

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 53 of 2014**

1. Chamru Ram Karma S/o Late Shri Bojha Majhi, A/o 70 years, R/o village Chantalak via Denkar, Post Dantewada, District Dantewada, Chhattisgarh.
2. Suriya Karma S/o Late Shri Sudarshan Karma, A/o 44 years, R/o Gram Farashpal, Tehsil Gidam, District Dantewada, Chhattisgarh.
3. Mukesh Prasad Gupta S/o Late Hans Lal Gupta A/o 45 years, R/o Main Road, Dantewada, District Dantewada, Chhattisgarh.
4. Amit Dewangan S/o Shri R.N.Dewangan, A/o 50 years, R/o Kailash Nagar, Dantewada, District Dantewada, Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Department of Revenue, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. Commissioner, Bastar Division, Dantewada, District Dantewada, Chhattisgarh.
3. Collector, Dantewada, District Dantewada Chhattisgarh.
4. Tehsildar, Dantewada, District Dantewada, Chhattisgarh.
5. Mohd. Sahul Hamid S/o Late Ibrahim R/o Near Majzeed, Bus Stand, Dantewada, District Dantewada, Chhattisgarh.
6. Kailash Gupt Mishr S/o Sidhewhar Mishr, R/o Main Road, Pathararas, In front of Potacalium Palhararas, Dantewada, District Dantewada, Chhattisgarh.
7. Mukesh Sharma S/o Tezbahadur R/o Gaurav Enterprises, Main Road, Dantewada, District Dantewada, Chhattisgarh.
8. Prashant Agrawal S/o Mahavir Prasad R/o Agrawal Bus Stand, Main Road, Dantewada, District Dantewada, Chhattisgarh.

---- Respondents

For Petitioners : Shri Saurabh Dangi, Advocate.

For Respondent/State : Shri Prafull N Bharat, Additional Advocate General.

For Respondents 5 to 8: Shri Anand Dadariya, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri P. Sam Koshy, J.
Order on Board

Per Deepak Gupta, Chief Justice

15/09/2016

1. The Petitioners, by means of this petition filed in the public interest, have prayed for grant of the following reliefs:

"10.1 The Hon'ble Court may be pleased to call relevant records relating to the instant matter.

10.2 The Hon'ble Court may kindly be pleased to direct the respondent No. 1 and 2 to initiate a thorough investigation in the instant matter and thereafter take appropriate action against the respondent 3 and 4 as well as against private respondents.

10.3 The Hon'ble Court may kindly be pleased to direct the respondent No. 1 and 2 to cancel the allotment of land to private respondents allotted vide the revenue case No. 03/A-20(3)/11-12.

10.4 The Hon'ble Court may kindly be pleased to direct the respondent No. 1 and 2 to recover the damages caused to the exchequer by the private respondents in connivance with the respondent no. 3 and 4 who have abused their position to benefit private respondents.

10.5 Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice."

2. To put it in a nutshell, grievance of the Petitioners is that some officials of the State of Chhattisgarh especially the Collector, Dantewada-Respondent No. 3, and Tahsildar, Dantewada-Respondent No. 4 acted in a malafide manner in exchanging the lands of the Government with the lands belonging to the private parties and it is the grievance of the Petitioners that the lands which were more valuable were given to the private respondents as against their less valuable lands. Their further allegation is that no notice was given as required and the entire action has been taken in a hush-hush manner.

3. The stand of the Respondents No. 5 to 8 is that everything is on record. The valuation of the land belonging to the Government and valuation of the land which

was taken in exchange by the Government was done as per the guidelines. After verifying all facts, the lands in question have been transferred. It is submitted that there is no illegality in the entire procedure of exchange of lands.

4. To understand the dispute, it would be pertinent to mention that the Respondents No. 5 to 8 namely Mohd. Sahul Hamid, Kailash Gupt Mishr, Mukesh Sharma and Prashant Agrawal jointly purchased a land bearing Khasra No. 576 measuring 1.47 hectares situated at village Chitalanka, Tahsil Dantewada from one Shri Baijnath vide registered sale deed dated 26.10.2010 for a total consideration of Rs. 40,00,000/-. It would also be pertinent to mention that just two months prior to the purchase of the land bearing Khasra No. 576, the original owner-Baijnath had sought and received permission from the competent authority to change the land user from agricultural to residential/commercial. It is also not disputed that this piece of land i.e. Khasra No. 576 was situated on the State Highway and was next to the Collector's Office. Soon after the Respondents No. 5 to 8 purchased this land, a proposal was mooted to acquire the said land for the purpose of establishing Jila Panchayat office. Instead of acquiring the land, the State entered into negotiations with Respondents No. 5 to 8 to provide them lands of equal value. The Respondents No. 5 to 8 agreed to this proposal and in exchange of their land measuring 1.47 hectares or 14680 sq.mts., they were given four pieces of land. Two pieces of land bearing Khasra No. 19/1 and 20 are situated close to each other. These two pieces of lands are away from the State Highway at a distance of 1.6 KMs from the original land. The Respondents No. 5 to 8 were also granted 1.001 hectares land in Khasra No. 19/1 and 0.606 hectares land in Khasra No. 20 i.e. total of 1.607 hectares. In addition thereto, the Respondents No. 5 to 8 were granted 0.202 hectares of land in Khasra No. 257/2, 0.07 hectares land in Khasra No. 375, 0.043 hectares land in Khasra No. 376 and 0.380 hectares in Khasra No. 384/1. Therefore, the total land allotted to the Respondents was 2.27 hectares as against 1.47 hectares owned by them. Out of

this, 1.60 hectares was in an area which was a bit further away from the State Highway, though not very far from the town. The remaining portion of the land i.e. approximately about 0.67 hectare which would work out to 6700 sq.mts of land is virtually within the heart of Dantewada. This land has much more commercial value than the land originally belonging to Respondents No. 5 to 8 in Khasra No. 576.

5. Though, the Petitioners have laid challenge to the aforesaid exchange also, we in this writ petition are not re-opening this exchange because this exchange was made in the year 2011 and the petition has been filed at a much later stage. What happened thereafter is extremely disturbing also important. On 02.03.2013, Mohd. Sahul Hamid-Respondents No. 5 alone made an application to the Collector, Dantewada (Respondent No. 3) in which he stated that a part of the land allotted to him in Khasra No. 257, which was subsequently re-numbered as 257/2 measuring 0.202 hectares was unfit for use because there were large number of teak trees on the land and there was a huge gutter passing through the land and it was not possible to level the land and lastly, that there were some unauthorised occupants on the land and it would be difficult to evict those encroachers from the said land. It is true that at the bottom of the application, it is mentioned "three others" but neither there is any signature of any of the other persons nor any material to show that Mohd. Sahul Hamid was authorised by the other three persons to file such application. On the date when this application was filed, the very same day, an order was passed that an application has been filed by Mohd. Sahul Hamid and three others praying that instead 0.202 hectare of land situated at Khasra No. 257 which was given in exchange to them, some other land may be provided. It was ordered that the application be registered and that notice of the same be published and the Revenue Inspector and the Patwari Halka be directed to submit their comments thereupon. The case was then fixed for 22.03.2013. On 22.03.2013, Mohd. Sahul Hamid filed another application

purportedly on his own behalf and on behalf of three others in which he now prayed that they be given vacant land out of Khasra No. 263 adjoining the main road and the land situated near the bus stand adjoining the mosque (which is his residence). Therefore, an application was now made by Mohd. Sahul Hamid allegedly on his own behalf and on behalf of three others that this specific land be given to them. The Tahsildar directed that the entire proceedings be adjourned to 25.03.2013. On 25.03.2013, the matter was taken up and it is noted that the Revenue Inspector furnished his comments. Thereafter, the matter was taken up on 29.03.2013 wherein it was recommended that report be sent to the Collector for granting to the Respondents-Applicants land in Khasra Nos. 263, 265, 266 and 257/1 total measuring 0.202 hectares in exchange of this land in Khasra No. 257/2.

6. On 15.04.2013, an order was passed by the Sub Divisional Officer (Revenue) (hereinafter called as 'the SDO') and it was forwarded to the Collector, Dantewada who on 25.04.2013 granted permission for exchange of the land as recommended. The grievance of the Petitioners is that the lands which have now been allotted to the Respondents 5 to 8 are highly valuable commercial lands. It is next contended that no notice of the same was issued as envisaged under the rules. It is lastly contended that the entire action of the Respondent authorities is malafide.

7. Shri Dadariya, learned counsel for the Respondents No. 5 to 8 has raised two preliminary objections. The first preliminary objection is that this writ petition should be rejected at the threshold. According to him, the petition has been filed at the instance of the persons who were owners or lease holders of the shops near Danteshwari Mata Temple and their shops were to be demolished for the purpose of beautification of the areas surrounding it. The shop owners were given option for their relocation in a commercial complex to be set up in Khasra No. 262. The shop owners filed writ petitions challenging the orders whereby the

lease deeds of the lands/shops originally occupied by them were cancelled. Those writ petitions were dismissed by this Court and they were further directed to file civil suits or alternative proceedings for redressal of their grievances. It is urged by Shri Dadariya that this petition has been filed by the present Petitioners at the instance of those shop owners. He submits that this petition has been filed to ventilate private disputes and the petition has not been filed in the public interest.

8. His second submission is that the Petitioners have only claimed in the petition a relief for setting aside the first exchange order and no relief has been claimed with regard to the second order of exchange and therefore, no relief can be granted as far as second exchange is concerned.

9. As far as the first objection is concerned, reliance has been placed by Shri Dadariya on the judgment of the Apex Court in *Neetu v. State of Punjab & Others* {AIR 2007 SC 758} and the judgment of a Division Bench of this Court in *SAH SOCh Self-Help Social Organization for Community Health v. State of Chhattisgarh & Others* (Writ Petition (PIL) No. 5471 of 2011) wherein, relying upon *Neetu* (supra), the public interest litigation petition was dismissed. There can be no dispute with the proposition laid down in *Neetu* (supra) wherein the Apex Court held as follows:

"10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique

considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

10. A Public Interest Petition must be filed bona fide and this Court will not under the garb of public interest litigation, entertain publicity interest litigation, personal interest litigation or paisa interest litigation. The question is whether the Respondents No. 5 to 8 have placed any material on record to show that this petition has not been filed in public interest. We, after going through the entire facts of the case, have no hesitation in holding that the Petitioners who are residents of the area have filed this petition in the public interest. They were not affected by the earlier orders of relocation of shops. The Collector has exercised powers not vested in him and the Respondents No. 5 to 8 have failed to show that how the Petitioners are inimical to them except to say that the petition has been filed at the behest of those who were asked to vacate the shops. There is no proof of the same. Even assuming that the petition has been filed at the behest of such persons, then also the Petitioner or the said persons have no personal axe to grind as far as the Respondents No. 5 to 8 are concerned. We fail to understand how the Respondents No. 5 to 8 can take shelter under this technical plea and try to get this petition dismissed at the threshold. We therefore reject this objection. Even otherwise, after hearing the entire case, we have no hesitation in holding that something totally illegal has happened. This Court even suo-moto needs to examine such a case to find out whether public property is being squandered or not.

11. As far as the second objection is concerned, for this very reason that larger public interest is involved, we are not inclined to dismiss the petition. Reliance has been placed by Shri Dadariya on the judgment of the Apex Court in *Press*

Council of India v. Union f India & Another {(2012) 12 SCC 329}. Each case has to be decided on its own facts. In public interest litigation, the arms of the Court are very wide. It is the duty of the Court to see that effective orders are passed to ensure that the public interest is safeguarded. Before dealing with other matters, we at the outset would like to make it clear that the State is only a trustee on behalf of the public for the properties which it holds. These are not the properties of the Government or the Government officials to dispose of in the manner which they feel like. These properties must be dealt with in accordance with the rules/regulations and it must be shown that these government properties have been exchanged, sold or parted with in accordance with the rules and also with a view to ensure that best price is received by the State which is holding the property in trust for the public at large. Every transfer of public property should be done in a totally transparent manner. There should be wide publicity and all citizens should have a right to give their offers for the property. Therefore, we reject the second objection also.

12. It would be apposite to mention that the law is now well settled that the Government cannot deal with public properties as per its own whims and fancies. No doubt, the Government in a welfare State has the power to give a large number of benefits such as jobs, contracts, licences, quota etc. However, wherever the Government deals with grant of largesse, it must act in a non-discriminatory manner. Reference in this behalf may be made to *Ramana Dayaram Shetty v. International Airports Authority of India & Others* {(1979) 3 SCC 489} wherein the Apex Court held as follows:

"12..... The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure." This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or

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

13. In *M/s. Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Ward No. 4 Palace Bar, Poonch, Jammu & Kashmir v. State of Jammu & Kashmir and Another* {(1980) 4 SCC 1} dealing with the same issue, the Apex Court held as follows:

"14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the government in taking a particular action, that the court would have to decide whether the action of the government is reasonable and in public interest. But on a basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the

court by proper and adequate material. The Court cannot lightly assume that the action taken by the government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of *mala fides* though it may, in a given case, furnish evidence of *mala fides*.

15. The second limitation on the discretion of the government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of a decision of this Court in *Ramanna D Shetty v. International Airport Authority of India*, that the government is not free, like an ordinary individual, in selecting the recipients for its largess and it cannot chose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largess, the government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in a conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the court as a rule of administrative law and it was also validated by the court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The court referred to the activist magnitude of Article 14 as evolved in *E.P.Royappa v. State of Tamil Nadu*⁴ and *Maneka Gandhi case*³ and observed that it must follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily chose any person it likes for entering into such relationship and discriminate between persons similarly

circumstanced, but it must act in conformity with some standard or principle which meets that test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground (SCC p. 512, para 21)

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

14. In *State of Haryana & Others v. Jage Ram & Others* {(1983) 4 SCC 556}

which was a case relating to auction of liquor vends, the Apex Court dealing with the issue as to what is meant by "publicity" held as follows:

"8..... When a rule requires 'publicity' to be given to an auction-sale, what is necessarily implied is that due steps must be taken to give sufficiently advance intimation of the intended sale and its material terms to the members of the public or, at least, to that section of the public which normally engages in the kind of business which is the subject-matter of the auction-sale. Even the five special invitees would have found it difficult to come prepared to take part in resale which was held on 23rd May. They were not invited to a wedding feast. They were invited to attend the resale of a liquor vend and it is well-known that a certain amount has to be paid by the successful bidder on the fall of the hammer. We are also unable to appreciate that the Excise authorities of the Government of Haryana should have picked and chosen some five particular persons as recipients of the notice of reauction. How their names transpired and what is their particular status, respectability and standing in the liquor trade, are matters on which no light is thrown. There is no material before us on which to doubt the integrity of the authorities who were connected with the reauction. But their conduct must be above suspicion."

15. In *Sachidanand Pandey & Another v. State of West Bengal & Others*

{(1987) 2 SCC 295}, similar question arose and the Apex Court dealing with the issue as to how the Government must deal with the public property held as follows:

"40. On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established. State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating

departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

16. In *Padma v. Hiralal Motilal Desarda & Others* {(2002) 7 SCC 564}, the Apex Court was dealing with the question as to how allotment and auction of flats and plots has to be done, the Apex Court observed as follows:

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

17. In *Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh & Others* {(2011) 5 SCC 29}, the Apex Court was dealing with an issue with regard to the legality of the allotment of land. After discussing the entire law, the Apex Court held as follows:

"65. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be 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 favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

65. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

66. 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."

18. In *Centre for Public Interest Litigation & Others v. Union of India & Others* {(2012) 3 SCC 1}, dealing with doctrine of public trust, the Apex Court held as thus:

"75. The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources. In Article 39(b) of the Constitution it has been provided that the

ownership and control of the material resources of the community should be so distributed so as to best sub-serve the common good, but no comprehensive legislation has been enacted to generally define natural resources and a framework for their protection. Of course, environment laws enacted by Parliament and State legislatures deal with specific natural resources, i.e., Forest, Air, Water, Coastal Zones, etc."

19. In *City Industrial Development Corporation v. Platinum Enterprises & Others* {(2015) 1 SCC 558}, the Apex Court, after referring to the entire law on the subject, held as follows:

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

50. Furthermore, this Court has already stated in *Akhil Bhartiya Upbhokta Congress v. State of M.P.*⁹ that the State or its agencies or instrumentalities must give largesse founded on a sound, transparent discernible and well-defined policy, which should be made known to the public at large and further held that a rational policy of allotting land on the basis of individual applications cannot de hors an invitation or advertisement by the State or its instrumentality, bringing it to the knowledge of public at large so that the eligible persons should not be excluded from lodging their competitive claims."

20. In *Lok Prahari v. State of U.P. & Others* {AIR (2016) SC 3537} the Apex Court dealing with allotment of government bungalows held as under:

"43. So far as allotment of bungalow to private trusts or societies are concerned, it is not in dispute that all those bungalows were allotted to the societies/trusts/organizations at the time when there was no provision with regard to allotment of government bungalows to them and therefore, in our opinion, the said allotment cannot be held to be justified. One should remember here that public property cannot be disposed of in favour of any one without adequate consideration. Allotment of government property to some one 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 the 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. "

21. We proceed to decide the present case in the light of the law laid down in the aforesaid judgments.

22. We may now make reference to the rules relating to exchange of lands etc. These have been annexed by the State Government and are part of the Revenue Book Circular. The relevant portion for exchange of the lands reads as follows:

"अदला-बदली

20(1) कलेक्टर कृषि योग्य शासकिय भूमि की अदला-बदली किसी भूमि स्वामी की लगभग सामान मूल्य अदला-बदली की भूमि से चालू बाजार दर पर करने की अनुमति दे सकेगा ।

परंतु -

(क) ऐसी अदला-बदली किसी एक पक्ष या दोनों पक्षों के लिया अलाभकारी नहीं होना चाहिए.

(ख) ऐसी अदला-बदली में अन्य व्यक्तियों का हितों पर प्रतिकूल प्रभाव नहीं पड़ना चाहिए -

परंतु यह और की -

(एक) एक ऐसी उद्घोषणा जारी की जाएगी जिसमे ग्राम के कृषकों से या अन्य व्यक्तियों से, जिनके हितों पर, यदि कोई हो, ऐसी अदला-बदली से प्रतिकूल प्रभाव पड़ने की सम्भावना हो, आपत्तियां यदि कोई हों, प्रस्तुत करने के लिए कहा जायेगा.

(दो) ऐसी अदला-बदली में प्राथमिकता क्रम वही होगा जो कंडिका ३ में दिया गया है; और

(तीन) यदि भूमि के एक ही खंड के लिए एक ही प्रकार की प्राथमिकता वाले एक से अधिक आवेदक हों तो, उस व्यक्ति को प्राथमिकता दी जाएगी जिसके पास कम भूमि हो ।"

The translated version of the aforesaid portion is as under:

"Exchange

20(1) Collector may permit exchange of Government land, suitable for agriculture, with the land of land owner having approximate equal value, at the current market rate.

Provided that -

- (a) Such exchange shall not be unprofitable to one or both of the parties.
- (b) Such exchange shall not adversely affect the interest of other person.

Further provided that -

- (1) A proclamation to the effect shall be issued whereby objections, if any, shall be invited from the farmers of village or other persons whose interests, if any, are possible to be adversely affected by such exchange.
- (2) In such an exchange, order of preference shall be same as given in para 3.
- (3) If there are more than one applicant having similar preference for the same piece of land, preference shall be given to the person having less land."

This is the only provision pointed out to us under which the Collector has the power to order exchange of lands. If we go through this provision carefully, it is apparent that the Collector is only empowered to exchange that government land which is capable of agriculture. Therefore, the first and foremost thing which has to be ensured is that the land which is sought to be transferred from the government pool is fit for agriculture. We must remember that this circular forms part of the Revenue Code which mainly deals with agricultural lands. The purpose for exchange is that people may have two or more plots at different places, then he can be given a land near to his holding to make it a consolidated plot. Another important aspect is that not only the land which is sought to be exchanged should be agricultural land but the value of the land which is to be exchanged should have the similar market value. This provision also provides that by this exchange, the rights of other persons should not be affected. It is further provides that a proclamation should be issued whereby the agriculturist of the village and other persons whose rights may be affected by such exchange are given an opportunity of submitting their objections to such exchange. We are not concerned with the rest of the provisions.

23. The essential ingredients according to us are (a) that the land to be given by the Government should be agricultural land; (b) that the market value of both the

land should be determined; and (c) that the persons including the agriculturists whose rights may be affected should be given opportunity of being heard before any such order is passed.

24. Coming to the facts of this case, the application dated 02.03.2013, was filed only by Mohd. Sahil Hamid-Respondent No. 5. It appears that the Collector, on 02.03.2013 itself passed an order forwarding the application to the SDO and thereafter, the SDO forwarded it to the Tahsildar who directed his Reader to register the matter. On the same date, the Tahsildar passed an order directing notices to be issued. We do not understand what was the unholy hurry in this case that everything had to be done on the same day. Not even an objection was raised as to who were the other three applicants who wanted their lands to be exchanged. No information was sought as to whether the other three persons were ready and willing to exchange their lands. On the basis of the order passed on 02.03.2013, a publication was issued but this publication is only in general terms in which it is stated that Mohd. Sahil Hamid and three others have made an application for exchange of their lands situated in Khasra No. 257 measuring 0.202 hectares with some other lands. Description of the land sought in exchange is not mentioned. Therefore, how can any person have knowledge as to what is the land which was proposed to be given to Mohd. Sahil Hamid and others. Without this information being given, nobody would know whether it is a land near to his house or some other land. This was an absolutely vague notice not informing the public either about their rights or which land was to be given to Mohd. Sahil Hamid in exchange of his lands.

25. This notice is supposed to have been published on 15.03.2013 and the report of the Process Server is that on the said date, he went to village Dantewada and apprised the public about the notice by reading it out to them. He got the signatures of five witnesses and pasted one copy of the notice at the Panchayat office. Out of those five witnesses, one is named Bhola but in the

signature corresponding to his name, the name is entered as Sori. Neither the parentage nor the addresses or any other description of the witnesses have been given to show as to who were the witnesses. Dantewada is not a village. It is a small town having a population of more than 25,000. It was and continues to be a Nagar Panchayat. When the Process Server describes Dantewada as a village, it is obvious that he is making a wrong statement. It is a town having population of more than 25,000. How could the Process Server read out the proclamation to the residents of Dantewada? If the land had been identified, then the Collector or the authorities should have directed that the proclamation be made by a beat of drum or publication in the newspaper or such other means to inform the public about the details of land proposed to be exchanged. This was not done. The manner in which this publication has been made leaves much to be desired. It is on the face of it a totally sham proclamation.

26. On 22.03.2013, Mohd. Sahil Hamid virtually changed the application and then asked for specific plots and areas and also identified those areas. After he made this application, the Revenue Department took no steps to ensure that fresh notices be issued to the persons belonging to that area. This fresh application was also only signed by Mohd. Sahil Hamid and not by the other three persons. The other three persons were not even named in the application. We are dealing with revenue officials who day in and day out deal with the revenue matters. They know how the Court functions and how applications are dealt with. Here, a vague application filed on 02.03.2013 was not only entertained, but with an unholy haste, orders were passed on the same date. Thereafter, a publication was made which is nothing but an apology in the name of publication. It gave no notice about the land which was intended to be given by the applicants and what land is to be given to the applicants in exchange. It appears to us that the notice was not even pasted, as stated by the Process Server. Therefore, we have no hesitation in holding that the exchange was not only illegal but also that the procedure

prescribed by law was not followed.

27. We may now deal with the conduct of the Respondents No. 5 to 8 in the present case. On behalf of the Respondents No. 5 to 8, objections to the writ petition were filed on 22.09.2015. In this affidavit, they made the following averments.

"10. That the present petition of the petitioner deserves to be dismissed on the ground of non-joinder of necessary parties as the answering respondents after exchange of the land had planned to construct a shopping complex and accordingly after proper sanction from the competent authorities a shopping complex has been constructed by the answering respondents and some of the shops were sold to different persons and till date huge investment has been done by the answering respondents upon the land allotted to them in exchange and therefore the petitioner ought to have made the purchasers as party respondent. Copy of the sale deed with respect to two shops are enclosed and filed herewith as Annexure R 5-8/4."

28. A bare reading of this paragraph indicates that the Respondents No. 5 to 8 suggested to the Court that after exchange of the land was complete, they had planned to construct a shopping complex and had in fact after obtaining proper sanction, constructed a shopping complex. They had clearly stated that the shopping complex was constructed by the answering Respondents meaning Respondents No. 5 to 8. They also stated that they had sold the shops to different persons and huge investments have been made by them. We may also note that on 06.04.2016, Shri Dadariya made a submission before the Court that the entire construction work of the complex had been completed and the same has become functional and third party interests have also been created. Thereafter, he was directed to file an affidavit and that affidavit was filed on 20.04.2016 and in para 3 of the affidavit, it was stated that the land bearing Khasra No. 263/2 measuring 0.22 hectare had been sold by the answering Respondents No. 5 to 8 to four other persons namely Smt. Waheeda Parveen, Smt. Maya Sharma, Smt. Rekha Mishra and Smt. Pushpa Agrawal. It was further stated that complex has been raised over the said land. The said construction has been completed and further

various third party interests have been created. Here also, the Respondents No. 5 to 8 have tried to hoodwink the Court. These four ladies are none else but the wives of Respondents No. 5, 6, 7 and 8, respectively. There is no explanation as to why this fact was not stated earlier either in the first return filed or in the affidavit filed pursuant to the orders of this Court. Even now, it is not mentioned as to what is the date of transfer. However, copies of the sale deed is attached which is dated 05.08.2013. This means that the Respondents No. 5 to 8 were well aware of the sale deed when they filed their first return on 22.09.2015. Yet they did not apprise this Court about this fact. Therefore, the Respondents No. 5 to 8 are guilty of *suggestio falsii and suppressio verii*. They have suppressed material facts and have tried to suggest to the Court as if they had carried out the construction which was clearly stated by them in their return filed in September, 2015. This is a reprehensible conduct. It is not difficult to decipher what was the reason for trying to mislead the Court. In case, the Respondents had filed sale deed with their first return, the question could have been raised from where their wives had raised funds of Rs. 20,00,000/- for purchase of these plots. This also clearly shows that the intention of Respondents No. 5 to 8 was to deal with the matter as commercial property and not for agricultural purpose. These transfers, one after the other have been made with a view to create third party rights and to frustrate the writ petition. Not a word has been stated by Respondents No. 5 to 8 as to what was the need for them to sell the property in the name of their wives. Not a word has been stated who raised the construction, from which bank the loan was obtained, who was the loanee and who stood guarantor for repayment of the loan. Only when specific queries were made, some information has come out otherwise the material facts have been withheld.

29. We have already held above that the Collector, under the circular in question had no power to exchange non-agricultural lands. Here we may come to another aspect. The Petitioners in their writ petition have alleged that the lands

comprised in Khasra No. 263 was earlier in the possession of the Forest Department and since it was a non-agricultural land, it could not have been allotted. After we had heard the matter at some length, on 29.06.2016, we had passed the following orders:

"After hearing the arguments for sometime, we would like to have some clarifications.

The Collector, Dantewada shall file an affidavit showing as to what was the classification of the land now allotted to private Respondents No. 5 to 8 and which is the subject matter of the dispute in this Writ Petition in the revenue records from 1990-2010. He shall also explain in his affidavit as to how the land which was previously used by the Forest Department for the residential purpose of its employees was treated to be agricultural land for the purpose of exchange.

This affidavit shall be filed within three weeks."

30. We had therefore clearly asked the Collector as to how the land which was previously used by the Forest Department for the residential purpose of its employees was treated to be agricultural land for the purpose of exchange. Pursuant to this order, an affidavit was filed on 19.07.2016 and para 6 of the said affidavit reads as follows:

"6. That, the concerned Khasra No. 257, had illegal encroachment in the form of a dilapidated Forest Department's quarter and a check post. The concerned land was not forest land; neither was it ever allotted to the Forest Department. The land belonged to the head "Kabil Kasth" under revenue head. As the land lay within the city, and the adjoining road had to be widened for public usage, the Divisional Forest Officer was requested to remove the illegal structures on its own cost via three notices. Copies of the notices addressed to the DFO, Dantewada are being annexed herewith as Annexure R/C for kind perusal of this Hon'ble Court. Thereafter, upon no response from the Forest Department, the illegal structures were removed. Presently, the road widening activity has been completed, which is evident from the photographs of the said road vide Annexure R/A."

31. In this affidavit, it was stated that the concerned Khasra No. 257 had illegal

encroachment in the form of a dilapidated Forest Department's quarters and a check post and the Forest Officers were asked to vacate the land. In this affidavit, it was also stated that the land fell under the head of "Kabil Kasth". Thereafter, on 03.08.2016, we had passed the following orders:

"Heard arguments in detail.

We have perused the affidavit filed by the Collector in pursuance to the directions given by us.

We are not fully satisfied with the affidavit so filed.

We therefore direct the Collector, Dantewada to prepare a fresh affidavit and along with the affidavit, he shall attach a large size map like Google map showing the terrain and the position of the various complexes in Dantewada. The map should clearly depict the following:-

1. the land which originally belongs to the private Respondents.
2. the land which was first allotted to them in exchange of their land originally owned by them.
3. the land which was given to them in exchange of the land allotted to them. If this land comprises of more than one plot, then all the plots shall be clearly depicted.
4. the small portion of land of the private Respondents which has now been exchanged shall also be clearly depicted along with the land which has now been given to them i.e. the land which was in the possession of the Forest Department.
5. the map shall also clearly show the location of the important places in Dantewada such as the Office of District Collector, District Panchayat Office, District and Sessions Court, Livelihood College, Women's Hostel and RTI Bhawan etc.

In the legend to be filed along with the map, the scale shall be clearly indicated so that the Court can determine what is the distance from one place to other.

The Collector shall in his affidavit clearly state why and how the land which was in the custody of the Forest Department and which as per his affidavit is Abadi land has in the year 2011 been treated as Nazul land was shown to be "Kabil kasth" in the earlier affidavit. "

32. Thereafter, an affidavit was filed on 06.09.2016 alongwith a very big copy of google map showing the terrain of the area and location of various plots. As we

have already held, we are not going into the validity of the earlier exchange but what we find is that 1.47 hectares of land which belonged to the Respondents was purchased by them within three months of the original owner obtaining permission to raise residential/commercial colony. We are adverting to this fact to show that the Respondents No. 5 to 8 were not agriculturists but had purchased these lands for the purpose of developing it as a colony or commercial complex. The State wanted these lands for the purpose of establishing Jila Panchayat Office and in exchange of the land situated in the main Highway, the Respondents were given as many as four pieces of land in six different khasras. Two pieces of land measuring 1.607 acres i.e. more than the total holding adjoining each other and are at a distance of about 1 KM from the main road. Another piece of land comprising of three khasras has been granted to the Respondents virtually in the heart of the town near the Danteshwari Mata temple next to big ground. Though, it may not be a highly commercial area, but it is definitely a very valuable piece of land. The land granted here is more than 0.44 hectares. 0.202 hectares was granted very close to Danteshwari Mata temple and near the commercial complex. It may be true that this land may have large number of trees but the fact remains that the Respondents No. 5 to 8 had willingly and with open eyes taken this land in Khasra No. 257/2 alongwith other five Khasra numbers in exchange of their original lands comprising of Khasra No. 576. When the exchange took place, the Respondents were given some good land, some ordinary land and some bad land. Most cleverly, after retaining all the other pieces of land which suited them, the Respondent No. 5 suddenly made an application on 02.03.2013 praying that the land in Khasra No. 257/2 is unsuitable and since the Forest Department is not going to give them permission to cut the trees, this land should be exchanged. As pointed out by us above on the day when the application is filed, the Collector marked it to the SDO, the SDO in turn marked to the Tahsildar who in turn marked it to the Reader and thereafter, the Revenue Inspector gives his report, all in one day. After that, to improve their

case, the Respondent No. 5 filed an application before the Forest Officers on 06.03.2013 seeking permission to cut 51 trees. This application was rejected on 11.03.2013 and on 22.03.2013, another application was filed giving these facts and now seeking specific land in exchange of Khasra No. 257/2. No notice was issued on the second application and the exchange was allowed as per the second application.

33. As held by us above, the Collector had no power or authority to order such exchange because this land was not an agricultural land and the land which has now been given is also not an agricultural land. Assuming that he had the power to order such exchange, he should have ensured that notice after the second application is served upon the residents of the surrounding area in respect of the specific piece of land which the Respondents wanted. This was not done. It was also not ensured whether the Respondents No. 6 to 8 are interested in this application or not. They were all working behind the scene. Moreover, if the Respondents No. 5 to 8 were dissatisfied with the exchange, they should have challenged the entire exchange and could not have kept that portion of exchanged land which suited them. When we compare the location of Khasra No. 257/2 which has now been exchanged with Khasra No. 263/2, 265, 266 and 257/1, it is obvious that the four khasras now given in exchange are highly commercial land where already shops were existing even before the lands were exchanged. This is also apparent from the fact that when the Forest Department was asked to vacate the land, a commercial complex was to be constructed over that area. All these facts show that there was an unholy nexus between the revenue officials and the Respondents No. 5 to 8. It also clearly indicates that without taking care of the larger public interest and without ensuring that public interest is not compromised, valuable land belonging to the State having a high commercial value have been exchanged. As held by us above, there was no proper publication of the notice also. Not only was the notice defective, but the

notice was not even published in a legal manner. The land which has been transferred in favour of the Respondents No. 5 to 8 all adjoins their own lands and this has enabled them to raise a huge commercial complex at the cost of public.

34. The Respondents No. 5 to 8 with open eyes had willingly without any pressure or coercion entered into an agreement with the State whereby they had agreed to exchange their original land in Khasra No. 576 with the land situated in Khasra No. 263, 265, 266 and 257/2. Now, they cannot be permitted to suddenly turn around and say that out of four khasra numbers, they be permitted to change part of one khasra number and they be given highly commercial land in its place. This land was also the land of their own choice as virtually demarcated by them.

35. Now, in reply, the Respondents No. 5 to 8 have tried to justify the exchange on the basis that the value was equal and reliance has been placed on Document-A which is a report dated 11.12.2015. The exchange was done in April 2013 and we cannot place reliance on this report. At best, this report can be used to justify the value of the land is equal. We may point out that circle rates are provided by the State only for the purpose of ensuring that proper stamp duty is obtained when sale deeds are registered. These circle rates cannot be deemed to be the market rates. Within the small circle itself, the rates can vary. Our attention has been drawn by learned counsel for the Respondents to a lot of circulars and in all these circulars, one constant factor is that the land should be used for agricultural purpose, whether the land is situated in village or in Nagar Panchayat. Valuation of the land is to be done only if it is used for agriculture purpose. We are emphasising this point that when land is used for agriculture the price depresses and as soon as the land is fit for commercial purpose or residential purpose, the value grows up many times. This has not been taken into consideration by the Respondents while ordering exchange and we therefore do not place reliance on this document because they all relate to valuation of agricultural land whereas the land in question is not at all agricultural land.

36. We have carefully gone through the calculations also and we find that the calculations have been made in a manner to suit Respondents No. 5 to 8. One document has been attached by the Respondent/State alongwith the affidavit dated 11.12.2015 calculations of the value of the land exchanged in 2012 have been made. In this calculation, the land of the Respondents No. 5 to 8 situated in village Chitalanka measuring 1.47 hectares has actually been valued at Rs. 20,51,939/-. The value of the government land transferred to the Respondents is assessed to be Rs. 25,28,708/-. However, the value of the land originally belonging to the Respondents No. 5 to 8 has been taken to be at Rs. 40,00,000/- on the ground that this land was purchased by the Respondents No. 5 to 8 for a consideration of Rs. 40,00,000/- . Therefore, the guidelines were not followed while assessing the value of the land of Respondents No. 5 to 8 and that valuation was fixed on the basis of the amount allegedly paid by Respondents No. 5 to 8 to the original owner namely Shri Baijnath. This is a totally fraudulent system where the circle rate has been followed while evaluating the government property but the market value as assessed by the claimants is taken to be the correct value while fixing the value of their land.

37. The matter does not end here. The total value of the lands of Respondents No. 5 to 8 was assessed at Rs. 20,51,939/- and land worth Rs. 25,28,708/- was given to them in exchange. However, when valuation of Kharsa No. 257 measuring 0.202 hectares of total land measuring 2.27 hectares was done on 25.03.2013 i.e. only one year later, it was valued at Rs. 34,00,000/- by the Revenue Inspector. Therefore, the value of land in Khasra No. 257 which was measuring only 0.202 hectares to be given to the State was valued at a lower rate but when the same land was being returned, only less than a year later, the valuation was done at a much higher rate. The total value of the land of Respondents No. 4 to 8 in Khasra No. 576 was originally assessed at Rs. 20,51,939 but the value was taken as Rs. 40,00,000/- only on the basis of this

sale deed. However, one year later, the value of 0.202 hectares of land i.e. 2000 sq.mts was valued at Rs. 34,00,000/-. Therefore, the land in Khasra No. 257 which is stated to be a useless piece of land because there are trees on it, is assessed at Rs. 34,00,000/-. How did the value of this land suddenly increased. This question remains unanswered.

38. According to the Respondents, though the value of the land of Respondents No. 5 to 8 was Rs. 40,00,000/-, they were only given land worth Rs. 25,28,708/- in exchange.

39. After one year, the value of 0.202 hectares of land was suddenly assessed at Rs. 34,00,000/- which is much more than the value of the entire land measuring 2.27 hectares granted to the Respondents No. 5 to 8. Therefore, the value of land was assessed at Rs. 34,00,000/- and according to the private Respondents, this land was a useless piece of land. This clearly demonstrates that the entire calculations are fraudulent and have been done only with a view to help the private Respondents.

40. The matter does not end here. According to the Respondents, the value of the land given to them in exchange of Khasra No. 257 which valued Rs. 34,00,000/- is only 20,00,000/-. Four months later, this land is sold by Respondents No. 5 to 8 to their wives and in that sale deed, the circle rate has been assessed at Rs. 30,00,000/-. The circle rate could not have suddenly risen dramatically by 50%. What is even more shocking is the fact that thereafter, one shop in the commercial complex has been sold by the wives of Respondent No. 5 to 8 for a consideration of Rs. 25,00,000/-. This clearly shows that this is a scam where the properties worth crores of rupees has been handed over to the Respondents No. 5 to 8 for a pittance.

41. We therefore have no hesitation in holding that the entire exercise culminating in the order dated 25.04.2013 passed by the Collector, Dantewada, is

wholly illegal and the same is quashed with all consequences. The State is at liberty to take over possession of the commercial complex and to deal with it in the manner it feels proper.

42. We are not oblivious to the fact that the Respondents have transferred their lands to their wives but we are purposely passing this order because till date, the wives have not approached to this Court for impleading them as Respondents and the Respondents have tried to withhold this fact and did not inform about this sale for a period of 1½ years. It is more than obvious that the transaction in favour of the wives is only a Benami transaction and accordingly we hold it to be illegal. The Respondents No. 5 to 8 are guilty of trying to mislead this Court. It is apparent from the stand of the Respondents that they themselves had raised construction of the building and the transfer in the name of the wives has been done only with a view to avoid such litigation and to delay the legal process. The transfer of the land by Respondents No. 5 to 8 in favour of their wives, who we are told have created further rights by transfer of their properties shall not be binding on the State and the entire land and property shall vest in the State Government.

43. Before parting with this case, we feel that we are duty bound to issue certain directions which must be followed by the State in all cases of exchange of land hereinafter:

- (i) The Collectors can and will only allow exchange of agricultural land.
- (ii) The exchange shall be allowed only for agricultural purpose and not for any other purpose.
- (iii) Before allowing any such exchange, notice of exchange giving details of the land sought to be exchanged and the details of the land which is proposed to be given in exchange should be given

to the residents of that area. Such notice should be personally delivered to the immediate neighbours and such notice should also be given a wide publicity by publication in two leading newspapers having wide circulation in the area in question. Notice be also issued by proclamation by beat of drum in the area both where the land sought to be exchanged is situated and also where the land sought to be given in exchange is situated.

(iv) That, there should be a condition in the exchange that the land is to be used only for the purpose of agriculture or for the purpose for which it is meant while giving it in exchange and shall not be used for any other purpose without permission of the Government.

(v) That while evaluating the market value of the agricultural land, guidelines may be followed but the circle rates cannot be blindly followed which are basically for the purpose of assessment of stamp duty.

(vi) There should also be a condition that at least for 20 years, the person to whom the land is given in exchange shall not transfer the said land to any other person.

(vii) Before any exchange is made in favour of a particular person, the Government should make an offer to all the persons in the locality and if somebody else is ready to give a higher value for the government land, then the government land should not be exchanged at a lower value as it may be manipulated by the officials and interested persons. Therefore, if the Revenue Inspector assesses the value of a land at Rs. 5 Lacs but some individual is willing to pay Rs. 10 Lacs for the said land, then the value of the land

shall be taken to be Rs. 10 Lacs and not Rs. 5 Lacs as assessed by the Revenue Inspector.

(viii) The conduct of the Collector and Tahsildar is not beyond doubt. There is a prima facie case for holding enquiry against them. The State is directed that enquiry is conducted against the Collector and Tahsildar as to how they passed such order in a haste manner.

44. The writ petition is allowed with the aforesaid direction. The exchange order dated 25.04.2013 passed by the Collector, South Bastar, Dantewada is held to be illegal and is accordingly quashed. Consequently, the transactions which have been made on the basis of the order dated 25.04.2013 shall also not be binding. The property constructed on the land shall vest free from all encumbrances in the State which shall ensure that all the shops are now sold after holding proper auction.

45. We may make it clear that the persons who have purchased these shops can file suits against the Respondents No. 5 to 8 and their wives for recovery of the amount which they have paid to them.

46. The Respondents No. 5 to 8 are burdened with cost of Rs. 1,00,000/- to be paid to the Chhattisgarh State Legal Services Authority.

47. The Registrar General shall send a copy of this order to the Secretary, Department of Revenue, Government of Chhattisgarh, who shall ensure that our directions are circulated to the concerned officials.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE