"
>
> *This passage for the first time brings out the distinction between an advantage derived by the person who deceives in contrast to the loss incurred by the person deceived. Buckley. J., in Re London & Clobe Finance Corporation Ltd., (1) brings out the ingredients of fraud thus :*
>
> "*To deceive is, I apprehend, to induce a*

man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."

19. Earlier another association namely Bharadwaj Ratan Family Foundation Charitable Trust entered into a memorandum of understanding with the State for establishment of medical college in the name of Indo U.S. College of Medical Science and Research Center in the State of Madhya Pradesh. Subsequently, the association did not establish the college and backed out the proposal. In the meanwhile, respondent No.3-society submitted its application for allotment of land in accordance with the policy of the Government for allotment of land free of cost. Two other institutions were also allotted lands at Bhopal for establishment of medical colleges under the same policy. The Collector forwarded the proposal to the State Government. The matter was considered by the Secretary,

Land Reservation Committee and the Government had taken a decision to allot the land in question to the answering respondent and thereafter, a lease deed was executed. The respondent No.3-society submitted application under Section 23(A) of the Act of 1973 to change the land use from agriculture to public semi public purpose. Notifications were issued in the newspapers. Only one objection was received to the effect and that was considered and 7.5 acres of land was deleted from the land use and it is mentioned that it be treated as reserved land for forestation and thereafter, appropriate authority ordered the change of land use. Then permission for construction of building was also granted.

20. A Division Bench of this Court in the case of *Pratap Chandra Chaturvedi vs State of Madhya Pradesh and others [Writ Petition No.4088/2009 (P.I.L.)]* has considered the policy of allotment of land for establishment of medical institutions and upheld the policy and held as under :

> *â□□When the State Govt. has taken a policy decision to set up medical colleges and hospitals for the purpose of giving free treatment and medicines to the persons who*

belong to below poverty line category, we are of the considered opinion, that the same sub-serves a larger public interest. The petitioner, as is evident from the assertions and submissions put forth by the learned counsel basically concerned with the loss caused to the Govt. It is obligatory, a primary one on the part of the State Govt. to make arrangements for treatment for poor people. It is not in dispute that there are not adequate medical hospitals and primary health centers in the villages for giving treatment to the poor people and if someone is constructing a college-cum-hospital for the cause of better treatment of the poor people, that should be regarded as public cause and the State Govt. policy cannot be found fault with. It has been said long back, a smaller public interest must yields to a larger public interest. Right of treatment is the facet of Article 21 of the Constitution of India. People are entitled to get treatment to lead a healthy life and the Govt. is under the obligation to do so and take steps in that regard. That apart, we may note in the passing that a civil suit was filed by some other persons claiming easmentry rights and trial Court has declined to pass an order of injunction on the ground that there is no

> *road in existence in the Govt. record. Be it clarified, we restrain ourselves from expressing anything on the merits of the said civil suit but we have only noted it. We may hasten to clarify that this would not effect the right, title and interest of any of the land holders who can establish the same in a court of law.â□□*

21. A Constitution Bench of the Apex Court in *Special Reference No.1 of 2012 [Under Article 143(1) of the Constitution of India]* has held that there cannot be only one method of disposal of natural resources by way of auction. However, legal validity of distribution has to be considered and if a policy is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down. The Constitution Bench has held as under:

> *â□□146. To summarize in the context of the present Reference, it needs to be emphasized that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and*

wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not be the endeavour of this Court to evaluate the efficacy of auction vis-Ã -vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the Courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but if a policy or law is patently unfair to the extent that it false foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.

147. Finally, market price, in economics, is an index of the value that a market prescribes to a good. However, this valuation is a function of several dynamic variables; it is a science and not a law. Auction is just one of the several price discovery mechanisms. Since multiple variables are involved in such valuations, auction or any other form of competitive bidding, cannot constituted even an economic mandate, much less a constitutional mandate.

148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra-vires the constitutional mandate.

149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or

welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution. â□□

22. In the present case the State had formulated a policy to allot land free of cost for the purpose of establishment of medical colleges to the private institutions because there were not sufficient medical colleges in the State to impart medical education. Getting proper medical care is a part of Article 21 of the

Constitution. The State has put a rider in regard to allotment of land to the effect that the medical colleges and hospitals established under the scheme have to provide free medical treatment to the poor persons. They have to distribute medicines free of cost and they have to provide various clinical examinations to poor patients free of cost. Under the same scheme, two institutions were allotted land in Bhopal itself for establishment of medical colleges. Earlier one institution entered into memorandum of understanding, however, it was backed out. Thereafter, the application of the respondent No.3-society for allotment of land was considered and same was accepted. In such circumstances, in our opinion, no fraud was played in allotment of land in favour of respondent No.3.

23. Learned counsel placed reliance on the judgments of the Apex Court in order to establish the fact that the allotment of land without inviting tenders or public auction or any advertisement is contrary to Article 14 of the Constitution. He has relied on the judgments of Apex Court in the matters of *Akhil Bhartiya Upbhokta Congress vs. State of M.P.* reported in *(2011) 5 SCC 29* and *Humanity &*

others vs. State of West Bengal reported in *(2011) 6 SCC 125*. However, the facts of those cases are quite different. In those cases the land was allotted for the purpose of cultural activities, however, in the present case, the land was allotted under the policy to establish medical college. There is a need for establishment of private medical colleges, so the State can get enough doctors to cater the need of proper health services to its citizens. At present, the number of doctors is quite less in comparison to total population. Hence, it cannot be said that allotment of land is arbitrary and illegal or the policy is illegal.

24. The next point is that whether the land was part and parcel of submergence area of the lake. It is an admitted fact that the land which is allotted in favour of the respondent No.3 is on the other side of the State highway (Bhopal-Indore). There is no lake. However, there is a nala which, reaches to the lake. The land cannot be said to be a part of catchment area because khasra Nos. 71, 73 and 76 were never recorded as part of the lake. Contrary to this land of those khasra numbers was recorded as nazul land padat. There are various reports of the revenue authorities to that effect. Some other lands of

the adjacent area were allotted to different institutions and office of Krishi Upaj Mandi Samiti. The aforesaid point has been considered by the National Green Tribunal. Hence, the point raised by the learned counsel for the petitioner that the land was part and parcel of the catchment area of lake could not be accepted.

25. The next point is in regard to environment and it is also a fact that the environment clearance was granted by the competent authority. That was challenged before the National Green Tribunal in a separate petition. Learned counsel for the petitioner on 29.01.2013 had agreed that the petitioner would not question the allotment of the land to the respondent No.3 on the basis of any right referable to the enactments specified to the Schedule I to the NGT Act. The aforesaid statement was recorded by the Court, which reads as under:

> *â□□At this stage, learned counsel for the petitioner states that the allotment of land to the respondent No.3 is not being questioned by the petitioner on the basis of any right referable to the enactments specified to the Schedule I to the NGT Act and, therefore, he does not question the environmental clearance granted to the*

respondent No.3.â□□

26. Subsequently, an application was filed to review the aforesaid order and grant liberty to challenge the same. That has been rejected by the Division Bench of this Court vide order dated 17.04.2015. The Division Bench has held as under:

> *â□□In our opinion, reliance placed on the decision of the Division Bench of Bombay High Court dated 02.07.2013 in Writ Petition No.369/2011 (Adarsh Co. Op. Housing Society Ltd. vs. Union of India and ors.) and including the decisions of the Madras High Court reported in (2007) 5 CTC 210 in the case of C. Augustine Jacob vs. The Union of India, will be of no avail to the applicant in the fact situation of the present case. Inasmuch as, in the reply affidavit filed by the respondent No.3 it has been highlighted that the applicant was conscious about the proceedings arising from the environmental clearance granted on 13.07.2010. That can be discerned from para 3.12 of Writ Petition No. 7344/2012 filed on 06.05.2012 much before the statement came to be made on 29.01.2013. The averments made in para 3.12 of the writ petition reads thus :-*

â□□3.12 That various complaints were raised by some environmentalists believing that the land lies in the catchment of Upper Lake. The other main allegation raised by these environmentalists were that though the respondent No.3 should have first obtained the environmental clearance before commencing the construction work, as per the SEIAA Guidelines, but the environmental clearance was obtained on 13.07.2010 when the construction was almost complete. The petitioner states that even this subsequent environmental clearance granted on 13.07.2010, a copy of which is annexed herewith as Annexure P-12 was issued by the respondent no.7 wrongly considering the aforesaid land to the falling the catchment area of upper lake whereas in fact the entire aforesaid land is part of the lake itself.â□□

We find force in the argument of the respondent No.3 that the statement made on 29.01.2013 on behalf of the applicant was

not due to mistaken belief but because of the objection taken by the respondent No.3, that the applicant was free to pursue grievance about justness of the environmental clearance order by way of statutory remedy under the National Green Tribunal Act, 2010 where the proceedings in that behalf were already pending and that remedy could have been availed by the applicant as well. Further, as aforesaid, it is not as if the applicant was unaware about the institution and pendency of the proceedings before the National Green Tribunal, at all. Before making statement, the applicant should have taken due care. Since the applicant chose to make the statement voluntarily, on 29.01.2013, with full knowledge that the applicant intends to pursue issue limited to land allotment and land use and more so because the environmental clearance order was passed as back as on 13.07.2010 which, if allowed to be challenged, at this distance of time, may cause undue hardship to the respondent No.3, who has already successfully contested the proceedings before the National Green Tribunal, which decided the challenge in favour of the respondent No.3 (project proponent), vide

decision dated 08.04.2013.

The argument of the applicant that the proposed amendment, essentially, is, for questioning the environmental clearance order dated 13.07.2010, being produce of fraud played on the competent authority and can be raised at any point of time, cannot be the basis to permit the applicant to approbate the reprobate in view of the express stand taken by the applicant on 29.01.2013.

Suffice it to observe, that no indulgence need be shown to the applicant for recall of the order dated 29.01.2013, in the fact situation of the present case.

Since the application for recall of order dated 29.01.2012 is being disposed of in terms of this order, as a consequence, the amendment application I.A. No.4532/2013 filed in writ petition No.7344/2012 also does not survive for consideration and is disposed of.â□□

27. The National Green Tribunal has considered the application of another institution in regard to allotment of same land i.e. *Association of Socio Environmental Assistance & Action (ASEAA) vs. Union of India* and held as under:

â□□The corollary to the above is that the â□□green areaâ□□ required in terms of the EC order in the present case would fall short. If this area is excluded then it is not disputed before us that the area will fall short by about 13% of the prescribed area. It would be sufficient compliance in our opinion, if additional land of approximately 2 acres is made into a complete green area where no other activity is carried on, except afforestation and alike activity. Thus, if the project proponent would acquire 2 acres of land and provided it for afforestation activity and carry on to raise dense green belt, it will be compliance of the conditions of the order of EC in its substantial terms and would help the cause of environment. The learned Counsel appearing for the project proponent submitted before us that they have already acquired the aforesaid land vide sale deed dated 04.01.2011. The area of more than 2 acres is acquired adjacent to the boundary of the hospital and they would comply with this condition in its entirety. In view of this admitted position we need not deliberate upon this aspect any further.

There is another aspect which has been highlighted during the course of argument by the applicant that the erosion

of the catchment area of the lake is adversely affected and hampering the preservation of the lake. According to him, large scale construction activity is going on in the catchment area of the lake, which should be stopped at the earliest to protect and preserve the lake and ensure maintenance of its water quality. However, the learned Counsel for the third Respondent has stated that they have not encroached upon the catchment area of the lake while raising the construction of the project, it is not necessary for us to go into this question particularly when there sis unanimity between the parties and the learned Counsel for the authorities that they cannot be permitted to carry on any construction in the cathcment area of the lake. If this construction activity goes on, it cannot be disputed and in fact, is undisputed before us that it will adversely affect the environment, the lake and its catchment area.

Lastly, it is also contended before us that the lake is being polluted by discharge of solid waste, particularly sewage which is untreated and unchecked. While referring to the report, the learned Counsel appearing for the State, on instructions of Mr. C.M.

Mishra, Joint collector Bhopal points out that no sewage is being discharged into the lake; however, they will ensure that no public authorities, private bodies or any other person/body is permitted to discharge any material/effluent, particularly untreated sewage into the lake, and they would take all necessary steps in this regard. The learned Counsel appearing for the Pollution Control Board also supports this approach of the State Government and submits that they would take steps in this behalf. The stand of the project proponent is clear that they are discharging no effluents or sewage into the lake. Let this fact be on record.

Now the question that we have to consider is as to what directions to be imposed and appropriately what orders should be passed in the facts and circumstances of the case.

It cannot be disputed that one way this is the case of â□□fait accompliâ□□ that by the time the applicant approached the High Court, much less the Tribunal, the hospital project had already come up. The hospital project is for construction of 825 bedded hospital with medical college. Thus, it intends to serve a public purpose. It is not only that the hospital building has been

constructed but even is in operation now for fairly long time. Thus, no purpose would be served by demolishing the building or area specified for a particular activity. The provisions of the NGT Act in terms of Section 20 require the Tribunal to consider and apply the principles of sustainable development, precautionary principle and polluter pays principle policy while passing orders in the applications before it. The tribunal has been vested with wide powers including directing payment of compensation where there is damage to the environment. It is a settled principle that wherever there has been adverse effect or impact upon the environment because of an activity, the Tribunal is empowered to pass prohibitory orders as well in the interest of the environment. The project has come up but the main emphasis of the submission of the applicant is on the non-compliance of the EC conditions to provide 33% green area and pollution of the lake water being caused by the construction and other activities, which in turn are bound to result in adverse environment impact.

We must appreciate and place on record the attitude adopted by the project proponent and all authorities concerned,

including the Government of Madhya Pradesh. The project proponent is a private entrepreneur but since, it has taken up an approach which is in the interest of environment and without, in any way, affecting the existing project, we hereby pass the following order and directions :

1. As agreed, the project proponent has already acquired more than 2 acres of land adjacent to the boundary of the hospital by sale deed dated 04.10.2011, i.e., Khasra Nos. 70/2/1, 70/2/2 and 70/1/1 which shall be treated as part of the hospital project. Its boundary wall be so extended. Out of the same, an area of 2 acres shall be out only to plantation of dense forest with native species of the area. To put it simply the ara shall be kept strictly as green area and shall be treated as a â□□no activity zoneâ□□, subject to the condition that this activity shall be initiated within a period of three months from today.

2. There shall not be permitted any construction activity by any authority or carried on by any person within 50 meters of the Full Reservoir Level (FRL) of catchment area of the lake.

3. There shall be no discharge of any untreated effluent, domestic discharge,

sewage or any solid waster disposal into the lake. The officer present on behalf of the MOEF and Joint Collector, Bhopal shall ensure that no such discharge is made into the lake.

4. We hereby constitute a special Committee consisting of Collector of Bhopal, Member of Secretary of PCB, Regional Officer in-charge of MOEF, Bhopal, Conservator of Forest ad one Sr. Officer from the Department of Housing and Environment and Department of Urban Development of the State of Madhya Pradesh, which shall ensure that the above directions are carried out without any default and delay. We make it clear that they shall personally be responsible for compliance of the order of the Tribunal. The above Committee shall first mark the area under FRL and then ensure that no activity is permitted in that area except afforestation. Besides this level, buffer zone of 50 meters from FRL shall be maintained free of any activity.

5. If any person is aggrieved or affected by any terms of this order, we grant specific liberty to such person to approach the Tribunal for any clarification or for issuance of such orders, as may be appropriate in the

facts and circumstances of the given case.

6. We are informed that another Writ Petition No.7344/2012 has been filed before the High Court of Madhya Pradesh at Jabalpur, which is stated to be pending. We leave all the contentions of the parties to be raised before the High Court of Madhya Pradesh. This order is without prejudice to the rights of the parties in those proceedings. The above situation provides that the project proponent shall comply with the directions within three months from today.

7. In view of above, we hereby direct the project proponent to comply with these directions within a period of three months from today.

8. In the event of default, the project proponent shall be liable to pay a compensation of Rs.5.00 crores. This compensation, which is payable in the event of default only i.e. we are imposing the penalty for breach of the terms of order of environment clearance for causing adverse environmental impact including upon the surroundings of the lake. In other words, if the project proponent satisfies conditions of this order within the time stipulated, such compensation shall not be payable.

> *However, in the event of default of compliance, not only the compensation shall become payable but this order not interfering with the project of the proponent and the EC dated 13.07.2010 shall also be recalled.*
>
> *9. In view of the above order and directions, we would neither stay nor recall the order granting EC. This application shall stand disposed of finally in above terms, while leaving the parties to bear their own cost.â*

28. The National Green Tribunal has considered same aspects in the aforesaid order and these points cannot be raised in this petition. Apart from this, the authorities have held the fact of tree plantation and excluded 7.50 acres of land. This fact has further been considered by the National Green Tribunal.

29. The next question is in regard to change of land use. In the present case, notices were issued by the competent authority in two daily newspapers on two consecutive dates, but, only one objection was received, which was considered elaborately. Thereafter, final notification was issued. Earlier, the land was nazul land-

padat and it was changed from agriculture to public semi public purpose. Learned counsel for the petitioner has relied on the judgment of the Apex Court in the matter of *Manohar Joshi vs. State of Maharashtra and others* reported in *(2012) 2 SCC 619* and pleaded that the change of land use was not permissible. The facts of the aforesaid case are quite distinguishable. In the aforesaid case, the land was reserved for primary school and on the instructions of the Government the allotment was granted for residential purposes without notifying the development plan and the residential complex was constructed by the relative of the Minister. In that circumstance, the High Court quashed the change of land use. However, in the present case the land was nazul land and it was changed to public semi public purpose in accordance with the requirement of the State for establishment of medical college and institutions. There are other institutions also in the same area. Hence, it cannot be said that the act of the State is arbitrary or illegal.

30. There are no allegations in the writ petition that some officers of the State or other authorities had received any illegal benefit or gratification. There are allegations in

the petition that the provisions of the rules have not been followed and the procedure of allotment of land was contrary to Article 14 of the Constitution. The same points have been discussed by us in detail.

31. Apart from this, it has further to be considered that the answering respondent No.3 received a loan of Rs.130 crores from the banks. It has also invested near about 30 crores. The building was constructed in the year 2011 for 750 bedded hospital and a medical college on the allotted land. M.C.I. granted permission after following the procedure for the purpose of establishment of medical college. The National Green Tribunal has also considered the environment aspect. Prima facie, no rule has been violated. In such circumstances, in our opinion, no relief can be granted to the petitioner in this public interest litigation. Some relief has already been granted by the National Green Tribunal. The order passed by the National Green Tribunal has attained finality.

32. The petitioner has also filed an application I.A. No.9248/2016 for issuance of interim directions at the time of final hearing. By the aforesaid I.A., the petitioner sought a direction that an inspection team be constituted to

consider the various aspects. We have already considered the facts in detail. Hence, in our opinion, it is not necessary to pass any order on this I.A. in regard to constitution of inspection team at this stage. It is hereby dismissed.

33. Consequently, we do not find any merit in this petition, it is hereby dismissed.

34. No order as to costs.

(S. K. Gangele) (Ashok Kumar Joshi)
Judge
Judge

Vkt.