

**CALCUTTA HIGH COURT**  
**Civil Appellate Jurisdiction**  
**Appellate Side**

**M.A.T. 1309 of 2015**  
**Prabir Kumar Talukdar**  
**-Vs.-**

**West Bengal Housing Infrastructure Development**  
**Corporation Limited & Ors.**

**With**  
**IA No. CAN 1 of 2018 (Old No. 4709 of 2018)**  
**With**  
**I.A. No: CAN 2 of 2020**  
**With**  
**I.A. No: CAN 3 of 2021**

**With**

**F.M.A. 2752 of 2015**  
**Shivmangal Securities Pvt. Ltd. & Ors.**  
**-Vs.-**

**West Bengal Housing Infrastructure Development**  
**Corporation Limited & Ors.**

**With**

**F.M.A 2754 of 2015**  
**Mohanlal Agarwal & Ors.**  
**-Vs.-**

**West Bengal Housing Infrastructure Development**  
**Corporation Limited & Ors.**

**With**  
**I.A. No: CAN 1 of 2015 (Old No. C.A.N. 7509 of 2015)**  
**With**  
**I.A. No: CAN 3 of 2019 (Old No. C.A.N. 1990 of 2019)**

**With**

**F.M.A. 2755 of 2015**  
**Sri Narayan Chandra Bandyopadhyay & Anr.**  
**-Vs.-**

**The State West Bengal & Ors.**

**With**

**F.M.A. 3172 of 2015**  
**Priyanka Agarwal & Anr.**

**-Vs.-**

**West Bengal Housing Infrastructure Development  
Corporation Limited & Ors.**

**With**

**IA No: C.A.N. 1 of 2015 (Old No. 7949 of 2015)**

**With**

**I.A. No: C.A.N. 3 of 2022**

**With**

**FMA 3664 of 2015**

**RDB Textile Ltd. & Anr.**

**-Vs.-**

**West Bengal Housing Infrastructure Development  
Corporation Limited & Ors.**

**With**

**I.A. No: C.A.N. 1 of 2015 (Old NO. C.A.N. 12272 of 2015)**

**With**

**M.A.T. 1069 of 2015**

**Bengal Brick Field Owners' Association & Ors.**

**-Vs.-**

**West Bengal Housing Infrastructure Development  
Corporation Limited & Ors.**

**With**

**I.A. No. C.A.N. 1 of 2018 (Old No: C.A.N. 4370 of 2018)**

**With**

**I.A. No: CAN 2 of 2020**

**With**

**M.A.T. 1129 of 2015**

**Hi-Tech Hatch Fresh Pvt. Ltd. & Ors.**

**-Vs.-**

**West Bengal Housing Infrastructure Development  
Corporation Limited & Ors.**

**With**

**I.A. No: C.A.N. 1 of 2018 (Old No: C.A.N. 4817 of 2018)**

**With**

**CAN 2 of 2020**

**With**

**M.A.T. 1174 of 2015**

**Swadhin Kumar Sadhu**

**-Vs.-**

**West Bengal Housing Infrastructure Development  
Corporation Limited & Ors.**

**With**  
**I.A. No. C.A.N. 1 of 2017 (Old No. C.A.N. 1345 of 2017)**

**With**

**M.A.T. 1342 of 2017**  
**M/s Awards International, A Prop. Concern & Anr.**  
**-Vs.-**

**The State West Bengal & Ors.**

**With**

**I.A. No. C.A.N. 1 of 2017 (Old No. C.A.N. 8635 of 2017)**

**With**

**M.A.T. 1763 of 2015**  
**Ajay Tibrewal & Ors.**

**-Vs.-**

**West Bengal Housing Infrastructure Development Corporation Limited**  
**& Ors.**

**With**

**I.A. No: CAN 2 of 2016 (Old No. C.A.N. 1278 of 2016)**

**With**

**M.A.T. 1899 of 2015**  
**MD. Nawsad Ali**

**v.**

**West Bengal Housing Infrastructure Development Corporation Limited & Ors.**

**With**

**M.A.T. 370 of 2017**  
**Mainak Sirkar**

**-Vs.-**

**The State of West Bengal & Ors.**

**With**

**I.A. No: C.A.N. 1 of 2017 (Old No. 2761 of 2017)**

**With**

**I.A. No: C.A.N. 2 of 2017 (Old No. 2762 of 2017)**

**With**

**F.M.A. 2355 of 2015**  
**Dreamland Infrabuild Pvt. Ltd. & Anr.**

**-Vs.-**

**West Bengal Housing Infrastructure Development Corporation Limited & Ors.**

**With**

**I.A. No: C.A.N. 3 of 2019 (Old No. C.A.N. 264 of 2019)**

**Before: The Hon'ble Justice Arijit Banerjee  
&  
The Hon'ble Justice Rai Chattopadhyay**

- |                                                                                                       |                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the appellants in<br>(FMA 2355 of 2015)                                                           | : Mr. Kishore Datta, LD. Sr. Adv.<br>Mr. Sumitra Das, Adv.                                                                                                                                                                                                                         |
| For the appellants in<br>(FMA 2754 of 2015<br>& FMA 3172 of 2015)                                     | : Mr. Saptangsu Basu, Sr. Adv.,<br>Mr. V. Bhatia, Ld. APP.<br>Mr. G. Prasad, Adv.<br>Mr. P. K. Jewrajka, Adv.<br>Mr. Pooja Jewrajka, Adv.                                                                                                                                          |
| For the appellants                                                                                    | : Mr. Anindya Lahiri, Adv.<br>Mr. R. Kr. Dubey, Adv.<br>Mr. P. Sharma, Adv.                                                                                                                                                                                                        |
| In person in<br>(FMA 2752 of 2015)                                                                    | : Mr. Nirmal K. Agarwal, Adv.                                                                                                                                                                                                                                                      |
| For the appellant in<br>(MAT 1069 of 2015)                                                            | : Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.<br>Mr. A. J. Sengupta, Adv,<br>Mr. A. Pal, Adv.                                                                                                                                                                                        |
| For the appellants in<br>(FMA 2755 of 2015)                                                           | : Mr. Indranil Nandi, Adv.<br>Mr. D. P. Samanta, Adv.<br>Mr. S. Konar, Adv.                                                                                                                                                                                                        |
| For the WBHIDCO                                                                                       | : Mr. Jayanta Kumar Mitra, Sr. Adv.<br>Mr. Abhratosh Majumdar, Ld. Sr. Adv.,<br>Mr. Jishnu Choudhury, Adv.<br>Mr. Debanjan Mondal, Adv.<br>Mr. Chayan Gupta, Adv.<br>Mr. Deepan Sarkar, Adv.<br>Mr. Sandip Dasgupta, Adv.<br>Mr. Saaquib Siddiqui, Adv.<br>Mr. Aviroop Mitra, Adv. |
| For the State                                                                                         | : Mr. S. N. Mookherjee, Ld. Adv. Gen.,<br>Mr. T. M. Siddiqui, Adv.                                                                                                                                                                                                                 |
| For the respondent<br>no. 16( In M.A.T.<br>1309 of 2015<br>M.A.T. 1069 of 2015<br>M.A.T.1129 of 2015) | : Mr. Anirudha Chatterjee, Adv.<br>Mr. R. Karmakar, Adv.<br>Mr. Ajay Gaggar, Adv.<br>Mr. U. Mallick, Adv.<br>Mr. S. Mukherjee, Adv.<br>Mr. T. Joarder, Adv.                                                                                                                        |

Heard On : 30.06.2022, 18.07.2022, 21.07.2022, 02.08.2022, 03.08.2022, 04.08.2022, 08.08.2022, 10.08.2022, 11.08.2022, 12.08.2022, 22.08.2022, 23.08.2022, 24.08.2022, 25.08.2022, 26.08.2022, 29.08.2022, 01.09.2022, 02.09.2022, 06.09.2022, 07.09.2022, 08.09.2022, 12.09.2022, 13.09.2022, 14.09.2022, 15.09.2022, 16.09.2022, 20.09.2022, 21.09.2022, 22.09.2022, 26.09.2022, 28.09.2022, 29.09.2022, & 30.09.2022

CAV on : 30.09.2022

Judgment On : 03.11.2022

**Arijit Banerjee, J.:-**

1. The subject matter of challenge in this bunch of appeals is a judgment and order dated May 13, 2015 whereby 61 writ petitions were disposed of. The writ petitions were filed by some of several beneficiaries of allotment of land by West Bengal Housing Infrastructure Development Corporation Limited (in short “HIDCO”) in the extended Calcutta Area which has come to be known as New Town, challenging notices of cancellation of such allotments of land issued subsequently by HIDCO.

2. A brief background of the case leading to filing of the 61 writ petitions may not be out of place.

3. HIDCO was incorporated sometime in the year 1999 as a Government controlled company with the State Government holding approximately 90 per cent of its shares, with the primary object of developing a new township in the north-eastern fringes of the city of Calcutta. A huge area of land was acquired for such purpose by the State Government to enable HIDCO to achieve the aforesaid object. Compensation for such land acquisition was

initially planned to be paid by the State Government but was actually paid by HIDCO.

4. At this point, it will be helpful to note that Item no. 17 of the minutes of the 37<sup>th</sup> meeting of the Board of Directors of HIDCO held on December 29, 2006, records as follows:

**“17. Reservation of chairman’s Quota (5%) of total Bulk Plots including Institutional, Commercial, Industrial and Residential Plots.**

Managing Director informed that WB HIDCO LTD. has established itself as a socially conscious Company committed to the Society particularly for economically weaker sections of people of the State. So far small residential plots including LIG, MIG, HIG of both individuals and co-operative categories were allotted to the public on lottery basis subject to reservation of chairman’s quota at 5% which were allotted on the basis of genuine needs including unsuccessful persons and also for other very justified reasons. Most of the bulk plots allotted so far represent allotment to Joint Venture Companies of WBHB, various Central/State Govt. Departments and some others through tendering process. It was felt a bare necessity for reservation of 5% of the total land available for sale/allotment as chairman’s quota including bulk plots.

After a brief discussion, the following resolution was passed:-

“Resolved that approval be and is hereby given for reservation of 5% of total saleable/allotable land in New Town (all inclusive-small plots and bulk plots) as was done in earlier cases as

‘chairman’s quota’ to be used exclusively for land losers. State-based philanthropic and Social Organisations and for encouraging different organisations, bodies, co-operative/individuals in the state having potential capacity/technical expertise/proven technology etc. but may not be so sound financially to compete in the tendering process (country-wise) and further which if implemented/encouraged will be of great help to the entire society of the State and employment generation amongst people of economically weaker section at such prices as chairman of the Company may finalise.

It was also Resolved that, Managing Director be and is hereby authorized to do all such other acts and things as he may deem fit and appropriate in this connection.”

5. Sometime in the year 2006 HIDCO, by publication in newspapers, invited applications from persons who were interested in acquiring residential plots in New Town under the chairman’s discretionary quota. The last date for making such application was September 27, 2006. Subsequently, by publishing notices in the October 12, 2007, Edition of the Bengali newspaper called ‘Ganasakti’ and English newspaper called the ‘Echo of India’, HIDCO invited applications from parties who were interested in obtaining allotment of non-residential/commercial plots in their favour in New Town under the chairman’s discretionary quota.

6. Eligibility criteria were laid down by HIDCO, which an applicant, whether in the residential category or in the commercial category, had to satisfy to qualify for allotment of land. It further appears that the Housing

Department of the State constituted a committee for considering the applications received for allotment of plots for commercial use under the chairman's discretionary quota. The minutes of meeting of such Screening Committee held on April 28, 2008, records the following decision:-

“The Committee constituted vide Housing Department, Government of West Bengal under Order No. 574HG/H1/NTP/IM-4/2000 Dated, Kolkata the 13<sup>th</sup> October, 2003 examined the applications for allotment and recommended as eligible the same as per enclosed list bearing Sl No. 1 to 849 except the application mentioned below:

“Sl.14,188, 272, 300, 302, 303, 317, 318, 323, 331, 335, 388, 447, 736, 825→ The quantum of land required not mentioned.

Sl. 270, 360, 361, 362, 363 → The purpose for which the land required not mentioned.”

7. Similarly, it appears that in respect of residential allotments, a Committee was set up to scrutinize the applications received. Such Committee as per the records available with HIDCO, is said to have met on May 24, 2007, to consider the applications and the Committee found all 835 applications to be in order and worthy of allotment.

8. It appears that in so far as non-residential plots were concerned, under the chairman's discretionary quota, one plot was allotted in 2008, four plots in 2009, forty-three plots in 2010 (most of them in the last quarter of that year) and sixty-three plots were allotted by the chairman under his discretionary quota in the first two months of 2011.



9. Similarly, in so far as residential plots were concerned, 27 allotments were approved by the chairman of HIDCO under his discretionary quota in 2007; 6 in 2008; 2 in 2009 and 10 in 2010.

10. In January and February 2011, the chairman approved the allotment of 219 residential plots in New Town, 60 of them on February 28, 2011.

11. On March 1, 2011, the Election Commission announced the dates for the Assembly Election in West Bengal. Consequently, the Model Code of Conduct came into operation on that date.

12. The election saw a change in Government; the then ruling party came to be replaced by the present regime. Naturally, the constitution of the Board of Directors of HIDCO which is a Government Company, underwent a complete change. The new management of the company after taking charge of the affairs of the company, claims to have noticed gross irregularity in the allotment of plots - both in residential and non-residential categories – both by the Board of Directors of the company at its 59<sup>th</sup> meeting held on February 28, 2011, and under chairman's quota. In this connection it will be important to note the relevant portions of the minutes of the 60<sup>th</sup> and 61<sup>st</sup> Board Meetings of HIDCO, held on August 19, 2011, and October 22, 2011, respectively.

13. The relevant resolution adopted on August 19, 2011, was as follows:-

“10 (i) **Status of allotment of plots made by the Board at its 59<sup>th</sup> Meeting held on 28<sup>th</sup> February, 2011**

...

“Resolved that, approval be and is hereby accorded to the following;

- (a) In cases where after initial intimation/offer of allotment, no application Money/Earnest Money is paid/deposited the offer be cancelled ab-initio;
- (b) In cases of residential plots where the Application Money has been deposited, no formal letter be issued. Application Money so deposited be refunded with a letter of regret refunding Application Money.
- (c) In case of non-residential plots where allotment letters were issued by the Board on 28-02-2011 but Earnest Money has not been deposited allotment be cancelled with a letter of regret;
- (d) For the applicants of residential plots under chairman's discretionary quota where formal allotment has been issued after receiving application money and the applicants started depositing money or deposited full payment, or yet to start depositing payment of installments, and also for the applicants of non-residential plots under chairman's discretionary quota and allotment approved in the meeting of the Board of Directors on 28.02.2011 where allotment has been issued and earnest money, and/or other installments have been deposited, an option be given to all such applicants to withdraw the applications upon which all the amounts paid will be refunded within a period of fifteen days from the date of receipt of letters. The application for withdrawal must reach the office within 15 days from the date of receipt of this letter.

“10 (ii) **Status of allotments out of chairman's Quota**

...

“Resolved that, approval be and is hereby accorded in view of abolishing of chairman’s Quota system to cancellation of all the plots allotted/approved under chairman’s quota specifically on 28<sup>th</sup> February, 2011 i.e. just a day before the declaration of general Election in the State of West Bengal to avoid restriction that would be imposed by Model Code of Conduct.”

14. At the 61<sup>st</sup> Board meeting of the company, the matter pertaining to allotment of plots in New Town was discussed under item no. 28 as follows:-

“28. **Allotment of land/plots issued on 28.02.2011 but were approved prior to 28.02.2011 for non-residential/residential/proposed Cooperative Housing Societies etc. purposes.**

A Board Note was placed before the meeting detailing allotments made to different persons, Companies, Housing Cooperatives & Organisations for the purpose of Residential/Non-Residential/Cooperative Housing Societies and that formal allotment letters although issued on 28.02.2011 approvals were accorded by chairman prior to 28.02.2011. In the Board Note allotments are shown under four categories numbering about 99 in total.

After a brief discussion, the following resolution was passed:-

“Resolved that, keeping in view of the wishes of the State Govt. and more particularly in view of allotments issued just before implementation of the Code of Conduct before Assembly Election

in the State of West Bengal approval be and is hereby accorded for cancellation of all such plots as detailed in the Board Note and its annexures and that AGM(M) be and is hereby authorized to issue such letters of cancellation.

“It was also resolved in this connection that CMD be and is hereby authorized to do all such other acts and things as he may deem most appropriate in the given circumstances”.

15. In the above factual background, HIDCO by issuing notices to the allottees, cancelled most of the allotments made under chairman's discretionary quota as also by the Board of Directors of HIDCO. This led to filing of a bunch of writ petitions challenging the notices of cancellation of allotments.

16. The Learned Judge, after a detailed discussion of the relevant facts of the case came to the following conclusion:-

“252. In the light of the factual position that has emerged in course of the present proceedings, none of the allotments made in favour of the petitioners appears to be beyond question or on the basis of any rational exercise of discretion or by way of any fair procedure. The facts show that the erstwhile chairman of the company vainly perceived that he had unfettered discretion to make allotment of plots to whoever he pleased without assigning any reasons or without reference to the guidelines. The discretion was exercised in a most capricious, inequitable and feudal manner. There was no basis in the choice of the beneficiaries from among many and the

manner of exercise of discretion does not satisfy the tests laid down by high judicial authorities.”

The Learned Judge therefore dismissed the writ petitions by the common judgment and order which is under appeal.

17. Before proceeding further we should note that although the order sheets in the file indicate that FMA 2355 of 2015 (***Dreamland Infrabuild Private Limited & Anr. v. West Bengal Housing Infrastructure Development Corporation Limited & Ors.***) was heard along with 13 other appeals, that is not the fact. As agreed by and between all concerned, FMA 2355 of 2015 was segregated from the other appeals and is yet to be heard. Hence the present judgment and order will not decide FMA 2355 of 2015.

18. A common preliminary complaint that all the appearing appellants through their learned counsel have made is that the learned Single Judge ought not to have clubbed the writ petitions together and should not have heard the same analogously. They contended that all the writ petitioners were not similarly placed. In case of some of the writ petitioners, the right to possess the plots of land allotted to them is qualitatively different and stronger than such right in case of other writ petitioners. Hence, the writ petitions should have been heard individually and should have been disposed of by separate judgments.

19. We see no merit in such contention of the appellants for three reasons. In paragraph 4 of the impugned judgment, the learned Judge has recorded as follows:

“4. The final hearing was structured thus: WP 2522 (W) of 2014 pertaining to the cancellation of an allotment of land for

commercial use was chosen, by consent of the appearing parties, as the lead petition and the common grounds of the challenge to the cancellation of the allotments in the several matters were required to be placed in full detail together with the aspects peculiar to that matter. The State and the company were thereafter heard in their defence of the decision to cancel the allotments in these matters. The private respondent No. 16 in the lead matter – the object of ire of many of the rejected allottees – missed the window allotted to it, but has been heard subsequently. The petitioners in the lead petition were permitted to submit in their rejoinder. Thereafter, the special features in every other individual petition were permitted to be addressed on, both by the petitioners and the respondents.”

From the paragraph extracted above, it is clear that the appearing parties agreed that the writ petitions should be heard analogously and they also agreed as to which writ petition would be treated as the lead petition. The appearing parties having consented to such clubbing of the writ petitions and hearing thereof analogously, they cannot now, in appeal, complain about the same.

20. Secondly, an order dated February 5, 2015 was passed by the learned Single Judge in W.P. No. 5158(W) of 2013 (**Shivmangal Securities**), which was, inter alia, to the following effect:-

“The parties are represented and affidavits have been completed. Since the similar issue is involved in several other matters, this petition will be heard with all the other matters pertaining to the

cancellation of the allotments of land for commercial use at Rajarhat”.

This order was not assailed before any higher forum and accordingly attained finality.

21. Thirdly, and in any event, the learned Judge took great pains to notice and record the salient features of each and every writ petition.

22. We can do know better than extracting the relevant paragraphs from the judgment under appeal. This will also be elucidative of the factual background of each case. We clarify however, that we shall extract only the paragraphs dealing with the 13 writ petitions which have resulted in the 13 appeals that we have heard.

23. Paragraphs 100-102 of the impugned judgment dealing with WP 37304(W) 2013 resulting in MAT 370 of 2017 (***Mainak Sirkar v. The State of West Bengal &Ors.***) read as follows:-

“100. The petitioner in WP 37304(W) of 2013 refers to an even more lucrative employment opportunity that he presented by his application of November 5, 2007 that the chairman, in his wisdom, could never have refused. The petitioner sought a five-cottah plot on the excellent credentials of he being a young businessman from a family which was in the jewellery business for several generations. The petitioner did not refer to the earth-shattering employment opportunities that his project would generate but merely indicated that he intended to open a jewellery showroom “so that I can expand the family business.” Such convincing application was approved on November 22, 2010 by the minister-

chairman and the company informed the petitioner on February 1, 2011 that just as the petitioner has sought, a five-cottah plot had been allotted to him in New Town to establish his jewellery shop. As in several other cases, particularly in the allotment of non-residential plots, the initial letter of intimation was followed a couple of months later by a formal offer of allotment identifying the exact location of the plot. In this petitioner's case, the letter of allotment was issued on May 3, 2011 and the petitioner made substantial payment in terms thereof before the allotment was cancelled by a generic notice of December 2, 2013. This petitioner has also asserted that if the cancellation of the allotment in his favour is not revoked, all other allotments made under the chairman's discretionary quota and by the company should be annulled.

101. The company refers to the guidelines for allotment of non-residential plots under the chairman's discretionary quota, particularly the clauses therein pertaining to eligibility, preference and selection:

**"2. ELIGIBILITY:**

Individuals, Companies, Traders, Developers, Industrialists, Entrepreneurs, Voluntary Organizations, other Organizations, Cooperative Societies and Institutions including Educational Institutions applying for plot and intending to take up project as stated in para 1 must have experience in any one of the following activities:



(a) Worked in the field of social welfare including health and other activities, like rural development, literacy, mother & child care, juvenile justice, care of the disabled and the old aged, control of drug abuse etc. benefiting, among others, the families belonging to lower income group /economically weaker section /BPL group / families of land losers in New Town Project.

(b) Outstanding work performed benefiting the community as a whole for which International / National / State level award or award from a Govt. recognized Organization has been received by the Organization.

(c) Activity or work performed in the field of Literature, Art, Culture, Cinema, Music, Sports and Games etc. for which International /National /State level award or award from a Govt. recognized Organization has been received by the Organization.

(d) Worked for talent search and recognized performance, especially from the poor students.

(e) Worked in the backward areas of West Bengal and / or among Scheduled Cast, Scheduled Tribe and other backward section of West Bengal.

(f) Considered to be eligible for setting up a project as required in New Town.

(g) Land losers of New Town Project – individual person or organization.

(h) Gallantry or other award winners – military, paramilitary, Police, Civil.

(i) Eminent Persons or organizations in the field of law, medicine, journalism, engineering, civil services, finance, accountancy, commerce & industry,

(j) Freedom fighters and bonafide participants in post independence democratic movement.

(k) Non resident Indians.

(l) Ex- serviceman

**N.B.:**

(1) One person or organization can apply for one plot only

(2) Applicant(s) must be competent to contract under the Indian Contract Act, 1872.

(3) Price /Premium/Charge as value of land and other charges will be fixed as per existing norms of HIDCO.

**3. PREFERENCE:**

Special credit will be given for allotment to those,-

(a) capable of preparing concept plan and implement a project on a smaller size of plot than the existing scale conventionally thought of or usually presumed to be required for setting up the said project, or,

(b) undertaken and intended to set up project or scheme having non-commercial approach, or,

(c) organizations /cooperative societies constituted with the land losers of New Town Project, or,

(d) undertaken and intended to take up welfare activities benefiting among others, the families belonging to lower

income group /economically weaker section /BPL group/land losers, or,

(e) worked in the backward areas of the State like Sunderbans laterite zone etc. and amongst the backward classes

#### **4. SELECTION:**

Selection of eligible applicants for allotment of plots will be made by the chairman at his discretion considering the eligibility, previous performance and preparation of concept plan of the project after examining the same in the light of the prescribed eligibility by a high level Committee. Decision of the chairman, HIDCO shall be final.

#### **N.B.:-**

(I) Failure in getting plot in New Town will not constitute sufficient reasons for selection.

(II) Incomplete /factually incorrect applications will be summarily rejected.”

102. The company refers to clause 5 of the guidelines that required documents and papers in support of the eligibility criteria to accompany the application, along with the certificate of registration of the organisation under the relevant statute. The company maintains that if it was imperative that documents be filed to enable the chairman to assess whether an applicant fulfilled the eligibility criteria, it is inconceivable that bare-bodied applications could be entertained and allotments made without any material to form any opinion as to the business or

performance of the applicants or their potential or their eligibility under the stated norms. With particular reference to the petitioner in WP 37304(W) of 2013, the company says that nothing in the purported application of November 5, 2007 gave any information relevant for the purpose of assessing whether this petitioner qualified to obtain an allotment under the chairman's discretionary quota. Indeed, the letter of intimation of February 1, 2011 required the petitioner "to kindly furnish a project report ..." The company suggests that if the "concept plan of the project" had not been submitted by this petitioner and no material evidencing the fulfillment of the eligibility criteria by this petitioner was furnished, there was nothing on which the chairman could have exercised his discretion to approve the allotment in this petitioner's favour. The company says that this petitioner's case is not an exception, but the general rule; in the sense that allotments of non-residential plots were approved by the chairman when there was no material on which any rational assessment could be made and there is no record of the chairman giving any iota of reasons in support of the approval of any allotment of plot in New Town."

24. Paragraphs 103 and 104 of the judgment dealing with WP 5158(W) of 2013 resulting in FMA 2752 of 2015 (***Shivmangal Securities Pvt. Ltd. & Ors. v. West Bengal Housing Infrastructure Development Corporation Limited & Ors.***) read as follows:-

"103. The next in the line is WP 5158(W) of 2013, instituted by two companies and the persons in control thereof who had applied on

December 26, 2007 to set up a financial hub in New Town. The application was accompanied by a concept plan which revealed the revolutionary business that the applicants intended to pursue in the office complex that they proposed to set up for trading in shares and securities, commodity trading, mutual funds services, insurance services and training in the financial sector. The applicants also intended “to provide office space” to other entities for conducting banking services, taxation and accountancy services and other advisory services. Such petitioners have relied on a document appearing to be dated February 28, 2011 where most of the names of the allottees are printed and the plot numbers are indicated in hand. The minister-chairman accorded the approval by apparently signing the document on February 28, 2011 whereupon a letter of intimation of the same date was issued by the company to the petitioners. The formal offer of allotment of the plot was made to these petitioners on May 7, 2011. As in most other allotments of nonresidential plots in New Town, the petitioners were required to pay Rs.13.36 lakh per cottah for the allotment of the land on freehold basis. After the company took up a review of the allotments made under the previous management, the petitioners were requested to withdraw their application and obtain refund of the payments made by a letter dated September 14, 2011 before the allotment was finally cancelled on similar grounds as in a number of non-residential plots by a letter dated February 11, 2013. This case, along with the seven other allottees

of non-residential plots evident from the document of approval of February 28, 2011 appearing at page 134 of the petition, conforms to the exact parameters of the final board decision of December 1, 2012 to cancel such allotments that were approved and intimated to the allottees on February 28, 2011.

104. The company has said in its affidavit that the application alleged to have been made by these petitioners is not available in the records of the company. The company has denied the rubber-stamp on the received copy of the application and the signature thereon. The more robust criticism of the approval of the allotment in these petitioners' favour by the erstwhile minister-chairman is that three allotments were made in favour of the members of one family which was contrary to the express stipulation in the guidelines that one person or one organisation could apply for only one plot. The company demonstrates that the petitioners in WP 5158(W) of 2013 and the petitioners in WP 2521(W) of 2014 and WP 13956(W) of 2014 are controlled by or belong to the same family. The company refers to the guidelines pertaining to allotment of non-residential plots under the chairman's discretionary quota and the restriction therein of allotment of more than one plot to the same person or organisation. The company says that if the chairman's discretion was exercised in such arbitrary and wanton manner by disregarding the relevant guidelines and the norms fixed, the allotments cannot be honoured as it would be opposed to public policy to do so."

25. Paragraphs 106 and 107 of the judgment dealing with WP 28365 (W) of 2013 resulting in FMA 3664 of 2015 (***RDB Textile Ltd. & Anr. V. West Bengal Housing Infrastructure Development Corporation Limited & Ors.***) read as follows:-

“106. The next petitioners in WP 28365(W) of 2013 have contributed substantially to the jurisprudence in this court and the law on acquisition of sick jute mills pursuant to sanction granted by court that every student of company law would be aware of. Such petitioners, like several other allottees of nonresidential plots in New Town before and after them, have access to photocopies of board meetings of the government company responsible for allotments and other records of such company. The petitioner company claims to have applied on January 12, 2011, which appears to have been received on January 17, 2011, for a 20-cottah plot in New Town for setting of its “Corporate Office-cum-R&D Centre.” The petitioner company flaunted its running of the Victoria Jute Mills which was, according to it, “a sick industry which has been subsequently revived by us.” It was but natural that with such credentials and the epoch-making proposal of setting up a corporate office and research centre, that the application was approved by the minister-chairman on February 1, 2011, which was communicated by the letter of intimation of February 21, 2011. The petitioners are silent on how the application made by them in January, 2011 that they have disclosed in the petition was approved with remarkable

alacrity in less than a fortnight. Though the respondent authorities insinuate that the allotment was pursuant to the then Transport Minister's recommendation of January 19, 2011, as is evident from such minister's letter to the chairman of HIDCO, the petitioners refer to their original application of February 21, 2008 which is appended to the letter of recommendation. The offer of allotment of the land was made by the company on May 7, 2011 at the usual rate of Rs.13.364 lakh per cottah. The allotment was cancelled by a letter of July 26, 2013 on the same lines as of the lead petitioners extracted above.

107. The company suggests that it is unusual that an application is made in January, 2011, purportedly in pursuance of an application earlier made in the year 2008, but the subsequent application does not refer to the previous application. The company contends that neither application disclosed any material for the minister-chairman to assess whether the application or the applicant conformed to the eligibility criteria for the allotment of a non-residential plot under the chairman's discretionary quota."

26. Paragraphs 117 and 118 of the judgment dealing with WP 2521 (W) of 2014 resulting in FEMA 2754 of 2015 (***Mohanlal Agarwal & Ors. v. West Bengal Housing Infrastructure Development Corporation Limited & Ors.***) read as follows:-

"117. In WP 2521(W) of 2014, the trump-card is thrown at the first instance by referring to the board note pertaining to the minutes of the 61st board meeting of the company held on October 22, 2011.



The petitioners say that the allotment made in their favour is not referred to in board note No.28 or in any of the charts appended thereto. They claim that their application of December 27, 2007 for a 20-cottah plot was to satisfy the burning need for a conference and banquet hall in New Town and it was in the best interests of developing the township that the remarkable concept plan was accorded approval by the chairman under his discretionary quota on February 24, 2011 which was intimated to the petitioner by the company's letter of February 28, 2011. These petitioners appear to be slightly disappointed with only a 15-cottah allotment being made in their favour. They claim to have made substantial payments upon receipt of the offer of allotment on freehold basis at Rs.13.405 lakh per cottah. They attack the generic letter of cancellation of November 27, 2013 for it betraying non-application of mind and being otherwise without basis.

118. The primary challenge by the company to the allotment made in favour of these petitioners is on the ground that a solitary family was favoured with the allotment of three non-residential plots by the erstwhile chairman in derogation of the norms set down in the relevant guidelines.”

27. Paragraph 143 of the judgment dealing with WP 3171 (W) of 2012 resulting in MAT 1342 of 2017(*M/s Awards International. A Prop. Concern & Anr. V. The State of West Bengal & Ors.*) reads as follows:-

“143. Though no submission has been made in support of WP 3171(W) of 2012, it is evident from the petition that the petitioner

applied on December 31, 2007 for allotment of a commercial plot to set up a gallery for sports trophies and corporate awards. The petitioner has relied on a copy of the notice dated October 11, 2007 issued by the company along with the guidelines for allotment of nonresidential plots under the chairman's discretionary quota. The petitioner has also relied on a subsequent notice of February 27, 2008 by which the time to apply for plots under the chairman's discretionary quota was extended till the end of March, 2008. Though the application was made by an entity described as "International Trophies & Co.", the letter of intimation was issued in the name of "Awards International" on February 1, 2011 following the chairman's approval of the allotment on November 22, 2010 for "trading and gallery purposes of sports trophies and corporate awards." The tentative allotment was cancelled on December 13, 2011 on the basis of "a policy decision" taken by the board of directors of the company on October 22, 2011. The notice of cancellation also asserted that no formal application or payment had been received for the allotment."

28. Paragraph 147 of the judgment dealing with WP 9162(W) of 2014 resulting in MAT 1069 of 2015 (***Bengal Brick Field Owners' Association & Ors. v. West Bengal Housing Infrastructure Development Corporation Limited & Ors.***) reads as follows:-

"147. The petitioners in WP 9162(W) of 2014 claim to have lost the copy of the application made by them on February 29, 2008. The petitioner company was allotted a five-cottah non-residential plot

for the construction of an office, including a guest-house, where its members from all over the State could stay when visiting the city. The approval was granted by the chairman under his discretionary quota on February 26, 2011 and the letter of intimation was issued on February 28, 2011. The letter of allotment was issued on May 12, 2011 at Rs.13.364 lakh per cottah. The allotment was cancelled by a letter of February 5, 2014 on similar grounds as indicated in several other letters of cancellation noticed above. The only other feature of this petition is that the petitioners have appended a list of the allottees of plots in New Town under the chairman's discretionary quota with effect from December 1, 2010. The petitioners complain that there are several anomalies in the list as disclosed by the company pursuant to a query under the Right to Information Act and the incomplete list appended to the supplementary affidavit of the company. The company contends that apart from the general irregularity involved in the allotment of the plot to these petitioners, the cancellation of the allotment was also on the ground that even the earnest money was not deposited within the 30-day period and the same was sought to be deposited much later on September 16, 2011."

29. Paragraph 163 of the judgment dealing with WP 4325(W) of 2014 resulting in MAT 1129 of 2015 (***Hi-Tech Hatch Fresh Pvt. Ltd. & Ors. v. West Bengal Housing Infrastructure Development Corporation Limited & Ors.***) reads as follows:-

“163. The petitioner in WP 4325(W) of 2014 applied to the chairman on February 28, 2008 for allotment of a one-bigha land “to establish a Star-Category Hotel on main road of New Town ...” The chairman approved the allotment of a eightcottah plot on February 24, 2011 and the company informed the allottee accordingly on February 28, 2011. The offer of allotment was made on April 21, 2011 for freehold land under the chairman’s discretionary quota at Rs. 13.364 lakh per cottah. The allotment was cancelled by a letter of December 9, 2013 on the same grounds as cited in a number of petitions noticed earlier. The company contends that nothing in the bare-bodied application of April 28, 2008 could have inspired any right-thinking public authority to approve the allotment in the applicant’s favour. The company expresses surprise as to how the chairman could discern from the application that the applicant conformed to the guidelines for obtaining a non-residential allotment in New Town.”

30. Paragraphs 165 and 166 of the judgment dealing with WP 13956 (W) 2014 resulting in FMA 3172 of 2015 (***Priyanka Agarwal & Anr. V. West Bengal Housing Infrastructure Development Corporation Limited & Ors.***) read as follows:-

“165. The petitioners in WP 13956(W) of 2014 applied on February 28, 2008 to set up a vocational training centre. A 10-cottah plot was approved for allotment on February 24, 2011 and the company intimated the petitioners thereof on February 28, 2011. The offer of allotment was issued on May 3, 2011 for freehold land

under the chairman's discretionary quota at Rs. 5.50 lakh per cottah. The letter of cancellation of February 5, 2014 was issued on similar lines as in a number of cases noticed earlier: the allotment being in breach of the Model Code of Conduct, the allotment being otherwise improper and the like. The petitioners assert that the letter of cancellation issued to them is in excess of the final decision taken by the board of directors of the company on December 1, 2012.

166. In the company's affidavit in this matter, it has indicated how several persons from the same family including these petitioners, Mohanlal Agarwal and Shivmangal Securities were allotted three non-residential plots in New Town under the chairman's discretionary quota. Shivmangal Securities, the principal petitioner in WP 5158 (W) of 2013, is controlled by two sons of late Sheokaran Agarwal. Mohanlal Agarwal, the lead petitioner in WP 2521(W) of 2014, is another son of late Sheokaran Agarwal. The present petitioners are granddaughters of late Sheokaran Agarwal. The company submits that even if the chairman's approval of all the three allotments is taken at face value, it will be evident that multiple allotments had been made in favour of one family and in derogation of the guidelines pertaining to non-residential allotments under the chairman's discretionary quota."

31. Paragraph 168 of the judgment dealing with WP 7468(W) of 2014 resulting in MAT 1309 of 2015 (***Prabir Kumar Talukdar v. West Bengal***

***Housing Infrastructure Development Corporation Limited & Ors.)*** reads as follows:-

“168. The last of the petitions pertaining to the cancellation of allotment of a non-residential plot is WP 7468 (W) of 2014. The petitioner, who appears to be the proprietor of a business running three hotels in the State, applied on February 22, 2008 “to start a modern and sophisticated star quality hotel”. The petitioner claimed as son of the soil to have experience in running hotels in Digha, Tarapith and Santiniketan. The proposal was approved by the chairman on February 24, 2011 and such decision was intimated by the company to the petitioner on February 28, 2011. The offer of allotment for the 15-cottah plot was issued on April 21, 2011 on freehold basis at Rs.13.405 lakh cottah. The petitioner claims to have made the entire payment and questions the propriety of the cancellation of the allotment on the ground that the reasons are generic, otherwise unconvincing and the insinuation therein is vague and unsubstantiated. The notice of cancellation of February 5, 2014 is on the same lines as in several other non-residential allotments including the lead petition. The company says that the allotment of the plot in favour of this petitioner was made in dubious circumstances as his application did not refer to any advertisement and nothing in the application could have informed the erstwhile chairman that the applicant conformed to the conditions set in the guidelines for a discretionary allotment.”

32. Paragraphs 194 and 195 of the judgment dealing with WP 224 (W) of 2014 resulting in MAT 1763 of 2015(***Ajay Tibrewal & Ors. v. West Bengal Housing Infrastructure Development***) reads as follows:-

“194. A 21-cottah plot under the bulk cooperative category was allotted in favour of the next lot of petitioners in WP 224(W) of 2014. The petitioners applied in 2008 and, in the petition, they have called upon the company to produce a copy of their application. The letter of intimation was issued to the chief promoter of Lambodar Cooperative Housing Society Limited on February 28, 2011 upon the chairman approving the allotment on February 22, 2011. However, no “Lambodar” has been impleaded as a party to the present proceedings though the petitioner no. 8 is a HUF and such petitioner’s name was also included among the 32 members of the relevant cooperative society. No offer of allotment indicating any payment schedule was issued to these petitioners, but the petitioners claim to have paid the full consideration. The payment made by the petitioners indicates another corner-plot allotment under the chairman’s quota. The tentative allotment was cancelled on identical lines as in several other residential allotments by the generic letter of October 9, 2013. These petitioners insist that if the allotments under the chairman’s discretionary quota were per se considered to be improper or illegal, all the allotments should have been cancelled and not only a few. They maintain that it is only upon the change of the political party in power in the State that the petitioners have suffered this

fate based on the conjectures of the present board of the company as to the circumstances in which allotments were made under the chairman's quota.

195. The company submits that as in several other matters, including WP 2735(W) of 2014 and WP 34290(W) of 2013, no copy of the application made by these petitioners have been disclosed, though the petitioners attempted to be clever by calling upon the company to produce a copy of their application. The company says that the petitioners were aware that they had been allotted a piece of land in an irregular manner and on irrelevant considerations and sought to cover up the irregularity by being aggressive and demanding that the company produce a copy of their application. The company insists that it is inconceivable that an application for the allotment of a plot would be made by any person to a government body, but a copy thereof would not be retained. The company also points out the casual statement in the petition that "Sometime in the year 2008, the petitioners herein applied to HIDCO for a plot of land at New Town ..." appearing in the third paragraph of the petition. The company says that the petitioners do not claim to have made an application pursuant to any advertisement and, in the year 2008, no application could have been received by the company or its erstwhile chairman for allotment of any residential plot in New Town under the discretionary quota."



33. Paragraphs 207 & 208 of the judgment dealing with WP 3608(W) of 2013 resulting in FMA 2755 of 2015 (***Narayan Chandra Bandyopadhyay & Anr. v. The State of West Bengal & Ors.***), read as follows:-

“207. One of the rejected joint allottees in WP 36084(W) of 2013 was the director (engineering) of the West Bengal Housing Board when he applied for a plot in New Town on February 14, 2011. This matter lends credence to how some of the applications may have been processed before they culminated in allotments being made under the chairman’s discretionary quota. Within 10 days of the application being made, it received the approval of the chairman. It is evident that this application did not receive any attention of the screening or other committee since there was virtually no time between the application being made and it being approved. The letter of intimation was issued to the applicant on February 28, 2011. The letter of allotment forwarded an application form, just as such letters in the cases of other residential plots had also forwarded formal application forms. The application form, along with documents in support thereof, appears to have been submitted by the petitioners jointly. The offer of allotment of a 2.99 cottah HIG-I plot on freehold basis was made on May 2, 2011 at a total price of about Rs.10.69 lakh. The allotment was cancelled by a notice of October 8, 2013 on the same ground that the approval of the allotment was communicated to the allottee a day before the model code became effective. These petitioners make several points, including that they should not

suffer for the perceived arbitrariness of allotments under the erstwhile chairman's discretionary quota. They overlook the fact that the application for the allotment did not mention how the applicant was eligible for consideration under the chairman's discretionary quota, but assert that the formal application submitted by them subsequent to the approval being granted by the chairman included all material to demonstrate that the petitioners were eminently qualified to obtain an allotment under the discretionary quota. They refer to the company's affidavit to suggest that irrelevant considerations were taken into account in cancelling their allotment. They also read out several other names from one of the charts appended to the company's supplementary affidavit filed in WP 5158(W) of 2013 to suggest that they have been picked out for hostile discrimination. In the company's affidavit in this matter it has been alleged that these petitioners applied on September 27, 2006, which was the last day for seeking allotments under the chairman's discretionary quota. The petitioners assert that they did not apply on September 27, 2006. They claim that the allottees of residential plots under the chairman's discretionary quota named against serial Nos. 317 to 356 of the relevant chart at page 178 of the said supplementary affidavit, including a joint secretary in the Housing Department and the Housing Commissioner, stood on the same footing as these petitioners, but such other allotments had not been cancelled and most of such allottees had been made over

possession of their plots in 2013 and 2014, long after the perceived anomalies in the allotment of residential plots under the chairman's discretionary quota were apparently discovered. The relevant allottees whose names figure against serial Nos.317 to 356 at page 178 of the supplementary affidavit were all informed of the approval of the allotments in their favour in February, 2011 and the approval in almost every case was accorded in January or February of the same year. The petitioners say that the joint secretary in the Housing Department, whose name figures against serial No.322, was given possession of the relevant plot on February 4, 2013 and the Housing Commissioner, whose name figures against serial No.334, was given possession on January 16, 2013. The petitioners claim that if the allotments made in favour of several cooperative societies, as evident from page 179 of the supplementary affidavit, were not cancelled despite the cooperative societies not being registered at the time that such supplementary affidavit was affirmed in May, 2014, there was no reason to cancel the allotments which were intimated to the allottees on February 28, 2011. The petitioners submit that it was the company which chose to intimate the petitioners of the chairman's approval of their allotments on February 28, 2011 and it defies logic that an allotment approved on February 18, 2011 would pass muster under the scrutiny that the allotments made by the chairman under his discretionary quota have been subjected to, but an approval on February 24, 2011 would be caught in the dragnet

merely because the letter of intimation was issued on February 28, 2011.

208. The company says that these petitioners were ineligible for any allotment under the chairman's discretionary quota since the application was filed only on February 14, 2011. The company says the arbitrariness in the allotments of plots under the chairman's discretionary quota would be evident from the fact that this application was even entertained and processed. The company refers to the principal petitioner's name figuring against serial No. 266 in the list appended to the minutes of the committee appointed to examine the applications for residential plots held on May 24, 2007. The first applicant is described as the director (engineering) of the West Bengal Housing Board in such list. Paragraph 4(b) of the company's affidavit claims that the first petitioner did not hold the post of director (engineering) of the Housing Board on February 27, 2006 when he is shown to have applied. According to the company, the inclusion of the first petitioner's name in the list of the applications purportedly scrutinised by the relevant committee on May 24, 2007 would demonstrate that such minutes cannot be believed and ought to be seen as fabricated and ante-dated. It is accepted on behalf of the petitioners that the first petitioner was not the director (engineering) of the Housing Board in September, 2006. In his affidavit-in-reply, the petitioners have altogether denied having

made an application for allotment of a residential plot in New Town on September 27, 2006.”

34. Paragraph 218 of the judgment dealing with WP 5988(W) of 2014 resulting in MAT 1899 of 2015 (***Md. Nawsad Ali v. West Bengal Housing Infrastructure Development Corporation Limited & Ors.***) reads as follows:-

“218. The petitioner in WP 5988(W) of 2014 has not disclosed a copy of the application made for the allotment an individual plot to him but has averred at paragraph 10 of the petition that such application was made “within 27.09.2006”. The letter of allotment in his favour was issued on February 28, 2011 following the chairman’s approval of the allotment under his discretionary quota on February 22, 2011. The petitioner has disclosed the copy of a two-page document relied on by several other petitioners, which evidences the approval accorded to several applications by the chairman on February 22, 2011. The petitioner was issued the offer of allotment on May 12, 2011 for a 2.24 cottah MIG-I plot on freehold basis at a consideration of Rs.6.72 lakh. The petitioner claims to have made the entire payment but suffered a notice of cancellation of October 9, 2013 on the ground that the letter of intimation was issued to him a day before the Model Code of Conduct became effective.”

35. Paragraph 219 of the judgment dealing with WP 22158 (W) of 2011 resulting in MAT 1174 of 2015 (***Swadhin Kumar Sadhu v. West Bengal***

***Housing Infrastructure Development Corporation Limited & Ors.)***

reads as follows:-

“219. The final matter, WP 22158(W) of 2011, was one of the earliest of the petitions challenging the cancellation of the allotment of a plot in New Town. The petitioners have relied on a copy of their application made on September 13, 2006. The letter of intimation was issued by the company to the chief promoter of the cooperative society on February 28, 2011 upon the chairman’s approval on the same day. The offer of allotment was issued to the petitioners on May 12, 2011 for a 5.98 cottah plot in the HIG-C category on freehold basis at a consideration of about Rs.19.73 lakh. The allotment was cancelled by a letter of September 14, 2011 on the ground that the letter of intimation was issued a day before the Model Code of Conduct came into effect. An ad interim order was declined when this petition was received on January 20, 2012, whereupon an appeal was preferred and an order obtained restraining the respondents from creating third party rights in respect of a property for a limited duration. These petitioners have relied on the perceived anomalies indicated in the supplementary affidavit filed in the lead petition pertaining to non-residential allotments wherein it has been claimed that the allotments made in favour of at least 180 have not been cancelled and that 81 allottees of residential plots under the special quota had obtained possession of their land between 2011 and 2014.”

36. It will therefore be seen that the learned Judge duly discussed the salient facts of the individual writ petitions. The grievance of the appellants that the learned Judge failed to pay heed to the distinct facts of the

individual writ petitions, is meritless. We are also of the opinion that the learned Judge, after discussing the facts of each case, who perfectly justified in taking a macro view of the entire process of allotment.

37. Having disposed of the preliminary point that the learned Judge should not have heard the writ petitions analogously, and having found no merit in such point, we may now consider the other points urged by the appellants.

38. In **MAT 1069 of 2015 (*Bengal Brick Field Owners' Association & Ors.*)**, the following points were urged by learned Counsel:-

(i) There was no fault or misrepresentation on the part of the appellant. There is nothing to show complicity of the appellant in the alleged irregular or illegal allotment of land in its favour.

(ii) Once part payment was received by HIDCO from the appellant, the same resulted in a concluded contract. Thereafter the allotment could not be cancelled.

(iii) Model Code of Conduct that came into force on March 1, 2011, upon the West Bengal Assembly Election being announced, did not prohibit allotment of land to interested parties. In any event, the process of allotment had started prior to March 1, 2011.

(iv) The contention of HIDCO that no application was made by the appellant is erroneous. Application on plain paper was made on February 29, 2008. However, no receipt was granted therefor.

(v) The appellant is similarly placed as **Balaji Enterprise (respondent No. 16)**. Both were allotted land under the

Chairman's discretionary quota. However, Balaji's allotment has not yet been cancelled. This amounts to discrimination.

39. In **FMA No. 2752 of 2015** (Shivmangal Securities), **FMA No. 3172 of 2015** (Priyanka Agarwal) and **FMA No. 2754 of 2015** (Mohanlal Agarwal), the arguments of the appellants were substantially the same. The points urged were:-

(i) The grounds for cancellation of allotment recorded in the minutes of the Board meetings, the grounds stated in the cancellation letters and the grounds taken during the hearing of the writ petitions were all different from one another. The stand of HIDCO shifted from time to time.

(ii) The allotment of land in favour of the appellants was made much before the abolition of the chairman's quota and the administrative decision of abolishing the chairman's quota could not have been given retrospective effect. Reliance was placed on the case of **Canara Bank and Anr. v. M. Mahesh Kumar, 2015 (7) SCC 412 para 17**.

(iii) There was no bar in making allotment one day before the declaration of the general election.

(iv) When a process was started by a Government prior to election being announced and the Model Code of Conduct coming into effect, the continuation or completion of such process would not be in violation of the Model Code of Conduct. Reliance was placed on the decision of this Court in the case of **Indian Oil Corporation & Ors. v. Shri Ujjal Chowdhury & Ors., 1999 (1) CLT 220, Para 5**.



(v) HIDCO has alleged irregularities in the process of allotment but has not specified what such irregularities are. The letters of cancellation really disclosed no reason. Reliance was placed on the decisions of the Hon'ble Supreme Court in the case of ***Union of India v. Mohan Lal Capoor & Ors.* 1973 2 SCC 836 Para 28**, for the proposition that reasons must disclose how mind was applied to a subject matter for a decision.

(vi) The grounds taken in the letters of cancellation really amount to bald allegations without any material to substantiate the same. All kinds of grounds have been included in the cancellation letters some of which are mutually inconsistent.

(vii) The allotments in question were not against public interest. The allotments did not cause any loss to the public exchequer. By merely alleging grounds of public interest or loss to the treasury, a successor public authority cannot undo the work undertaken by the previous authority. Such a claim must be proved by material facts, evidence and figures, which has not been done in this case. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***City and Industrial Development Corporation of Maharashtra (CIDCO) v. Shisir Reality (Pvt.) Ltd.*, (2021) SCC online SC 1141 Para 75**.

(viii) HIDCO's contention that the applications of the appellants were not available in its records cannot prejudice the appellants. HIDCO has not denied receipt of the applications. It only says that the applications are not available in its records. The allegation

regarding the Rubber Stamp of HIDCO having been manufactured by the appellant for preparing receipted copy of application for allotment of land, has not been substantiated by evidence.

(ix) The allegation that the allotment of separate plots to different members of the same family was contrary to the guidelines, is incorrect. There was no restriction in the guidelines preventing allotment of different plots to different members of the same family. Further, this allegation was made for the first time during the course of hearing. The Court will not entertain a new point if the facts or the evidence in support thereof are not pleaded and/or annexed to the writ petition or to the counter affidavit. Reliance was placed in this connection on the decisions of the Hon'ble Supreme Court in the cases of ***Bharat Singh & Ors. v. State of Haryana & Ors, (1988) 4 SCC 534, Para 13; Andhra Pradesh Industrial Infrastructure Corporation Ltd.& Ors. V. S.N. Rajkumar & Anr, 2018(6) SCC 410, para 21; and, Shankar Chakravarti v. Britannia Biscuit Ltd. 1979 (3) SCC 371 Para 32.***

(x) The learned Judge allowed HIDCO to rely on new grounds of cancellation, other than those mentioned in the letter of cancellation dated February 11, 2013. This goes against the decision of the Hon'ble Supreme Court in the case of ***Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors. 1978 (1) SCC 405***, wherein it was held that when a statutory functionary makes an order based on certain grounds,

the validity of such order must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

(xi) The opinion of the learned Judge that the principle enunciated in **Mohinder Singh Gill's case** will not apply where larger public interest is involved is erroneous. Such opinion is based on the decision of a two judge Bench of the Hon'ble Supreme Court in the case of **Chairman, All India Railway Recruitment Board v. K Shyam Kumar, (2010) 6 SCC 614**. However, the learned Judge failed to notice the decision of a three judge Bench of the Hon'ble Supreme Court in the case of **Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra (CIDCO) v. Shisir Reality (Pvt.) Ltd. (2021) SCC online SC 1141, Para 41**, wherein, while relying on the judgment in **Mohinder Singh Gill's case**, the Hon'ble Supreme Court observed that; "..... when statutory functionaries such as CIDCO render an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise." Further, in a case decided subsequent to **K Shyam Kumar's Case, reported at 2018(6) SCC 410, Para 21 (Andhra Pradesh Industrial Infrastructure Corporation Ltd. and Ors. v. S.N. Rajkumar & Anr.)**, the Hon'ble Supreme Court relied on the ratio in **Mohinder Singh Gill's Case**.

(xii) HIDCO was never sure of the grounds and bases of cancellation of the allotments. The reasons for cancellation considered at the time of taking the decision to cancel the allotments were subsequently abandoned. This shows the arbitrariness and lack of application of mind by HIDCO while taking the decision to cancel the allotments. In this connection, reliance was placed on the judgment of the Hon'ble Supreme Court in the case of ***Sachidanand Pandey v. State of West Bengal & Ors., (1987) 2 SCC 295 Para 27***, for the proposition that a decision must be arrived at after taking into account all relevant considerations, eschewing all irrelevant considerations. In the instant case the decision to cancel the allotments was taken on considerations that were subsequently found to be irrelevant even by HIDCO.

(xiii) No opportunity of hearing was given to the allottees before the allotments were cancelled. This amounted to breach of the principles of natural justice and fair play. In this connection reliance was placed on the decisions of the Hon'ble Supreme Court in the case of ***Daffodills Pharmaceuticals Ltd. & Anr. v. State of U.P. and Anr, 2019 SCC OnLine SC 1607, paras 15 and 17***.

(xiv) There was discrimination in cancellation of allotments. Similarly circumstanced allottees were treated in a dissimilar manner by cancelling the allotments of some of them and allowing the others to retain the allotments. In this connection reliance was placed on the decision of the Hon'ble Supreme Court in the case of

***Prem Chand Somechand Shah & Anr. v. Union of India & Anr., (1991) 2 SCC 48 para 8***, for the proposition that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed.

(xv) Any classification on the basis of a cut-off date should meet 2 important criteria: (a) intelligible differentia and (b) nexus to the object. In this connection reliance was placed on the decisions of the Hon'ble Supreme Court in the cases of ***State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75, para 55; Venkateshwara Theater v. State of Andhra Pradesh & Ors, 1993 (3) SCC 677, para 20; and, Prem Chand SomechandShah & Anr. v. Union of India & Anr. (Supra) Para 8***. In the instant case the classification on the basis of the cut-off date of February 28, 2011, did not have any nexus to the object.

(xvi) There was a concluded contract between the appellant and HIDCO which was acted upon by HIDCO by accepting part payment. There was no allegation of breach of any of the terms and conditions of the contract by the appellant. HIDCO cannot be permitted to resile from the concluded contract.

(xvii) The allotment made in favour of the appellant has given rise to a legitimate expectation that HIDCO will act as per its promise. However, by backing out from its promise HIDCO had acted in violation of the doctrine of legitimate expectation. In this connection reliance was placed on the decision of the Hon'ble

Supreme Court in the case of ***State of Bihar & Ors. v. Shyama Nandan Mishra, (2022) SCC online SC 554 paras 34-36.***

(xviii) The allotments were cancelled only because there was change of Government. It is a case of “regime revenge”. In this connection reliance was placed on the decisions of the Hon’ble Supreme Court in the cases of ***Andhra Pradesh Dairy Development Corporation v. B. Narasimha Reddy, (2011) 9 SCC 286, Para 40*** and ***State of Tamilnadu v. K Shyam Sunder, (2011) 8 SCC 737, para 35***, for the proposition that a succeeding Government is duty bound to continue and carry on the unfinished job of the previous Government.

(xix) The facts of the case would show that the cancellation of allotments was done without any application of mind by the new Board of Directors of HIDCO. The facts would reveal that the decision to cancel the allotment had been taken by someone else and such decision was taken well before the constitution of the new Board. The new Board had been carrying out dictates of “someone else”. Reliance was placed on the decision of the Hon’ble Supreme Court in the case of ***Onkarlal Bajaj & Ors. Union of India & Anr, 2003 (2) SCC 673 para 27*** for the proposition that an order passed without application of mind deserves to be annulled being an arbitrary exercise of power.

(xx) The material on record does not disclose any irregularity in the approval of allotments made by the erstwhile chairman of HIDCO. Reliance was placed on the decision of the Hon’ble

Supreme Court in the case of ***Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir, (1980) 4 SCC 1 para 14***, for the proposition that there is always a presumption that Government 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 in public interest.

(xxi) The allegation that there was no rational exercise of discretion by the then chairman of HIDCO or that the allotments were questionable or were made without following fair procedure, is based merely on suspicion and conjecture. No evidence in this regard, has been brought before the Court. Suspicion cannot take the place of proof. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Uma Charan Shaw & Bros. v. Commissioner of Income Tax, 1959 (37) ITR 271 Para 18***.

(xxii) There were some allotments made under the chairman's discretionary quota, in respect of which irregularities were observed by the learned Judge, but there were other allotments, including the appellants' allotments, where no irregularity was observed by the learned Judge. However, the learned Judge upheld the cancellation of the appellants' allotments along with cancellation of irregular allotments. The upholding of cancellation of all the allotments irrespective of whether or not all were tainted, resulted in treatment of unequals as equals. Equal treatment to unequals is unjustified, arbitrary, unconstitutional and violative of Article 14 of the Constitution. In this connection reliance was

placed on the decisions of the Hon'ble Supreme Court in the cases of ***Onkar Lal Bajaj (supra) Para 45; U.P. Power Corporation Limited v. Ayodha Prasad Mishra, (2008)10 SCC 139, para 40; and, Premchand Some Chand Shah and Anr. (supra) para 8.***

(xxiii) The allotments in question were not under challenge before the learned Judge. Cancellation of the allotments was the subject matter of challenge. The learned Judge by holding that the allotments were irregular, travelled beyond the scope of the writ petition.

(xxiv) The impugned Judgment is based on perceptions and not on material evidence.

40. Learned Counsel appearing for the appellants in **FMA 2755 of 2015 (Sri Narayan Chandra Bandopadhyay and Anr.)**, apart from adopting the arguments made in the appeal of **Shivmangal Securities**, urged that at the 78<sup>th</sup> meeting of the Board of Directors of HIDCO, after the change of Government, a specific resolution was adopted to cancel only those plots, both residential and non-residential, in respect of which both approval and allotments were made/given on February 28, 2011. However, in the case of these appellants, although the allotments was made/ intimated vide letter dated February 28, 2011, the approval to such allotment was accorded by the chairman on February 24, 2011. Hence, the allotment of plot made in favour of the present appellants ought not to have been cancelled.

Learned Counsel also referred to various facts as recorded in the written notes of arguments filed on behalf of these appellants and



submitted that the quota system of allotment of State largesse is still in existence in one form or the other. Learned counsel also submitted that there has been discrimination in cancellation of allotments.

41. The submission made on behalf of HIDCO may be summarized as follows:-

(i) Allotments of land made under the chairman's discretionary quota can always be cancelled. The State always has the liberty of fair play at the joints as long as it acts in public interest.

(ii) The subject matter of discretionary quota was land belonging to the State and is State largesse. State largesse cannot be given away at the whims of any State Authority but only in a manner consistent with the constitutional requirements of fairness, transparency and reasonableness. In this connection reliance was placed on the decisions of the Hon'ble Supreme Court in the cases of ***Centre for Public Interest Litigation & Ors. v. Union of India & Ors.***, (2012) 3 SCC 1, ***ICICI Bank Ltd. v. Official Liquidator of Aps Star Industries Ltd. & Ors.***, (2012) 10 SCC 1; ***Manohar Lal Sharma v. Principal Secretary & Ors.***, (2014) 9 SCC 516; ***Manohar Lal Sharma v. Principal Secretary & Ors.***, (2014) 9 SCC 614; and, ***City Industrial Development Corporation v. Platinum Entertainment & Ors.*** (2015) 1 SCC 558.

(iii) The new Board of Directors of HIDCO found that there was gross irregularity and illegality in allotment of land by the erstwhile

Board of Directors and/or the chairman of the Board under his discretionary quota.

(iv) The so-called applications for allotment were made without following the prescribed guidelines which inter alia, contained eligibility criteria. The applications were made without printed dates although most of the applications were in printed form. The applications were made largely beyond the time limits prescribed.

(v) Receipt of the applications by HIDCO is highly questionable since, in some cases the same were made beyond the prescribed dates; in some cases alleged receipt of applications is recorded with a dubious stamp and squarely questioned in HIDCO's affidavit; in some cases original applications are not traceable in HIDCO's file; in some cases the applications appended to the writ petition and those produced by HIDCO along with its affidavit are different; in some cases the applications are undated; in some cases the applications were not traceable even by the concerned writ petitioner and not annexed to the writ petition; in some cases the applications were obviously ante-dated since the applicant, being a company, was not even incorporated as on the date of the application or the application referred to an event or a balance sheet of a later date or referred to New Town Police Station or Jyoti Basu Nagar that were brought into existence and/or named much later than the date of the alleged application.

(vi) The applications for allotment were not screened since the Screening Committee for residential plots did not meet for

considering the applications on May 24, 2007 and the said committee did not meet on April 28, 2008 for screening of non-residential plots. This fact is indisputable since, as on the alleged dates of screening, many of the applicant companies had not yet been incorporated and many of the applications were obviously antedated since they referred to events or matter which came into existence on a later date. There can be no doubt that the applications were allowed by the erstwhile chairman of HIDCO without screening thereof.

(vii) Alternatively and in any event, 835 applications for residential plots could not have been screened, minutes prepared and signed on May 24, 2007 from 3 P.M.; and 849 applications for non-residential plots could not have been screened, minutes prepared and signed on April 24, 2008 from 3 P.M. This was humanly not possible. No reason is recorded in the minutes of the alleged meeting of the Screening Committee for allowing the applications. There was total non-application of mind. The guidelines were not even considered.

(viii) The erstwhile chairman while allowing the applications, did not and could not have considered the merits thereof. There is no material on record to show as to why a large number of successfully screened applications were rejected. There is no evidence of application of mind by the erstwhile chairman.

(ix) There is a huge time gap between the alleged screening and allotment made by the chairman. This time gap is not

explained anywhere in the records available. The total number of allotments made under the chairman's discretionary quota till the end of 2010 was 316 for residential plots and 48 for non-residential plots. Between January 1, 2011, and February 27, 2011, 159 residential plots and 21 non-residential plots were allotted. On February 28, 2011, 60 residential allotments were made. Thereafter no allotment is shown to have been made. On February 28, 2011, 42 non-residential allotments were made (27 Board allotments and 15 under chairman's discretionary quota).

(x) The Board allotments of February 28, 2011, are highly suspect. The Board meeting started at 12 noon and a committee was constituted. Such committee allowed the applications at a special committee meeting held at 6 P.M. on that date, which is then included in the minutes of the Board Meeting. All of this was done in one day which was practically impossible. No reasons were recorded. Merits of the applications were not considered and the same could not have been done within such a short time.

42. Learned Counsel for HIDCO then indicated certain irregularities in individual cases as follows:-

(i) The petitioner in **W.P. No. 2523(W) of 2014 (Prime Steel)** was incorporated on January 14, 2009, which was after the last date of submission of applications for allotment of non-residential plot under chairman's discretionary quota and after the date of the alleged Screening Committee meeting of April 28, 2008.

(ii) The applicant in W.P. No. 22170(W) of 2012 (***Dream Land Infra Build Private Limited***) was incorporated on July 12, 2008, although the application for allotment is said to have been made on December 26, 2007. The Screening Committee which had purportedly met on April 28, 2008, could not have considered the application which was apparently ante-dated. The applicant in W.P. No 21310 (W) of 2011 (***Bag Advisory***) is said to have applied for allotment on March 31, 2008. However, the company was incorporated on March 14, 2011.

(iii) The third petitioner in **W.P. No. 4903(W) of 2012** was one Kolkata Diabetes Research Hospital Private Limited which was incorporated on May 23, 2011. However, the date of the application for allotment is February 14, 2011.

(iv) New Town was re-named as “Jyoti Basu Nagar” pursuant to a Government Notification dated October 1, 2010. However, the applicants in W.P. No. 3816(W) of 2012(***Biswa Karma Nirman***), W.P. No. 36986 (W) of 2013 (***Excelsior***), W.P. No. 68(W) of 2014 (***Subhojit Das Gupta***), W.P No. 2735(W) of 2014 (***Partha Acharya***) and W.P No. 23157(W) of 2012 (***Arun Kumar Saha***) have, in their respective applications for allotment made in 2008/2007/2006/2011/2006 respectively referred to Jyoti Basu Nagar. In the case of Partha Acharya, if the application was made on January 12, 2011 as it shows, the same could not have been considered by the Screening Committee in the year 2007.

(v) New Town Police Station was set up pursuant to a State Government Notification dated February 20, 2007. However, the petitioners in W.P. No. 67(W) of 2014 (**Mahammad Abdul Khayun**) and W.P. No. 70(W) of 2014 (**Tapan Kumar Sarkar**), in their applications for allotment both made on September 27, 2006, refer to New Town Police Station.

(vi) The receipts on some of the applications had rubber stamps which were not of HIDCO and were manufactured rubber stamps. The signature is also of a person not associated with HIDCO. This discrepancy was found in the cases of the petitioners in W.P.No. 5158 (W) of 2013 (**Shivmangal Securities**); W.P. No. 6440 (W) of 2014 (**Nitin Mittal**); W.P. No. 1992(W) of 2014 (**Madhu Agarwal**); and W.P. No. 2659(W) of 2014 (**Sudip Das**).

(vii) The last date for submitting applications for allotment of non-residential plots under the chairman's discretionary quota, as per the advertisements published, was March 31, 2008. However, applications purportedly made much beyond the last date were allowed and plots were allotted in the following cases:- (a) the Writ petitioner in W.P. No 28365(W) (**RDB Textile**) had applied on January 12, 2011; (b) The writ petitioner in W.P No. 30170 (W) of 2013 (Manaksia Ltd.) had applied much after March 31, 2008, and the application for allotment had reference to the 2010 business turn over; (c) the writ petitioner in W.P. No. 2523(W) of 2014 (**Prime Steel**) applied on August 12, 2010; (d) the writ petitioner in W.P. No. 7752(W) of 2012 (**KIDZ Health Care**) applied on

September 30, 2010; (e) The petitioner in W.P. No. 2395 (W) of 2014 (**Adhunik infrastructure**) applied in November, 2010; (f) the writ petitioner in W.P. No. 2735(W) of 2014 (**Partha Acharya**) applied on January 12, 2011.

(viii) Although as per guidelines, only one application per family or organization was permitted, more than one member of a family applied in certain cases and their applications were allowed. This happened in the case of the petitioners in W.P. No. 5158(W) of 2013 (**Shivmangal Securities**) and the petitioners in W.P. No. 2521(W) of 2014 (**Mohanlal Agarwal**) and W.P. No. 13956(W) of 2014 (**Priyanka Agarwal**). Mohanlal Agarwal, Priyanka Agarwal and the persons in control of Shivmangal Securities belong to the same family. Three allotments of non-residential plots were made to members of the Agarwal family.

43. Having found out the aforesaid irregularities, the new Board of Directors decided to review the entire process of allotment of lands. It was found that in 2011, there was a sudden surge in the number of allotments made just prior to the Model Code of Conduct coming into operation upon the general legislative assembly elections being announced. Once the MCC came into effect, allotment of land could not have been made. Hence February 28, 2011, was chosen as the cut-off date by the new Board of Directors. At the 60<sup>th</sup> adjourned Board meeting held on August 19, 2011, HIDCO decided to cancel all allotments made on or after February 28, 2011. At its 78<sup>th</sup> Board Meeting held on December 1, 2012, the Board decided to give effect to the resolution taken in the 60<sup>th</sup> and 61<sup>st</sup> Board meetings to

initiate the process of cancellation without giving any special weightage to the allottees who had made payments, substantial or otherwise, against allotments made in their favour. Since deeds of conveyance had already been executed and registered in favour of Balaji Enterprises and Alo-Eye- Care, a decision was taken by the Board on April 10, 2014 at its 88<sup>th</sup> Board meeting to initiate legal action for cancellation of the deeds of conveyance executed in favour of Balaji Enterprises and Alo-Eye-Care. Accordingly suits have been filed in the Competent Court.

44. Learned Counsel for HIDCO drew our attention to paragraphs 13 to 17 and 20 of HIDCO's supplementary affidavit affirmed on May 5, 2014 by its Chairman-cum-Managing Director in W.P. No. 5158(W) of 2013 (**Shivmangal Securities**) which was treated as supplementary affidavit of HIDCO in all the writ petitions. The said paragraphs of the supplementary affidavit of HIDCO read as follows:-

“13. In the 60<sup>th</sup> Board Meeting of the Board of WBHIDCO held on 19<sup>th</sup> August 2011 the present Board of Directors of WBHIDCO while examining the various aspects of the matter thus decided to cancel all the plots allotted both under chairman's quota and through Board's decisions in its 59<sup>th</sup> Meeting held on 28<sup>th</sup> February, 2011.

During review of the allotments it was noticed that a large number of plots were allotted on a single day which appeared to be glaringly high compared to the allotment made in earlier years. A picture of such allotments under chairman's quota is as under:-



| Year                      | No. of allotment of<br>Non-Residential Plots | No. of Allotment of<br>Residential Plots |
|---------------------------|----------------------------------------------|------------------------------------------|
| 2001                      | -                                            | 96                                       |
| 2002                      | -                                            | 70                                       |
| 2003                      | -                                            | 56                                       |
| 2004                      | -                                            | 0                                        |
| 2005                      | -                                            | 19                                       |
| 2006                      | -                                            | 43                                       |
| 2007                      | -                                            | 7                                        |
| 2008                      | 1                                            | 6                                        |
| 2009                      | 4                                            | 2                                        |
| 2010                      | 43                                           | 10                                       |
| 2011 (upto<br>28.02.2011) | 63 (42 on 28.02.2011)                        | 219 (60 on 28.02.2011)                   |
| Total                     | 111                                          | 528                                      |

Copies of two separate list of allottees in the above two categories (residential and non-residential) under the Chiarman's Discretionary Quota and list of allottees under Special Quota of Chiarman are annexed hereto and collectively marked as Annexure "R-11".

14. In its 60<sup>th</sup> Meeting, the Board decided to cancel the allotments in respect of which intimation letters were issued on 28<sup>th</sup> February, 2011. The Board in its considered view decided to cancel all such allotments since 28<sup>th</sup> February, 2011 was taken as

the referral date for cancellation of the large number of allotments made on a single day which happened to be merely a day before the Legislative Assembly Elections 2011 was announced, either through chairman's quota or through Board. This decision was based on the principle of uniformity and propriety. Copies of the minutes of the 60<sup>th</sup> and 61<sup>st</sup> Board Meeting are enclosed hereto and collectively marked as Annexure "R-12". It may be noted here that the minutes of the 61<sup>st</sup> Board Meeting were circulated to the various concerned officers by the Company Secretary under cover of his Memo dated 11<sup>th</sup> November, 2011 and the discussions taken at such meeting thus became known to all concerned.

15. The Corporation has cancelled all the residential allotments in respect of which intimation letters were issued on 28<sup>th</sup> February, 2011, save the following:-

| Sl No. | Plot No.   | Name of the Allottee | Reason for non-cancellation                                                                                                                                   |
|--------|------------|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.     | IIB-1442/1 | Abhijit Saha         | Memorandum of possession (MOP) issued on 29.04.2011; the plot already stood transferred through execution of registered sale deed with possession handed over |

|    |            |                             |                                                                                                                                                                                                            |
|----|------------|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |            |                             | much prior to 60 <sup>th</sup> Board Meeting.                                                                                                                                                              |
| 2. | AI-179     | Dipak Kumar<br>Bhattacharya | Memorandum of possession (MOP) issued on 30.05.2011; the plot already stood transferred through execution of registered sale deed with possession handed over much prior to 60 <sup>th</sup> Board Meeting |
| 3. | IIA-2249   | Araksha C.H.S.              | Due to pendency of Court Case (W.P. No. 12617 (W) / 2012)                                                                                                                                                  |
| 4. | IIC-1982/1 | Biswajit Deb                | Due to pendency of Court Case (W.P. No. 18529(W)/2013)                                                                                                                                                     |
| 5. | IIA-2231   | Sankhachil C.H.S.           | Due to pendency of Court Case (W.P.No. 25416(W)/2014)                                                                                                                                                      |
| 6. | IIC-2116   | Arun Kr. Saha               | Due to pendency of Court Case (W.P. No. 23157(W) /2012)                                                                                                                                                    |

|    |          |                                        |                                                             |
|----|----------|----------------------------------------|-------------------------------------------------------------|
| 7. | IIA-2308 | Calcutta High Court<br>Bar Association | Due to Pendency of<br>Court Case (W.P. No.<br>3245(W)/2012) |
|----|----------|----------------------------------------|-------------------------------------------------------------|

16. In the 11<sup>th</sup> Board Meeting of WBHIDCO held on 16<sup>th</sup> July, 2001, a resolution was taken that maximum 1% of total plots will be considered for allotment to in-house Employees' Housing Co-operative Societies, but no price concession or other preference would be given. In the 12<sup>th</sup> Board Meeting held on 10<sup>th</sup> October, 2001 of WBHIDCO, one bulk plot bearing No. AA-I/153 measuring 0.33 hectares of land was allotted to WBHIDCO Employees' Cooperative Housing Society. The land allotted was increased from time to time. In the context of this decision of the Board, at the 59<sup>th</sup> Board Meeting held on 28<sup>th</sup> February, 2011, it was decided to allot additional quantum of land in favour of the WBHIDCO Employees Cooperative Housing Society. At the 61<sup>st</sup> Board Meeting on 22<sup>nd</sup> October, 2011, it was considered that this allotment of additional quantum of land to the said Housing Cooperative Society is a continuous process, that the said additional quantum of land was within the ceiling of 1% of the total allotment and pursuant to such allotment, the Deed of Conveyance to such society was registered. The additional quantum of land was granted to an existing allottee. This allotment constitutes a different class.

17. Out of all allotments of non-residential plots under chairman's quota, letters of intimation were sent in 111 cases. Out of these cases, formal offers were sent in respect of 77 cases. In respect of 34 cases, no formal letters of allotment were issued and these were cancelled. In respect of 66 allotments, though approval was issued on different dates, yet formal offer letters were issued (after 28<sup>th</sup> February, 2011) in April & May 2011, all these cases have been cancelled, except the following four cases-

a) Balaji Enterprise – Deed of Conveyance was registered on 21<sup>st</sup> October, 2011 and land stood transferred, prior to holding of the 61<sup>st</sup> Board Meeting on 22<sup>nd</sup> October, 2011.

b) Alo Eye care – Deed of conveyance was executed on 2<sup>nd</sup> November, 2011 and land stood transferred, prior to circulation of minutes of the 61<sup>st</sup> Board Meeting on 11<sup>th</sup> November, 2011.

c) Sukhendu Ghosh – Moved Hon'ble High Court (W.P. No. 464(W)/2012); before cancellation could take place in pursuance of 70<sup>th</sup> Board Meeting held on 1<sup>st</sup> December, 2012.

d) Dacca Oushadhalaya – Moved Hon'ble High Court (W.P. No. 4074 (W)/2012) before cancellation could take place in pursuance of 70<sup>th</sup> Board Meeting held on 1<sup>st</sup> December, 2012.

20. In the circumstances aforesaid, allotments made to all the following allottees have been cancelled except for the instance as stated in paragraphs 15 and 17 above-

a) In case of residential plots, where letters of intimation were issued on 28<sup>th</sup> February, 2011.

b) In case of non-residential plots, where firm offers of allotment were issued after 28<sup>th</sup> February, 2011.

The modes of allotment of all plots in New Town have been discussed as aforesaid.”

45. Learned Counsel for HIDCO then submitted that the selection of the cut-off date is based on sound reasoning and is a considered administrative decision to cancel illegal allotments and not hamper allotments, though illegal, where deeds of conveyance had been executed and/or possession of the concerned plot had been made over to the applicant. It was submitted that though a number of allotments under the chairman’s discretionary quota had been made prior to February 28, 2011, with regard to residential plots and several allotments of non-residential plots were also made prior to the cut-off date and / or firm offers of allotment were issued prior to the cut-off date, the Board of HIDCO took a considered decision to not cancel such allotments as the same had been made over a span of approximately 8 to 10 years whereas on February 28, 2011, there were several allotments made on a single day which was glaring, compared to the allotments made in earlier years. On selection of cut-off date and limited scope of judicial review of the same, learned counsel relied on the following authorities:-

***a) (2008) 14 SCC 702 (Government of Andhra Pradesh & Ors. v. N. Subbarayudu) Para 9.***

***b) (2011) 8 SCC 269 (Orissa Power Transmission Corporation Limited v. Khageswar Sundaray).***

46. It was then submitted that the new Board of Directors of HIDCO was entitled to review the decision of the earlier Board to make sudden allotments on February 28, 2011. Upon finding patent illegality and arbitrariness in the procedure adopted for such allotments, the new Board decided to cancel such allotments.

47. It was argued that there can always be a change in the stand and policy of the Government after change in Government if it is in public interest. In the present case, arbitrary allotments of State largesse were cancelled. Reliance was placed on the following decisions:-

- a. **(2019) 3 SCC 803** (State of Bihar & Anr. v. Sachindra Narayan & Ors.) at paragraph(s) 21, 32 and 33.
- b. **(2019) 9 SCC 710** (Kerala State Beverages Corporation Limited v. P.P. Suresh & Ors.) at paragraph 19.
- c. **(1996) 6 SCC 530** (Common Cause, a registered society v. Union of India & Ors.) Paragraph 25..
- d. **(2018) 12 SCC 85** (Indian Oil Corporation Limited v. Shashi Prava Shukla & Ors.) at paragraph(s) 23, 25 and 33.
- e. **(2011) 8 SCC 737** (State of Tamil Nadu & Ors. v. K. Shyam Sundar & Ors.) at paragraph(s) 2,4,7,14,31-35.
- f. **(2011) 9 SCC 286** (Andhra Pradesh Dairy Development Corporation Federation v. B. Narasimha Reddy & Ors.) paragraph(s) 40 to 46.
- g. **(2014) 2 SCC 401** (J. Jayalalitha & Ors. v. State of Karnataka & Ors.) paragraph 24.

48. It was then submitted that the criteria laid down for exercise of discretion under the chairman's quota were vague and without adequate guidelines. Even such criteria were not followed while making the concerned allotments. The decision for allotment was taken in hot haste; more than 800 applications were allegedly scrutinized within a few hours. This was physically impossible. In this connection reliance was placed on the Decisions in **V. Purushotham Rao v. Union of India & ors.,(2001) 10 SCC 305 at paragraph(s) 23 and 25; and, Fuljit Kaur v. State of Punjab & Ors., (2010) 11 SCC 455 at paragraph 25.**

49. It was then submitted that in view of the facts that came to light before the learned Single Judge, the Court was justified in observing that none of the writ petitions could be seen in isolation and that all the allotments have to be seen as part of a process that reveals itself as flawed and arbitrary. The learned Judge called for the records of the case which disclosed general arbitrariness and illegality vitiating the entire process. The learned Judge was entitled to exercise extraordinary powers under Article 226 of the Constitution of India and particularly certiorari jurisdiction to call for the records, even without any pleadings, consider the records and the facts of the case and pass appropriate order. In this connection reliance was placed on the decision in **State Bank of India & Ors. v. S.N. Goyal,(2008)8 SCC 92 para 21.**

50. As regards the contention of the appellants that the learned Single Judge could not have looked beyond the text of the letters of cancellation, it was submitted that the principles laid down in the case of **Mohinder Singh Gill (supra)** have to be seen in light of the factual matrix of that case. No



public interest was involved in that case and as such the judgment is not an authority for the proposition that the Court cannot look at documents beyond the impugned order even if public interest is involved. On the contrary, it has been held by the Hon'ble Supreme Court in several decisions that the principles laid down in **Mohinder Singh Gill's case** do not apply in cases where public interest is of paramount importance. Reliance was placed on the following decisions:-

- a) (1987) 2 SCC 295 (**Sachidanand Pandey v. State of West Bengal & Ors.**) at paragraphs 27, 39 and 40.
- b) (2010) 6 SCC 614 (**All India Railway Recruitment Board v. K Shyam Kumar**) at paragraphs 44-47.
- c) (2014) 13 SCC 692 (**PRP Exports & Ors. v. Chief Secretary, Government of Tamil Nadu & Ors.**) at paragraphs 2 and 5-8.
- d) (2019) 18 SCC 401 (**63 Moons Technologies Ltd. v. Union of India & Anr.**) at paragraphs 100 and 101.
- e) (2021) SCC Online SC 1141 (**City and Industrial Development Corporation of Maharashtra (CIDCO) v. Shisir Reality (Pvt.) Ltd.**) at paragraphs 5, 6, 76, 96, 225 and 226.

51. Learned Counsel appearing for Balaji submitted that no order should be passed in the present proceedings which may affect Balaji's right in respect of the land allotted to it. Registered sale deed has been executed in its favour. It has constructed a mall on the concerned plot. HIDCO has filed a suit in the competent civil court for declaration and cancellation of the sale deed. Balaji is contesting the suit.

52. Learned Counsel further submitted that although the appellants have not pleaded negative equality, yet, in effect their prayer rests upon negative equality. In the absence of claim for negative equality, Balaji, which is in no way associated with the appellants, cannot be roped in, in these proceedings and nor can any relief be sought for against Balaji. The appellants have to stand on their own set of rights and can neither claim their right through Balaji nor can they contend that since their allotment has been cancelled, Balaji's allotment also has to be cancelled. Learned Counsel relied on the decision of the Hon'ble Supreme Court in the case of ***State of Odisha & Anr. v. Anup Kumar Senapati & Anr., (2019) 19 SCC 626 (para 39 to 48)*** in support of the proposition that no right of negative equality can be claimed even in similarly circumstanced situations.

53. It was finally submitted by learned counsel that this court is hearing intra-Court mandamus appeals, the scope of which is very limited. Excepting where there is palpable infirmity in the impugned order, interference is not called for. Only because a different view is possible, the Appeal Court shall not interfere. The judgment assailed in these appeals is well reasoned and needs no interference. In this connection, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Management of Narendra & Company Pvt. Ltd. v. Workmen of Narendra & Company, (2016) 3 SCC 340 para 5*** and on the decision of a Division Bench of this Court in the case of ***Dr. Utpal Sharma v. Akshay Pant and Ors., (2019) 1 CHN 328 para 22.***

54. Written notes of arguments have been filed by the appellants in:-

- a) MAT 1069 of 2015 (***Bengal Brick Field Owners' Association & Ors. -Vs.- West Bengal Housing Infrastructure Development Corporation Limited & Ors.***).
- b) FMA No 3172 of 2015 (***Priyanka Agarwal & Anr. -Vs.- West Bengal Housing Infrastructure Development Corporation Limited & Ors.***).
- c) FMA No. 2755 of 2015 (***Sri Narayan Chandra Bandyopadhyay & Anr. -Vs.- The State West Bengal & Ors.***)
- d) FMA 2752 of 2015 (***Shivmangal Securities Pvt. Ltd. & Ors.- Vs.-West Bengal Housing Infrastructure Development Corporation Limited & Ors.***).
- e) FMA 2754 of 2015 (***Mohanlal Agarwal & Ors. -Vs.- West Bengal Housing Infrastructure Development Corporation Limited & Ors.***).

55. We have considered all such notes of arguments.

### **Findings of the learned Single Judge.**

56. By a detailed judgment and order running into 200 pages, the learned Judge dismissed all the writ petitions. In brief, the learned Judge came to the conclusion that there was complete arbitrariness in the matter of allotment of State land to the writ petitioners and others who did not approach the Court challenging cancellation of the allotments. The learned Judge found the procedure to be completely flawed, tainted with fraud and devoid of any kind of sanctity. No logic was followed in making the allotments. The applications made were not even scrutinized in the light of the guidelines framed, whatever their worth be. It was as if the chairman of

HIDCO under his discretionary quota and even the Board of Directors of HIDCO doled out State property to a chosen few at their whims.

57. Before we proceed to express our opinion, we would like to extract certain portions of the judgment against which these appeals are directed;-

“... It may be useful to refer to the opinion in *Platinum Entertainment (supra)* where the Supreme Court, in effect, held that the High Court had missed the woods for the trees in confining itself to the impugned cancellation of the allotment without peering into the circumstances in which the grant had been made in favour of the writ petitioners.” (paragraph 224)

“... the two principal decisions that fall for consideration in the present matters are to be tested to ascertain whether they were arbitrary or in abuse of the discretion available. The two decisions are: first, the cancellation or threatened cancellation of the allotments; and, secondly, the manner of allotment of the plots to the petitioners in these matters. The propriety of the later decision has necessarily to be considered ahead of the other; for, if it is found that there was no ground to cancel or want to cancel the subject allotments, the manner of allotment would not be required to be gone into.” (paragraph 226)

“... the letters of cancellation pertaining to allotment of non-residential plots had a bit of this and bit of that; but it is obvious that the company had not been able to discover or comprehend the level or extent of arbitrariness with which allotment of plots in New Town had been made under the former management of the company and, particularly, under the chairman’s discretionary quota. But now that everything has been laid bare and the suspicion that the company harbored as to the manner of allotment while

cancelling or threatening to cancel the allotments, appears to have been founded on good grounds, the acts of the company now complained of have to be assessed in the backdrop of the manner in which the allotments were made in the first place.” (para 227)

“The new management of the company that was installed in the middle of 2011 perceived that the allotments made immediately before the 2011 assembly elections were announced, required to be looked into. There was substantial basis for such decision, as the last dates for receiving applications for residential and non-residential allotments were in 2006 and 2008, respectively; but the number of allotments made under the chairman’s discretionary quota in the four calendar years prior to 2011 showed a remarkable jump in the first two months of 2011. Till the year 2007 no allotment of any non-residential plot in New Town was made since it appears that non-residential allotments were opened up only in 2008. The last date for receiving applications for the allotment of non-residential plots under the chairman’s quota was March 31, 2008. It would be expected that within reasonable time of such last date for receiving applications, the applications would be considered and allotments made. The petitioners have relied on the minutes of the meeting of a committee that was set up to scrutinize the applications received for the allotment of non-residential plots. Such committee, according to the petitioners and the records available with the company, is said to have met on April 28, 2008 to consider the applications and, in one sweep and without assigning any reasons, the committee found all the applications to be in order and worthy of allotment save the few which either did not indicate the size of the plot required or the purpose for

the allotment. If the relevant committee considered the applications for non-residential plots – whatever may have been the quality of such consideration – and it submitted a report by way of the minutes of the meeting on or about April 28, 2008, the chairman should have acted thereupon within reasonable time of the receipt thereof. But the undisputed figures of allotment show that the chairman allotted one non-residential plot in 2008 and another four in 2009. The tempo picked momentum with 43 allotments of non-residential plots in 2010, most of them appearing to be in the last two or three months of the year. Compare this to the 63 allotments of non-residential plots made by the chairman under his discretionary quota in the first two months of 2011 with 15 of them being approved for allotment on February 28, 2011. The board approved the allotment of 27 other non-residential plots at its meeting of February 28, 2011.” (paragraph 228)

“The last date for receiving applications for the allotment of residential plots in New Town was September 27, 2006. Again, it would have been expected that the allotments from the chairman’s discretionary quota under such head would be made within reasonable time of the last date for the receipt of applications. Several of the petitioners pertaining to the residential allotments have referred to a committee that was set up to scrutinise the applications received for the allotment of residential plots in New Town. Such committee, according to several of the petitioners and the records available with the company, is said to have met on May 24, 2007 to consider the applications and, without assigning any reasons, the committee found all 835 applications to be in order and worthy of allotment. When the relevant committee considered the applications for residential plots –

whatever may have been the quality of such consideration – and it submitted a report by way of the minutes of the meeting on or about May 24, 2007, the chairman should have acted thereupon within reasonable time of the receipt thereof. In the four calendar years preceding 2011, a total of 25 residential allotments were approved by the chairman under his discretionary quota: seven in 2007; six in 2008; two in 2009; and, ten in 2010. In the first two months of 2011 the chairman approved the allotment of 219 residential plots in New Town, 60 of them on February 28, 2011. In the light of the alarming flurry of activities towards the end of 2010 and the crescendo in the first two months of 2011, the company was justified in revisiting the allotments or, at least, reviewing the circumstances in which the allotments were made. The figures suggested a story and it was perfectly in order for the company to try to discover it.” (paragraph 229)

“In most cases where the allotments have been cancelled or threatened to be cancelled, the only reason cited or one of the several reasons given by the new management of the company is that the intimation of the approval of the allotment was made just prior to the assembly elections in the State being announced. The petitioners have attempted to discredit the reason by referring to several judgments and even the opinion of the Election Commission that a process which had been started long prior to any election being announced would remain unaffected by the Model Code of Conduct. What the petitioners have attempted to gloss over is the fact that the trend of allotment that started towards the end of 2010 ought to have continued in its upward graph even after February 28, 2011 or tapered off in a reasonable manner without the abruptness with which it seems to have been arrested

on February 28, 2011. Notwithstanding what the company may have said in its letters of cancellation, the issue is not as to whether the allotments made immediately prior to the election dates being announced may be regarded as dubious or contrived to beat the deadline; the more appropriate assessment would be whether the company at the relevant time perceived that no further approval of allotments could be made upon the election dates being declared. It is the inescapable inference that may be drawn from the conduct of the company in the days leading up to February 28, 2011, that its chairman perceived that further allotment of plots could not be approved or the approval intimated to the allottees after the election dates were declared. There is no dispute that except for the issuance of a solitary letter of intimation on March 1, 2011, the letters of intimation in all other subject cases, whether under the chairman's discretionary quota or by the board, were issued on or a few days prior to February 28, 2011." (paragraph 230)

"... the company has also submitted that it has instituted civil suits against Balaji Enterprise, the respondent No.16 in the lead petition, and against Alo Eye Care Private Ltd and that it will pursue such actions diligently. In respect of the residential allotments made in favour of Abhijit Saha and Dipak Kumar Bhattacharya, it appears that they were favoured citizens under the previous management of the company since they obtained possession of their plots before the change of guard at Writers' Building or the effect of such change trickled down to the HIDCO headquarters. The petitioners have not been able to cite the instance of any other allottee who may have been covered by the decision of the company for cancellation of allotment, but has not been proceeded against. Contrary to what the



petitioners suggest, the company has not resorted to picking and choosing a few for harsh treatment on an imaginary classification.” (paragraph 231)

“Despite the unrelenting rumblings of the rejected allottees as to the basis and manner of classification, there appears to have been both reason and rationale in the company choosing where the axe would fall. .... The company has said that it was slightly stricter in dealing with improper allotments of non-residential plots than in residential plots since non-residential plots lend themselves to be exploited more for commercial gains. There is sound logic in making a distinction between non-residential and residential allotments and it may have been irrational if it was not so done. As to the cut-off date of February 28, 2011 in either case, it would be evident that the company chose the last possible date without being vindictive and cancelling all the allotments under the discretionary quota by disregarding any distinction between those who may have already taken steps upon obtaining title or possession or both of their allotted lands and those who had not got title or possession.” (paragraph 232)

“The ancillary question which arises is that whether another cut-off date could have been chosen or the distinction between who to proceed against and who not to proceed against could have been otherwise than as decided by the company. When the propriety of a cut-off date or the manner of classification is called into question it may, more often than not, appear that another date or another set of criteria may have been equally or more efficaciously chosen. It is here that the court should realise the bounds of its authority and eschew usurping the administrative decision-making function unless it is demonstrated that the impugned cut-off date or the classification

was not based on intelligible differentia or that the same had no nexus with the object of the exercise. ....” (paragraph 233).

“... the facts undeniably demonstrate that the process of allotment of plots in New Town, both by the board and under the chairman’s discretionary quota, was unfair, irrational and otherwise improper. Once such position is established, it cannot be said that merely because the company had informed some of the applicants that their allotments had been approved or even the formal offers of allotment were issued, the process could not be revisited or reviewed. The company had due authority to cancel any allotment if it reasonably perceived the process to have been improper. Merely because the company has chosen a cut-off date which allows some of the other unworthy allottees to retain their allotments, it cannot be said that no action could have been taken by the company despite discovering the colossal irregularity in the process. Article 14 of the Constitution does not operate in a negative sense. Just because another citizen has got away with a wrong does not imply that the next wrong-doer has also to be let off.” (paragraph 234)

“some of the petitioners have argued that in the company perceiving all the allotments made under the chairman’s discretionary quota to be improper but proceeding against only a few, it has sought to put its imprimatur of propriety on the other perceived improper allotments. Such argument does not appeal. Just as the State or an instrumentality of the State must be guarded and informed in conferring a benefit to a person; once the benefit has been conferred, the State or instrumentality is obliged to exercise greater caution and restraint in recalling or undoing the benefit conferred.

The doctrine of proportionality or even the test of reasonableness would make a distinction between two unworthy recipients of State largesse depending on the extent of the activities undertaken by the two recipients in pursuance of the grant. Say, for instance, two persons were improperly allotted and given possession of parcels of land by the State on freehold basis and one of them proceeded to transfer the same; it may not then be possible for the State to divest the transferee of his property if he had acquired it in good faith upon satisfying himself of the title of his vendor. But the fact that the State cannot undo the improper grant to the one may not stand in the way of the State recalling the allotment improperly made to the other allottee.” (paragraph 235)

“While it is acknowledged that these petitions have not come by way of any public interest litigation, yet it cannot be forgotten that the exercise of authority under Article 226 of the Constitution is primarily in public interest. As several authoritative pronouncements, including the judgment reported at (2013) 5 SCC 427 (*Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society*), instruct, the primary purpose in this jurisdiction is to protect and establish rights and to impose a corresponding imperative duty existing in law. The issuance of high prerogative writs by the superior courts in this country is designed to promote justice and its grant or refusal is at the discretion of the court. Such discretion is exercised by taking into consideration a wide variety of circumstances, including the facts of the case, the exigency that warrants the exercise of the discretion, the consequences of the grant or the refusal of the writ and the nature and extent of the injury that is likely to

ensue by such grant or its refusal. The discretion has to be exercised on the considerations of public policy, public interest and public good. The authority to issue a writ is equitable in nature and governed by the principles of equity. The issuance of a writ may be refused on grounds that lead to injustice: the prime consideration for the issuance of a writ is whether substantial justice will be promoted. It is possible that if only one of the petitions fell for consideration and the facts pertaining to the other matters were not before the court, the court may have been slow in allowing reasons not referred to in the notice of cancellation to have been cited in support of the cancellation. Even then it would have been possible for the company to rely on the facts that have come to light in course of the present proceedings to ask the court to see the relevant letter of cancellation in the context of the larger perspective. But now that the five dozen or so matters throw up facts which demolish the sanctity of the process of allotment of plots in New Town, none of the petitions can be seen only on the basis of the acts complained of therein; all the petitions have to be seen as part of a process that indisputably reveals itself as flawed and arbitrary. ...” (paragraph 236)

“... but, by and large, approvals could be granted only if the applications were worthy on the yardstick set out in the guidelines. It is evident that there was no application of mind in taking up any application for consideration or even in the approval thereof for allotment.” (paragraph 237)

“.... But in this case, the two relevant committees expressed no opinion at all other than one finding all but a few to be considered for allotment and the other approving all for consideration. Apart from the fact that the relevant

material raises justifiable doubts as to whether these committees met at all or whether they considered any application or that the applications had even been filed when these committees appear to have deliberated thereon, neither set of minutes reveals the application of any mind to the matters that ought to have been considered. As a consequence, the chairman could no longer approve any application for allotment without undertaking a detailed assessment by taking relevant considerations into account in the light of the guidelines. After all, there were 829 applications for non-residential plots (849 less 20 apparently found ineligible by the relevant committee) and there had to be some basis why only a few of them ended up successful and the others not. Similarly, when the relevant committee looking into applications for residential plots approved all 835 cases, there ought to have been some basis for approving a few and not the rest. If the chairman had proceeded to approve the allotments according to any alphabetical order or the dates of the applications or such other discernable basis, even the facile exercise that he undertook may have got the benefit of the doubt. But when the chairman chose a few to confer largesse on, the process had to be transparent and fair; which it does not appear to have been. Indeed, the letters of intimation issued to the approved applicants for non-residential plots demanded the project reports to be submitted. That would imply that there was no assessment of the applications on the basis of the criteria recognised in the guidelines..." (paragraph 238)

"Most of the applications for allotment appear to be dubious and several are demonstrably false or had been ante-dated. It is strange that a substantial number of the petitioners herein puts up received copies of applications

bearing a questioned rubber-stamp and the alleged signature thereon of a solitary employee of the company. It is intriguing that though several of the petitioners have relied on copies of other letters received by the company, none of such other letters carries the dubious rubber-stamp that many of the petitioners have sought to rely on to demonstrate that their applications had been lodged with the company. At least three of the companies that had allegedly applied for allotment of non-residential plots in New Town had not even been incorporated on the date that they claim to have applied therefor. In all three cases the concerned companies were incorporated several months or years after the last date passed for receiving applications for the allotment of non-residential plots in New Town. Several other applicants for non-residential allotments appear to have referred to facts in future, if the dates appearing on their applications are to be given any credence. Most curiously, many of the petitions do not carry copies of the applications for allotment or rely on printed applications for allotment which are undated or where the date is written in hand. As to the rejected allottees of residential plots, several of the applications refer to “New Town Police Station” or to “Jyoti Basu Nagar” years before such police station was set up or New Town was sought to be renamed. Many of the residential applications that fall for consideration are also either undated or carry hand-written dates or are in a similar form. It is unnatural that so many anomalies appear in the applications for allotment of plots. The only logical inference is that the process was undertaken on the basis of extraneous considerations and the related documents have been fabricated or manufactured to try and window-dress the process as authentic.” (Paragraph 239)

“... Apart from the fact that there is nothing which indicates why some applications were taken up for consideration and others not, the chairman owed a duty to all the applicants to consider the applications on a level-playing field. If all the applicants had been allotted plots and some late applicants also accommodated, there would be no cause for complaint; but when several of the applicants are shown in the list to have applied within time but other applications which, according to the relevant applicants, were filed much later than the last dates therefor and the dates ascribed to such applications in the list, the entire process is vitiated. In fact, the facts as noticed in the discussion pertaining to the individual matters would reveal that several of the applications could not have been before the committees set up to scrutinise the same.” (paragraph 240)

“...The sanctity of a process is destroyed if even a solitary instance is shown that would cast a doubt on the date on which the process is shown to have been undertaken. There are instances galore which lead to the inevitable conclusion that the minutes of the two committees which met to approve the residential and non-residential applications on May 24, 2007 and April 28, 2008, respectively, were fabricated and brought into existence as a part of a charade to cloak a dubious process with contrived authenticity. The facts lead to the inescapable inference that the entire process of approving or granting allotment of plots under the chairman’s discretionary quota was a sham and that the exercise of discretion was arbitrary, at variance with the guidelines set therefor and otherwise opposed to public interest and contrary to public policy.” (paragraph 241)

“... In judicial review of any impugned distribution of State largesse, the court may not say that it could have been done better or that a different set of parameters ought to have been applied therefor. Whether on *Wednesbury* reasonableness or on the basis of the doctrine of proportionality, the court will assess whether the process was fair or in furtherance of the object of the exercise. It is found in this case that only some of the applicants under the chairman’s discretionary quota were selected for approval without even a rational basis for picking out some and leaving out the others. Even the allotments made by the board of the company on February 28, 2011 were not on any rational basis but on the purported recommendation of a committee that is shown to have met long after the board meeting on the same day had commenced and whose purported recommendations were approved by the board apparently on the same day. ...” (paragraph 245)

“.... In any event, publication of advertisements in a self-professed mouthpiece of a political party as *Ganashakti* and a little-known and much less read English newspaper as *The Echo of India* cannot be regarded as a bonafide method of giving wide publicity for applications for allotment of commercial plots in New Town; and it appears to have been more of a token compliance with the requirement in judicial pronouncements in such regard. The manner in which the allotment of plots in New Town has been made, other than by way of lottery, seems to be arbitrary from the beginning to the end.” (paragraph 246)

“Take, for instance, the day that was February 28, 2011 at the office of *HIDCO*. At 12 noon the 59th meeting of the board of directors of the company commenced in the conference room at its then registered office in



the Salt Lake Stadium Complex. It was attended by the minister-chairman, the managing director, the joint managing director and 11 other directors. Eight other officials were present at the meeting by invitation. The company secretary was also in attendance. The minutes show 38 items of business transacted thereat. The minutes were prepared on the same day or by the next day if the chairman's signature with the date of March 1, 2011 is to be believed. On February 28, 2011 a committee constituted at the board meeting of the same day met at 6 pm under the chairmanship of one of the directors of the company. Of the two other members of such committee, one was the managing director of the company. The company secretary of the company was also in attendance at the meeting of the committee. The committee is supposed to have "scrutinized/analysed" eight applications for setting up medical facilities in New Town and approved all of them. Since the minutes of the 59th board meeting do not record that any of the directors or the company secretary left such board meeting to attend any other meeting, it is safe to assume that the board meeting had concluded prior to the board-appointed committee meeting at 6 pm on the same day. Yet, the recommendation of the committee appears to have been approved in the minutes of the board meeting held earlier on the same day. Apart from the board meeting and the committee meeting held on such day, 42 letters of intimation of nonresidential plots (27 board allottees and 15 allottees under the chairman's discretionary quota) were issued to the relevant applicants by the company on February 28, 2011. A further 60 letters of intimation were issued to the relevant applicants for residential plots on the same day. In addition, sometime earlier during such busy day the chairman considered

59 applications for allotment of residential plots and approved them. The chairman's signature and the date of February 28, 2011 appear on the two sets of documents in such regard. After the chairman approved the 59 applications, a more formal note was prepared by his officer on special duty and forwarded to the managing director of the company on the same day. The relevant four-page document bears the signature of the officer on special duty and the date of February 28, 2011. The chairman also had time to approve at least three allotments in the non-residential category under his discretionary quota. If the time taken for the considerable deliberations that the board-appointed committee had to undertake to assess the applications for setting up medical facilities in New Town is taken into account, it was very late in the day and well beyond usual working hours when the board of directors of the company must have considered the recommendations of the committee before it approved the same. Without going into the nicety of how letters of allotment bearing the date of February 28, 2011 could have been issued to the applicants who wished to set up medical facilities in New Town when the board minutes approving the allotments in their favour were signed only on March 1, 2011, it would have been very late in the evening when the last of the letters of intimation pertaining to such allotments could be prepared. It appears to have been a day well spent at HIDCO, except that there does not appear to have been any comparable level of activity on any previous or later occasion." (paragraph 247)

"... It may have been open to the new management of the company to even proceed against the other allottees of non-residential plots in New Town who had already obtained title or possession; but the fact that the company has

not chosen such option, is not enough to undo the reasonable classification that it made in this category. However, it is left to the company and its discretion if it wishes to proceed against all the other allottees of non-residential plots under the chairman's discretionary quota since the entire procedure is found to be faulty, arbitrary and opposed to public policy." (paragraph 248).

### **Court's View**

58. For the sake of convenience we have extracted the more relevant observations of the learned Judge. We are in complete agreement with the approach, observations and decision of the learned Judge.

59. Gone are the days of monarchy. The King could deal with his wealth, including land, in any manner he wished, however unreasonable, unfair, inequitable or whimsical that manner be. This was because it was universally accepted that "the King can do no wrong".

60. Days have changed. We now live in a different era. Our country is a democracy. The government is by the people, of the people, for the people. In governance, be at the centre or the State level, paramount importance must be given to public interest. The State may own land. However, it holds such land on trust for the benefit of the members of the public. It cannot deal with such land in any manner that it may wish. Its action in that regard must conform to established principles of law. When the State distributes its largesse, of which land is the most scarce and valuable, it must do so following a fair and transparent procedure. Any arbitrary action in that regard is liable to be struck down.

61. In the present case the State government decided to develop a new township. There was nothing wrong with such decision. HIDCO was incorporated for the purpose of achieving the aforesaid object. Again, there was nothing wrong with such action. The first erroneous step, in our view, was clothing the chairman of HIDCO with authority to allot plots of land, residential and non-residential, to persons interested, at his sole and absolute discretion. The executive having absolute discretion to exercise a power in the manner it wishes, his antithetical to the Rule of Law. Although guidelines appear to have been laid down for exercising the chairman's discretion and certain criteria were indicated in such guidelines, the same do not appear to have been followed at all.

62. Committees were set up for scrutinizing applications made by interested parties for allotment of residential and non-residential plots. Neither of such committees appears to have applied mind to the matter at all. The committee set up for examining the 835 number of applications for residential plots, allowed all the applications without recording any reason at all. Further, this appears to have been done at a single meeting which started at 3 p.m. on the concerned day. It is extremely difficult to believe that 835 applications could have been meaningfully considered and scrutinized within a few hours. The same applies to the committee that was set up for looking into 849 applications for non-residential plots. Expecting a few applications, all were allowed. Again, no reasons were recorded.

63. Out of the applications recommended by the two committees for favourable consideration, some were allowed by the then chairman of HIDCO. Again there is not an iota of reason indicated in the records as to

why some of the applicants were chosen for allotment of plots and the others rejected. There could hardly be a more blatant example of arbitrary and stark abuse of power by the executive. Nepotism is writ large on the action of the then chairman of HIDCO.

64. It is also significant that the recommendations of the two committees were made in 2007 and 2008. Till the end of 2010 there were not many allotments. Suddenly there was a pronounced surge in allotment in the first two months of 2011. On February 28, 2011, a large number of allotments were made, both of residential and non-residential plots. On the very next day, i.e., March 1, 2011, the General Assembly Elections in West Bengal were announced, bringing into operation the Model Code of Conduct. Obviously the allotments or approvals granted towards the end of February, 2011, were to beat the deadline when the Model Code of Conduct would become operative making it impermissible or improper for HIDCO, a State controlled company, to allot lands.

65. The entire process culminating in the allotments which were subsequently cancelled, wreaks of arbitrariness. Even the allotments approved by the Board of Directors of HIDCO are suspect. Nowhere in the records of HIDCO is it indicated as to why the 8 allottees who professed to set up medical institutes/hospitals were found worthy of allotment of land. The entire process was as opaque as an iron sheet. In the facts of the case, the concept of transparency and fair play in State action was jettisoned in the Ganges or buried in the Thar. This cannot be permitted when the State is dealing with public property. We completely endorse the view of the learned Single Judge.

66. Another point that was urged by the appellants is that the cancellation of the allotments was resorted to by HIDCO only because there was a change in Government. A different political party having come into power, the decision of the earlier management of HIDCO as regards the concerned allotments, was nullified. Mr. Agarwal, representing the appellants in FMA No 2752 of 2015 (**Shivmangal Securities**) described this as a “regime revenge”. It was submitted that a succeeding Government is duty bound to continue and carry on the unfinished job of the previous Government.

In our view, there cannot be any such absolute proposition of law. Even ***Andhra Pradesh Dairy Development Corporation v. B. Narasimha Reddy,,(Supra)*** and ***State of Tamilnadu v. K. Shyam Sundar, (Supra)***, the two decisions of the Hon’ble Supreme Court relied upon by the appellants, envisage that if a new Government finds that a decision of the previous Government is illegal or is against public interest or is contrary to statutory provisions, the new Government would be justified in annulling the decision. The precise observation of the Hon’ble Supreme Court in the case of ***Andhra Pradesh Dairy Development Corporation*** is, “The State being a continuing body can be stopped from changing its stand in a given case, but where after holding enquiry it came to the conclusion that action was not in conformity with law, the doctrine of estoppel would not apply. Thus, **unless the act done by the previous Government is found to be contrary to the statutory provisions, unreasonable or against policy**, the State should not change its stand merely because the other political party has come into power.” (**Emphasis is ours**)

Similarly, the relevant observation in the case of ***State of TamilNadu v. K Shyam Sunder (supra)*** is “..... unless it is found that act done by the Authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power....”

67. In the present case, the new management of HIDCO, after assuming charge, discovered the completely arbitrary manner in which plots of land had been allotted by the erstwhile management, primarily under the chairman’s discretionary quota. The present Board of Directors therefore decided to cancel such allotments and in our opinion, rightly so. The argument that a decision of a Government, however arbitrary or illegal, is irreversible and cannot be departed from by the succeeding Government is preposterous and is not an argument which can be countenanced in law.

68. The learned Judge has extensively dealt with the aspect of discrepancies and anomalies in the so-called applications made for allotment of land. Some of the purported applications were made by companies which were incorporated much later than the dates of the respective applications. Some of the applications referred to the New Town police station when on the dates of such purported applications, such police station had not come into existence. Similarly, some of the applicants referred to ‘Jyoti Basu Nagar’ although New Town was re-named as Jyoti Basu Nagar much after the dates of the respective applications.

69. Looking at the entire gamut of facts, a reasonable person can come to only one conclusion, i.e., the process of allotment of plots of land adopted by the previous management of HIDCO, is tainted, completely arbitrary,

discriminatory, stinks of nepotism and favoritism, is grossly violative of Article 14 of the Constitution and is a classic example of flagrant abuse / misuse of executive power.

70. Mr. Anirudha Chatterjee learned Counsel representing Balaji Enterprise, relied on the Supreme Court decision in the case of ***Management of Narendra & Company Pvt. Ltd. (surpa)*** and on the decision of a Division Bench of this Court in the case of ***Dr. Utpal Sharma, (Supra)*** in support of his argument that in an intra Court appeal, unless there is palpable infirmity in the impugned judgment and order, interference is not warranted. We are completely *ad idem* with the above proposition of law.

71. Unless a judgment and order assailed before a Division Bench of this Court is unreasoned, arbitrary, ex facie contrary to law or perverse, in the sense that the learned first Court has addressed a wrong question or the decision is based on no evidence at all, the Division Bench shall not interfere. If the view taken by the learned Single Judge is a plausible view, the fact that the Appeal Court may have a different view, is not a ground for interfering with the impugned order. In the facts of the present case however, we are of the considered opinion that in the factual background indicated in the judgment and order assailed in these appeals and also briefly indicated in this judgment, the view taken by the learned Single Judge is the only view that could be taken by a Court of Law. Arbitrariness and nepotism in State action must be eschewed and Rule of Law must be upheld at all costs.



72. Myriad decisions have been cited on behalf of the appellants. Highest number of authorities have been cited by Mr. Agarwal on behalf of ***Shivmangal Securities*** in FMA 2752 of 2015. We have briefly noted those decisions above. We sincerely appreciate the effort made by Mr. Agarwal. However, with great respect, none of the said decisions are germane to the very short issue involved in this case, i.e., whether or not the decision of the erstwhile management of HIDCO to make the concerned allotments is vitiated by complete arbitrariness and nepotism in the procedure adopted.

73. Although several points have been argued by learned Counsel representing the appellants, the issue involved is really a short one – whether or not cancellation of the allotments of plots of land made earlier in favour of the appellants, was justified. The cancellation letters were challenged in the writ petitions. The learned Single Judge addressed a more fundamental issue and in our opinion rightly so, as to whether or not the allotments made were legal and valid in the first place. If it be held that the allotments made were arbitrary, result of nepotism and favoritism and unsustainable in law, the allotments must go. The manner of cancellation of the allotments would in that event, pale into insignificance. The learned Judge took great pains to go through the records of the case. Although the appellants/writ petitioners argued that the legitimacy or propriety of cancellation of the allotments must be judged only on the basis of the cancellation letters, the learned Judge was not impressed with such argument, and in our view rightly so. The writ Court while exercising jurisdiction under Article 226 of the Constitution is empowered to issue 5 kinds of writs, namely, certiorari, mandamus, prohibition, habeas corpus

and quo-warranto. By issuing a writ of certiorari, the writ Court can call for the records of a case to be produced before the Court, duly certified to be true by the competent authority, so that the Court can look into the records and pass an appropriate order. In the present case, the learned Judge did precisely that. Upon considering the records of the case the learned Judge formed a considered opinion that the process of allotment of land adopted by the erstwhile chairman and/or the erstwhile Board of Directors of HIDCO was illegal, vitiating the entire process. Accordingly, the learned Judge upheld the cancellation of the allotments by the present management of HIDCO and rejected the prayer of the appellants for quashing the letters of cancellation.

74. A huge issue was made by the appellants relying on the Hon'ble Supreme Court decision in **Mohinder Singh Gill's Case (supra)** that HIDCO cannot be permitted to defend the letters of cancellation by referring to any material beyond the text of the letters of cancellation. While HIDCO, referring to the decisions of the Hon'ble Supreme Court in **Sachidanand Pandey v. State of West Bengal & Ors. (supra)**, **All India Railway Recruitment Board v. K Shyam Kumar (supra)**, **PRP Exports & Ors. v. Chief Secretary, Government of Tamil Nadu & Ors. (supra)**, **63 Moons Technologies Ltd. v. Union of India & Anr. (supra)** and **CIDCO v. treasure reality (supra)**, argued that the principle of law laid down in **Mohinder Singh Gill's Case (supra)** has been diluted and in any event would not apply where greater public interest is involved, the appellants argued that the principle enunciated in that case still holds good with full rigour and it is irrelevant whether or not public interest is involved. To our

mind, it is unnecessary to enter into such a controversy for deciding the present case. As aforesaid, the learned Single Judge in exercise of the court's power to issue a writ of certiorari, called for the relevant records and on the basis thereof came to the conclusion that the concerned allotments could not be sustained in law. In this connection one may refer to the observation of the Hon'ble Supreme Court in the case of ***State Bank of India & Ors. v. S.N. Goyal***, (supra) to the effect that adjudication of a dispute by a Civil Court is significantly different from the exercise of power of judicial review in writ proceedings by the High Court. In writ proceedings the High Court can call for the records of the order challenged, examine the same and pass appropriate orders after giving an opportunity to the State, or the statutory Authority to explain any particular act or omission. However, in a civil suit parties are governed by rules of pleadings and there can be no adjudication of an issue in the absence of necessary pleadings.

75. The contention of the appellants that there is nothing on record to show any fraud or misrepresentation on their part and hence, the allotments ought not to have been cancelled, cannot be accepted. We have also gone through the records of the case as disclosed before us. There was complete lack of transparency in the process of allotment of lands and the entire process smacks of nepotism, favoritism and jobbery. In view thereof, it is irrelevant as to whether or the appellants, were in complicity with the persons who were at the helm of affairs of HIDCO when the allotments were made.

76. The argument of the appellants that once HIDCO accepted part payment from the allottees, a concluded contract came into existence and

HIDCO could not on a later date renege from such contract, is equally frail particularly in the facts and circumstances of this case. Once the entire allotment process is found to be polluted and stinking of very foul smell, the allotments must be nullified. It is fairly well established that 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. However, that is not an invariable rule. There may be situations which necessitate 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 can be permitted to be done which gives an appearance of bias, jobbery or nepotism. In this connection one may refer to the decision of the Hon'ble Supreme Court in ***Sachidanand Pandey v. State of West Bengal & Ors. (Supra)***.

77. The appellants have severely criticized the fixation of February 28, 2011, as the cut-off date for cancellation of allotments. In effect, as per the resolution of the Board of Directors of HIDCO, in case of residential plots, where letters of intimation were sent on February 28, 2011, the allotments were cancelled. In case of non-residential plots, where firm letters of allotment containing the minute particulars of the land and other terms and conditions, were sent on or after February 28, 2011, the allotments were cancelled. According to the appellants, the cut-off date was fixed arbitrarily. HIDCO says that since there was suddenly an unusually large number of

allotments of both residential and non-residential plots on February 28, 2011, and the Model Code of Conduct came into operation on the very next day, i.e, March 1, 2011, upon the General Elections in the State being announced, the Board decided to fix February 28, 2011, as the cut-off date.

78. We do not think that the cut-off date was fixed arbitrarily. The State must be given some leeway and freedom in the matter of deciding what the cut-off date should be in a fact situation like the present one. So long as it cannot be said that the decision fixing a particular cut-off date does not have any nexus to the object sought to be achieved, the Court would be slow to interfere with the administrative decision of the State (and HIDCO is essentially an arm of the State) fixing a particular date as the cut-off date. Just because the Court may feel that another date should have been fixed as the cut-off date, the Court will not intervene. The Court will only interfere if the cut-off date is fixed arbitrarily and has no rational basis at all, which is not the case here.

79. Let us consider another point urged on behalf of the appellants and specifically on behalf of **Shivmangal Securities**. It was contended that no opportunity of hearing was given to the allottees of land prior to the allotments being cancelled. This amounted to breach of the principles of natural justice. Hence, the cancellation of the allotments is bad in law.

We have our doubts as to whether this point was urged before the learned single Judge. There is no deliberation on this point in the judgment under appeal. It is also nobody's case that the learned Judge has not recorded such argument advanced by the writ petitioners. However, since this point is essentially a point of law, we might as well consider the same.

As observed by the Hon'ble Supreme Court in the case of ***Uma Nath Pandey and Ors. v. State of U.P. and Ors. reported at AIR 2009 SC 2375:-***

“6. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.”

In ***Ajit Kumar Nag v. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia & Ors., reported at AIR 2005 SC 4217***, a three Judge bench of the Hon'ble Supreme Court, at paragraph 36 of the judgment, observed as follows:-

“36. We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are also conscious of the general principle that pre-decisional hearing is better and should always be preferred to post-decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of *audi alteram partem*. It has been stated that the first hearing in human history was given in the

Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten forbidden fruit. [See R. V. University of Cambridge, (1723) 1 Str 557]. But we are also aware that principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straight-jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated; “To do a great right after all, it is permissible sometimes to do a little wrong”. [Per Mukharji, C.J. in Charan Lal Sahu v. Union of India MANU/SC/0285/1990:, (Bhopal Gas Disaster); AIR 1990SC1480] while interpreting legal provisions, a court of law cannot be unmindful of hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than ‘precedential’.

In the same judgment, the Hon’ble Supreme Court noticed the observation of a Constitution Bench in ***Union of India and Anr. v. Tulsiram Patel, (1985) II LLJ 206 SC***, to the effect that in certain circumstances, application of the principles of natural justice could be modified and even excluded. Both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in taking of prompt action, right to natural justice could be excluded. It could also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory

provisions warrant its exclusion. The maxim of *audi alteram partem* could not be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency so demands.

In ***M.C. Mehta v. Union of India, reported at 1999 3 SCR 1173*** the Hon'ble Supreme Court observed that there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, if the quashing of the order said to have been passed in breach of principles of natural justice is likely to result in revival of another order which is in itself illegal, it is not necessary to quash the order merely because of violation of the principles of natural justice. In this connection the Hon'ble Supreme Court referred to its earlier decision in the case of ***Gadde Venkateswara Rao v. Government of Andhra Pradesh, reported at (1966) 2 SCR 172***.

In ***P.D. Agrawal v. State Bank of India & Ors., reported at AIR 2006 SC 2064***, the Hon'ble Supreme Court observed that the principles of natural justice cannot be put in a straight jacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent times undergone a sea change. It was further observed that the Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse.

In ***Uma Nath Pandey, (supra)***, the Hon'ble Supreme Court noticed the dicta in its earlier decision in ***M.C. Mehta's case (Surpa)***, to the effect that even in cases where the facts are not all admitted or beyond dispute,



there is a considerable unanimity that the courts can, in exercise of their discretion, refuse certiorari, prohibition, mandamus, or injunction even though natural justice has not been followed.

Keeping in mind the above principles of law, we are of the view that in the facts of the present case it was not necessary for HIDCO to grant an opportunity of hearing to the allottees of land prior to issuing the letters of cancellation of allotments. The allotments were not cancelled on the basis of any allegation against the allottees. The new management found the entire process of allotment adopted by the erstwhile management, to be so faulty, tainted and arbitrary that a decision was taken to cancel the concerned allotments. In our view, this is one case where application of the principles of natural justice could be excluded. Even assuming for the sake of argument that the cancellation letters were issued without adhering to the principles of natural justice, quashing of such letters would not be warranted as the same would result in revival of the concerned allotments which the learned Single Judge has rightly found to be illegal.

The decision in ***Daffodills Pharmaceuticals Limited & Anr. (supra)*** relied upon by the appellants was rendered in a completely different fact situation. In that case a contractor was blacklisted by the Medical and Health Department of the U.P. Government on the basis that a criminal action had been initiated against the contractor (Daffodills) by the Central Bureau of Investigation. Facts revealed that the criminal action was against an erstwhile Director of Daffodills. Daffodills was not granted any opportunity of hearing before being blacklisted. In that background the

Hon'ble Supreme Court set aside the order of blacklisting on the ground of breach of the principles of natural justice.

80. Mr. Lahiri, learned Advocate appearing for some of the appellants relied on the decision of this Court in the case of ***Indian Oil Corporation & Ors. v. Shri Ujjal Chowdhury & Ors., (1999) 1 CLT 220***, in support of the proposition that when a process has started prior to election being announced and Model Code of Conduct coming into force, the continuation or completion of such process would not be in violation of the Model Code of Conduct.

The above case would not have any application to the facts of the present case. The cancellation of the allotments has been upheld not for violation of Model Code of Conduct but because the entire process of allotment has been found to be illegal.

The decisions reported at ***(2021) 1 SCC 804 (Vet India Pharmaceutical Limited v. State of Uttar Pradesh & Anr.)***, ***AIR 1952 SC 75 (State of West Bengal v. Anwar Ali Sarkar)***, ***(2008) 10 SCC 139 (Uttar Pradesh Power Corporation Limited v. Ayodhya Prasad Mishra & Anr.)***, ***(1993) 3 SCC 677 (Venkateswara Theatre v. State of Andhra Pradesh & Anr.)*** and ***(2003) 2 SCC 673 (Onkarlal Bajaj & Ors. Union of India & Anr.) (supra)*** were relied upon by the appellants for the proposition that treating unequals as equal is discriminatory. In our opinion, the aforesaid cases are not germane to the facts of the present case. There clearly appears to be an intelligible differentia for selecting the cut-off date for cancellation of allotments.

81. The Decisions reported at **(2003) 2 SCC 673 (Onkarlal Bajaj & Ors. Union of India & Anr.) (supra) and (2008) 15 SCC 243 (Mukund Swarup Mishrav. Union of India & Ors.)** were cited by the appellants, in aid of the proposition that the learned Judge ought to have set aside the cancellation of the allotments and appointed a Committee to examine the merits of each case.

As we read the aforesaid judgments, no such principle of law has been laid down as submitted by the appellants. In the facts of the above two cases, the Hon'ble Supreme Court deemed it appropriate to appoint a committee for examining each case. In the present case, the learned Judge found the entire process of allotment to be vitiated by arbitrariness and the facts of the case justify such a finding. Hence, no question of appointing a Committee can arise.

82. In view of the aforesaid, the appeals fail and are dismissed along with the connected applications. Three applications had been filed by **Balaji Enterprise** in M.A.T. 1309 of 2015, M.A.T. 1069 of 2015 and M.A.T. 1129 of 2015 respectively, praying for leave to transfer the land allotted to it, to a third party. Such applications have not been pressed and are also dismissed.

83. Accordingly M.A.T. 1309 of 2015 With I.A. No: C.A.N. 1 of 2018 (Old No: C.A.N. 4709 of 2018) With I.A. No: C.A.N. 2 of 2020 With I.A. No: C.A.N. 3 of 2021, F.M.A. 2752 of 2015, F.M.A. 2754 of 2015 With I.A. No: C.A.N. 1 of 2015 (Old No: C.A.N. 7509 of 2015) With I.A. No: C.A.N. 3 of 2019 (Old No: C.A.N. 1990 of 2019), F.M.A. 2755 of 2015, F.M.A. 3172 of 2015 With I.A. No: C.A.N. 1 of 2015 (Old No: C.A.N. 7949 of 2015) With I.A. No: C.A.N. 3 of

2022, F.M.A. 3664 of 2015 With I.A. No: C.A.N. 1 of 2015 (Old No: C.A.N. 12272 of 2015), M.A.T. 1069 of 2015 With I.A. No: C.A.N. 1 of 2018 (Old No: C.A.N. 4370 of 2018) With I.A. No: C.A.N. 2 of 2020, M.A.T. 1129 of 2015 With I.A. No: C.A.N. 1 of 2018 (Old No: C.A.N. 4817 of 2018) With I.A. No: C.A.N. 2 of 2020, M.A.T. 1174 of 2015 With I.A. No: C.A.N. 2 of 2017 (Old No: C.A.N. 1345 of 2017), M.A.T. 1342 of 2017 With I.A. No: C.A.N. 1 of 2017 (Old No: C.A.N. 8635 of 2017), M.A.T. 1763 of 2015 With I.A. No: C.A.N. 2 of 2016 (Old No: C.A.N. 1278 of 2016), M.A.T. 1899 of 2015, M.A.T. 370 of 2017 With I.A. No: C.A.N. 1 of 2017 (Old No: C.A.N. 2761 of 2017) With IA No: C.A.N. 2 of 2017 (Old No: C.A.N. 2762 of 2017) are disposed of.

84. There will be no order as to costs.

85. Urgent certified website copies of this judgment if applied for, be supplied to the parties, subject to compliance with all necessary formalities.

I agree.

**(RAI CHATTOPADHYAY, J.)**

**(ARIJIT, BANERJEE, J.)**

### **Later**

After pronouncing the judgment in Court, Mr. Lahiri, learned Advocate appearing for some of the appellants and Mr. Nandi learned Advocate appearing for the appellants in F.M.A. 2755 of 2015 submitted that the monies that the appellants had paid to HIDCO and are still lying deposited with HIDCO, should be returned with interest at the bank rate. Learned

Advocate for HIDCO says that the principal amount will naturally be returned. However, in spite of HIDCO offering to refund the monies paid by the appellants after cancellation of the allotments, the appellants refused to accept the same. Accordingly, no interest is payable to them.

The appellants will be at liberty to write to HIDCO claiming refund of the monies they had paid to HIDCO in connection with the allotments. HIDCO shall forthwith and in any event within 10 days of receipt of any such written request, refund the principal amount. The appellants may make a request to HIDCO for payment of interest which HIDCO shall consider, keeping in mind the fact that it is an arm of the State and is expected to act fairly and reasonably.

**(RAI CHATTOPADHYAY, J.)**

**(ARIJIT, BANERJEE, J.)**