



2024:DHC:2446



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 20.02.2024
Judgment pronounced on : 28.03.2024

+ W.P.(C) 10014/2005

WG. COMMANDER P.S. BHINDER (RETD) NOW
DECEASED THROUGH LRSPetitioner

versus

DELHI DEVELOPMENT AUTHORITYRespondent

Advocates who appeared in this case:

For the Petitioner : Mr. Harish Malhotra, Senior Advocate
with Mr. Rajender Agarwal and Mr.
Anoop Kumar, Advocates, Advocates

For the Respondent : Mr. Anish Dhingra, Advocate

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The present petition has been filed under Article 226 of the Constitution of India, *inter alia*, seeking the following reliefs:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to issue:

A) a writ of a certiorari or any other appropriate writ or direction in favour of the petitioner and against the respondent



thereby quashing the order dated 19th February, 2003 communicated vide letter dated 12th /31st March, 2003 bearing reference no .F.27(13)/72/LAB(R)DDA/2538

B) a writ of certiorari or any other appropriate writ or direction in favour of the petitioner and against the respondent thereby quashing the order dated 4th february, 2005 bearing reference no.F.27(13)/72/LAB(R)/128 whereby the request for restoration of allotment of alternate plot was not acceded

C) to a writ of mandamus or any other appropriate writ or direction in favour of the petitioner and against the respondent thereby directing the respondent to forthwith restore the lease of the petitioner in respect of plot no.11, block B, Malviya Nagar Extension Residential Scheme, New Delhi and to provide NOC to the petitioner to get the plans sanctioned and raise construction thereon

D) a writ of mandamus or any other appropriate writ or direction in favour of the petitioner and against the respondent thereby restraining the respondent from in any manner allotting, selling, transferring, assigning or disposing of the plot no.11, block B, Malviya Nagar Extension Residential Scheme, New Delhi in favour of anyone.

E) cost of the writ be also awarded in favour of the petitioner and against the respondents;

F) pass any other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents."

2. The facts as narrated in the petition are as under:-

(i) It is the case of the petitioner that he was allotted a 325 Sq. Yards plot at C-474, Defence Colony, New Delhi on 03.06.1952 (hereinafter referred to as "*Defence Colony Property*") on leasehold basis by the Ministry of Defence, Resettlement



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Section, Government of India on the basis that the petitioner was serving in the Indian Air Force.

(ii) The petitioner states that *vide* sale deed dated 10.09.1952 he purchased the one-third share in a valuable and vast track of land measuring 12 bighas and 6 biswas *vide* Khewat Khatoni No. 20/47, Khasra No. 352 in Jamabandi of 1950-51 in Village Yakootpur in Delhi, near the present day Kailash Colony. It is the case of the petitioner that the possession of the said plot was handed over to the petitioner on 14.11.1952.

(iii) The petitioner states to have thrown the said property situated in Defence Colony, Delhi in his Hindu Undivided Family (hereinafter referred to as “HUF”) on 20.02.1962 and thereafter it were always treated as a HUF property and not an individual property.

(iv) It is the case of the petitioner that from the year 1962 onwards, the construction was completed and the premises was let out for rent in the name of HUF. The petitioner stated that from 1962 onwards the Defence Colony Property has always been assessed in the hands of HUF and ultimately the Defence Colony Property was also mutated by the Land and Development Officer (hereinafter referred to as “L&DO”) in the name of the HUF on 26.10.1979.



(v) It is the case of the petitioner that a notification under Section 4 of the Land Acquisition Act, 1984 was issued on 04.02.1964 in respect of Yakootpur land belonging to the petitioner and on 18.11.1964, the notification under section 6 of the Land Acquisition Act, 1984 was made, whereunder the said land was fully acquired. On 28.04.1965, the award was made and possession was taken by the government.

(vi) The petitioner states that the Land & Building Department of Delhi Administration *vide* letter dated 02.12.1971 informed the petitioner that the petitioner can be leased out a fully developed plot of 800 sq. yds as alternate plot in terms of the Acquisition Policy. To which, the petitioner conveyed his acceptance.

(vii) It is the case of the petitioner that a plot No. 11, Block B in Malviya Nagar Extension Residential Scheme, New Delhi (hereinafter referred to as "*subject plot*") was allotted to the petitioner on 25.07.1972 and the possession of the said plot was handed over to the petitioner on 05.12.1972.

(viii) The petitioner stated that a lease deed dated 26.11.1973 was executed in favour of the petitioner. However, while doing so, the petitioner was required to furnish an affidavit on a non-judicial stamp paper declaring neither the petitioner nor any of his family members including his wife hold any plot of land or a residential house in urban area.



(ix) It is the case of the petitioner that Urban Land & Ceiling Act came into force in the year 1976. Since the plot in question was admeasuring 800 sq. yds., unless the clearance was obtained from the Competent Authority under the Urban Land & Ceiling Act, 1976, no construction could have been done on such plot.

(x) The petitioner stated that the respondent issued a notice dated 16.03.1979 to the petitioner as to why action should not be taken for cancellation of lease on account of non-erection of building within the time specified in the lease.

(xi) It is the case of the petitioner that the he submitted a reply dated 30.03.1979 stating *inter alia*, that since the land in question required permission under the Urban Land Ceiling Act, 1976 and the case being pending with the Competent Authority, unless the clearance or exemption is granted to the petitioner, no construction can be raised. It is the case of the petitioner that there were various correspondences between him and the respondent between the years 1979 to 1982 for non-erection of building in the subject plot.

(xii) The petitioner submitted that the respondent issued the show-cause notice dated 08.02.1982 on the grounds that since the petitioner was owning a residential house i.e., Defence Colony property and had secured the allotment of subject plot



by suppressing material facts, therefore, the lease could be canceled.

(xiii) It is the case of the petitioner that a detailed reply dated 10.05.1982 was submitted pointing out that no misrepresentation was done as the petitioner was not individually holding any plot and the said property was in the name of HUF, therefore, no action could be taken.

(xiv) The petitioner stated that *vide* letter dated 26.07.2000, he sought extension of time for construction from the respondent and also offered to pay the necessary penalty amount for grant of such extension. Thereafter, the petitioner sent reminders and in the meantime, Urban Land Ceiling Act, 1976 was repealed and therefore, no clearance was required.

(xv) It is the case of the petitioner that he received a letter dated 12/31.05.2003 from the respondent that the lease of the petitioner has been cancelled in respect of the said plot on the ground of giving wrong affidavit, which was the subject matter of the show-cause notice dated 08.02.1982.

(xvi) The petitioner stated that he made representation dated 28.04.2003 to withdraw the cancellation and restore the allotment.

(xvii) It is the case of the petitioner that *vide* a letter dated 04.02.2005, the respondent intimated to the petitioner that his



request for restoration of allotment cannot be acceded to.
Hence, the present petition.

CONTENTIONS OF THE PETITIONER

3. At the outset, Mr. Harish Malhotra, learned Senior Counsel appearing for the petitioner submits that it is not disputed that the land of the petitioner ad-measuring 12 *bigha* 6 *biswa* recorded in *Khewat Khatoni* 20/47, *khasra* Nos. 352 in *Jamabandi* of the year 1950-51 in village Yakootpur in Delhi near the present day Kailash Colony, was acquired by the Government in the large scale land acquisitions in the year 1964 *vide* notifications dated 04.02.1964 and 18.11.1964 under Sections 4 and 6 respectively of the Land Acquisition Act, 1894 (hereinafter referred to as the “*LA Act*”).

4. Learned Senior Counsel also submits that as per the Policy known as Large Scale Acquisition, Development and Disposal of Land in Delhi Scheme, 1961 (hereinafter referred to as “*1961 Scheme*”), the Central Government apart from the compensation thereon, provided for entitlement of such persons to an alternate plot of land, subject to certain conditions. He asserts that under the said acquisition proceedings, the entire land of the petitioner was acquired leaving no parcel of land available for the petitioner as a consequence thereto. This aspect alone entitled the petitioner for an alternate plot of land under the 1961 Scheme. According to learned Senior Counsel, the eligibility conditions prescribed in the 1961 Scheme apart from other conditions, stipulated that the applicant should not own a house/



residential plot/ plot of out of village *abadi* in his/ her own name or in the name of his wife/ husband or any of his/ her dependent relations including unmarried children, nor should he be a member of any Co-operative Housing Society. According to the prescribed procedure, the applicant was to file an affidavit in that regard along with the application seeking allotment of alternate plot.

5. After the formalities were completed, learned Senior Counsel submits that the Delhi Development Authority *vide* its letter dated 02.12.1971 informed the petitioner that it can allot a fully developed plot of 800 sq. yards and sought his acceptance. The necessary affidavit, as prescribed was submitted on 05.07.1972. Learned Senior Counsel submits that such acceptance was conveyed and the subject plot was allotted on 25.07.1972 and possession handed over on 05.12.1972. A lease deed dated 26.11.1973 was also executed in favour of the petitioner.

6. Learned Senior Counsel submits that in the meanwhile, the petitioner retained the possession of the said plot of land till a show cause notice dated 16.03.1979 was issued to the petitioner seeking cancellation of the lease on account of not erecting a building within the time specified in the lease. To this, the petitioner had given a reply on the ground that a permission under Urban Land Ceiling Act, 1976 was pending in the absence whereof, no construction could be commenced. It was only when the respondent issued impugned show cause notice dated 08.02.1982 seeking cancellation of the allotment of the alternate plot on the ground of concealment of the petitioner



owning property in his own name, i.e., Defence Colony Property at the time of filing the application along with the affidavit seeking allotment of alternate plot of land.

7. Learned Senior Counsel submits that though the petitioner had submitted a detailed reply dated 10.05.1982 pointing out that there was no misrepresentation, as the petitioner was not holding any plot of land or property in his individual name but in the name of HUF, yet the respondent sought cancellation of the allotment. Despite such reply and other further representations, the respondent sent a communication dated 12/31.05.2003 cancelling the lease of the subject plot on the basis of the show cause notice dated 08.02.1982. It is this cancellation and the rejection of the request of restoration that is the subject matter of the present petition.

8. Learned Senior Counsel submits that the plot at Defence Colony was allotted to and purchased by the petitioner on 03.06.1952 and was thrown into the hotchpotch of the HUF, which was created by petitioner along with his family members viz., his wife and two children on 20.02.1962. Thereafter, till date, the property is continuing to remain in the name of HUF. He submitted that the said property has also been mutated in the name of HUF on 26.10.1979 by the L&DO. According to the learned Senior Counsel, once a property owned by an individual has been thrown in the common hotchpotch of the HUF, it loses its individual characteristic of having been owned by the said individual and becomes a property belonging to the HUF, which is treated as a juridical person for the purpose of Income Tax under



Section 2 Clause (31) of the Income Tax Act, 1961. As a consequence, he submits that such property cannot be stated to be the property belonging to or that the petitioner has any share in it to disentitle the petitioner from an alternate plot of land as per the 1961 Scheme.

9. Learned Senior Counsel also strenuously argued that the Defence Colony Property was put into the common hotchpotch of the HUF in the year 1962, whereas the lands at Village Yakootpur were acquired in the year 1964. Once the property became the property of a HUF prior to the acquisition itself, the affidavit stating that the petitioner does not have any plot of land in his name or in the name of his wife or unmarried children would not amount to concealment of facts. He strenuously puts across the argument that the documents on record including those showing that the HUF has been filing its Income Tax Returns separately on account of the income generated from the HUF property, would be a relevant evidence to indicate that the property does not belong to the petitioner.

10. Learned Senior Counsel draws attention of this Court to condition 5 of the allotment letter dated 20.06.1972 to point out that the condition mentioned therein on the aforesaid argument, has not been violated by the petitioner. The Clause/Condition 5 is extracted hereunder :-

“The allotment is subject to the condition that you or your wife/ husband or any of your dependent relations including unmarried children did not own in full or in part, on free hold or lease hold basis, any residential plot or house in the urban areas of Delhi, New Delhi or Delhi Cantonment either on the



date you applied for the allotment of an alternative developed plot or at any time thereafter till the execution of the lease-deed and you will be required to furnish an affidavit in the prescribed form within a fortnight of the receipt of this letter.”

In support of the aforesaid contention, learned Senior Counsel referred to the affidavit dated 05.07.1972 filed subsequent to the aforesaid allotment letter, whereby the petitioner had categorically deposed and declared that neither he nor his wife or any of the dependent relations including unmarried children do not own and will not own in full or in part on free hold and lease hold basis any residential plot or house in the urban areas of Delhi, New Delhi or Delhi Cantonment on the date of the application and at anytime thereafter. He submits that the affidavit is in consonance with the condition stipulated in Condition 5, and as such, apparently there is neither any concealment nor suppression of material fact nor is there any misrepresentation in the affidavit.

11. Learned Senior Counsel next referred to an affidavit claimed to have been signed on 20.02.1962 and attested on 15.08.1965 by the Assistant Director Training, Development and Panchayat Department at Chandigarh at Punjab, to submit that the contents of said affidavit would clarify that the petitioner had of his own volition placed his self acquired Defence Colony Property into the HUF created by him by virtue of the said affidavit. This document, according to learned Senior Counsel establishes beyond doubt that the petitioner had no property in his name after the Defence Colony Property was thrown into the common hotchpotch of the said HUF.



12. Learned Senior Counsel submits that interestingly the mutation of Defence Colony Property in the name of the HUF by the L&DO, was allowed on 26.10.1979 on the application filed by the HUF on 25.01.1979. Learned Senior Counsel read through the said document, to submit that all documents including certificates issued by the Income Tax Department and Income Tax assessment orders from the years 1964 to 1978 were filed, which were taken into consideration by the Department to carry out the mutation. He submits that now to question or doubt the affidavit filed by the petitioner is an exercise of arbitrariness and wholly unjustified.

13. Learned Senior Counsel submits that in the year 1981, the Parliament promulgated the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter referred to as "*Nazul Rules*"). Learned Senior Counsel submits that a show cause notice was issued by the respondent on 08.02.1982 seeking cancellation of the lease deed in respect of the HUF property on the ground of furnishing a false affidavit. This was followed by a cancellation letter dated 12/31.05.2003. According to the learned Senior Counsel, this cancellation was not only arbitrary but completely illegal and beyond the competence of the authority. In order to buttress the aforesaid arguments, learned Senior Counsel drew attention of this Court to Rule 6 and 17 of the Nazul Rules, to submit that, even if one were to go by the general restriction of allotment of residential plots governed by provisions of Rule 17, the petitioner could be precluded from the allotment of alternate land,



provided that petitioner owned or was allotted as an individual, a plot of land more than 67 sq. mtrs. He submits that the respondents have contended that the petitioner is a shareholder to the extent of 81.25 sq. yards in the HUF property and as such, is disentitled from allotment of alternate plot of land. This argument, according to the learned Senior Counsel, is factually incorrect. He submits that the Defence Colony property being the property of HUF, the petitioner could not be stated to be a shareholder in the said property, muchless to the extent of 81.25 sq yards in the said property. Mr. Malhotra, learned Senior Counsel vehemently contended that an HUF property does not belong to a single individual and even if one were to assume that there is some interest of the persons constituting such HUF, the interest or the shareholding in such property could not be ascertained till such property became subject matter of partition. In that view of the matter, he submits that the respondents could not have calculated the share of the petitioner to the exact figure of 81.25 sq yards. Thus, the action of respondent in cancellation of lease as also the allotment of the alternate plot is arbitrary, whimsical, unjust and unconstitutional and has to be quashed and struck down by this Court.

14. The other leg of the argument of the learned Senior Counsel was with respect to the insurmountable delay on the part of the respondent to issue show cause notice, as late as in the year 1982 and the actual cancellation having been done by issuance of the letter dated 12/31.05.2003. He submits that there is no explanation, muchless any cogent reason as to why, despite issuing a show cause



notice in the year 1982, the respondents canceled the allotment of subject plot *vide* the impugned letter dated 12/31.05.2003.

15. Learned Senior Counsel also submitted that in the present case, the petitioner was allotted the alternate plot way back in the year 1972 and had already taken possession of the said plot, thus, there was no reason or occasion available with the respondent to issue a show cause notice dated 08.02.1982. The action was originally initiated not on the basis of alleged false affidavit but on the non-commencement of construction on the vacant plot of land in terms of the permanent lease dated 26.11.1973. The issue regarding alleged false affidavit, was raised by the respondent subsequently, as an afterthought. This being the factual position, the action of the respondent, to now cancel the lease deed and the allotment is driven by *malafide* and is as such, unsustainable in law.

16. Learned Senior Counsel has relied upon the following judgments of the Supreme Court and this Court in support of his case :

- i) ***Surjit Lal Chhabda vs. Commissioner of Income Tax, Bombay***, reported as (1976) 3 SCC 142.
- ii) ***Captain Bhupinder Kumar Suri vs. Naresh Kumar Suri & Ors***, reported as 2017 SCC OnLine Del 7214.
- iii) ***Ramanand vs. Union of India & Ors***, reported as 1993 (26) DRJ (FB).

17. In the alternative learned Senior Counsel had argued that by the time the show cause notice was issued in the year 1982 by the respondent, the Nazul Rules were brought in the year 1981. That



being the case, the show cause notice and its consequent action has to be considered in the prospect of Nazul Rules, 1981. Viewed from that angle learned Senior counsel submits that the provisions of the Nazul Rules would override the previous provisions, that is 1961 Scheme as laid down by the judgement of the Full Bench of this Court in ***Ramanand vs Union of India & Ors***, reported as **1993 SCC OnLine Del 397**. According to the learned Senior Counsel the Nazul Rules stipulated that a person would be entitled to allotment of alternate plot, in case, as on the date of allotment of Nazul Land such person owned or was allotted or had a house on a plot of land, which is less than 67 sq. mtrs. He submits that as on the date of allotment, the petitioner did not own any plot of land and it was only the HUF which owned the Defence Colony property and as such even under the Nazul Rules, the petitioner could not be denied the alternate plot of land. Looking at it any which way, learned Senior Counsel submits that the cancellation of lease of subject alternate plot is arbitrary, whimsical, unjust and unconstitutional and has to be quashed and struck down by this Court.

CONTENTIONS OF THE RESPONDENT

18. Mr. Anish Dhingra, learned counsel appearing for the respondent submitted that in the present case, this Court has to consider as to whether the petitioner had submitted a *bonafide* and genuine affidavit at the time of submission of his application seeking allotment of alternate plot of land in lieu of the compulsory land acquisition of his property.



19. Learned counsel brought attention of this Court to the written submission filed on behalf of the respondent particularly to para 5, to submit that the defence taken by the petitioner regarding not owning a residential plot either in his name or in the name of his wife or dependent children, is not available for the reason that admittedly, the petitioner did own a self acquired property, which was claimed to have been thrown in the common hotchpotch of the HUF. As against this, learned counsel submits that as on the date of the submission of the affidavit, no permission was sought by the petitioner to transfer the Defence Colony Property in the name of the HUF. Moreover, assuming that the petitioner had indeed transferred Defence Colony Property in to the HUF, no such details were admittedly mentioned in the said affidavit.

20. Learned counsel also submits that the condition that neither the petitioner nor his wife or dependent children should hold a property in Delhi, was itself violated since the members of the said HUF admittedly were the petitioner, his wife and his minor children at the relevant time and the petitioner was a shareholder of the said Defence Colony property to the extent of 81.25 sq. yards. Since the shareholding to the aforesaid extent is more than 67 sq. mtrs. even under the Rule 6 and 17 of the Nazul Rules, the petitioner was not entitled to allotment of alternate plot of land.

21. Another argument of learned counsel was that the purpose of creating HUF in the present case by the petitioner was only for purposes of saving tax on the rent which the petitioner was receiving



from the tenant. He submits that the petitioner does not dispute that the HUF property was leased out to a Company at the relevant point in time wherefrom rents were accruing. Learned counsel also submits that such rents in the name of HUF were obviously being enjoyed by the petitioner and his family, and as such, the contention of the petitioner that HUF is a separate legal entity owning the HUF property, would not be tenable. In any case, learned counsel submits that the petitioner does not dispute that the HUF comprises the petitioner, who is its *karta* and his immediate family members alone, and as such, his share and his family member's share in the said property existed on the date of submission of the affidavit. He submits that it was on these grounds as also on the basis of concealment of material facts in the affidavit, submitted alongwith the application in the year 1971, that the respondents issued show cause notice, which led to passing of the impugned order. He submits that the writ petition should be dismissed with costs.

ANALYSIS AND CONCLUSIONS :-

22. This Court has heard the submissions of the learned counsel appearing for the parties, perused the record minutely and considered the judgments relied upon.

23. There is no dispute to the fact that on the Large Scale Land Acquisitions initiated by the Central Government in early 1960s, the land admeasuring 12 *bigha* 6 *biswa* of the petitioners recorded by *khevat khatauni* No. 20/47, *khasra* Nos. 352 in *Jamabandi* of 1950-



1951 in Village Yakootpur in Delhi was compulsorily acquired by the Central Government for the planned development of Delhi. It is also not disputed that apart from the entitlement to various components of compensation in accordance with the provisions of LA Act, the 1961 Scheme also provided for allotment of alternative plot of land in lieu of compulsory acquisition, subject to certain conditions.

24. It would be essential to consider the various eligibility conditions as per the 1961 Scheme. The eligibility criteria is read as under:-

“1. The persons who are RECORDED OWNER prior to issue of notification under Section 4 of the Land Acquisition Act.

2. The persons whose lands have been acquired must have received the compensation as rightful owners from the LAC/Court and the Govt. has taken the possession of acquired land.

3. The applicants should not own a house/residential plot/flat out of village abadi in his/her dependent relation's name including unmarried children, nor he should be a member of any Co-operative Housing Society.

4. For awards announced prior to 3.4.86, the land acquired is not less than 150 square yards and for awards announced post 3.4.86, the land must not be less than one bigha”

(emphasis supplied)

For the purposes of the present dispute, Clause (3) of the eligibility conditions would be *germane*. As per the said Clause, the applicant should not own a house/ residential plot/ flat out of Village *abadi* in his/ her own name or in the name of his wife/ husband or any of his/ her dependent relations including unmarried children, nor he



should be member of any Co-operating Housing Society.

25. The controversy in the present case revolves around an admitted fact that the petitioner had on 03.06.1952 been allotted a plot in Defence Colony, New Delhi admeasuring 325 sq. yards on leasehold basis by the Ministry of Defence, Re-Settlement Section, Government of India as he was serving the Indian Air Force. The petitioner claimed that by the document dated 20.02.1962, he created an HUF and simultaneously thrown the Defence Colony Property into the common hotchpotch of the HUF. The petitioner had also claimed that the lands at Village Yakootpur were acquired by the Government in the year 1964 by which time the property was not in the name of the petitioner but the HUF. In another words, according to the petitioner, there was no plot remaining or owned by the petitioner or his wife, dependent relations including unmarried children as on the date of acquisition. If that be, the petitioner claims that he was entitled to the allotment of alternate plot of land. Even otherwise the petitioner submitted that once having allotted a plot of land and given possession thereof to the petitioner, the action cancelling such allotment on the basis of an alleged false affidavit would be arbitrary, whimsical, unjust and wholly unconstitutional.

26. The substratum of the argument being that the HUF is a separate legal entity and the property owned by it could not be said to belong to either the petitioner or his family members individually or jointly. The petitioner attempted to impress upon this Court that viewed in such manner, the impugned action *vide* letter dated



12/31.05.2003 cannot withstand the scrutiny of law and has to be necessarily quashed and set aside. And consequently, according to the learned Senior Counsel, the petitioner would be entitled to re-allotment and re-execution of the perpetual lease deed in respect of the property bearing subject plot.

27. As an alternate, the petitioner claims that the show cause notice being issued on 08.02.1982, the Nazul Rules which came into effect in the year 1981 would primarily govern the subsequent action. Having regard thereto, Rule 6 and 17 of the Nazul Rules have to be read in manner which would entitle the petitioner for the allotment of alternate plot of land. Consequently, the action is untenable both on fact as on law.

28. In order to appreciate the controversy, it would be appropriate to consider the issue as to the affect of placing property in the common hotchpotch of HUF when considered in the light of the eligibility conditions contained in the 1961 Scheme.

29. There is no literal definition provided in the Hindu Law to the word “HUF” nor is there any provision describing the said word. However, the word “*person*” includes HUF as stipulated in Clause (ii) of sub-Section 31 of Section 2 of the Income Tax Act, 1961. It thus, could be said to be an artificial juridical person. In ***Kapurchand Shrimal vs. Tax Recovery Officer, Hyderabad & Ors*** reported in (1969) 72 ITR 623, the Supreme Court held in para 5, as under :-

5. The scheme of the Income Tax Act, 1961, is to treat the assessee failing to pay the tax due within the period prescribed a defaulter. The Income Tax Officer may, where the assessee is



found to be in default, issue a certificate for recovery and forward it to the Tax Recovery Officer specifying the amount of arrears due from the assessee. The amount due may be recovered by resort to any one or more of the four modes prescribed by Section 222 of the Act. If the defaulter fails to comply with a notice issued by the Tax Recovery Officer requiring the defaulter to pay the amount within fifteen days from the date of the service of the notice, proceedings for recovery may be taken against the assessee for recovery of the tax. But under the scheme of the Act and the Rules, the assessee alone may be treated in default. The Act and the Rules contemplate that the notice for payment of the tax arrears may be issued against the assessee, and proceedings for recovery of the tax may be taken against the assessee alone. Under the Income Tax Act, 1961, a Hindu undivided family is a distinct taxable entity, apart from the individual members who constitute that family. Section 4 of the Income Tax Act charges tax for any assessment year, the total income of the previous year of every person and "person" is defined in Section 2(31) as including — (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) a local authority, and (vii) every artificial juridical person, not falling within any of the preceding sub-clauses. The Legislature having treated a Hindu undivided family as a taxable entity distinct from the individual members constituting it, and proceedings for assessment and recovery of tax having been taken against the Hindu undivided family, it was not open to the Tax Recovery Officer to initiate proceedings against the manager of the Hindu undivided family for his arrest and detention. It is true that if properties of the family moveable and immovable are to be attached, proceedings may be started against the Hindu undivided family and the manager represents the family in proceedings before the Tax Recovery Officer. But by the clearest implication of the statute the assessee alone may be deemed to be in default for non-payment of tax, and liability to arrest and detention on failure to pay the tax due is also incurred by the assessee alone. The manager by virtue of his status is competent to represent the Hindu undivided family, but on that account he cannot for the purpose of Section 222 of the Act of 1961 be deemed to be the assessee when the assessment is made against the Hindu undivided family and certificate for



recovery is issued against the family.”

(emphasis supplied)

In the aforesaid judgment the Supreme Court had clearly drawn distinction between HUF as a taxable entity *vis-a-vis* the individual members constituting it, in the context of arrest and detention and other proceedings for the purpose of Section 222 of the Income Tax Act, 1961. In ***Ram Kumar Ram Niwas Nanpara vs. Commissioner of Income Tax & Ajmer Merwara, Lucknow***, reported as (1952) 22 ITR 474, the Allahabad High Court held in para 14 as under :-

14. The next point for consideration is whether a Hindu undivided family as such has a legal entity distinct and separate from that of the members who constitute it. It may be that member of a Hindu undivided family may continue to have certain personal rights and may be able to own property in his own right and enter into a contract in his own right but a Hindu undivided family is not like a corporation or a limited concern and it cannot, therefore, be said that it has a legal entity quite distinct and separate from that of those who constitute it. A joint Hindu family is a unit to which no outsider can be admitted by agreement; it is a status which can only be acquired by birth or by adoption and the head or Karta of that family has certain rights and, while acting within those rights, he can bind every member of the family by his actions or deal with the joint family property which, though it does not belong to him and belongs to all, he has been given the power to manage or dispose of, in the interest of the family. It is difficult to equate or define the position of a joint Hindu family as understood under the Hindu Law with the modern conception of a company or a firm or association of individuals for trade or business purposes.

The Allahabad High Court had held that the HUF is not like a corporation or a limited concern and it cannot, therefore, be said that it had a legal entity quite distinct and separate from that of those who



constituted it. It further observed that HUF is a status which can only be acquired by birth or adoption and the head or *karta* of that family has certain rights by which he can bind every member of the family though, the property may not belong to him and belongs to all. In another words, it appears to this Court that though the HUF may be a legal entity for the purposes of Income Tax and may hold a property in its own name, yet it cannot be said that the individual members constituting it, do not have any share in the said property. The share in such property on devolution may change or vary in proportions with the increase or decrease in the members constituting the HUF. This surely cannot mean that the individual members do not have any rights whatsoever over the HUF property.

30. The aforesaid view of this Court is strengthened by the judgment of the Supreme Court dismissing SLP No (s). 21476-21477/2023 on 03.10.2023 in *N.S. Balaji vs. the Presiding Officer Debt Recovery Tribunal and Others* by relying upon its judgement in *Sri Narayan Bal vs. Sridhar Sutar* reported in (1996) 8 SCC 54, which held as under :-

“ In the present case, the petitioner claims that the property in question was a joint family property/Hindu Undivided Family (HUF) property, which was mortgaged by the petitioner’s father as one of the guarantors. The petitioner also states that his father was the Karta of the HUF.

The position on the rights of a Karta vis-à-vis an HUF property is well settled. This Court in Sri Narayan Bal v. Sridhar Sutar has held that the Karta has the right to sell/dispose of/alienate an HUF property, even if a minor of the family has undivided interest. The reason is that an HUF is capable of acting through its Karta or an adult member of



the family in the management of the HUF property. Thus, the father of the petitioner herein, as the Karta of the HUF, was entitled to mortgage the HUF property. The son(s) or other member(s) of the HUF need not be consenting parties to the mortgage. Post alienation, a coparcener may challenge the act of a Karta, if the alienation is not for legal necessity or for betterment of the estate, which is not the assertion established in the present case."

(emphasis supplied)

By distilling the aforesaid observations of the Supreme Court, it is clear to this Court that the *karta's* right of selling/ disposing of or alienating an HUF property, even if a minor of the family has undivided interest, was upheld. A coparcener to such property has a right to challenge the act of the *karta*, if the alienation is not for legal necessity or for betterment of the estate, post alienation. The right and entitlement of a Karta over the HUF property is undeniable. By this proposition, the petitioner admittedly being the Karta cannot claim that he or his family members did not have any share in the Defence Colony Property (HUF).

31. In the case of ***Chhotey Lal & Ors vs. Jhandey Lal & Anr*** reported in **1972 SCC OnLine All 66**, it was observed that the true position in law is that all the members of the HUF collectively own the property by holding an equivalent interest. The relevant paragraph is extracted hereunder:-

"13. It is thus clear that the members of the joint family collectively own the coparcenary property. Each members has an interest in such property, though his interest becomes definite on partition. Till then, it is an undivided interest. The view expressed in Mahabir Singh [14 A.L.J. 278.] and the other cases mentioned above, that the members were not the tenants of the holding because they had no interest in it, is with respect,



fallacious. In law, the members of the joint Hindu family together become the tenant of the holding. The coparcenary body as such, and as an entity apart from its members, does not own property. The property does not vest in the coparcenary but in its members, though collectively. This view finds support in Mahavirprasad Badridas v. M.S. Yagnik [A.I.R. 1960 Bombay 191.] . Shah, J. (as he then was) held that “the property belonging to a Hindu undivided family is the ownership of the coparceners in that family and that such a family is not a corporation. It is not a juridical entity distinct from the members who constitute it. It cannot sue or be sued in the joint family name and cannot convey the property held by it in its joint character. The coparceners who are members of the Hindu undivided family are undoubtedly owners of the property; but a Hindu undivided family has no independent existence apart from the individuals who constitute the same. Statements sometimes made in decided cases and text books that a Hindu joint family is a “sort of corporation” in dealing with questions relating to enjoyment of the property of the family (see for instance Anali Narhar Kulkarni v. Ramchandra Ravji Kulkarni [I.L.R. 10 Bom. at pp. 39 and 78.] and Mayne a Hindu Law 11th Edition, Art. 243, at page 305) do not justify the view that a Hindu undivided family is a corporation”. His Lordship emphasised that the property is the property of the coparceners who for the time being constitute the Hindu undivided family.

14. Hindu Law does not recognise a joint Hindu family or coparcenary as a juristic personality capable of holding property, as an entity separate from the members of the family. When it is popularly said that a property is joint family or coparcenary property, the true position in law is that the members collectively own it, each having an interest. One of the distinctive features of such “coparcenary property” is in its passing on death of a member. According to Hindu law, the interest of a dead member passes by survivorship to other existing members of the family. It does not devolve on his personal heirs.”

(emphasis supplied)

This aforesaid view was reiterated and approved by the Supreme Court in para 19 of *Gaya Din (D) Thr LRs. & Ors vs.*



Hanuman Prasad (D) Thr LRs & Ors, reported as **(2001) 1 SCC 501**.

The same is extracted hereunder:-

“19. There can be no controversy about the contention that the succession of the tenancy rights, special rights created under the Act, can only be under the provisions of those Acts. On Manni's death his sons Bala Prasad, Sadhau and Sheetal Prasad became entitled to 1/3rd share each. But they continued as joint Hindu family of which their children also became members. It is a well-settled principle of Hindu law that the joint and undivided family is the normal condition of Hindu society but it is not a juristic person, as such it cannot hold any property independent of the members. On a perusal of the aforementioned judgment of the Full Bench of the Allahabad High Court, we approve the following proposition laid down by it:

“[T]hat the members of the joint family collectively own the coparcenary property. Each member has an interest in such property, though his interest becomes definite on partition. Till then, it is an undivided interest. The view expressed in Mahabir Singh [Mahabir Singh v. Bhagwanti, (1916) 14 ALJ 278 : ILR 38 All 325] and the other cases mentioned above, that the members were not the tenants of the holding because they had no interest in it, is, with respect, fallacious. In law, the members of the joint Hindu family together become the tenants of the holding. The coparcenary body as such, and as an entity apart from its members, does not own property. The property does not vest in the coparcenary but in its members, though collectively.”

32. As to what constitutes ‘*partition*’ under the Explanation to Section 171 of the Income Tax Act, the Supreme Court in ***ITO vs. N.K. Sarada Thampatty (Smt.)*** reported in **(1991) Supp 2 SCC 737** at page No. 741 in para 5 held as under :

“5. The main question which falls for consideration is as to whether the partition as effected by the agreement dated February 21, 1963 and also the decree of the civil court amount to “partition” under the Explanation to Section 171 of the Act and further whether the Income Tax Officer acted contrary to



law in holding that in spite of the partition as alleged by the respondent, the status of HUF was not disrupted and that status continued for the purposes of assessment during the relevant assessment years. Under Section 171 a Hindu family assessed as HUF, is deemed for the purposes of the Act to continue as HUF except where partition is proved to have been effected in accordance with the section. The section further provides that if any person at the time of making of assessment claims that partition total or partial has taken place among the members of the HUF, the Income Tax Officer is required to make an inquiry after giving notice to all the members of the family, and to record findings on the question of partition. If on inquiry he comes to the finding that there has been partition, individual liability of members is to be computed according to the portion of the joint family property allotted to them. What would amount to partition for the purposes of the section is contained in the Explanation to the section which defines partition as under:

“Explanation.— In this section,—

(a) ‘partition’ means—

(i) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or

(ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition.”

The above definition of the partition does not recognise a partition even if it is effected by a decree of court unless there is a physical division of the property and if the property is not capable of being physically divided then there should be division of the property to the extent it is possible otherwise the severance of status will not amount to partition. In considering the factum of partition for the purposes of assessment it is not permissible to ignore the special meaning assigned to partition under the explanation, even if the partition is effected through a decree of the court. Ordinarily decree of a civil court in a partition suit is good evidence in proof of partition but under Section 171 a legal fiction has been introduced according to which a preliminary decree of partition is not enough, instead there should be actual physical division of the property pursuant



to final decree, by metes and bounds. The legislature has assigned special meaning to partition under the aforesaid Explanation with a view to safeguard the interest of the revenue. Any assessee claiming partition of HUF must prove the disruption of the status of HUF in accordance with the provisions of Section 171 having special regard to the Explanation. The assessee must prove that a partition effected by agreement or through court's decree, was followed by actual physical division of the property. In the absence of such proof partition is not sufficient to disrupt the status Hindu Undivided Family for the purpose of assessment of tax. Under the Hindu law members of a joint family may agree to partition of the joint family property by private settlement, agreement, arbitration or through court's decree. Members of the family may also agree to share the income from the property according to their respective share. In all such eventualities joint status of family may be disrupted but such disruption of family status is not recognised by the legislature for purposes of income tax. Section 171 of the Act and the Explanation to it, prescribes a special meaning to partition which is different from the general principles of Hindu law. It contains a deeming provision under which partition of the property of HUF is accepted only if there has been actual physical division of the property, in the absence of any such proof, the HUF shall be deemed to continue for the purpose of assessment of tax. Any agreement between the members of the joint family effecting partition, or a decree of the court for partition cannot terminate the status of HUF unless it is shown that the joint family property was physically divided in accordance with the agreement or decree of the court."

(emphasis supplied)

The Supreme Court, in the context of Explanation to Section 171 of the IT Act, held that, any agreement between the members of the joint family effecting partition, or a decree of the Court for partition cannot terminate the status of HUF unless it is shown that the joint family property was physically divided in accordance with the



agreement or a decree of the Court. In other words, the property of the HUF may be disrupted by agreement of partition by private settlement; by arbitration; or through Court's decree. In fact, the family was also at liberty to share the income from the property according to their respective share.

33. From the overall conspectus of the observations and ratio laid down by the Supreme Court and the Allahabad High Court in the aforesaid judgments, it is clear that the HUF under the Income Tax Act, 1961 is a juridical person. However, the right or entitlement of the individual members constituting such HUF in respect of any property owned by it, has also been accepted. The role of *karta* in respect of such property is also clearly delineated. The actions taken by the *karta* in respect of such property is also amenable to be questioned by the coparceners post any such alienation on grounds available to such coparceners. All this analysis leads this Court to the firm conclusion that the property belonging to the HUF also belongs to each of the individual constituents in the proportionate share. In another words, every member of the HUF has some share in the said property.

34. In the aforesaid backdrop, applying the principles to the present case, it is clear that though the Defence Colony Property was placed in the common hotchpotch of the HUF in the year 1962, yet the shares of the petitioner as also his wife and two minor children, as they then were, in the said property cannot be undisputed. As to what were the proportion of shares, is irrelevant to consider in the present dispute.



Suffice it to conclude that the petitioner as a *karta* along with his immediate family members comprising the HUF were having equal rights/ shares over the HUF property. Looked at it from that angle, this Court needs to examine as to whether the petitioner can now be said to have violated the eligibility conditions at the time of filing the affidavit in support of the application for allotment of alternate plot of land.

35. Before this Court considers the said issue, it would be necessary to deal with the judgment relied upon by the learned Senior Counsel for the petitioner. Learned Senior Counsel relied upon ***Surjit Lal Chhabda (supra)***, which is distinguishable on facts. In that case, the Supreme Court was considering the question of law as to whether a single male can constitute a joint or undivided family with his wife and unmarried daughter, which has no relevance to the facts arising in the present case where the moot question is as to whether the constituent comprising the HUF would also be considered as holding shares in the property of the HUF.

36. It is not disputed by the petitioner that in the affidavit filed in support of the application, this fact regarding the Defence Colony property was not disclosed. It would be apposite to extract the entire affidavit for clarification, which is as under :-

“Affi d a v i t.

I, Pritam Singh Bhinder Wing Commander son of Late Shri Aman Singh resident of 662 Luxmibai Nagar, New Delhi, solemnly declare and affirm that I or my wife or any of my dependent relations including unmarried children do not own



and will not own, in full or in part on free-hold or lease hold basis, any residential plot or house in the Urban areas of Delhi, New Delhi or Delhi Cantonment, on the date of application for the allotment of the plot and at any time thereafter.

I have attained the age of majority, my date of birth being 9-6-1919 (Nineth day of June Nineteen hundred and Nineteen.

sd/-

Deponent

I, Pritam Singh Bhinder Wing Commander aforesaid solemnly affirm and say that the facts mentioned above are true to my knowledge and nothing is false therein and that no material fact has been concealed.

sd/-

Deponent

Place: New Delhi.

Dated:- 5-7-1972."

From a perusal of the contents of the aforesaid affidavit, it is clear that the petitioner has given solemn declaration and an affirmation that neither he nor his wife or any of the dependent relations including unmarried children did not own and will not own in full or in part on free hold or lease hold basis, any residential plot or house in the urban areas of Delhi, New Delhi or Delhi Cantonment on the date of the application. The said affidavit was sworn on 05.07.1972, while submitting his application for allotment of alternate plot. As on that date, not only the petitioner but also the family members, who individually constituted the HUF had a proportionate share in the Defence Colony Property. This fact was not disclosed. In the considered view of this Court, this was a concealment of material fact, which would have otherwise disentitled the petitioner from allotment of alternate plot of land as per the 1961 Scheme.



37. The argument that the petitioner had thrown the self acquired Defence Colony Property in the common hotchpotch of the HUF in the year 1962 even before the compulsory acquisition of his lands in the year 1964, and as such, had not committed any concealment is concerned, the same is recorded only to be rejected. The said rejection is on the basis of the aforesaid reasons in the preceding paragraphs, holding that each of the individual members of the HUF had proportionate share in such property. Thus, it is irrelevant as to whether Defence Colony Property was placed in the common hotchpotch of the HUF prior to acquisition of land in 1964.

38. The other argument regarding applicability of Nazul Rules in the intervening period prior to the show cause notice issued in the year 1982 is concerned, the same too, cannot come to the rescue of the petitioner. This is for the reason that there is no denial that the allotment of the subject plot was under the 1961 Scheme. This read with Clause (III) of the perpetual lease deed dated 26.11.1973 in respect to the subject plot, as also condition (5) of the allotment letter dated 20.06.1972 bring to fore the fact that the allotment as also the execution of the perpetual lease deed was conditional. For clarity, Clause (III) of the Lease Deed dated 26.11.1973 and condition 5 of the allotment letter dated 20.06.1972 are extracted hereunder :-

Clause III of lease deed:

“III. If the sum or sums payable towards the premium or the yearly rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for one calendar month next after any



of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it discovered that this Lease has been obtained by suppression of any fact or by any mis-statement, mis-representation or fraud or if there shall have been, in the opinion of the lessor, whose decision shall be final, any breach by the Lessee or by any person claiming through or under him of any of the covenants or conditions contained herein and on his part to be observed or performed, then and in any such case, it shall be lawful for the Lessor, notwithstanding the waiver of any previous cause or right of re-entry upon the Residential plot hereby demised and the buildings thereon, to re-entre upon and take possession of the Residential Plot and the buildings and fixtures thereon, and there-upon this Lease and every thing herein contained shall cease and determine and the Lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him."

Condition 5 of allotment letter:

"5. The allotment is subject to the conditions that you or your wife/husband or any of your dependent relations including unmarried children did not own in full or in part, on free hold or lease hold basis, any residential plot or house in the urban areas of Delhi, New Delhi or Delhi Cantonment either on the date you applied for the allotment of an alternative developed plot or at any time thereafter till the execution of the lease-deed and you will be required to furnish an affidavit to his effect before execution of the lease-deed, meanwhile, you may please furnish an affidavit in the prescribed form within a fortnight of the receipt of this letter (form enclosed)."

The allotment letter dated 20.06.1972, particularly condition 5 stipulated that the allotment of the alternate plot of land was subject to the petitioner furnishing an affidavit in terms thereof. It is clear that such allotment was not an open ended invitation / offer of allotment of the alternate plot but dependent upon the contents of the affidavit itself. Meaning thereby, the sanctity of the declaration and solemn affirmation was to be maintained at all times. In case an applicant



furnished a false declaration or concealed material facts, it would be direct violation/contravention of mandatory condition of allotment. Since the petitioner had not disclosed the existence of a HUF property of which the petitioner himself was the *karta* and his wife and two minor children were the remaining members, in the considered opinion of this Court, that sanctity was broken.

Insofar as the clause (III) of the lease deed dated 26.11.1973 is concerned, there too the Lessee was warned of re-entry into the property if it was found or discovered that the lease has been obtained by suppression of any fact or by any misstatement, misrepresentation or fraud. In the opinion of this Court, clause III was also breached by the petitioner. This is for the reason that it was only upon the affidavit submitted in terms of condition 5 of the allotment letter dated 20.06.1972 that the allotment took place and the perpetual lease deed was executed. Both the instances are, in the opinion of this Court, intrinsically intertwined. In that view of the matter, the argument regarding the Nazul Rules being the governing regulations post 1981 when the show cause notice was issued on 08.02.1982 cannot be countenanced and are rejected.

39. Even otherwise, it is not disputed that the allotment was under the 1961 scheme which was in force till 1981 when Nazul Rules were brought into force. That so far as the ratio laid down by the Full Bench of this Court in ***Ramanand (supra)*** relied upon by the learned Senior Counsel particularly para 17 is concerned, there is no quarrel that Nazul Rules are deemed to have impliedly repealed the 1961 Scheme.



However, it is relevant to note that in the present case the allotment was under the 1961 Scheme and as such the reliance on *Ramanand's* judgment is misplaced.

40. The Coordinate Bench of this Court in *Surender Singh Maan Vs. Govt. of NCT of Delhi* reported in 2017 SCC Online Del 10194 had succinctly considered the effect of an affidavit as required under the Policy and the context in which the government had brought the 1961 Scheme into force. More particularly, the observations in para 12 and 13 would be pertinent and are extracted hereunder:-

"13. In a Full Bench judgment of this Court reported as AIR 1987 Delhi 46 Shiv Devi v. Lt. Governor, this provision had been interpreted and the relevant extract of the aforesaid order reads herein as under:—

"This shows that a plot can only be allotted to a person whose wife/husband or any of his/her dependent relations, including unmarried children do not own a house or plot in Delhi. Thus, the only beneficiaries under the Scheme of allotment in lieu of a plot are those who have no house in Delhi or whose dependant family members etc. do not have a house. No other person can get an allotment. If we see the scheme this way, we will understand that it has a distinct beneficial quality regarding the public. It is not a gift. It is a necessity for persons who would otherwise not possibly acquire any homes.

xxxxxxxx

The Scheme visualises one house per person. When there is a situation of no house or no plot when the existing plot of that person has been acquired by the State, then it is the duty of the State to give an alternative plot. That is the purpose and the end-all and be all of the Scheme."

(emphasis supplied)

The Full bench of this Court in *Shiv Devi Vs. Lt. Governor*, reported as AIR 1987 Del 46 referred to in the aforesaid judgment had



dealt with the broad parameters of the 1961 Scheme to conclude that the said scheme visualizes one house per person. When there is a situation of no house or no plot available with the persons whose land has been acquired by the State then it would be the bounden duty of the State to give an alternative plot. It is pertinent to note that in the present case, no such factual situation arose. In fact, the non-requirement of an alternative plot is apparent from the fact that though the petitioner was allotted the said plot in the year 1972; lease deed executed in 1973; followed by the handing over possession of such plot, had failed to even commence construction over the said land even till the year 1982. This demonstrates that the petitioner was not at all in the need of any alternate plot of land falling within the scope of parameters as crystallized by the Full Bench of this Court in *Shiv Devi (supra)*.

41. That apart, though the Defence Colony property was claimed to have been thrown in the common hotchpotch of the HUF in the year 1962, there was no reason furnished by the petitioner as to why the mutation of the said property in the name of HUF was not applied for till the month of January, 1979 which was finally carried out by the authority on 26.10.1979. Admittedly, the said property was leased out on rent indicating that the petitioner was not in dire need of an alternate plot of land.

42. As a fag end argument, learned Senior Counsel had referred to the delay firstly in respect of the show cause notice being issued in the year 1982 whereas the allotment was sanctioned in the year 1972 to



submit that the action is barred by delay and laches. To this, the respondent had explained that it was only upon the petitioner not commencing construction over the said plot despite number of notices having been issued in that context, it took time for the respondent to procure files and collate all the requisite information. Once having collated the facts, the respondent issued the show cause notice in the year 1982 putting the petitioner to notice as to why the said allotment ought not to be cancelled.

43. This aspect, to the mind of this Court, is a satisfactory explanation keeping in view the fact that the petitioner himself had concealed material facts while seeking allotment of alternate plot. Apart from this, learned Senior Counsel had also argued that the respondents had taken inordinate time in passing the impugned order in the year 2003 while the show cause notice was issued in the year 1982. Suffice it to state that there is no doubt that there was a delay however, keeping in view the ratio down by the Supreme Court in ***S.P. Chengalvaraya Naidu (Dead) By LRs vs. Jagannath (Dead) By LRs & Ors*** reported in (1994) 1 SCC 1, whereby it was categorically laid down that '*fraud vitiates all solemn acts*'. On the strength of this, this Court is of the considered opinion that the petitioner had obtained the allotment of an alternate plot by concealment of material facts amounting to fraud and as such cannot be heard to say that the respondents have delayed adjudication of the show cause notice. In that view of the matter, the said argument has no substance.

44. In view of the above, there is no merit in the writ petition and



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the same is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J.

MARCH 28, 2024*/nd/ms*