

Niti

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NOS.450, 451 & 452 OF 2022
WITH
MISC. CIVIL APPLICATION NOS.2280, 2279 & 2278 OF
2022(F)

WRIT PETITION NO.450 OF 2022

1. M/s. JPS Realtors Pvt. Ltd.
Having its registered Office
at Plot No.11,
Lane No.4, Saidulajab
Extension, IGNOU Road,
Saket, Delhi – 110030,
Through its Director,
Shri Jaideep Sangwan,
48 years of age, Indian
National, Residing at 9/A,
Sector 6, Faridabad –
Haryana.

2. Shri Jaideep Sangwan,
48 years of age, Indian
National, Shareholder of
M/s. JPS Realtors Pvt. Ltd.,
Residing at House No.9/A,
Sector 6, Faridabad –
Haryana.

... Petitioners

Versus

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

2. The Goa Housing Board,
Through its Managing

Director, Office of the Goa
Housing Board, Alto Betim,
Porvorim, Bardez – Goa.

3. The Assistant Engineer,
The Goa Housing Board,
Alto Betim, Porvorim,
Bardez – Goa.

4. Secretary (Housing)
Department of Housing,
Government of Goa,
Secretariat, Porvorim, Goa.

... Respondents

Mr Dattaprasad Lawande and Mr Jay Mathew and Mr G. Nadkarni, Advocates for the Petitioners.

Mr D. Pangam, Advocate General with Mr Geetesh Shetye, Additional Government Advocate for Respondent Nos.1 & 4.

Mr A.D. Bhobe with Ms A. Fernandes, Advocates for Respondent Nos.2 & 3.

**WITH
MISC. CIVIL APPLICATION NO.2280 OF 2022 (F)
IN
WRIT PETITION NO.450 OF 2022**

1. Mr. Pushkaraj Shirodkar
Son of Prakash Shirodkar,
39 years, Married, Resident of 974,
Alto Porvorim, Penha de Franca,
Bardez, Goa.

2. Shri Gurunath Vernekar,
Son of late Ravlu Vernekar,
79 years, married,
Resident of House No.778,
Alto Betim, Bardez, Goa.

3. Shri Joseph Sylvester Carneiro

Son of Late Shri Pedro N. Cameiro
73 years, married,
Resident of H.No.1675,
Journalist Colony,
Near Bank of Maharashtra,
Penha de Franca, Bardez Goa.

.... Applicants

In

1. M/s. JPS Realtors Pvt. Ltd.
Having its registered Office
at Plot No.11, Lane No.4,
Saidulajab Extension,
IGNOU Road, Saket,
Delhi – 110030,
Through its Director,
Shri Jaideep Sangwan,
48 years of age, Indian National,
Residing at 9/A, Sector 6,
Faridabad – Haryana.

2. Shri Jaideep Sangwan,
48 years of age, Indian National,
Shareholder of M/s. JPS Realtors
Pvt. Ltd., Residing at House No.9/A,
Sector 6, Faridabad – Haryana.

.... Petitioners

Versus

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

2. The Goa Housing Board,
Through its Managing Director,
Office of the Goa Housing Board,
Alto Betim, Porvorim, Bardez – Goa.

3. The Assistant Engineer,

The Goa Housing Board,
Alto Betim, Porvorim,
Bardez – Goa.

4. Secretary (Housing)
Department of Housing,
Government of Goa,
Secretariat, Porvorim, Goa.

... Respondents

Mr S.S. Kantak, Senior Advocate with Mr Preetam Talaulikar, Mr Abhijeet Kamat, Ms Neha Kholkar and Ms Saicha Desai, Advocates for the Applicants.

**WITH
WRIT PETITION NO.451 OF 2022**

1. A.V. Estates Pvt. Ltd.
Having its Office at,
Plot No.6, Aldeia De Goa,
Lily Avenue, Near all India Radio,
Bambolim, Nauxim, Tiswadi,
Goa – 403202.
Through its Director,
Mrs. Shefali Varma,
51 years of age,
Residing at House No.C-5,
Three Kings Resort,
Reis Magos, Verem,
Nerul, Goa – 403114.

2. Mrs. Shefali Varma,
Shareholder of Petitioner No.1,
51 years of age,
Residing at House No.C-5,
Three Kings Resort,
Reis Magos, Verem,
Nerul, Goa – 403114.

... Petitioners

Versus

1. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

2. Goa Housing Board,
Through its Managing Director,
Office of the Goa Housing Board,
Alto Betim, Porvorim, Bardez – Goa.

3. Department of Housing,
Government of Goa,
Through its Secretary,
Secretariat, Porvorim, Goa.

4. Assistant Engineer,
Goa Housing Board,
Office of the Goa Housing Board,
Alto Betim, Porvorim,
Bardez – Goa.

... Respondents

Mr Dattaprasad Lawande and Mr Jay Mathew and Mr G. Nadkarni, Advocates for the Petitioners.

Mr D. Pangam, Advocate General with Mr S.P. Munj, Additional Government Advocate for Respondent Nos.1 & 4.

Mr A.D. Bhobe with Ms A. Fernandes, Advocates for Respondent Nos.2 & 3.

**WITH
MISC. CIVIL APPLICATION NO.2279 OF 2022 (F)
IN
WRIT PETITION NO.451 OF 2022**

1. Mr. Pushkaraj Shirodkar
Son of Prakash Shirodkar,
39 years, Married, Resident of 974,
Alto Porvorim, Penha de Franca,
Bardez, Goa.

2. Shri Gurunath Vernekar,
Son of late Ravlu Vernekar,
79 years, married,
Resident of House No.778,
Alto Betim, Bardez, Goa.

3. Shri Joseph Sylvester Carneiro
Son of Late Shri Pedro N. Cameiro
73 years, married,
Resident of H.No.1675,
Journalist Colony,
Near Bank of Maharashtra,
Penha de Franca, Bardez Goa.

.... Applicants

In

1. A.V. Estates Pvt. Ltd.
Having its Office at,
Plot No.6, Aldeia De Goa,
Lily Avenue, Near all India Radio,
Bambolim, Nauxim, Tiswadi,
Goa – 403202.
Through its Director,
Mrs. Shefali Varma,
51 years of age,
Residing at House No.C-5,
Three Kings Resort,
Reis Magos, Verem,
Nerul, Goa – 403114.

2. Mrs. Shefali Varma,
Shareholder of Petitioner No.1,
51 years of age,
Residing at House No.C-5,
Three Kings Resort,
Reis Magos, Verem,
Nerul, Goa – 403114.

... Petitioners

Versus

1. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

2. Goa Housing Board,
Through its Managing Director,
Office of the Goa Housing Board,
Alto Betim, Porvorim, Bardez – Goa.

3. Department of Housing,
Government of Goa,
Through its Secretary,
Secretariat, Porvorim, Goa.

4. Assistant Engineer,
Goa Housing Board,
Office of the Goa Housing Board,
Alto Betim, Porvorim,
Bardez – Goa.

... Respondents

Mr S.S. Kantak, Senior Advocate with Mr Preetam Taulikar, Mr Abhijeet Kamat, Ms Neha Kholkar and Ms Saicha Desai, Advocates for the Applicants.

**WITH
WRIT PETITION NO.452 OF 2022**

1. M/s. Veera Promenade Pvt. Ltd.
Formerly known as Micasa Developers
Pvt. Ltd., Having its registered Office
at 201B, Mathias Plaza, 18th June Road,
Panaji, Goa -403001,
Through its Authorized Representative,
Shri Durgappa Anandu Shetti,
58 years of age, Indian National,
Residing AGI, Sabnis Palace,
Alto Betim Road,
Near Petrol Pump Porvorim,

Penha de France, Porvorim,
Goa – 403521.

2. Shri Gaurav Jain,
41 years of age, Indian National,
Shareholder of M/s. Veera Promenade
Pvt. Ltd., Residing at C/o. Raj Kumar Jain,
A2/31-32, Safdarjung Enclave,
South West Delhi, Delhi – 110029.

.... Petitioners

Versus

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

2. The Goa Housing Board,
Through its Managing Director,
Office of the Goa Housing Board,
Alto Betim, Porvorim, Bardez – Goa.

3. The Assistant Engineer,
The Goa Housing Board,
Alto Betim, Porvorim,
Bardez – Goa.

4. Secretary (Housing)
Department of Housing,
Government of Goa,
Secretariat, Porvorim, Goa.

.... Respondents

**Mr Shyam Dewani with Mr Nitin Lalwani, Advocates for the
Petitioners.**

**Mr D. Pangam, Advocate General with Mr Prashil Arolkar,
Additional Government Advocate for Respondent Nos.1 & 4.**

**Mr A.D. Bhoje with Ms A. Fernandes, Advocates for
Respondent Nos.2 & 3.**

**WITH
MISC. CIVIL APPLICATION NO.2278 OF 2022 (F)
IN
WRIT PETITION NO.452 OF 2022**

1. Mr. Pushkaraj Shirodkar
Son of Prakash Shirodkar,
39 years, Married, Resident of 974,
Alto Porvorim, Penha de Franca,
Bardez, Goa.

2. Shri Gurunath Vernekar,
Son of late Ravlu Vernekar,
79 years, married,
Resident of House No.778,
Alto Betim, Bardez, Goa.

3. Shri Joseph Sylvester Carneiro
Son of Late Shri Pedro N. Cameiro
73 years, married,
Resident of H.No.1675,
Journalist Colony,
Near Bank of Maharashtra,
Penha de Franca, Bardez Goa.

.... Applicants

In

1. M/s. Veera Promenade Pvt. Ltd.
Formerly known as Micasa Developers
Pvt. Ltd., Having its registered Office
at 201B, Mathias Plaza, 18th June Road,
Panaji, Goa -403001,
Through its Authorized Representative,
Shri Durgappoa Anandu Shetti,
58 years of age, Indian National,
Residing AGI, Sabnis Palace,
Alto Betim Road,
Near Petrol Pump Porvorim,
Penha de France, Porvorim,

Goa – 403521.

2. Shri Gaurav Jain,
41 years of age, Indian National,
Shareholder of M/s. Veera Promenade
Pvt. Ltd., Residing at C/o. Raj Kumar Jain,
A2/31-32, Safdarjung Enclave,
South West Delhi, Delhi – 110029.

.... Petitioners

Versus

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

2. The Goa Housing Board,
Through its Managing Director,
Office of the Goa Housing Board,
Alto Betim, Porvorim, Bardez – Goa.

3. The Assistant Engineer,
The Goa Housing Board,
Alto Betim, Porvorim,
Bardez – Goa.

4. Secretary (Housing)
Department of Housing,
Government of Goa,
Secretariat, Porvorim, Goa.

.... Respondents

Mr S.S. Kantik, Senior Advocate, with Mr Preetam Talaulikar, Mr Abhijeet Kamat, Ms Neha Kholkar and Ms Saicha Desai, Advocates for the Applicants.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

**Reserved on : 17th JANUARY 2023
Pronounced on : 30th JANUARY 2023**

JUDGMENT : (*Per M.S. Sonak, J.*)

1. Heard learned Counsel for the parties.
2. Rule. Learned Counsel appearing for the respondents waive service on Rule.
3. The learned Counsel agree that a common judgment and order could dispose of these three petitions because they raise substantially common issues of law and fact.
4. The Goa Housing Board (GHB) is constituted under the Goa Housing Board Act, 1968 (GHB Act). After complying with all legal procedures, including obtaining prior approval from the Government, GHB auctioned plots 'G', 'H' and 'I' at Porvorim on 14.12.2021. The petitioners were adjudged highest bidders after they bid ₹71,000/- per square metre, ₹37,500/- per square metre and ₹36,000/- per square metre as against the minimum reserved price of ₹35,000/- per square metre. The GHB accepted the bids and even issued sale letters as contemplated by the Goa Housing Board (Registration, Allotment and Sale of Plots) Rules, 2016 (said Rules). The petitioners paid the entire consideration amount of over ₹54.47 crores to GHB, which was duly received and even spent by GHB towards payment of salaries, pensionary

benefits, etc., of its employees. After the entire process was practically complete, based upon purported directives of the Government, the GHB revoked/cancelled the allotment/sale of plots to the petitioners. However, there was neither minimum compliance with the principles of natural justice and fair play nor an offer to refund the amounts received and appropriated by GHB. Therefore, these petitions challenge the purported Government directions and the consequential GHB's action by treating the so-called Government directions as binding upon itself.

5. To be precise, the petitioners, by instituting these petitions under Articles 226 and 227 of the Constitution, challenge the following :

(i) Communication no.2/38/202 10/HSB dated 07.06.2022 by which the Section Officer (Housing) forwarded file notings by styling the same as "decision taken by the Government" for information and necessary action by the Managing Director of GHB;

(ii) The decision of the GHB revoking/cancelling Sale Letter in respect of plot numbers 'G', 'H' & 'I' at Porvorim as contained in the Minutes of the 504th meeting held on 15.06.2022;

(iii) Communication dated 12.07.2022 issued by the Managing Director, GHB informing the petitioners of such cancellation; and

(iv) The email communication dated 29.03.2022 (sent at 4.52 pm) by Assistant Engineer, GHB, purporting to withdraw the Sale Letter dated 29.03.2022 issued by Managing Director, GHB at 2.21 pm.

6. Mr Dewani and Mr Lawande, the learned Counsel for the petitioners, submitted that there is no Government decision or direction consistent with the constitutional scheme or the provisions of the GHB Act. In any case, they submit that the decision-making process is vitiated by illegality, irrationality and procedural impropriety. They submit that the impugned decisions are unreasonable, irrational and illogical. They submit that vital considerations have been ignored and irrelevant considerations have influenced the decision. They submit that GHB has acted under dictation without independent application of mind. They submit that Assistant Engineer's email dated 29.03.2022 is ultra vires. They submit that the impugned actions grossly violate principles of natural justice and legitimate expectations. They submit that the doctrine of promissory estoppel is also attracted in this matter. For all these reasons, they

submit these petitions be allowed and the sale/allotment of the three plots restored to the petitioners.

7. Mr Dewani and Mr Lawande submitted that Mr Rohan Khaunte's objection based on alleged congestion or commercialisation was considered and rejected when Mr Khaunte was in the opposition. However, after Mr Khaunte joined the State cabinet, his objections suddenly became one of the grounds for the so-called Government directions. They pointed out the irrationality and contradictions in the decision and the gross procedural improprieties in the decision-making process. Mr Dewani and Mr Lawande relied upon several decisions which would be considered in the course of this judgement and order.

8. Mr A D Bhobe, learned Counsel for GHB, consistent with the affidavit filed on behalf of GHB, asserted that the entire auction process culminating in the acceptance of petitioners' bids was perfectly legal and following the said GHB Act and the said rules. He submitted that necessary approvals were obtained from the Government for this process. He, however, submitted that Government's directions bind the GHB; therefore, GHB had no option but to revoke/cancel the allotment/sale of the three plots to the petitioners.

9. Mr Bhobe also made it clear that he was not defending the Assistant Engineer's email dated 29.03.2022 sent at 4.52 pm purporting to withdraw the Sale Letter digitally signed by the M.D., GHB about 2 hours earlier. Accordingly, he accepted that there was no legal explanation in support of the Assistant Engineer's email dated 29.03.2022.

10. The learned Advocate General vehemently defended the State Government's decision as reflected on the notings annexed to the communication dated 07.06.2022 addressed by the Section Officer (Housing) to the Managing Director, GHB.

11. The learned Advocate General submitted that the State Government's decision was in the public interest after considering the views of the Minister (Transport) and Minister (Housing). He offered that the Minister (Housing) had opined that plot 'G' had fetched the rate of ₹71,000/- per square meter and, therefore, plots 'H' and 'I' which had fetched the rate of only ₹37,500/- and ₹36,000/- should be re-auctioned, if necessary, after increasing the FAR. He submitted that the Minister (Transport) had opined that using the auctioned plots for commercial purposes would lead to traffic congestion at Porvorim. The learned Advocate General submitted that the State Government directed the GHB to cancel the allotments so that the commercial plots could be

retained as open spaces. The learned Advocate General submitted that since there was no direction for re-auction, the presumption is that the State intended that the auctioned plots should be retained as open spaces. Therefore, he submitted that public interest is involved and the directions are in furtherance of public interest.

12. The learned Advocate General submitted that the impugned directions were issued under Section 51 of the GHB Act and, in any case, are relatable to Section 124 of the GHB Act. He submitted that even otherwise, since the auction process has to begin with the approval of the State Government, the State Government has inherent rights or rights under the General Clauses Act to revoke or direct the revocation of allotment of plots in a public auction. He submitted that since public interest is involved, no case is made to interfere with the impugned decision/direction. He relied on *Rajasthan Housing Board & Anr. V/s. G.S. Investments & Anr.*¹ and *State of U.P. & Ors. V/s. Maharaja Dharmander Prasad Singh & Ors.*².

¹ (2007) 1 SCC 477

² (1989) 2 SCC 505

13. The learned Advocate General submitted that executive decisions need not contain elaborate reasons because they are not orders made by judicial or quasi-judicial authorities. He offered that the notings indicate application of mind, and the ultimate decision has to be construed based upon the notings that precede the same. He submits that, thus construed, there is no arbitrariness or illegality involved in the impugned directions.

14. The learned Advocate General submitted there are no pleadings to support the argument based on promissory estoppel. He submitted that none of the petitioners had altered their position based on the Sale Letters or allotment letters. He submitted that mere payment of the total consideration, even after obtaining loans, does not change the Petitioners' position and entitles them to invoke the promissory estoppel doctrine. He submitted that the State Government, in any case, had held out no representations to the petitioners. For the same reason, he proposed that even the doctrine of legitimate expectation is not applicable. The learned Advocate General submitted that though there was no direction to refund the amounts paid by the petitioners, that is a matter which is too obvious to be stated. He offered that this is something that goes without saying. But he pointed out that since the petitioners have not claimed any

refund, there was no question of grant of any such refund in these petitions.

15. For all the above reasons, the learned Advocate General submitted that these petitions may be dismissed.

16. Mr Kantak learned Senior Advocate for the intervenors submitted that there is traffic congestion at Porvorim. If any commercial projects are allowed on the auctioned plots, then such congestion would only increase. Therefore, he submitted that the decision of the State Government is in the public interest.

17. Mr Kantak pointed out that the residents from the locality, which include the intervenors, were assured by the former Chief Minister that these plots would be retained as open spaces. He submitted that their MLA of Porvorim, Mr Rohan Khaunte, had also objected to the auction. He submitted that Mr Rohan Khaunte is now the Minister (Transport) and, therefore, concerned with the congestion issue at Porvorim. Mr Kantak relied on the decision of the Hon'ble Supreme Court in *Resident's Welfare Association & Anr. V/s. The Union Territory of Chandigarh & Ors.*³ to highlight the importance of environmental impact assessment in the planning process. Based

³ SLP (C) No.4950 of 2022
decided on 10.01.2023

on all this, Mr Kantak submitted that these petitions may be dismissed.

18. The rival contentions now fall for our determination.

19. The GHB was established under the GHB Act as an autonomous self-financing corporate body with perpetual succession and a common seal. Under the GHB Act, GHB is empowered to acquire, hold and dispose of movable and immovable property and to contract and do all things necessary for the purposes of the GHB Act. Therefore, one of the primary purposes for establishing GHB is to enable GHB to formulate schemes for acquiring, developing and selling immovable properties. For this, the GHB is required to and does formulate various schemes for which necessary approval is obtained from the Government.

20. Section 58 of the GHB Act specifically empowers GHB to dispose of land by lease, sale, exchange, etc. The Government exercising powers under Section 128, read with Section 58 of the GHB Act, has framed Goa Housing Board (Registration, Allotment and Sale of plots) Rules, 2016 (said rules), which provide detailed procedures for auction, allotment and sale of properties. The said rules also provide for the circumstances in

which the GHB may revoke or cancel such allotments or sales. Particular reference is necessary to rules 15 and 19 of the said rules.

21. The said rules lay particular emphasis on the issue of "Sale Letter" under rule 15 of the said rules. Such a sale letter is issued only after GHB duly accepts the bid and the bidder pays the entire amount to GHB. Rule 18 of the said rules postpones the execution of a formal Sale Deed even though GHB receives the entire consideration amount until the allottee completes construction of the project upon the auctioned plot and obtains Occupancy Certificate from the competent authorities within the timeline indicated. Thus, the said rules contemplate that the contract of sale is practically complete on the issue of the Sale Letter. Still, the formal execution of the conveyance is postponed until the allottee completes construction and obtains Occupancy Certificate. That Sale Letter, as noted earlier, is issued only after the allottee pays the full consideration and not before.

22. The undisputed position in the present case is that the GHB secured approval dated 05.10.2021 from the Government for the sale/auction of plots 'G', 'H' and 'I' at Porvorim. Based on such approval, the GHB advertised the proposed E-auction in local and national newspapers like Tarun Bharat, Bhaangarbhuin,

The Times Group, Hindu, and Tribune, among others. The bidders desirous of participating were required to make an initial deposit of ₹1.00 crore and pay non-refundable registration fees of ₹5,000/-. The E-auction was scheduled for 14.12.2021.

23. Undisputably, eight serious parties evinced interest in participating in the E-auction by paying the registration fees of ₹5,000/- and a deposit of ₹1.00 crore. Precisely, a day before the scheduled E-auction, that is, on 13.12.2021, Mr Rohan Khaunte, MLA, who was then not a part of the ruling dispensation, objected to the E-auction on the ground that commercial projects on the three plots would lead to "*traffic congestion and chaos*". The objection also referred to some alleged promise made by the former Chief Minister that no commercial projects would come up on these three plots at Porvorim-Goa.

24. The above representation dated 13.12.2021 was made by Mr Rohan Khaunte to Hon'ble Chief Minister. However, no action was taken by Hon'ble Chief Minister on such representation, and consequently, the E-auction, as scheduled, was held on 14.12.2021. On 15.12.2021, the GHB considered the position and resolved to accept the petitioners' bids which were the highest and above the minimum reserved price of ₹35,000/- per square metre determined and notified by GHB in

advance. Based on sale statistics, the record shows that the cost of properties in the area ranged between ₹11,000/- to ₹25,000/- per square metre. However, GHB resolved to determine the minimum reserved price at ₹35,000/- per square metre.

25. At the 500th meeting of GHB held on 15.12.2021, the Managing Director (MD) did flag the issue about the bids received for plots 'H' and 'I' in comparison with the bid received for plot 'G'. The highest bid for plot 'G' was ₹71,000/- per square metre as against the minimum reserved price of ₹35,000/- per square metre. The bids received for plots 'H' and 'I' were, however, ₹37,500/- and ₹36,000/- respectively, as against the minimum reserved price of ₹35,000/-.

26. Accordingly, the Board, which comprises nominees of the Government, considered and deliberated upon the issue in some detail. The Minutes record that the Board members were inclined to accept the three bids because the average rate for the three plots was approximately ₹49,864.80 per square metre as against the base rate of ₹35,000/- per square metre. The Board members also considered the Board's financial position and other factors. Finally, after due deliberations, the Board resolved to except the three bids and issued allotment/sale letters to the petitioners since they were the highest bidders. On 21.12.2021, the GHB issued

necessary allotment letters to the petitioners. On 22.12.2021, the petitioners conveyed their acceptance. The petitioners also deposited the amounts needed consistent with the terms and conditions of the auction and the said rules as were required of them by GHB.

27. On 31.12.2021, Mr Rohan Khaunte's representation was forwarded by the office of the Hon'ble Chief Minister to GHB for examination and necessary action. Accordingly, GHB, in its 502nd meeting held on 04.01.2022, considered threadbare Mr Khaunte's objections and resolved to reject the same, citing several reasons.

28. The extract from the 502nd meeting of GHB held on 04.01.2022, relevant to the above issue, is transcribed below for the convenience of reference:

"The letter was placed before the Board in its 502nd meeting held on 04/01/2022 and the decision of the Board was as below:

"Objection to the commercialization of the Area Surrounding the Housing Board Market at Porvorim.

The Board perused the agenda and the letter received from the Office of the Chief Minister, regarding the letter dated 14/12/2021 received from Shri Rohan A. Khaunte, MLA-Porvorim constituency addressed to the Hon'ble

Chief Minister to examine the matter for necessary action.

Shri Rohan A. Khaunte has objected to the auctioning of the commercial plots at Porvorim. It is stated in the letter that due to the concerns of commercialization, Ex-Chief Minister, Late Shri Manohar Parrikar had assured the people of Porvorim that no further development in the area would take place. Further, it is stated that due to this area under the Porvorim constituency will face frequent traffic congestion, parking issues and overcrowding, etc. and as such requested the Hon'ble C.M. to rectify the issue on a priority basis.

*Board in its 497th meeting held on 01/09/2021 had decided to auction the 3 commercial plots at Porvorim as per the Rules formulated by the Government and after obtaining Govt approval. Board also obtained Government approval for the sale of the commercial plots in terms of the GHB Rules, 2016 and had fixed reserve price of Rs.35,000 per sq.m. The Board has successfully conducted the e-auction of these plots and orders of allotments are already issued to the successful bidders for which they have conveyed acceptance. **The Board deliberated in detail on the objections filed and decided that the same had no basis whatsoever as the plots were zoned as Commercial by the Town and Country Planning Department after careful consideration of all planning aspects. The FAR of the plots was changed in the year 2015 and enhanced from 80 to 150 and Village Panchayat Penha de Franca, had granted NOC vide its letter no. VP/PDF/044/2013-14/993 dated***

02/08/2013. The Board was of the opinion that the objections filed by the local residents had no basis whatsoever and if such objections are acted upon by Goa Housing Board especially when the Board stood to gain revenue to the tune of Rs. 50.92 cr approx., then it shall be a huge loss to the Government/Goa Housing Board. The moot question was that a land parcel which had undergone through the process of proper planning and ratified by the TCP Dept. could not be subject to misplaced fears of local residents at sole risk and cost of the Goa Housing Board. Further, the Board noted that the auction of commercial plots had received a good response and the entire process was carried out in an open and transparent manner in e-auction mode and any cancellation of the plots at this stage would not be advisable particularly when the Board had followed all procedures and concluded the auction. The Board was of the view that cancellation of the process will invite avoidable litigation as the parties may approach Hon'ble Courts and the GHB will find it difficult to defend its action of arbitrary withdrawal/cancellation of auction process. Board also noted that at no point of time any written assurance was provided to local residents regarding no development on commercial plots and deliberated that Porvorim is growing rapidly and the pace of development will pick up in days to come.

Board after a detailed deliberation rejected the proposal of Shri Rohan A. Khaunte considering the fact that if the plots are not sold by auction, GHB will have to incur

massive financial loss of approx. Rs. 54.45 Crores. Also the Board has many new projects under progress for which payments are to be released to the contractors and also the Board has to clear loan liability to the tune of Rs 59.13 crores for which revenue had to be generated through sale of plots/ tenements. Further there are no grants to GHB from the Government for its projects and the Board is a self-sustaining body. Hence Board decided to go ahead with the process of allotment of plots as per established procedure."

Accordingly, as per Board decision it was decided not to cancel the allotment of three commercial plots."

29. The GHB, by its communication dated 11.03.2022, informed the Hon'ble Chief Minister about the Board's decision on Mr Khaunte's objection. However, even at this stage, Mr Rohan Khaunte was an opposition MLA and no directions were issued by the Government or the Hon'ble Chief Minister to restrain GHB from acting on its resolution dated 15.12.2021 or disagreeing with GHB's resolution dated 04.01.2022. Therefore, GHB accepted the full balance consideration from the petitioners. Thus, by the third week of March 2022, GHB received the full consideration of ₹54.47 crores from the

petitioners towards the sale of the three plots publicly auctioned to the petitioners.

30. Consistent with the provisions of Rule 15 of the said rules, the petitioners were issued on email a Sale Letter on 29.03.2022. The MD, GHB, at 2.21 p.m., digitally signed this Sale Letter. However, after about 2 hours, that is, at 4.52 p.m., the petitioners received an email communication from the Assistant Engineer, GHB, which reads as follows:

*"From : Managing Director
Goahousingboard<goahousingboard@yahoo.in>
Date : 29 March 2022 at 4:52:05 PM IST
To: sandeepjps@gmail.com
Subject: reg sale letter*

It is to inform you that the sale letter no.GHB/ADM/1880/2022 dated 29/03/2022 issued towards the commercial Plot No.I at Porvorim has been issued inadvertently without obtaining prior approval/consent of the Managing Director, Goa Housing Board and hence the same is void.

The same stands withdrawn until all the legal formalities have been completed.

*S. Arsekar
Asst. Engineer,
Holding additional charge O.S."*

31. Mr A.D. Bhobe, the learned Counsel GHB, as noted earlier, made it clear that the GHB was not defending the above communication issued by the Assistant Engineer, GHB, at 4.52 pm. Even otherwise, we are satisfied that the Sale Letter, which was digitally signed by the Managing Director of GHB at 2.21 pm and issued consistent with Rule 15(3) of the said Rules, could not have been withdrawn by the Assistant Engineer, GHB, on the alleged ground that the same was issued inadvertently and without obtaining prior approval/consent of the Managing Direction, GHB.

32. Admittedly, on 29.03.2022, there was no State Government decision or direction for revocation or withdrawal. In any case, the Assistant Engineer, GHB, lacked authority to comment, much less withdraw the Sale Letter issued by the Managing Director under Rule 15(3) of the said Rules. Moreover, in terms of Rule 19 of the said Rules, only the Board is empowered to cancel the allotment of the Plot sold in auction for misrepresentation, suppression of fact or breach or contravention of any of the conditions of the said Rules. Considering the drastic nature of the action under Rule 19 of the said Rules, principles of natural justice and fair play will have to be read into this provision.

33. Admittedly, there was no compliance with the principles of natural justice and fair play before the Assistant Engineer sent the above email. Moreover, there is no allegation in the email about any misrepresentation, suppression of facts or breach of any of the terms and conditions of the said Rules. The impugned email sent by the Assistant Engineer or the affidavit of GHB does not explain what the inadvertence involved was and why the Assistant Engineer referred to the absence of prior approval/consent of the Managing Director, GHB, when the Managing Director, GHB, digitally signed the Sale Letter itself.

34. For all the above reasons, the impugned email dated 29.03.2022 issued by the Assistant Engineer, GHB, at 4.52 pm is indefensible, and quite reasonably, Mr Bhobe, the learned Counsel for GHB did not attempt to justify the issuance of such email by the Assistant Engineer of GHB. Accordingly, the impugned email dated 29.03.2022 issued by the Managing Director, GHB, is declared void and, in any case, the same is quashed and set aside as ultra vires, null and void.

35. The learned Counsel for the petitioners did hint that the ultra vires action of the Assistant Engineer, GHB, was because of certain undue pressure exerted upon him. They pointed out that the results of the Goa State Legislative Assembly elections were

declared on 28.03.2022. Mr Rohan Khaunte, who had joined the ruling dispensation, was elected and was soon to be inducted as Minister (Transport) in the cabinet. Though no firm inference can be drawn based upon the material before us, the records bear out that soon after that, that is, on 07.04.2022, the GHB quite inexplicably referred Mr Rohan Khaunte's objection to the Government, even though such objection was considered threadbare in the GHB's 502nd meeting on 04.01.2022 and the resolution to reject the objections was already conveyed on 11.03.2022 to the Government. For almost two months after the total consideration was received and even spent, the petitioners' representations to be placed in possession of the allotted plots were not responded to by GHB on the unwritten excuse that the Government was considering the matters.

36. By impugned communication dated 07.06.2022, the Section Officer (Housing) forwarded the decision taken by the Government to the Managing Director, GHB, for information and necessary action. To this communication were annexed certain notings from pages 1/N to 19/N.

37. The impugned communication dated 07.06.2022 reads as follows:

"Government of Goa

Department of Housing

Secretariat, Porvorim – Goa. 403521

No.:2/38/202 10/HSG

Dated 07.06.2022

To,

The Managing Director,

Goa Housing Board,

Porvorim – Goa.

***Sub.: Auction of commercial plots at Porvorim,
request for cancellation regarding.***

***Ref.: (i) Letter No.GHB/ADM/22/2022 dated
07/04/2022***

Sir,

*I am directed to refer to your letter dated
07/04/2022 (read at (I) above) on the subject cited above
and to forward herewith the decision taken by the
Government in this Departments file of even
No.2/38/2021/HSG (copy of file noting attached) for
your information and necessary action.*

Yours faithfully,

Sd/-

(Gloria Rodrigues)

Section Officer (Housing)

Encl.: -As above

e-mail: hsg-sectt.goa@gov.in Phone No.: 0832-2419791”

38. At least the communication dated 07.06.2022 contains no decision of the Government. The learned Advocate General, however, submitted that the noting on page 14/N, signed by the Hon'ble Chief Minister on 03.06.2022, is the decision of the

State Government. This noting on page 14/N dated 03.06.2022 reads as follows:

Considering the context herein & apprehensions of Hon'ble Minister Housing & Hon'ble Minister Tourism, the said allotment of all three plots may be revoked.

*Sd/-
03.06.2022*

39. After receipt of the above communication dated 07.06.2022, the GHB convened and held its 504th meeting on 15.06.2022. The Minutes of this meeting record in detail the deliberations and the decisions of the 497th, 498th, 500th, and 502nd meetings. The minutes record how all the petitioners have paid the entire amount towards the auction purchase of the three plots before the due dates. The Minutes record how, upon receipt of this enormous amount, the GHB could clear its outstanding liability, bank loans, the release of payment to various contractors, and the backlog of pensioners' salaries (arrears). The Minutes record how a letter was received from the Hon'ble Minister for Road and Transport, Government of Goa, and the Hon'ble Chief Minister called for comments from the GHB. The Minutes record that the detailed report was submitted to the Office of the Hon'ble Chief Minister.

40. The Minutes of the meeting on 15.06.2022 further record that on cancellation of the allotments, the Board would have to refund the entire amount to the allottees immediately, but the Board has utilized the amount for clearance of the pending bills, salaries of the employees, pensioners and also for payment of outstanding loans and at present the Board does not have sufficient amount to refund the said amount. The Minutes also record how the Government has to pay GHB ₹16.42 crores towards loss on Tamnar line work at Colvale, ₹7.15 crores towards Plot taken by the revenue department in Porvorim and ₹15.00 crores towards land for Jail and ₹30.00 crores for purchase of building 'B' in the market complex at Porvorim.

41. Finally, the Minutes of the 504th meeting of GHB held on 15.06.2022 record the following:

"Board after detailed elaboration decided to revoke allotment of the three commercial plots at Porvorim in view of the Govt. decision conveyed vide letter no.2/38/20210/HSG dated 07/06/2022 and decided to convey the decision of the Govt. to the allottees of the three commercial plots. Further, Board also resolved to move a proposal to the Govt. to provide necessary funds amounting to Rs.54.45 Crores in order to refund the amount to the allottees, as presently the Board is not having funds as the amount received has been utilized for the

payments of the staff salary and pensioners bills, outstanding loans, pending bills of the contractors, etc."

42. Based on the above decision in the 504th meeting of GHB held on 15.06.2022, the Managing Director GHB issued the impugned communication dated 12.07.2022, revoking the sale/allotment favouring the petitioners.

43. At this stage, for completion of the narration, it is necessary to mention that the petitioners had instituted Writ Petition Nos.1543/2022(F), 288/2022 and 290/2022 questioning the withdrawal of their Sale Letter by the Assistant Engineer of GHB on 29.03.2022 at 4.52 pm. However, during the pendency of those petitions, the impugned so-called directions or decisions were issued on 07.06.2022, 15.06.2022 and 12.07.2022. Accordingly, these three petitions were disposed of by granting the petitioners liberty to challenge the cancellation of their allotments on all permissible grounds.

44. These petitions were instituted on 09.09.2022 and were taken up for consideration on 21.09.2022. On this date, the Additional Government Advocate appeared on behalf of respondents nos.1 & 4, i.e. the State Government. Mr Bhobe, on behalf of the GHB, applied for two weeks to file a reply. The

matter was accordingly placed for further consideration on 17.10.2022.

45. On 17.10.2022, Mr Bhobe, the learned Counsel for GHB, once again applied for 15 days to file a reply. Even the Additional Government Advocate appeared on behalf of the State Government on this date. However, neither was any reply filed nor was any time sought to file reply. Accordingly, the matter was adjourned on 28.11.2022 at the request of Mr. Bhobe.

46. On 28.11.2022, reference was made to the intervention applications filed in the three petitions. On this date, it was made clear that if the respondents wished to file further pleadings, they should be filed within two weeks, and the matter was stood over to 04.01.2023.

47. On 04.01.2023, the matter was argued for some time. After Mr Bhobe, the learned Counsel for GHB, stated that the GHB had issued the impugned revocation orders solely based on the directions given by the State Government, Mr Munj, the learned Additional Government Advocate, sought time, stating that the Government's reply was almost ready but sent for approval. He stated that the reply would positively be filed by 09.01.2023, and copies would be furnished to the learned Counsel for the petitioners on the same date.

48. On 04.01.2023, the learned Additional Government Advocate submitted that the impugned decision of the State Government was based on the notings of the Minister (Housing) about inadequate rate. He reasoned that if the objections concerned traffic congestion, there would be no question of issuing directives for re-auction.

49. Accordingly, the above statement of the learned Additional Government Advocate was recorded in paragraph 3 of our order dated 04.01.2023, which was dictated in the open Court in the presence of the learned Counsel for the parties. Accordingly, the order dated 04.01.2023 made in this petition reads as follows:

"P.C.:

Though enough time was granted to respondent Nos.1 and 4 to file their reply, no reply has been filed. Mr. Munj, learned Additional Government Advocate states that reply will be positively filed on 09/01/2023 and even copies will be furnished on the same date.

2. Accordingly, place the matter on 10/01/2023 for final disposal at the admission stage. The Housing Board whose decision is challenged in this petition has already filed affidavit and in that sense, the pleadings are complete.

3. Opportunity is granted to the State to file its affidavit considering the notings dated 03/06/2022

at page 190 of the paperbook in Writ Petition No.450 of 2022. The notings at least, prima facie, indicate that the Government directive was upon considering the context and apprehensions expressed by Hon'ble Minister for Housing and Hon'ble Minister for Tourism. The objection raised by the Minister (Housing) was about inadequate rate. The objection raised by the Minister (Tourism) was about traffic congestion. Mr Munj, now states that if the objections were to be about traffic congestion, then, there was no question for issuing directives for re-auction. He submits that the objection considered by the notings of 03/06/2022 was about the rates.

4. Accordingly, affidavit to be filed latest by 09/01/2023. If no affidavit is filed by 09/01/2023, the matter will nevertheless be taken up for final disposal at the stage of admission.

5. Stand over to 11/01/2023 for final disposal at the stage of admission."

50. Mr Sudhir Kerkar, Managing Director of GHB, filed an affidavit on 31.10.2022. Although some preliminary objections were raised in the affidavit, Mr Bhobe, the learned Counsel for GHB, did not urge any arguments supporting such preliminary objections. On the contrary, Mr Bhobe submitted that there was no flaw in the allotment process. Still, the Board went by the Government directions, which are binding on the Board and issued the impugned cancellation of allotment orders. Mr Bhobe

submitted that all this is reflected in the notings placed on record by the petitioners along with their petitions.

51. Smt Amonkar's affidavit says that the same is based on the records available with her office and she craves leave to file a detailed affidavit if required. By our order dated 04.01.2023, we had clarified that the matter would be taken up for final disposal at the admission stage. When the case was taken up for final hearing on 11.01.2023, no request was made for filing a further affidavit. Smt Amonkar's affidavit does object to the entertainment of these petitions on the ground that the disputes are purely contractual and would involve adjudication into disputed questions of fact. However, this objection was not raised or pressed by the learned Advocate General, Mr Bhobe or Mr Kantak.

52. Even otherwise, the objection to the maintainability or the entertainability of the petitions, with respect, lacks substance. First, there were no disputed questions of fact. The impugned actions grossly violated the principles of natural justice and fair play. Finally, there were allegations of gross unfairness, which have been made good by the petitioners.

53. Smt Amonkar's affidavit asserts that the impugned Government decision was based on objections raised by Minister (Transport), that is, Mr Rohan Khaunte, concerning commercialisation, congestion, etc. and the objections raised by Hon'ble Minister (Housing) concerning the inadequate rates fetched by plots 'H' and 'I' at the E-auction. However, there is no statement in Smt Amonkar's affidavit that the impugned Government decision was based exclusively on Minister (Transport)'s objection about commercialisation, congestion, etc. This is evident from a perusal of the statements in paras 13 to 18 of Smt Amonkar's affidavit.

54. Since there was a challenge to the Government's source of power to issue the impugned communication, Smt Amonkar refers to Section 51 of the GHB Act, suggesting that the said provision was the source. However, some vague statements were also made that the Government always has powers to issue such directions without precisely qualifying the source and other than referring to the provisions of Section 51 of the GHB Act.

55. Based on the above position, the first question to be determined is the legal status of the impugned communication dated 07.06.2022 and the decision in the notings annexed to the same. Could the impugned communication dated 07.06.2022

and the decision in the notings annexed to the same constitute a Government decision in terms of Articles 162 and 166 of the Constitution? Further, could they constitute "directions" under any of the provisions of the GHB Act?

56. The above questions arise because neither the impugned communication nor the submissions at the final hearing were clear about the legal status of the impugned action or the source of power under which the impugned action was taken. At least, Smt Amonkar's affidavit on behalf of the State Government referred to Section 51 of the GHB Act as the source of power. However, while not abandoning Section 51 of the GHB Act, the learned Advocate General attempted to invoke Section 124 of the GHB Act and the "inherent powers" of the Government to support such decisions.

57. The circumstance that the impugned orders do not quote the precise Section under which the power was exercised or even mention the wrong Section is never fatal. It is always open to indicate the power source in the affidavit supporting the impugned order. In any case, it is always open to show the power source at the stage of the final hearing. However, when challenged, the source of power must be disclosed. This vital issue cannot be obfuscated or confused, perhaps to escape compliance

with statutory or constitutional provisions. Such calculated confusion or avoidance will not pass muster in proceedings for judicial review. Besides, such confusion and tentativeness, whether calculated or otherwise, spell non-application of mind vitiating the decision-making process.

58. The learned Advocate General did submit that the impugned communication dated 07.06.2022 and the decision in the notings which accompany it is an executive or administrative order. He offered that such executive or administrative orders need not contain elaborate reasoning or reasons, unlike in judgements and orders by quasi-judicial or judicial authorities.

59. Since the learned Advocate General refers to the impugned communication as an executive or administrative order, we cannot avoid observing that from the perusal of the impugned communication dated 07.06.2022 or the so-called decision in the notings which accompany the same; there is not even the slightest semblance of compliance with the predicates of Article 166 of the Constitution. The action is not expressed to be taken in the name of the Governor. Also, there is no authentication as contemplated by Article 166(2) of the Constitution.

60. The impugned communication dated 07.06.2022, signed by the Section Officer (Housing), who was probably not even of the rank of an under-secretary, states that she was forwarding herewith "*the decision taken by the Government in this department's file*". The file notings from pages 1/N to 19/N were annexed to this communication without even indicating which was the precise decision. This hardly is an appropriate manner for either taking or communicating Government decisions intended to affect parties or visit parties with serious civil consequences. Further, this is hardly the proper manner of issuing statutory directions under the GHB Act. Based upon the impugned communication and the so-called decision in the notings which accompanied this communication, GHB was not justified in adopting any resolution on 15.06.2022 or issuing the impugned communication dated 12.07.2022 cancelling the allotment and sale favouring the petitioners.

61. As noted earlier, there was no compliance with the Constitutional requirements. Compliance with the constitutional provisions of Article 166(2) is not a mere formality in every case. The importance of this constitutional requirement has been explained by the Hon'ble Supreme Court in several decisions, including but not restricted to *State of Uttaranchal and Anr.*

*V/s. Sunil Kumar Vaish & Ors.*⁴, *State of U.P. V/s. Neeraj Awasthi & Ors.*⁵, *Shanti Sports Club and Ant. V/s. Union of India & Ors.*⁶, *State of Punjab V/s. Sodhi Sukhdev Singh*⁷, *Bachhittar Singh V/s. State of Punjab*⁸, *State of Bihar V/s. Kripaly Shankar*⁹, *Rajasthan Housing Board V/s. Shri Kishan*¹⁰, *Sethi Auto Service Station V/s. DDA*¹¹.

62. The Hon'ble Supreme Court has explained that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in the manner specified in rules made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)]. In other words, unless an order is expressed in the name of the President or the Governor and is authenticated in the manner

4 (2011) 8 SCC 670

5 (2006) 1 SCC 667

6 (2009) 15 SCC 705

7 AIR 1961 SC 493

8 AIR 1963 SC 395

9 (1987) 3 SCC 34

10 (1993) 2 SCC 84

11 (2009) 1 SCC 180

prescribed by the rules, the same cannot be treated as an order on behalf of the Government.

63. The Hon'ble Supreme Court has explained that a noting recorded in the file is merely a noting simpliciter and nothing more. It represents simply an expression of opinion by a particular individual. By no stretch of the imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting the right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2).

64. In *Neeraj Awasthi* (supra), in the specific context of “*directions*” issued by the State Government to U.P. Krishi Utpadan Mandi (Market Board) under the powers conferred upon the State Government by Section 26-M of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, the Hon'ble Supreme Court held that such “*directions*” must be in terms of the constitutional

scheme that is upon compliance with the requirement of Article 162 read with Article 166 of the Constitution. Furthermore, the Hon'ble Supreme Court also held that “*directions*” must pertain only to policy questions and not interfere with the Board's day-to-day functioning.

65. Recently, we examined the legal status of a former Chief Minister's note in the file of *Shah Technical Consultants Pvt. Ltd. & Anr. V/s. The Public Works Department, Government of Goa & Anr.* (Writ Petition No.482 of 2022 decided on 16.11.2022). There, the petitioners relying upon the former Chief Minister's noting in the file, sought a writ of mandamus to recover consultancy fees of ₹21,30,72,298/-.

66. The State Government resisted the petition by urging that a mere noting in the file cannot be regarded as a Government decision even though the noting was made by the former Chief Minister. The learned Advocate General forcibly contended that no mandamus could be issued based on such noting or by treating such noting as a Government decision. Relying upon most of the above-referred decisions of the Hon'ble Supreme Court, we upheld the learned Advocate General's contention that the mere noting in the file of the former Chief Minister would not constitute a Government decision unless the same culminates

into an order following the constitutional scheme in Article 166. Our order quotes the Hon'ble Supreme Court saying that the business of the State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires a particular mode or manner in which such decisions can be taken and given effect to.

67. In *Babu Verghese & Ors. V/s. Bar Council of Kerala & Ors.*¹², the Hon'ble Supreme Court has held that it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor V/s. Taylor*¹³, which Lord Roche followed in *Nazir Ahmad V/s. King Emperor*¹⁴, stated :

“Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

68. The Hon'ble Supreme Court has since approved the above rule in *Rao Shiv Bahadur Singh V/s. State of V.P.*¹⁵ and again

¹² (1999) 3 SCC 422

¹³ (1875) 1 Ch.D 426

¹⁴ AIR 1936 PC 253

¹⁵ AIR 1954 SC 322

in *Deep Chand V/s. State of Rajasthan*¹⁶. A Three-Judge Bench of the Court considered these cases in *State of Uttar Pradesh V/s Singhara Singh*¹⁷, and the rule laid down in *Nazir Ahmad's* case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.

69. Therefore, if any petition were to have been instituted, say by the intervenors in the present petition, to enforce the Government decision in the notings accompanying the impugned communication dated 07.06.2022, then, if the Government wished, it was always possible for the Government to urge that the noting in the file was not enforceable in the absence of its issue consistent with the constitutional scheme in Article 166. This was the precise defence taken by the State Government and even upheld by us in *Shah Technical Consultants Pvt. Ltd.* (supra). Because the Government should not be able to take such self-serving stances, the Hon'ble Supreme Court has repeatedly addressed the importance of expressing executive action consistent with the provisions of Articles 77 and 166 of the Constitution.

16 AIR 1961 SC 1527

17 AIR 1964 SC 358

70. Thus, the impugned communication dated 07.06.2022 and the decision in the notings accompanying the same hardly qualify as a Government decision consistent with the requirements of Article 166 of the Constitution. In any case, the same hardly constitutes a statutory direction under the GHB Act. Therefore, the GHB exceeded its jurisdiction in regarding itself to be bound by the same and proceeding to cancel or revoke the allotment or sale of the said plots favouring the petitioners. Admittedly, there was no independent application of mind by the GHB. On the contrary, the GHB has repeatedly endorsed its original decision and asserted it was perfectly legal. Even the Government has never alleged or pointed out any illegality in the original decision of GHB of receiving full consideration and allotting the plots to the Petitioners.

71. Though we have adverted to the aspect of total non-compliance with the provisions of Article 166 of the Constitution, we clarify that we do not base our final conclusion on this aspect. Because we are conscious of some precedents which take the view that such breaches by themselves may not vitiate the decision. However, even such precedents hold that such decisions cannot claim the immunity conferred by Article 166(1).

72. As regards the source of power to issue the impugned communication dated 07.06.2022 or the decision in the notings that accompany the same, as noted earlier, there is no conceptual clarity whatsoever either in the impugned communication, in the decision in the noting, the affidavit, or with respect, the submissions of the learned Advocate General. Indicating the power source, at least at some stage, was imperative because each power source has its own peculiar predicates and hedges. The non-indication of any power source is indicative of the non-application of the mind. But, at least, the State Government's affidavit points to Section 51 of the GHB Act and even quotes the same, suggesting power was exercised under the said provisions. Therefore, the provisions of Section 51 of the GHB Act are first required to be considered to determine whether the impugned action can be traced to this provision.

73. Section 51 of the GHB Act is found in Chapter V, which is concerned with **housing, improvement or building schemes**. This Chapter comprises Sections 28 to 52. This Chapter has to be distinguished from the following Chapter VI, concerned with the **acquisition and disposal of land**. Chapter VI comprises Sections 53 to 59.

74. Section 51 of the GHB Act reads as follows:

“51. Power of Government to call for the records of Board and to modify housing, improvement or building schemes – (1) Notwithstanding anything contained in the foregoing provisions of this chapter, the Government may, at any time, in the case of any housing, improvement or building scheme which is proposed to be framed or which has been framed by the Board or which is being executed by it, call for and examine the records of the Board relating to such scheme and if, after making the examination and after considering the representations, if any, of the Board and the local authority concerned, it appears to the Government that such scheme should be modified, annulled or remitted for reconsideration to the Board or that such scheme should be executed with modifications, it may pass orders accordingly.

(2) The Government may stay the execution of any such scheme pending the exercise of its powers under sub-section (1) in respect thereof.

(3) Any housing, improvement or building scheme which has already come into force but has been modified by the Government under sub-section (1) shall have effect as if it had been duly sanctioned by the Board or the Government, as the case may be, under Section 41. The scheme as modified shall be published in accordance with the provisions of Section 42 and on such publication, the scheme so modified shall come into force and have effect accordingly.”

75. As the title of Section 51 suggests, the same empowers the Government to call for records of the Board and to modify housing, improvement or building schemes. This Section nowhere empowers the Government to direct the GHB to revoke or cancel the individual allotment or sale of plots to parties like the petitioners. The scheme for selling several commercial or other properties at various locations in the State of Goa was approved by the Government vide letter dated 27.07.2021. The impugned communication dated 07.06.2022 or the notings which accompany the same do not even touch the scheme as was approved vide letter dated 27.07.2021.

76. The impugned decision, therefore, neither refers to nor modifies the letter dated 27.07.2021 or the scheme or schemes approved by the Government vide the said letter. Consequently, it is apparent that the impugned decision has no nexus with Section 51 of the GHB Act and the power exercised is not relatable to or can be sourced to Section 51 of the GHB Act. Therefore, the impugned decision is ultra vires Section 51 of the GHB Act. The same would never have formed the basis for GHB revoking or cancelling the allotments or sales favouring the petitioners.

77. Section 51 of the GHB Act contemplates “*an order*”, as is clear from the expression “*it may pass orders accordingly*” in

Section 51(1) of the GHB Act. The impugned communication dated 07.06.2022 issued by the Section Officer (Housing), or for that matter, the notings accompanying this communication, can hardly be regarded as any order under Section 51 of the GHB Act. Thus, there is no order as contemplated by Section 51 of the GHB Act made by the Government in the present case. Absent such an order, the GHB's impugned resolution or decision has no legal legs to stand on.

78. Further, before passing an order under Section 51 of the GHB Act, the Government is obliged to examine and consider representations of the Board and the local authority concerned. This is evident from the expression "*after making the examination and after considering the representations, if any, of the Board and the local authority concerned.....*". This expression and this requirement, couched in mandatory terms, contemplates granting an opportunity to the Board and the local authority concerned to make representations, if they wish to, concerning the proposed modification of schemes.

79. In the present case, no such opportunity was ever given to GHB or the Village Panchayat of Penha De Franca (local authority), which had already provided its NOC for the commercial use of the said plots. The GHB had also repeatedly

asserted that it had complied with all legal procedures and formalities concerning the E-auction and allotment of plots to the petitioners. Therefore, the Government should have at least examined and considered these matters as representations of the Board or the local authority concerned. Instead, the notings on record show that there was no examination and consideration before purporting to exercise powers under Section 51 of the GHB Act.

80. In *Chairman, Life Insurance Corporation of India & Ors. V/s. A. Masilamani*¹⁸, the Hon'ble Supreme Court, has explained that the word “*consider*” is of great significance. The dictionary meaning of the same is “*to think over*”, “*to regard as*”, or “*deem to be*”. Hence, there is a clear connotation that there must be an active application of the mind. In other words, the term “*consider*” postulates consideration of all relevant aspects of a matter. Thus, the opinion formation by the statutory authority should reflect an intense application of mind regarding the material available on record. Moreover, the Hon'ble Supreme Court has held that the authority's order should reveal such application of mind.

18 (2013) 6 SCC 530

81. In *Bhikhubhai Vithlabhai Patel V/s. State of Gujarat*¹⁹, the Hon'ble Supreme Court reiterated that the term “consider” means to think over; it connotes that there should be an active application of the mind. In other words, the term “consider” postulates consideration of all the relevant aspects of the matter. A plain reading of the relevant provision suggests that the State Government may publish the modifications only after consideration that such modifications have become necessary. The word “necessary” means indispensable, requisite; indispensably requisite, useful, incidental or conducive; essential; unavoidable; impossible to be otherwise; not to be avoided; inevitable. The word “necessary” must be construed in the connection in which it is used. The opinion formation by the State Government should reflect the intense application of mind regarding the material available on record that it had become necessary to propose substantial modifications to the draft development plan.

82. The Hon'ble Supreme Court further held that the Court is entitled to examine whether there has been any material available with the State Government and the reasons recorded, if any, in the formation of opinion and whether they have any rational connection with or relevant bearing on the formation of the opinion. The Court is entitled, particularly when the formation

¹⁹ (2008) 4 SCC 144

of the opinion is challenged to determine whether the formation of the opinion is arbitrary, capricious or whimsical. It is always open to the court to examine whether reasons for the formation of an opinion have a rational connection or relevant bearing to the formation of such opinion and are not extraneous to the purposes of the statute.

83. Section 51(3) of the GHB Act provides that even the order made under Section 51(1) does not come into force no sooner the same it is made. Based on the order, the Board is required to modify the scheme, and the scheme as modified must be published in accordance with Section 42. It is only on such publication that the scheme so modified shall come into force and have effect accordingly.

84. Section 42 of the GHB Act, which is also a part of Chapter V concerning housing, improvement or building schemes, provides that whatever the Board or the Government sanctions housing, or improvement of building schemes, “***it shall be published by notification***”. Section 2(o) of the GHB Act defines “*notification*” to mean notification published in the Official Gazette. At least we were not shown any order under Section 51(1) of the GHB Act published in the Official Gazette.

Since there is no order as such, it is inconceivable that some non-existent order is published in the Official Gazette.

85. As noted earlier, Chapter V of the GHB Act, in which Section 51 appears, is concerned with housing, improvement or building schemes. Therefore, Section 51 is concerned with the modification of housing, improvement or building schemes. In contrast, Chapter VI of the GHB Act is concerned with acquiring and disposing of land. Section 58, part of Chapter VI, deals with the power to dispose of land owned or vested in the GHB.

86. For the revocation of an allotment or sale of the auctioned plot, the Government, by exercising its powers under Section 128 read with Section 58 of the GHB Act, has framed the Goa Housing Board (Registration, Allotment of Sale of Plots) Rules, 2016. Rule 19 of the said rules provides for the circumstances in which the allotment of a plot if any made, shall stand cancelled. Such powers for cancellation of allotment of plots already made, are vested in the GHB and not in the Government or the Hon'ble Chief Minister. The impugned decision, therefore, is clearly ultra vires and cannot be sustained by sourcing the power to Section 51 of the GHB Act.

87. For all the above reasons, we hold that the impugned communication dated 07.06.2022 or the decision referred to in the notings accompanying the same cannot be called a Government order under Section 51 of the GHB Act. In any case, the same breaches the mandatory predicates of Section 51 of the GHB Act. Therefore, the same is liable to be struck down. Therefore, based upon the same, GHB could not have cancelled the valid allotment or sale of the said plots to the petitioners.

88. The State Government's affidavit does not refer to Section 124 of the GHB Act as being the source of power for the impugned decision. However, the learned Advocate General did refer to the decision in *Rajasthan Housing Board* (supra). He pointed out that Section 60 of the Rajasthan Housing Board Act, 1970, was pari materia with Section 124 of the GHB Act. In the said case, he pointed out that the State Government issued directions to the Board to cancel allotments made in a public auction due to news reports of large-scale boggling. Due to the bungling, the plots fetched the highest bids of ₹5750/- per sq. meter when there was material to suggest that in the past, plots in the said area had fetched a price of ₹10,000/- per sq. meter. As a result, based on a detailed consideration of the matter, including the report of the Financial Commissioner, the State Government

disapproved the auction and directed the holding of a fresh auction.

89. The Hon'ble Supreme Court found some defects in the ultimate decision resulting in the auction cancellation. However, the Hon'ble Supreme Court held that the Court exercising discretionary power under Article 226 of the Constitution should not have interfered, keeping the larger public interest in mind. The Court noted that there was enough material before the State Government to show that in the past, plots in the area had fetched a price of ₹10,000/- per sq. meter, and the highest bid made at the auction was merely half that is, ₹5750/- per sq. meter. Further, there was enough material to indicate that the auction had not been conducted fairly. The Hon'ble Supreme Court, therefore, held that the directions issued by the Government by invoking the provisions of Section 60 of the Act were in the interest of the Housing Board to generate revenue and to augment its finances. In short, such directions were necessary and expedient to carry out the purposes of the Act.

90. In the present case, at least the learned Advocate General did not contend that the impugned decision was issued in the interest of the GHB or to enable the GHB to generate revenue and augment its finances. The Minister (Housing) did express

such sentiments in his notings qua plots 'H' and 'I', which had fetched bids of ₹37,500/- and ₹36,000/-. However, there was no question of such issues arising with the auction of plot 'G', which had fetched a bid of ₹71,000/- per sq. meter as against the minimum reserved bid of ₹35,000/- per sq. meter. Therefore, the decision in *Rajasthan Housing Board* (supra) is distinguishable. Moreover, the impugned direction in the *Rajasthan Housing Board* (supra) did not require the Board to act in breach of the Act or the Rules made thereunder. Only the approval for the auction was declined based on solid and relevant material on the record.

91. In *Bangalore Development Authority V/s. R. Hanumaiah & Ors.*²⁰, in the context of the provisions of Section 65 of the Bangalore Development Authority Act, 1976, which are also pari materia with the provisions of Section 124 of the GHB Act, the Hon'ble Supreme Court expressly disagreed with the contention that the directions issued by the Hon'ble Chief Minister through his note were binding on the Bangalore Development Authority (BDA) or that the BDA was bound in law to re-convey the land in terms of the directions issued by the Hon'ble Chief Minister. The Court held that it was not shown that the Hon'ble Chief Minister was authorised to issue such

directions to BDA. The contention that BDA is bound by all directions of the Government irrespective of the nature and the purpose of the directions was expressly rejected. The Court held that the directions have to be to carry out the objective of the Act and not contrary to the provisions of the Act. The Government can issue directions, which in its opinion, are necessary or expedient for carrying out the purposes of the Act and not otherwise. The Court found that the directions issued by the Hon'ble Chief Minister would destroy the purposes of the Act and, therefore, such directions would not have the sanctity of law.

92. In *K.K. Bhalla V/s. State of M.P. & Ors.*²¹, the Hon'ble Supreme Court followed *Bangalore Development Authority* (supra) and held that the State had no role to play in the matter of individual allotments made favouring "Y". The Court held that even the advice given by the State in such matters would be ultra vires. The State, as already held, could not implement its purported policy decision as regards allotment of land on concessional rates. Such a direction or even a policy decision in that behalf was ultra vires and contrary to the statutory rules framed by JDA. Action by way of a policy decision or otherwise at the hands of a statutory authority must be in consonance with the statutory rules and not dehors the same.

21 (2006) 3 SCC 581

93. In *State of U.P. & Ors. V/s. Maharaja Dharmender Prasad Singh & Ors.*²², which was incidentally cited by the learned Advocate General, the Hon'ble Supreme Court was concerned with Section 41(1) of the U.P. Urban Planning and Development Act, 1973, which provided that the Authority, Chairman or Vice-Chairman shall carry out such directions as may be issued from time to time for the State Government for efficient administration of the Act. On analyzing such provision, the Hon'ble Supreme Court held that the same could not be construed as a source of power to direct any Authority or functionary under the Act to carry out something which that Authority or functionary is not, otherwise, competent to do or carry out under the Act. The Hon'ble Supreme Court observed that Section 41(1) is not a Super Henry VIII clause for the supply or source of additional provisions and powers not already obtaining under the Act.

94. In the present case, the impugned decision/directions have the effect of directing the GHB to act contrary to Rule 19 of the said rules framed by the Government itself. Neither under Section 51 nor Section 124 of the GHB Act can the Government direct the GHB to act contrary to the rules framed by the Government. Firstly, it is quite doubtful whether any directions

22 (1989) 2 SCC 505

can be issued under Section 124 of the GHB Act concerning the day-to-day affairs of the GHB Act. It is also doubtful whether directions can be issued to cancel individual allotments without modifying schemes or by disregarding the grounds and procedure referred to in Rule 19 of the said rules enacted by the Government itself. In short, we are not inclined to accept the submission that directions under Section 124 of the GHB Act can overreach the statutory provisions of the GHB Act or rules made thereunder, which rules admittedly have a statutory force.

95. If Section 124 is to be interpreted as empowering the Government to issue directions to the GHB to act contrary to the provisions of the GHB Act or the statutory rules made under the GHB Act, then Section 124 of the GHB Act will have to be held as a Super Henry VIII clause empowering the Government to direct the GHB to act even in breach of the law or conferring absolute immunity to ultra vires or wholly illegal actions of GHB. This cannot be. Otherwise, an Act that the GHB is legally prohibited from doing would be immunised, based upon the directions issued by the Government under Section 124 of the GHB Act. This is not and could not have been the intention of the Legislature while enacting Section 124 of the GHB Act. Therefore, assuming that the impugned communication dated 07.06.2022 and the decision in the notings accompanying the

same is relatable to Section 124 of the GHB Act, the same is ultra vires and unsustainable.

96. The learned Advocate General's contention, based upon some general theory of "*inherent powers*" of the Government, does not, with respect, commend to us. Firstly, our Constitution has adopted a limited form of Government. Our constitution envisages the *rule of law* and not the *rule of men*. It recognises that howsoever high one may be, one is under the law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits. The Hon'ble Supreme Court made such observations in *Pancham Chand & Ors. V/s. State of Himachal Pradesh & Ors.*²³, when the Hon'ble Chief Minister of the State issued directions to the Transport Commissioner for granting of stage carriage permit for a particular route under the MV Act, 1988. The Transport Minister promptly obliged. However, the Hon'ble Supreme Court struck down the permit by holding that the direction of the Hon'ble Chief Minister amounted to a violation of the constitutional scheme and improper interference with the functioning of statutory authorities.

23 (2008) 7 SCC 117

97. Secondly, the issue of auction, allotment or cancellation of allotment of plots is governed by the GHB Act and the said rules made thereunder. No provision was shown to us empowering the Government or the Hon'ble Chief Minister to revoke/cancel or direct the revocation/cancellation of allotment of plots to parties, particularly where such allotment was admittedly made after scrupulous compliance with the provisions of the GHB Act and the rules made thereunder. In *State of Sikkim V/s. Dorjee Tshering Bhutia & Ors.*²⁴, the Hon'ble Supreme Court has explained that even the executive power of the State is excluded from the field covered explicitly by the statute. Therefore, the arguments based on the so-called exercise of inherent executive powers cannot be accepted.

98. The learned Advocate General did argue that since the approval to auction the plots was given by the State Government, it had the inherent power to revoke such approval. Factually, such approval has not been withdrawn by the State Government vide the impugned action or otherwise. The approval is already acted upon. The auction was complete, and even sale letters were issued to the Petitioners. In any case, no provision is shown empowering the Government to cancel a valid allotment made by the GHB pursuant to an approval granted by the Government for the

24 (1991) 4 SCC 243

disposal of plots through public auction. Again, as noted earlier, if the impugned action is unsustainable under Sections 51 and 124 of the GHB Act, then, surely, based upon some vague and undefined inherent executive power, the Government cannot direct the GHB to act contrary to the statutory rules or the provisions of the GHB Act.

99. Now, even if it is assumed that the State Government had powers to issue the impugned direction, the impugned direction would be in the nature of a statutory order or statutory direction. To such a statutory order or direction, the principles laid down in *Commissioner Of Police, Bombay V/s. Gordhandas Bhanji*²⁵ and *Mohinder Singh Gil & Anr. V/s. The Chief Election Commissioner, New Delhi & Ors.*²⁶, would apply.

100. In the above two cases and several others, the Hon'ble Supreme Court has held that when a statutory functionary makes 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 affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later

25 AIR 1952 SC 16

26 1978 AIR 851

brought out. In *Gordhandas Bhanji* (supra), the Hon'ble Supreme Court held that public orders, publicly made, in the exercise of statutory authority could not be construed in the light of the explanation presently given by the Officer making the order of what he meant or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed. Therefore, they must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.

101. Since the learned Advocate General pointed out to the noting of the Hon'ble Chief Minister dated 03.06.2022 as being the decision or the direction of the Government, it must be noted that this decision does not refer to the retention of the three plots as open spaces. Even the affidavit filed by the State Government does not refer to the retention of these three plots as open spaces. The statement made by the learned Additional Government Advocate categorically refuted this line of reasoning. Only the learned Advocate General now contends that this is the true reason for the cancellation of the allotment or sale of the plots. This contention, with respect, cannot be accepted either on the material produced on record or considering the legal position

concerning public orders publicly made as explained by the Hon'ble Supreme Court in *Gordhandas Bhanji* (supra) & *Mohinder Singh Gil* (supra).

102. The only reason (if at all) the noting dated 03.06.2022 reflects is the so-called consideration of "*the context herein & apprehensions of Hon'ble Minister (housing) & Hon'ble Minister (Tourism)*". This means that the impugned decision is based on the apprehensions of the Minister (Housing), which concerned inadequate rates for plots 'H' and 'I' and the Minister's (Tourism) apprehensions, which concerned congestion and commercialization. The objections of two Ministers were certainly not on the same page in the sense the objections were opposed to one another. Therefore, the decision could have perhaps been based on one or the other, assuming that there was any material on record for the projected apprehensions. But the decision could not have been based on cumulative consideration of both objections. This would render the impugned decision irrational and contradictory.

103. No advantage can be taken of the fact that the reasons are vague, contradictory, or irrational; therefore, supplying such reasons in the course of oral arguments cannot be countenanced. Such decisions have to stand or fall based on the reasoning

reflected in the decisions themselves. There is no question of adding reasons under the garb of interpreting the vague or contradictory decision. There is no question of adding reasons taking advantage of the fact that the original decision is vague, irrational or contradictory.

104. Vagueness, irrationality or contradictory reasons indicate non-application of mind, which is a good ground for judicial review even of executive or administrative orders. Here, the State purports to elevate the impugned decision to the status of a direction or statutory order under Section 51 or 124 of the GHB Act. Therefore, the principles in *Gordhandas Bhanji* (supra) and *Mohinder Singh Gil* (supra) would apply rigorously. Moreover, as noted, the State Government's affidavit aligns with the noting and not with the submission that traffic congestion or commercialisation was the only reason for the impugned decision. For these reasons, the impugned decision will have to be struck down, assuming that the same was intra vires.

105. In *R V/s. Secretary of State for Foreign and Commonwealth Affairs*²⁷, the Court of appeals relied on Lord Upjohn's speech in *Padfield V/s. Minister of Agriculture*,

²⁷ (2002) All ER (D) 450

*Fisheries and Food*²⁸ “.... if he [sc. a Minister of the Crown] does not give any reason for his decision it may be, if circumstances warrant it, that a court may be at liberty to come to the conclusion that he had no good reason for reaching that conclusion and order a prerogative writ to issue accordingly.” and held that where a Minister has given a conflicting or apparently conflicting reason, the same can be said to be irrational and interfered with.

106. On the aspect of the objection based on alleged traffic congestion or commercialisation, the record discloses that GHB considered such objection in its 502nd meeting held on 04.01.2022. The extract of these Minutes is quoted in paragraph 33 of this judgement and order. The objection about traffic congestion or commercialisation was again considered threadbare by the Additional Secretary (Housing), whose notings are reflected at pages 6/N and 8/N accompanying the communication dated 07.06.2022.

107. These notings dated 13.04.2022 are transcribed below for the convenience of reference.

"Order of Addl. Sec. (Housing)

May Kindly peruse the submissions of M.D. (GHB) as at 46/C-43/C, and the observations of this Department listed at points (1) to (11) on prepages 5/N and 6/N (above).

2. The Hon'ble MLA (Porvorim) has demanded that the allotment made by GHB in favour of 03 allottees for commercial plots in Porvorim Housing Scheme be cancelled

His argument is on the basis of some purported assurance by Former CM and that these plots are a hindrance from planning point of view.

3. The Govt. can invoke its right to stall or cancel the process of allotment ab initio, only and only if, there is any deficiency in the process and procedure or any malafides/criminal offence noted in the process (like in the case of Colvale Housing Scheme, commercial allotment of 2010-2011)

4. In this case, the GHB has followed due process as per the GHB Act, 1968 and plot Rules, 2016

There is nothing on record, nor is there anything which can even indicate or any deficiency of process. This has been listed at point (i) and (ii) on 5/N-6N

5. GHB is an autonomous Institution, "outside" the consolidated fund of the State Government does not support any financial scheme for GHB and it has to surmise from their own resources.

At present, Govt. of Goa has to provide the GHB (Rs.16.43 Crore towards loss on Tanmar line work in Colvale), (Rs.7.15 Crores towards

Plot taken by Revenue Dept in Porvorim) and (Rs.15.90 Crores towards Plot for Jail by Home Dept.)

6. This being the case, and since there is nothing tenable On the demand made by Hon'ble MLA (Porvorim) and to Secure the interest of the GHB; Govt. may reiterate the decision taken by GHB in its 502 meeting held on 04/01/2022 and approves by Govt., which rejected the claims/objections of the Hon'ble MLA, Porvorim.

Submitted.

*Sd/-
13.04.2022”*

108. The notings of the Additional Secretary (Housing) were approved by Secretary (Housing) on 18.04.2022. The notings even refer to the location and prominent landmarks around the three plots. There is a reference to GHB constructing a market complex where ample parking space has been provided. A joggers park has been developed in the open space, and a recreation plot has been allotted for the construction of the Hanuman temple, which has been completed. The notings record that the commercial plot allottees will also provide necessary parking infrastructure as per the prevailing Town and Country Planning bylaws.

109. The notings, time and again, reiterate that GHB had adhered to and complied with GHB's extant guidelines and allotment rules. The notings record that *“the apprehension of improper planning, congestion, parking, etc., sought to be displayed by the Hon'ble MLA, are rather misplaced in the context of existing developments, available free space, movements capacity, etc., which the TCP Department and N.H. Authority have complied with. The representation thus made on this count for cancellation of the allotment may be filed as it is devoid of any substantial reference for the public purpose”*.

110. The notings record how the GHB had prepared a detail scheme for disposing or otherwise dealing with its properties and plots. The notings record that such scheme was duly forwarded to the State Government, and the State Government vide letter dated 27.07.2021 had approved the scheme. The notings record that the sale of three commercial plots at Porvorim was in terms of the scheme. The notings record that several projects have been undertaken under the scheme. Finally, the notings register that, as observed earlier, till date, there is no revocation of the letter dated 27.07.2021, even though after the issue of the Sale Letter to the petitioners, the scheme implementation was complete qua the sale of the three auctioned plots.

111. The notings refer to the 495th and 496th meeting of the GHB, relating to the E-auctioning of plots 'G', 'H' and 'I' at Porvorim consistent with the scheme approved by the Government. The notings referred to Mr Rohan Khaunte's objections when he was not a part of the cabinet and their rejection by the Board. The notings most importantly record that the three auctioned plots were zoned as "*commercial*" by the Town and Country Planning Department after carefully considering all planning aspects. The FAR of the plots was changed in 2015 and enhanced from 80 to 150. The Village Panchayat of Penha de Franca has granted its NOC. The GHB would gain revenue of ₹54.47 crores, and there shall be a massive loss to the GHB if the allotment is cancelled. The noting stated that the **"land parcel which had undergone a thorough process of proper planning and ratified by the TCP Department cannot be subject to misplaced fears of local residents of sole risk and cost of GHB."**

112. The notings on pages 5/N and 6/N also record that "*the cancellation of the plots will invite unavoidable litigation as parties may approach Hon'ble Court and the GHB, as well as the Government, will find it difficult to defend its action or arbitrary withdrawal/cancellation of auction process*". The further noting records that "*no point of time any written assurance was provided*

to local residents regarding no development on commercial plots and deliberated that Porvorim is growing rapidly and the pace of development will pick up in days to come".

113. The noting also records that all the three highest auction bidders have fulfilled the eligibility conditions and paid the entire dues before the due date as contemplated by the said Rules. The noting records that the cancellation of allotment can be made by the Board only if there are violations of the conditions of the Rules in force by the allottees concerned and that none of the allottees, in this case, had violated the Rules. The noting also records that the Government can cancel the entire allotment process if it is found that the allotment process violated the provisions of the GHB Act and the said Rules, which does not appear to be so in the present case.

114. Now, the Hon'ble Chief Minister is undoubtedly entitled to overrule the notings put up by the bureaucrats. However, the overruling decision must reflect a minimal consideration of the points raised in such notings. The reasons need not be very elaborate, but the reasons should at least be clear and cogent. Besides, there must be some material on record to back such reasons. In such matters, a mere *ipse dixit* will not suffice.

Unfortunately, the impugned decision or the noting dated 03.06.2022 is empty of all such attributes.

115. To qualify as a reasonable decision, the decision or the material in support of the decision must reflect the application of mind to vital and relevant consideration. The fact that the allotment/sale of the plots was under the approval granted for the E-auctioning of such plots by the Government itself was a relevant consideration. But the same has not been taken into account at all. The circumstance that Mr Rohan Khaunte, who was then in the opposition, objected to the auction a day before the auction but based on such objection, the public auction was not restrained was also a relevant consideration that was not taken into account at all. The detailed review of Mr Khaunte's objection by the GHB and the bureaucrats, who found such objections untenable, was not even considered.

116. The circumstance that these three plots were zoned as commercial plots by increasing their FAR in 2015 by the Town and Country Planning Department of the Government of Goa was vital and relevant. To date, no steps have been taken to change this zoning. This zoning was after a lengthy process adopted by the TCP Department, which included inviting

objections from the public and other stakeholders. Even this aspect was never considered before taking the impugned decision.

117. The circumstance that the GHB scrupulously followed all rules and regulations for allotting/selling the plots to the petitioners was also a relevant consideration. Furthermore, the circumstance that the GHB's financial position was precarious and the GHB had already spent the amount of ₹54.47 crores received from the petitioners for payment of salaries, pension, etc., was also a relevant consideration. All these considerations were, however, completely ignored. The notings indicate that the GHB had made it clear that it has no funds to even refund this amount of ₹54.47 crores to the petitioners, whose allotment/sale be cancelled. However, there is no consideration of this vital aspect.

118. The learned Counsel for the petitioners pointed out that the so-called oral promise purportedly made by the former Chief Minister concerned the property surveyed under no.130 as per Mr Khaunte's objection. However, the three auctioned plots are a part of Survey no.129. Therefore, even this aspect was never considered.

119. The predicament of the petitioners was also never considered. The petitioners have now pleaded that they have obtained loans and financial assistance to pay the GHB. They have pleaded that the action of the State and GHB is arbitrary and unfair. They have claimed that the petitioners' legitimate expectations were not considered. They have pleaded that there was no compliance with the principles of natural justice and fair play. All the above aspects have not at all been considered.

120. The unreasonableness of the impugned decision is evident from the circumstance that several relevant and vital considerations were not even taken into account. The impugned decision violated the principles of natural justice and fair play by directing the GHB to violate these principles and even act contrary to the said rules. The impugned decision did not consider the legitimate expectations of the petitioners, who had collectively invested an amount of ₹54.47 crores in purchasing the commercial plots. Two petitioners have placed on record documents showing that they have obtained loans from banks and financial institutions to raise this amount. One of the petitioners has placed on record documents concerning the engagement of Architects and Consultants to commence and complete the project expeditiously. All these aspects were required to be considered and have not been considered.

121. In *U.P. Power Corporation Ltd. & Anr. V/s. Sant Steels & Alloys (P) Ltd. & Ors.*²⁹, the Hon'ble Supreme Court was constrained to observe that in this 21st century, when there is a global economy, the question of faith is very important. The Government offers certain benefits to attract entrepreneurs, and the entrepreneurs act on those beneficial offers. However, after that, the Government withdraws those benefits. This will seriously affect the Government's credibility and show the short-sightedness of governance. Therefore, to keep the people's faith, the Government or its instrumentality should abide by their commitments. In this context, the action taken by the appellant-Corporation in revoking the benefits given to the entrepreneurs in the hill areas will sadly reflect their credibility, and people will not take the word of the Government. That will shake the faith of the people in governance. Therefore, to keep the faith and maintain good governance, it is necessary that whatever representation is made by the Government or its instrumentality which induces the other party to act, the Government should not be permitted to withdraw from that. This is a matter of faith.

122. The Hon'ble Supreme Court in *Lalaram & Ors. V/s. Jaipur Development Authority & Anr.*³⁰, held that the

²⁹ (2008) SCC 777

³⁰ (2016) 11 SCC 31

equitable notion of exacting fairness in governmental dealings required that there is no unfettered discretion in public law and that a sovereign authority possessed powers is required to use them for the public good. And that the duty to act fairly and adopt a “fair play in action” procedure also raises a reasonable or legitimate expectation in every citizen to be treated fairly in their dealings with the State and its instrumentalities. This obligation, as a part of good administration, is obligated by the requirement of non-arbitrariness in a State action, which as a corollary, makes it incumbent on the State to consider and give due weight to the reasonable or legitimate expectations of the person, likely to be affected by the decision, so much so that any failure to do so would proclaim unfairness in the exercise of power, thus vitiating the decision by its abuse or lack of bona fides. The besieged decision would then be exposed to the challenge on the ground of arbitrariness. The mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right in all circumstances. Still, the failure to consider and give due weight to it, may render the decision arbitrary. Thus the requirement of due consideration of legitimate expectation formed a part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness and arises out of the

principles of natural justice, and can be invoked as a substantive and enforceable right.

123. In *Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Anr. V/s. Shishir Realty Private Limited & Ors.*³¹, the CIDCO, an instrumentality of the State, allotted a plot to the highest bidder M/s. Metropolis Hotels. Sub-division of this plot was also eventually permitted, and CIDCO executed two separate lease deeds in respect of the sub-divided plot nos.5 and 5A. The auction purchaser took steps to raise finances after mortgaging the plots with the financial institution. At this stage, the CIDCO, supported by the State of Maharashtra or rather at the goading of the State, cancelled the allotments because the sub-division and the consequent allotment of sub-divided plots were improper. The State of Maharashtra duly supported its contentions. The High Court struck down this action.

124. The Hon'ble Supreme Court while dismissing the appeals held that the action of the CIDCO was based upon suo motu inquiry of the Principal Secretary, Urban Development Department for the State of Maharashtra. The Court found that the inquiry was not conducted with an open mind, and principles

31 2021 SCC OnLine SC 1141

of natural justice were flouted entirely. The Court held that natural justice is important while reviewing administrative orders. Providing effective natural justice to affected parties before a decision is taken is necessary to maintain the rule of law. Natural justice is the sworn enemy of intolerant authority. Any attempt by an authority to circumvent the requirement of providing an effective hearing before reaching a conclusion cannot pass muster.

125. The Hon'ble Supreme Court held that as a first step of judicial review, we need to note 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. The Court held that there was no concrete allegation or adjudication on the suggested cartelization. The Court held that there was no illegality or unfairness in the subdivision of the plot. The Court held that when a contract is being evaluated, the mere possibility of more money in the public coffers does not in itself serve the public interest. A blanket claim by the State claiming loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination. The larger public interest in upholding contracts and the fairness of public authorities is also in play. Courts need

to have a broader understanding of public interest while reviewing such contracts.

126. The Hon'ble Supreme Court referred to its earlier decision in *Andhra Pradesh Dairy Development Corporation Federation V/s. B. Narasimha Reddy*³², in which it was held that in the matter of the Government of a State, the succeeding Government is duty bound to continue and carry on the unfinished job of the previous Government, for the reason that the action is that of the “State”, within the meaning of Article 12 of the Constitution, which continues to subsist and therefore, it is not required that the new Government can plead contrary to the State action taken by the previous Government in respect of a particular subject. Being a continuing body, the State can be stopped from changing its stand in a given case. Still, after holding an enquiry, it concluded that the action was not in conformity with the law, and 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 the policy, the State should not change its stand merely because the other political party has come into power. “Political agenda of an individual or a political party should not be subversive of the rule of law.” The Government has to rise above

32 (2011) 9 SCC 286

the nexus of vested interest and nepotism, etc., as the principles of governance have to be tested on the touchstone of justice, equity and fair play.

127. The Court finally reiterated certain well-established tenets of law pertaining to Government contracts. The Court held that constitutional factors are also in play when we speak of government contracts. Governmental bodies, and public authorities, are expected to uphold fairness, equality and the rule of law even while dealing with contractual matters. It is a settled principle that the right to equality under Article 14 abhors arbitrariness. Public authorities must ensure that no bias, favouritism or arbitrariness is shown during the bidding process. A transparent bidding process is much favoured by this Court to ensure that constitutional requirements are satisfied. Fairness and the good faith standard ingrained in the contracts entered into by public authorities mandate such public authorities to conduct themselves in a non-arbitrary manner during the performance of their contractual obligations. Therefore, by merely using grounds of public interest or loss to the treasury, the successor public authority cannot undo the work undertaken by the previous authority. Such a claim must be proven using material facts, evidence and figures. If otherwise, there will remain no sanctity in the words and undertaking of the Government. Businessmen will

be hesitant to enter a Government contract or invest in furtherance of the same. Such a practice is counterproductive to the economy and the business environment in general. The Court concluded that there was a clear element of abuse of bureaucratic power behind the subsequent change in the tender allotment. After conducting a tender process and receiving money, the Government backtracked, leading to prolonged litigation. The CIDCO's order, *inter alia*, annulling the allotment on hyper-technical grounds cannot be sustained for being contrary to the doctrine of fairness. The reasons stated in the order above are perverse and per se based on extraneous considerations. Accordingly, appeals were dismissed with costs.

128. The GHB, in this case, has quite frankly disclosed that its decision was based entirely on the directives of the Government. Even the records disclose that the GHB protested this decision but felt bound by it and passed the resolution on 15.06.2022. Based on this resolution, the GHB resolved/cancelled the allotment of plots to the petitioners. Thus, there was no independent application of mind on whether the directives were relatable to Section 51 or 124 of the GHB Act. Since the so-called directions are legally infirm, the resolutions and the impugned orders cancelling the allotments cannot survive their legal infirmity.

129. The intervenors have at no stage challenged the classification of these plots as commercial plots by the planning departments and the planning authorities since 2015. In any case, the objections of the intervenors based on alleged congestion have been addressed by the GHB and the Secretaries to the Government. The assurance that the intervenors refer prima facie concerned Survey no.130. These plots are a part of Survey No.129. As the Hon'ble Supreme Court observed, the public interest is involved in the Government and the Authorities following the law instead of acting *de hors* the law.

130. The objections of the intervenors were considered by the Board threadbare. The objections were also considered in some detail by the Secretaries to the Government of Goa. The objections based upon lack of planning, traffic congestion, etc., were also considered by the planning authorities in 2015 when they classified these plots as commercial plots. The State Government, in terms of Rule 3(1) of the said rules, expressly permitted the disposal of these plots by public auction. At the stage when Mr Khaunte was an opposition MLA, his objections did not persuade the Government to either stop the auction process or even prevent the GHB from accepting consideration of over ₹54.00 crores from the petitioners and completing the allotment/sale formalities.

131. Yet, after Mr Khaunte was inducted into the cabinet, his objection about traffic congestion was suddenly made one of the considerations for the impugned decision. The other consideration is the alleged inadequate rates for two out of the three plots. Based upon contradictory reasons, the impugned decision was made without making any provisions to enable the GHB to even refund the amount of ₹54.00 crores to the petitioners.

132. The observations in *Resident's Welfare Association* (supra) relied upon by Mr Kantak do not apply to the facts of the present case. In any case, these three plots were classified as commercial plots by the Planning Authorities way back in 2015 after complying with all rules and regulations. Even the intervenors have not challenged the same, perhaps because it would be too late to challenge such classification now. There is no allegation that these three plots were classified as commercial out of the blue. On the contrary, these plots touch the highway and are not a part of some residential development.

133. Moreover, there is no record of the intervenors opposing other commercial projects in Porvorim. The intervenors have also not pointed out any illegality in the auction process or the allotment of the plots to the Petitioners. The intervenors nowhere

challenged the classification of these and other properties in Porvorim as commercial by the planning Authorities almost 7-8 years ago. Therefore, to urge that the use of only these plots for commercial purposes would contribute to traffic congestion or occasion commercialization seems a little far-fetched. Based on such apprehensions, the Petitioners cannot be denied relief when no illegality whatsoever is even alleged in the allotment or sale of plots by GHB to them.

134. Therefore, the observations in *CIDCO's* case (supra), where auction purchasers were sought to be prevented from using the auctioned plots based on some alleged public interest issues, would apply. However, in the *CIDCO's* case (supra), the Hon'ble Supreme Court held that the larger public interest of upholding contracts and fairness of public authorities must also not be ignored. Therefore, Courts need to have a broader understanding of public interest while reviewing contracts entered into by the State or instrumentality of the State.

135. For all the above reasons, though we have heard the learned Counsel for the intervenors, based upon the intervenors' arguments, relief cannot be denied to the petitioners.

136. At one stage, we were considering whether relief should be withheld from the petitioners in Writ Petition No.450 and 451 of 2022 because the bids submitted by these petitioners were ₹37,500/- and ₹36,000/- per square meter against the minimum reserve price of ₹35,000/- per sq. meter. Although the bids were higher than the minimum reserve price, we thought that if at the same auction, the neighbouring plot could fetch ₹71,000/- per sq. meter, then it is only appropriate that the petitioners in Writ Petition No.450 and 451 of 2022 increase their bids proportionately. Accordingly, we requested Mr Lawande to obtain instructions from the Petitioners in the two petitions.

137. On instructions, Mr Lawande, on behalf of the petitioners in Writ Petition No.450/2022, stated that the Petitioner agrees to a 10% increase. Therefore, though we think that the Petitioners in Writ Petitions 450 and 451 of 2022 should increase their bids to at least ₹50,000/- per square metre, we understand that we cannot compel them to do so. However, based on this factor, we also do not think that we must decline relief even though the action of the State and GHB is ultra vires and unreasonable.

138. As observed earlier, this aspect was considered and deliberated upon by the GHB in its 500th meeting held on 15.12.2021. The notings of this Board meeting indicate that the

GHB felt that the average price fetched in respect of all three plots was ₹49,864.80/- as against the minimum reserve price of ₹35,000/-, and therefore the bids could be accepted. This was a commercial decision. Moreover, no malafides have been alleged either by the intervenors or the Government. Therefore, though this decision qua plots H and I might not align with our views on rates, we do not think we would be justified in denying relief to the Petitioners in Writ Petition nos.450 and 451 of 2022.

139. Besides, the impugned decision/directive of the State Government is also not entirely clear on whether it was based on the inadequate rates for two plots or the necessity to keep these plots as open spaces. Therefore, upon cumulative consideration of all such factors, whilst we are not inclined to deny relief to the petitioners in Writ Petition No.450 and 451 of 2022, we leave it to the GHB, and the said two Petitioners to negotiate some higher rate.

140. Mr Lawande's statement concerning the Petitioner in writ Petition No.450 of 2022 is accepted. The Petitioner must comply with it within some reasonable time to be indicated by GHB. But we still think and hope that the petitioners in these two petitions must consider enhancing the rate offered by them, no doubt, after accounting for the differences between plots 'G' on

the one hand and plots 'H' and 'I' on the other. However, the delivery of possession must not be delayed on this ground.

141. For all the above reasons, we allow these petitions and quash and set aside the following impugned decisions:

(i) Communication no.2/38/202 10/HSB dated 07.06.2022 by which the Section Officer (Housing) forwarded file notings by styling the same as "decision taken by the Government" for information and necessary action by the Managing Director of GHB;

(ii) The decision of the GHB revoking/cancelling Sale Letter in respect of plot numbers 'G', 'H' & 'I' at Porvorim as contained in the Minutes of the 504th meeting held on 15.06.2022;

(iii) Communication dated 12.07.2022 issued by the Managing Director, GHB, informing the petitioners of such cancellation, and

(iv) The email communication dated 29.03.2022 (sent at 4.52 pm) by Assistant Engineer, GHB, purporting to withdraw the Sale Letter dated 29.03.2022 issued by Managing Director, GHB at 2.21 pm.

142. Further, we direct the GHB to act in furtherance of Sale Letters dated 29.03.2022, which now revive and, to hand over physical possession of the three plots to the petitioners within two

weeks from today. Accordingly, the three years for completion of the project, as specified in the Sale Letter dated 29.03.2022, will commence from handing over the physical possession of the three plots to the petitioners.

143. All these petitions and the Misc. Civil Applications therein are disposed of.

144. The rule is made absolute in all these petitions in the above terms. Accordingly, there shall be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

NITI K
HALDANKAR

Digitally signed by NITI
K HALDANKAR
Date: 2023.01.30
14:55:55 +05'30'