

Dev Singh Vs. U.T. Chandigarh and Others

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Court : Punjab and Haryana

Decided On : May-08-2012

Judge : Hemant Gupta & a.N. Jindal

Appeal No. : C.W.P. No. 3271 of 1982

Appellant : Dev Singh

Respondent : U.T. Chandigarh and Others

Advocate for Def. : Mrs. Lisa Gill

Judgement :

A.N. Jindal, J.

Power tends to corrupt, and absolute power corrupt absolutely. Great men are almost always bad men, even when they exercise influence and not authority: still more when you superadd the tendency or the certainty of corruption by authority. [Lord Action, in a letter to Mandell Creighton (5 April 1887), published in Historical Essays and Studies (1907)]

Power expands through the distribution of secrecy. (David Johan Moore Cornwell (John Le Carre) (from an interview by Pip Ayers in Live magazine, the Mail on Sunday, July 10, 2011)

It is not possible to found a lasting power upon injustice, perjury and treachery. (Demosthenes, reported in Josiah Hotchkiss Gilbert, Dictionary of Burning Words of Brilliant Writers (1895), p. 455.)

All power corrupts, absolute power is even more fun. [Simon Travaglia, The Operator from Hell Part 2 (1997)].

Power corrupts, Power Point corrupts absolutely. [Ed Tufte, Wired, issue 11:09 (September 2003)].

Though disuse of power by the powerful lowers the majesty of the office and sometimes makes the very office redundant, but misuse and abuse of power leads to corruption and chaos. The judicial prudence requires the balance between the justice and power. Corruption and justice cannot dwell together.

Corruption at high places has become fashion of the day. Any defalcation, embezzlement, misappropriation or corruption, if committed by an individual functionary, the same could be detected due to the availability of the evidence, but in cases where the Administrators, who are the part and parcel of the governing body themselves indulge in illegal distribution of the State assets, the problem to detect such scam aggravates. It was the press, media and the social activists who highlighted such modalities and helped to bring the scandal to the fore. The present case is also an example where the people at the helm of affairs of the Notified Area Committee, Manimajra connected one way or the other with the Notified Area Committee distributed 12 commercial sites amongst themselves while throwing all the norms and rules relating to the sale of the property to the winds and by concealing the same from the general public. The said scam was published as a news item in February, 1982 under the heading: "U.T. Officials grab land in Manimajra" indicating that the misappropriation of show rooms of the size of 17' - 3" x 31.6' for a sum of Rs.30,000/- per commercial site, which invited the petitioner Dev Singh to file writ petition No.3271 of 1982. Prior to this writ petition one Om Parkash had also filed a Civil Suit No. 2171 of 1982 titled as Om Parkash v. Union Territory of Chandigarh and others, which was later on withdrawn by him.

The facts in the background of the case are that Notified Area Committee, Manimajra (herein referred as, 'the Committee') was constituted under Section 241 of the Punjab Municipal Act w.e.f. 19.4.1976 with all nominated members - 6 officials and 5 non official. Sh. P.P. Sawhney (respondent No.16), the then Land Acquisition Officer, Chandigarh Administration was made its first President. However, Hoshiar Singh and Joginder Singh Walia were the President and Secretary of the Committee respectively at the time when the plots in question were allotted i.e. on 2.7.1979.

Apprehending a haphazard construction within the jurisdiction of Notified Area Committee, it passed a resolution on 24.1.1978 for acquiring the land for setting up the commercial as well as residential sectors in the area. Notification under Section 4 of the Land Acquisition Act was published on 2.1.1979. The Chief Architect wrote to the President of the Committee on 24.4.1979 for demarcation the ground to check the feasibility of the site and communicated that the lay out plan for the residential colony on the Eastern side of Chandigarh- Kalka road had been prepared. The petitioner has averred that he has been handed over lay out plan by Shri J.S.Walia, the then Secretary of the Notified Area Committee, whose sons are successful allottees and impleaded as respondent Nos.3 and 4. The said lay out plan is Annexed P-2 said to be drawing No.14, Job No.77 dated 27.04.1979. The said lay out plan does not bear the signatures of the officials involved in the preparation of the same, but is recited as signed i.e. Sd/-. There is another lay out plan appended with the written statement of respondent No.5, as Annexure R-5/3. The said lay out plan carries the impressions of signatures of the officials. The inference is that the photocopy produced by the respondents is from the original, whereas the copy produced by the petitioner is from the copy. Both are materially different. The description of the plots carved out in such plans is as under:

DETAIL OF PLOTS (Annexure P-2)

Category of Plots	Size of Plots	No. of Plots
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DETAIL OF PLOTS (Annexure R5/3)

Category of plots	Size of plots	Nos. of Plots
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1 - Kanal1-87,
121-126, 251-
253

14 Marla 48'-9" x 97'-
6"39' 0" x 9671
101-120, 127- 18' 0"
169 75
143-250 29' 3" x 78'
0"
10 Marla

48'9"x 97'
6"29' 3" x 78'
0" 8188
24' 0" x 72' 78
0"
98
19' 6" x 58'
6"

110-242

	Total	242	Commercial Sites	79
Commercial Sites	34' 6" x 15' 0"	79		
Total		321	321	424

At this stage, it may be noticed that Ms. Lisa Gill, learned counsel for the Municipal Corporation, has stated that the original of the lay out plan is not available with the Corporation, the successor-in-interest of the Notified Area Committee.

Learned Amicus Curiae appointed for the petitioner has argued that there is interpolation in the plan and in fact the original lay out plan was for 67 commercial plots, but later on additional plots were carved out from the area reserved for parking and assigned numbers with suffix "P". Such 12 commercial sites, measuring 17'- 3" x 31.6', are the subject of controversy in the present petition. These 12 sites were marked as 815A, 815B, 815C, 815D, 830A, 830B, 830C, 830D, 855A, 855B, 855C and 855D in the layout plan and these sites were carved out in the area left out for parking. The Committee vide alleged resolution No.4 dated 28.4.1979, resolved to sell the residential plots at the rate of Rs.500/- per square yard. The resolution was signed by the Secretary on 3.5.1979. The President vide letter dated 5.5.1979, had also approved the scheme for sale of 79 commercial sites in addition to the 242 residential plots with the condition that 50% sites would be reserved for the following categories :-

1. 30% sites for employees serving the Chandigarh Administration.
2. 10% of the sites for ex-servicemen of 3 Forces. Serving personnel of these Forces who are likely to be released within one year shall also be eligible under the reservation.
3. 10% of the sites for employees of the Notified Area Committee, Manimajra and those serving the Chandigarh Administration who are actually engaged and connected with the development scheme of Manimajra.

The aforesaid resolution was approved by the Deputy Commissioner subject to the condition that there will be no reservation except 5% reservation each for Scheduled Caste, Backward Class and serving/Ex-servicemen from the defence forces vide letter Memo No. DC/DA-79/10651 dated 29.5.1979. Before this letter reached the office of the Committee, the Secretary/ President of the Committee without getting approved the notice from the Committee or the competent authority for issuing advertisement for sale of the commercial and residential sites, wrote a letter to the Tribune directing to publish advertisement in the newspaper of 7.6.1979. The last date for the receipt of the applications was fixed as 16.6.1979. The notice was published under the signatures of Hoshiar Singh, President of the Committee, in the small column of The Tribune (English), Chandigarh on 7.6.1979, it is reproduced as under :-

“NOTIFIED AREA COMMITTEE

MANIMAJRA (U.T. CHANDIGARH)

No. NAC-79/1309 Dated the: 31.5.79.

NOTICE

APPLICATIONS are invited on the prescribed form obtainable from the Secretary, Notified Area Committee, Manimajra on payment of Rs.5/- each for allotment of Commercial and Residential sites on the free hold basis at Manimajra upto 1.6.1979.

Every application for allotment of plots should be accompanied by an earnest money equivalent for 10 percent tentative sale price of the site in the form of demand draft payable to the Notified Area Committee, Manimajra and drawn on any scheduled bank at Manimajra. A person who owns a residential site in Chandigarh or in the Urban Estates of S.A.S. Nagar (Mohali) or Panchkula in his/her own name or in the name of any dependent member of his/her family is not eligible to apply.

All modern amenities like roads, sewerage, water supply and street lighting etc. shall be provided in the complex by the Committee.

Detailed particulars of the sites and other terms/conditions of allotment can be had from the Secretary of the Committee along with the application form during office hours on any working day.

Hoshiar Singh, H.C.S.

President

Notified Area Committee,

Manimajra (U.T. Chandigarh)"

The said notice was published on 7.6.1979. Pursuant to this short notice, only 12 applications were received against the aforesaid twelve commercial sites, situated at strategic junction of Manimajra and Panchkula on the East of Chandigarh Kalka Road. Mr. J.S. Walia, Secretary of the Committee allotted these plots on the reserve price either to his own kiths and kins, or to the relatives of the Town Planner or other officers directly or indirectly connected with the Committee. The details of the sales and the connections of the purchasers are reproduced as under :-

S.No.	No. of Site	To whom allotted	Officer/Member Involved	Relation
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Harinderpal Singh
and Prabhjot Singh
sons of

Shri Joginder
Singh Walia,

1	815-A	17, MIG Sector 18, Housing Board Colony, Panchkula	Sh. Joginder Singh Walia	Sons
			Sh. Sudhir K. Verma, Divisional	
2	815-B	Mrs. Madhuri Verma, 288, Sector 21-A, Chandigarh	Town Planner, Chandigarh Member NAC, Manimajra	Wife
3	815-C	S. Tejinder Singh C/o Sh. Joginder Singh, Resident Commissioner, Punjab Bhawan, Delhi	Sh. Joginder Singh Walia, Secretary, NAC, and R.S. Malik former D.C. Chandigarh	Relative /Friend

4	815-D	Mrs. Surekha w/o Late Sh.Ashok Kohli, 279, Sector 16, Chandigarh	Shri S.C.Nagin, Senior Town Planner, Chandigarh Administration	Daughter
5	830-A	Nathi Singh s/o Bansidhar, 1103, Sector 21-B, Chandigarh	Sh. P.P. Sawhney, Ex-President, NAC and LAC Chandigarh Administration	Benami for Shri P.P. Sawhney
6	830-B	Sh. Des Raj s/o Shri Ramji Lal, Sector 15, Faridabad	Sh. R.S. Malik, former D.C. Chandigarh	Father
7	830-C	Mrs. Savita Vadhera, w/o Sh. Kuldeep Rai, Sector 11, Chandigarh	Sh. K.R. Vadhera, Ex-Assistant Estate Officer, Chandigarh Administration	Wife
8	830-D	Mrs. Bimla Malik w/o Sh. O.P. Malik, General Manager, Haryana Roadways, Karnal	Sh. R.S. Malik, Former D.C. Chandigarh	Sister-in-law

9	855-A	Sh. Daulat Ram s/o Sh.Gobind Ram, Sector 18, Faridabad	Sh. Hoshiar Singhat that time President NAC, Manimajra	Benami forSh. Hoshiar Singh
10	855-B	S. Rupinder Singh s/o S.Jagan Singh, SCF 33, Sector 19, Chandigarh	Sh. J.S. Walia,Secretary, NAC, Manimajra	Relative/Friend
11	855-C	Mrs. Rajinder Kaur w/oSh. A.S. Mehendiratta, 137, Sector 23, Chandigarh	Sh. A.S.Mehendiratta, Archihtect, Ch. Admn. and Ex. Member NAC	Wife
12	855-D	Mrs. R.K. Mangat w/o S.Jagadev Singh, 1033, Sector 11, Chandigarh	S. Mohinder SinghExecutive Magistrate Chandigarh Administration	Daughterin-law

The allotment letters were issued by Mr. J.S. Walia, Secretary, of the Committee himself and in order to show his observance of all the formalities, the initials of Clerk Smt. Rita Grover were also obtained. The petitioner has also pointed out that another advertisement (Annexure P-4) was published in the 'Indian Express' on 01.08.1979. The action in pursuance of such advertisement was stayed by the Administration, but still two plots have been allotted by obtaining bank drafts dated 31.07.1979 before the date of publication of the advertisement. The factum of stay

restraining the Committee for making allotments is admitted in the written statement filed on behalf of respondent Nos.1 and 2 and also the fact that two plots were allotted in pursuance of advertisement dated 01.08.1979 to Vidyawati Sofat and Suresh Sofat i.e. wife and son of R.G. Sofat, resident of H.No.1046, Sector 8-C, Chandigarh.

The patent illegalities came to notice of the Chief Commissioner, Chandigarh when he was on his visit to Manimajra Town on 6.9.1982. He directed enquiry to be held by the Vigilance Cell, U.T. Chandigarh. Consequently, enquiry was held by Bhagwan Dass, Inspector Vigilance Cell, U.T. Chandigarh. The enquiry report was submitted before this Court on 22.08.1985, when the counsel for the Union Territory was directed to take a final decision in the matter. Thereafter, the U.T. Administration dismissed Mr. J.S. Walia from service. However, regarding the other officials, it was reported that either they had been repatriated to their respective departments or retired, therefore, they had written to their departments for proceeding against them accordingly.

Since some of the allottees had already transferred the show rooms, therefore, this court vide order dated 6.2.2008 directed the petitioner to serve the allottees as well as their transferees, or legal representatives or their family members (affected persons). The relevant extract of the order dated 6.2.2008 is reproduced as under :-

“It appears that some of the allottees/ beneficiaries have not been served despite efforts made by the Registry of this Court in the past. Since the allottees have their permanent abodes in the U.T. of Chandigarh and records to this effect are available with the official respondents i.e. Municipal Corporation, Chandigarh, the Commissioner, Municipal Corporation, Chandigarh is directed to ensure that each and every allottee/his legal representative/family members as well as those who are in occupation of the allotted sites, are informed in writing that this case shall be taken up for final disposal at no.1 on 20.2.2008. An affidavit in compliance to this order be also filed.

Adjourned to 20.2.2008.

Let a copy of this order, duly attested under the signatures of the Bench Secretary, be supplied to Mrs. Lisa Gill, learned counsel for the respondents No.1 and 2, for information and necessary compliance.”

On 20.02.2008, this Court directed to publish a Public Notice by the Municipal Corporation, Chandigarh in at least two daily newspapers including the one in vernacular language with a view to inform all the allottees, their transferees and/or their tenants. Thereafter, the notices have been published in 'The Tribune' and 'Dainik Bhaskar' on 09.03.2008. Though Vidyawati Sofat and Suresh Sofat have not been impleaded as a party, yet some allottees have put in appearance after the public notice was published. Therefore, all the allottees, occupiers and tenants are deemed to have been granted opportunity to contest the present suit. The petitioner appeared before this Court on 10.05.2011 and stated that he is unable to engage a counsel now. Mr. Jaskirat Singh Sidhu, Advocate, was appointed as amicus curiae to assist this Court on behalf of the petitioner considering the fact that the issue involved in the writ petition is regarding illegal allotment of plots. In these circumstances, the matter has come up before us for final hearing.

The Government also examined the allotments and found the same to be improper and consequently proceeded for cancellation thereof. Mr. Abhishek Dev, IAS, Joint Secretary Home-cum-Joint Secretary, Local Government, filed an affidavit stating that vide affidavit dated 4.1.2010, furnished by the Joint Commissioner, Municipal Corporation, Chandigarh, it was stated that action shall be taken for cancellation of the allotments after affording opportunity of hearing to the allottees. Thereafter, notice dated 30.3.2011 was issued. The said notices were also challenged by some of the respondents in this writ petition itself by way of Miscellaneous Applications.

Respondents No.1 and 2 in their joint written statement have admitted that the appointment of Mr. J.S. Walia as Secretary of the Notified Area Committee, Manimajra was not in accordance with rules. He did not meet the qualification as prescribed in the advertisement. It was also admitted that the Committee failed to give proper advertisement showing the situation, size, number and rates of the plots at which the same were to be sold/allotted and the terms and conditions on

which the same were to be sold. The advertisement which appeared in the newspaper "The Tribune (English)" on 7.6.1979, indicated the last date for filing the applications was 16.6.1979. Regarding the other advertisement dated 1.8.1979, it was stated that the same was advertised despite the stay, restraining the Committee from making any allotment and the two commercial sites were allotted by the Committee on the basis of the bank draft dated 31.7.1979 even before the advertisement dated 1.8.1979 to Vidyawati Sofat and Suresh Sofat i.e. wife and son of R.G. Sofat, resident of H.No.1046, Sector 8-C, Chandigarh. They also admitted that only 12 applications were received against the 12 commercial sites and out of those applications, 8 applicants were the relatives or dependents or the officials of the Chandigarh Administration and official members of the Committee and one site was allotted to the relative of the senior officer of the Punjab Government.

Respondents No.3, 4, 7 and 12 did not file their written statement. It is noticed that the respondents No.6, 8 and 13 (Out of them respondent No.8 has already expired and his legal heirs have been impleaded as respondents) and have contested the petition. The respondents No.7, 9 and 16 also filed separate written statement. The respondent No.9 had died and he was substituted by respondents No.18 to 20 being his legal heirs. The respondents No.21 to 24 are the transferees. All the respondents have virtually raised similar points and they denied the allegations as set out in the petition.

The transferees have set up the plea that they are the bona-fide transferees of the plots and the transfers were made in their favour with the permission of the Committee. The petitioners as well as the U.T. Administration had been witnessing the construction raised over the plots and they did not proceed against them, therefore, the administration is estopped to take any such action. No definite procedure was in operation at that time. The only procedure in general was that the Committee was to show his intention by way of public notice that some plots were available. The mode of transfer was by way of allotment or auction. Since the number of the applicants were equal to the number of plots, therefore, the question of auction did not arise.

The allottees or their legal representatives furnished almost identical replies and stated that the allegations are not correct. The proper procedure before the allotment of sites was followed. It is asserted that neither they are authors of the site plan nor they ever distorted or got distorted the same through any official. It was also averred that several modifications were incorporated and omissions made by the petitioner in the layout plan to support his case. The respondent No.2 namely, the President of the Committee who on his own as well as on behalf of the Government i.e. Respondent No.1 has admitted the correctness of the layout plan in their affidavits, therefore, the petitioner may be put to strict proof to prove the correctness of the layout plan over which he wants to rely. It was further asserted that the intending purchasers were fully aware of the number of plots available including 12 mini show rooms in question. The respondents are not in any way related to the officers/officials of the Committee or the Chandigarh Administration. It was further asserted that till the year 1979, whosoever applied for allotment of the shop/office/show room, he was allotted the same and the lesser number of applicants were available as compared to the number of plots available. It was asserted that now the things have been changed as many of the respondents have already transferred, rented out the show rooms after raising construction and these have changed various hands. Now to disturb them at this stage would amount to unsettling them which may result into serious loss, prejudice and damage.

The first contention raised by the learned counsel for the respondents is that the petitioner even did not apply for any commercial site, therefore, he has no locus standi and the cause of action to file the writ petition, consequently, the same is bound to fail on this sole ground.

Having pondered over the marathon contentions raised on the point, we do not find ourselves convinced with the same. The main points raised in this writ petition are that the commercial sites were sold for nominal price after carving out later; the said sites were kept away from the public notice; that no wide publicity was given in connection with the allotment and the same were not sold in open auction. As a matter of fact, two types of the commercial sites were floated by the Committee of the sizes of 34'-6" x 75' and 35'-3" x 75'. For these plots, as per

official record, the margin money to be deposited along with the application was Rs.15000/- whereas the margin money for the 12 small commercial booth of the size of 31'-6" x 17'-3" was only Rs.3000/-. As such, keeping in view the difference between the margin money, it was possible for the customers having low income to deposit this margin money. Had the due publicity been given for the sale of such commercial sites then the petitioner could have laid his hands to apply the same and become the prospective purchaser. Not only the petitioner, many similarly situated people would have preferred to apply for such sites.

The issue regarding the 'locus standi' and the 'cause of action' has attracted attention of the courts from time to time and broad change has undergone in law relating to the "locus standi" and "cause of action" which deviates from the old rule that only person aggrieved against the legal injury by reason of violation of legal right or legally protected interest by such action. The issue was broadly decided by the seven Judges Bench of the Supreme Court in **S.P. Gupta v. Union of India, AIR 1982 SC 149** wherein, their Lordships reviewed the legal position on the issue of standing of the petitioner in the public interest litigation. Bhagwaati, J., speaking for the majority of the Court observed as under :-

".... The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement of judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. Under this rule, the Court was concerned with the question whether the applicant was a person aggrieved. According to this rule, it was only a person who suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally protected interest who could bring an action for a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. The Supreme

Court will readily respond even to a letter addressed by such individual acting *pro bono publico* Another point which requires emphasis is that cases may arise where there is no outwardly public injury by the act or omission of the State or public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such action or omission.....”

In **Janata Dal v. H.S. Chaudhary, AIR 1993 SC 892**, their Lordships gave meaning to the expression 'public interest litigation' with the following words :-

“.... The expression 'litigation' means a legal action including all proceedings therein, initiated in a Court of law with the purposes of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a Court of law for the enforcement of public interest or general interest which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decisions explaining expression 'PIL' in its wider connotation in the present-day context in modern society a few of which we will refer to in the appropriate part of this judgment.”

In **Chaitanya Kumar v. State of Karnataka, AIR 1986 SC 825**, the Apex Court approved the entertaining of a writ petition at the instance of a third party involving a challenge to the grant of contract to bottle arrack and observed :-

“.... It is true that in a public interest litigation, those professing to be public spirited citizens cannot be encouraged to indulge in wild and reckless allegations besmirching the character of others but, at the same time, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the Court is concerned with the balancing of interests. Where in a public interest litigation for setting aside grant of contract to bottle arrack, it was established that the executive action was arbitrary the High

Court did not have option but to set aside the contract in spite of the fact that the allegation of bias against the Chief Minister was found to be false.”

The principles for entertaining public interest litigation were culled out in two Division Bench judgments delivered in cases **Lawyers' Initiative through Shri R.S. Bains, Advocate v. State of Punjab, 1995 (2) ILR 279** and **Ishwar Singh v. State of Haryana, 1995 (2) 110 PLR 613 : 1996 (2) RRR 61 (PandH) (DB)**, which are enumerated as under :-

“The question of locus standi would not be material and the Court would allow litigation in public interest if it is found :-

(i) That the impugned action is violative of any of the rights enshrined in part III of the Constitution of India and the relief is sought for its enforcement.

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance.

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provisions of the Constitutional Law.

(iv) That such person or group of persons is not a busy body of meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance.

(v) That the process of Public Interest Litigation was not being abused by politician other busy bodies for political or unrelated objectives. Every default on the part of the State or Public Authority being not justifiable in public in such litigation.

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country.

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities.

(viii) Public interest litigation may be initiated either upon a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination.

(ix) That the person approaching the Court has come with clean hands, clear heart and clean objectives.

(x) That before taking any action in public interest litigation the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politician, busy body or persons or group of persons with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.”

In the instant case, the challenge is to the flouting of the rules and the procedure for sale of the public property and the fraud committed by the respondents at the time of allotment of the prime property to make unlawful enrichment to themselves and cause loss to the state exchequer. Instead of throwing the public property in open auction so as to attract the highest bid and to generate the revenue of the State, the property was allotted by the President and the Secretary either to their relations or to the relatives of Deputy Commissioner, Chandigarh or other officers directly or indirectly connected with the Committee. In the aforesaid judgments, the Apex Court has held that the petitioners cannot be treated as busy body or meddlesome interloper and went on to observe that the points raised by the petitioner are of great public importance and the action of the respondents is required to be tested on the touch stone of the judgment delivered by the Court with regard to right of the Government to make nomination under unconstitutional and illegal policy/instructions/guidelines, therefore, the petitioner could not be non-suited on the ground that they did not have locus standi to challenge the nomination made by the State Government. In the case of **M.C. Mehta v. Union of India, 1992 (3) SCC 356 : 1996 (2) RRR 592 (SC)**, the respondents had questioned the locus standi of the petitioner to move to the court. While declining the objection, the Court held that the action complained is of public interest affecting the health and life of the citizens living in the area where the stone crushers are located and as the official respondents had failed to perform the

duties cast upon them under the statute, the rules framed thereunder and the directions of the Supreme Court, the petition was maintainable.

In the light of aforesaid judgments, we are set to examine,

“whether the action of the respondents was mala fide and in deviation of the settled principles of law for the sale of the public property?” The facts which have been brought on record in the form of pleadings and the facts which are reflected from the record produced by the petitioner as well as the respondents No.1 and 2 show that by filing the petition, the petitioner has espoused the cause of the public by bringing it to the notice of the court that powerful and influential persons of the committee, with the connivance of the officers sitting at their supervision, have grabbed the public property on the basis of illegal allotments at a nominal prices. If prime land of these commercial sites is allotted to them in an arbitrary manner and it is kept away from the eyes of the public at large, then the public exchequer would certainly suffer huge loss. The Full Bench of this Court in **Anil Sabharwal vs. State of Haryana, 1997 (3) R.C.R. (Civil) 260** has also elaborately discussed the aforesaid judgments and had concluded that in case where the larger public interest is involved and the settled principles of rules and byelaws are said good bye by the public functionaries to enrich themselves, then the writ petition could not be dismissed on the ground of lack of locus standi.

Admittedly, Notified Area Committee, Manimajra, came into existence w.e.f. 19.4.1976 by a notification of the Chandigarh Administration consisting of official and non official members, Sh.P.P. Sawhney- respondent No.16 (the then Land Acquisition Collector/Officer), was made the first President. The Notified Area was constituted in exercise of powers conferred under Section 241 of the Punjab Municipal Act, 1911 and in terms of Section 243 of the Act, the provisions of the Act are applicable to the Notified Area Committee. In exercise of powers conferred under Section 240(o), the Lieutenant Governor has notified Rules on 16.07.1918 in respect of General principles in the several Departments of the Administration including Part II of Management of Municipal Properties and of Provincial Properties. Though such Rule has been amended by the Punjab Government on 16.09.1976, but the Rules in existence prior to 01.11.1966 shall

govern the Union Territory of Chandigarh of which Notified Area Committee is the part. The relevant extract from the Rules reads as under:

“1. No land, the property of a municipal committee, shall be alienated permanently or for a term exceeding ten years except with the previous sanction of the Commissioner of the Division or in exercise of powers specially conferred upon a committee by these rules or any other authority of the Local Government.

2. (1) Every Municipal committee in charge of nazul properties of Government shall maintain a register in the form appended to this rule, and if the amount of such properties is large shall also maintain a large scale map with index showing the position of such properties.

xxx xxx xxx

(2) No municipal committee shall lease nazul properties of Government in its charge for a term exceeding five years without the previous sanction of the Deputy Commissioner or for a term exceeding ten years without the previous sanction of the Commissioner.

(3) No municipal committee shall sell nazul properties of Government in its charge without the previous sanction of Government. Applications for such sanction should be submitted to Government through the Deputy Commissioner and Commissioner in the form appended to this rule, accompanied when necessary by a rough plan. When the sale has been completed the same statement should be re-submitted to Government, for confirmation of the sale, with the result of the sale detailed on the reverse, provided that if the property is sold by auction and the price realized is not less than 75 per cent of the price accepted by Government when the proposals for sale were submitted for sanction, the sale may be confirmed by the Commissioner without further reference to Government.”

The property vesting with the Notified Area Committee in terms of Section 56 of the Act could be transferred to the State Government under Section 59 of the Act. If the Notified Area Committee is to sell its property other than those specified in Section 59 of the Act, it can be act upon only after resolution of the Committee, a

copy of which is required to be sent to the Deputy Commissioner within three days in terms of Section 30 of the Act. The approval of the Deputy Commissioner on 29.05.1979 was for the sale of 79 commercial sites with 5 per cent reservation for Scheduled Castes, Backward Classes and serving/ex-servicemen from defence forces. In terms of the Rules notified in the year 1918, after completion of sale, the same was required to be submitted to the Government for confirmation. But if the property is put to auction and the price realized is not less than 75 per cent of the price accepted by Government when the proposals for sale were submitted for sanction, the sale may be confirmed by the Commissioner without further reference to Government.

The scheme under which 242 residential and 79 commercial sites were sold is known as 61.21 acres scheme regarding the land situated at Chandigarh- Kalka road. No resolution of the Committee as required under the Act for sale of the property and forwarding the same for seeking approval of the Deputy Commissioner or the competent authority has been placed on record. The alleged resolution No.4 purported to be the resolution passed by the Committee is not actually a resolution but the same appears to be a concoction as none of the members of the Committee are allegedly signatories of the same. The said resolution No.4 dated 28.4.1979 does not indicate if it was passed by the majority of the members. It is in the shape of a letter written by the Secretary. Again a letter bearing UO No.NAC-79/1062 dated 5.5.1979, has been written by the President of the Committee for according approval of the Deputy Commissioner for sale of the plots. The said letter is accompanied by the terms and conditions for sale of the property which is also signed by the President of the Committee without any approval of such terms from the Committee. Among other terms and conditions, the letter written by the President indicates about some reservations of the residential plots to the particular category of persons whereas commercial plots do not indicate any such reservation, however, the Deputy Commissioner, vide letter dated 29.5.1979, accorded the sanction as under :-

Reference your U.O. No. NAC-79/1062, dated the 5th May, 1979, on the subject cited above.

2. In accordance with the provisions of Municipal Properties Alienation Rules, sanction is, hereby, accorded to the lay out plan for the commercial and residential scheme with the terms and condition of the allotment of sites subject to the condition that there will be no reservation except 5 per cent reservation each for Scheduled Castes, Backward Class and serving/ex-servicemen from defence forces. The price of the plots will, however, be paid on instalment basis rather than in lump-sum.

Sd/-

Deputy Commissioner,

Chandigarh.”

But, in the present case, no such reservation was provided and all the 12 plots were sold on free hold basis at reserve price. As a matter of fact, no proper publication of the scheme was made by the Committee. No public notice was issued as required under the Act before putting the sites to sale. Section 214, 215 and 218 of the Punjab Municipal Act, 1911, refer to the manner in which the notice has to be served or published. Relevant Sections of the Punjab Municipal Act, 1911 read as under :-

214. Reasonable time for compliance to be fixed. When any notice under this Act requires any act to be done for which no time is fixed by this Act, it shall fix a reasonable time for doing the same.

215. Authentication, service and validity of notices. (1) Every notice issued by a committee under this Act or under any rule or bye-law shall be in writing, signed by the President, Vice-President, secretary or assistant secretary, or by the members of any sub-committee specially authorised by the committee in that behalf, and every such notice and every order made under Section 193 may be served on the person to whom it is addressed, or delivered or left at his usual place of abode or business with some adult male member or servant of his family or if it cannot be so served, may be affixed to some conspicuous part of this place of abode or business.

Provided that such notice may be signed by the Medical Officer of Health when it is issued by the committee under any section of this Act under which power may be delegated to the Municipal Officer of Health under clause (b) of Section 33 and has been so delegated.

(2) When the place of abode or business of the person to whom notice is addressed is not within the limits of the municipality, the notice may be served by posting it in a registered cover addressed to his usual place of abode.

(3) If the owner of any property has no place of abode or business within the municipality, every such notice addressed to him as such owner may be served on the occupier.

(4) When the place of abode or business of the occupier of any property is not known every such notice addressed to him as such occupier may be served by affixing it to some conspicuous part of the property.

(5) No notice issued by the committee under this Act or under any rule or bye-law shall be invalid for defect of form."

218. Publication of public notices - Every public notice given by a committee under this Act or any rule or bye-law shall be published by proclamation or in such other manner as the State Government may, by rule, direct." On critical analysis of the aforesaid provisions it transpires that when the time for publishing notice has not been fixed by any provisions of the Act, then the Committee shall fix a reasonable time for doing the same. The Committee was also to seek direction of the State Government in publishing and proclaiming such public notices. But, in this case, the Committee appears to have been side lined, but the Secretary and the President of the Committee were on the forefront of the whole game. They did not seek any direction from the State Government about the manner in which the notice was to be published or proclaimed and no reasonable time was fixed in the said notice issued by the Committee. The sanction was accorded by the Deputy Commissioner vide letter dated 29.5.1979 which may have been received by the Committee at the most on 31.5.1979. The Secretary of the Committee wrote a letter to the Manager, The Tribune, Chandigarh on 31.5.1979, pursuant to which a

notice in the small column of the English Tribune was published on 7.6.1979 as directed by the Secretary of the Committee. The notice further reveals that the date of receipt of the applications was 16.6.1979. The description of the plots, their location or even the earnest money required to be deposited is disclosed. To cover up such omission, the stand is that public notice in respect of such details was displayed on the notice board of the Committee. The size of notice board, the manner in which it was published has not been disclosed. In fact, the layout plan is huge, which could not have been displayed on any normal size of notice board.

This type of notice does not amount to giving any wide publicity to the scheme for inviting applications of the customers with a motive to fetch maximum price but the same appears to be a camouflage and an eye wash to complete the formalities. The residents of this area knows Hindi and Punjabi but such citizens were deprived of the information about the availability of plots for sale of the plots at Chandigarh- Kalka road. Further the notice is defective inasmuch as - (i) it was very short notice so as to provide proper opportunity to the intending purchasers for filing the applications; (ii) notice itself does not indicate any performance over which it could be applied; (iii) it is vague inasmuch as it does not disclose the situation of the area where plots are located or the number and sizes of the plots to be sold. The area at Manimajra is a big area, therefore, it was difficult to assess and analyze as to where the property was located. Since it was a matter of sale of commercial sites, therefore, if sold without giving wide publicity would certainly result into a huge loss of revenue to the Committee, therefore, it should have been appropriate if a wide publicity through the regional newspapers of vernacular language and national language would have been given. The notice does not refer to number of residential or commercial plots; the reserve sale price of the plots; the manner in which the allotment was to be made and the date and the place of auction.

It may further be observed that notice though bears the signatures of the President but no resolution indicates if the President was authorised to issue such notice. The Committee being the legal entity is governed by the Act, Rules or the resolution passed thereunder. Consequently, the President or the Secretary or any other member of the Committee without any proper authorization could not issue

such notice, therefore, in the absence of any such resolution or rule, we find that the President or the Secretary of the Committee were not competent to issue notices, receive applications and put the property to sale without following the proper procedure as prescribed under the aforesaid rules. The Secretary of the Committee on receiving all the applications appears to have allotted the plots without draw of lots, in view of the fact that the number of applications was less than the number of plots. The process of allotment has not been got approved from Government. It appears that Hoshiar Singh, President and J.S. Walia, Secretary of the Committee in collusion with the officers in the helm of affairs, without publishing valid notice and giving adequate advertisement for sale of the plots adopted the methodology to benefit their own kiths and kins.

The earnest money deposited, as per Annexure R-2, shows that seven persons, namely, Major Mahinder Singh, Smt. Bimla Malik, O.P. Malik and Des Raj applied for two plots each and got issued drafts No.848423 to 848431 from Punjab and Sind Bank, Sector 26, Chandigarh for a sum of Rs.3000/- each on one date i.e. 15.6.1979. Jatinder Walia, Paramjit Walia and Urmil also got issued drafts from the same bank on the same date and the others also applied on or after 13.6.1979.

The argument of the learned counsel for the respondents that even prior to the sale of these plots, the number of applicants was always less than the number of plots, therefore, no abnormality could be said to have taken place in the sale of the present plots. In this regard, it may be mentioned that J.S. Walia, who admittedly was not qualified for the present post of Secretary having gained the patronage of the high ups, therefore, with an intention to oblige those who had contributed for his appointment was bound to oblige them by applying short cut procedure while violating the rules by not giving wide publicity to the scheme. It has come on record that J.S. Walia himself got allotted plots in his name or in the names of his sons, relatives or friends, therefore, while getting benefit for himself, did not shirk while obliging other official's as beneficiaries of the public land at throw away price in order to get support to his own illegal acts. Though the Finance Secretary, having come to know about the fraud being committed by the officers in regard to the mal administration in the sale of the property situated at Manimajra, had ordered stay, yet, two plots had been allotted by the respondents on 31.7.1979.

As regards the argument that the respondent Committee had dealt with the municipal property earlier also in a similar manner and allotted the same without any public auction and it was so done for the reason that the number of booths or residential sites were more than number of customers, as such, the case of the petitioner cannot be taken as an exception and they having spent lot of money over the construction with the permission of the Municipal Committee now cannot be thrown away out of the premises.

In this regard it may be observed that each case has to be examined on its own facts. We cannot validate the wrong committed by the Committee in a particular case on the ground that it had committed the similar ground earlier. The principle of discrimination has no application in such circumstances. As we are not sitting over to decide the validity of the earlier or latter allotments, therefore, the argument is turned down.

The property as put to sale was situated at strategic junction of Manimajra at Chandigarh- Kalka Road, but the display advertisement which appeared at page No.8 of the Tribune on 7.6.1979 did not reflect the exact location but instead it displayed the location "at Manimajra". Had the exact location been mentioned in the notice, then certainly more customers ought to have been attracted.

While refuting the arguments, the learned counsel for the respondents have urged that it was an open sale of the property and every customer including the petitioner could participate while applying for the same, therefore, no fraud could be said to have been committed, we observe that despite the defect and the irregularities as referred to above in connection with the sale, it is noticed that no official of the Committee was associated in the allotment of the sites. The allotment letters were prepared by J.S. Walia Secretary of the Committee himself and in order to show observance of the formalities, Smt. Reeta Grover a clerk has signed the letter. Learned counsel for the respondents have referred to the second notice dated 1.8.1979 containing details of the sites and their prices. The said notice appears to have not been got approved from the competent authority nor published in the press. The said notice is also vague and it is also doubtful if it was actually affixed on any notice board and there is no note in the file if such notice was placed on

the notice board, which amounts to concealment of facts of availability of sites at Chandigarh- Kalka road from the general public. The record further reflects that the allotment of mini show room sites was proposed by the Secretary and approved by the President of the Committee and the letters so written to the Deputy Commissioner do not refer to any approval by the Committee.

Learned counsel for the respondents has urged that despite the advertisement, which appeared in the newspaper on 7.6.1979, two more advertisements appeared in the press subsequently, but they have failed to support this fact by any documentary evidence.

Learned counsel for the respondents have given much stress that though the allegations are with regard to the sale of the plots to the relatives of the President, Secretary of the Committee, Deputy Commissioner, Senior Architect and the other persons associated with the Committee, yet the petitioner ought to have strictly proved this fact. We observe that from the affidavit as filed on 11.1.2012 as also from the facts available on record and inference drawn on such basis, it is crystal clear that according to the allottees' list first mini show room site was allotted to two sons of J.S. Walia, Secretary of the Committee, second to the wife of Mr. Verma, (town planner who prepared the lay out plan), third plot was allotted to the son of Joginder Singh (senior IAS Officer of Punjab), fourth plot was given to the daughter of S.C. Nangia, Senior Town Planner, fifth was given to Nathi Singh of Chandigarh (said to be the relative of P.P. Singh Swahney, the then President of the Committee), sixth was given to the father of the Chairman of the Committee, seventh to the wife of the Assistant Estate Officer U.T. Chandigarh, eighth to the sister-in-law of the Chairman of the Committee, ninth to Daulat Ram of Faridabad (said to be benami for Hoshair Singh President of the Committee), tenth was given to Rupinder Singh of Chandigarh (said to be relation of J.S. Walia Secretary of the Committee), eleventh was given to the wife of A.S. Mehendiratta, Architect, Chandigarh Administration and twelfth was given to the daughter of Mohinder Singh Executive Magistrate (now retired). No rebuttal to this affidavit has been filed by way of furnishing counter affidavit. Even if in respect of few allottees, the exact relation with the officials is not made out, the fact remains that at least 8 plots out of 12 were allotted to the officials. The said fact is sufficient to infer that

all the allotments were actuated by fraud.

The enquiry conducted by Mr. Bhagwan Dass, Inspector Vigilance Cell, Chandigarh in terms of the direction of the Chief Commissioner is on record. He has found that initially there were 67 commercial sites, as per approved site plan, but 12 show room Nos. 815A, 815B, 815C, 815D, 830A, 830B, 830C, 830D, 855A, 855B, 855C and 855D were created later on with a motive to allot them to their own kiths and kins and for obliging the officers/officials associated with the Administration. He also observed that the allotments were made in hurried manner; according to the official file, a note was put up on 26.6.1979 that 48 applications i.e. less than number of plots offered was received and allotment could be made without draw of lots. The said note was followed by a note dated 30.6.1979 recorded by J.S. Walia, Secretary proposing the system of first come first serve. The said proposal was approved by Hoshiar Singh, President of the Committee on 30.6.1979 itself and thereafter a press note was given by J.S. Walia to the effect that allotment letters in all 48 cases be issued and the same were issued on 2.7.1979. He also reported that the residential and commercial sector on the East of Chandigarh- Kalka Road was first proposed by the Committee on 30.8.1978. Notification under Section 4 of the Land Acquisition Act for acquisition of the area was issued on 2.1.1979. Before issue of notification under Section 6 of the Land Acquisition Act, on 17.3.1979 and completion of other formalities of acquisition, the NAC, Manimajra asked the Town Planner on 23.1.1979 to prepare the layout plan of the area. The plan was prepared and supplied on 24.4.1979 and revised on 27.4.1979 on the condition that the property shall be demarcated on the ground to check feasibility of the site. No checking on that account was ever made and the sites were created and allotted in haste by the N.A.C. Manimajra. Unnecessary haste shown in creation and allotment of the sites on nominal price without getting any sanction from the Government is another circumstance which contributed to the allotment of mini show room sites at Manimajra only to the officers and the relations concerned, directly point out towards misfeasance in the public office and breach of statutory duty and malicious use of power.

The manner in which the plots were carved out, the advertisement issued and the plots allotted to the officials associated with the Notified Area Committee shows

that there was a calculated design to grab the public property by deceit under the cover of wide publicity by publication of a public notice bereft of any particulars in the newspaper and then introduced public notice on the Notice Board, the possibility of which is not reliable. The essence of the parliamentary democracy is not to distribute the property in an unplanned or unorganized and ruthless manner. "The corruption is also included as an abuse of public resources for private gain as has been recorded in the Encyclopaedia of Democracy by Seymour Martin Lipset Vol. 1, p.310, in the Chapter "Corruption".

According to Francis Beaumont (1584-1616), corruption is a tree whose branches are of an un-measurable length, they spread everywhere and the dew that drops from thence, hath infected some chairs and stools of authority. The authority cannot be autocratic and make its own rules for rules of governance on other consideration then impart which is another kind of fraud if it is so adopted." The supreme Court in case **Shivsagar Tiwri v. Union of India and others, (1996) 6 Supreme Court Cases 558**, while setting aside the allotment of booth/stalls observed that executive powers of the Government is distributed department-wise and one Minister is made head of that department. The other minister becomes responsible for the acts and policy of the department. He becomes principally accountable and answerable to the people. His powers and duties are regulated by the law of the land. The legal and moral responsibility or liability for the acts or omissions rest solely on the Minister. While accepting the report made by the Central Bureau of Investigation in the allotment of booth/stalls, the Apex Court observed that world of jurisprudence has thus accepted that misfeasance in public office is a species of tort and misuse of power by the public officer which is actionable in tort. While discussing about such allotment as a fraud, the Apex Court in **Shivsagar Tiwari's** case (supra), discussed the judgments delivered in cases **Common Cause, a Registered Society v. Union of India, (1996) 6 SCC 530** and **Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243** and observed as under :

"10. It would be apposite in this context to refer to the recent decision of this Court in **Common Cause, a Registered Society v. Union of India**, in which one of us (Kuldip Singh, J.) reiterated the need to act fairly and justly in the matter of grant of

largesses, pointing out that any arbitrary distribution of national wealth would violate the law of the land. Mention was made of the judgment in Lucknow Development Authority v. M.K. Gupta, stating that the same approved “misfeasance in public office” as a part of the law of the tort. It was pointed out that public servants become liable in damages for malicious, deliberate or injurious wrongdoing.”

11. A reference to Wade's Administrative Law shows that a breach of statutory duty does give rise in public law to liability, which has come to be known as “misfeasance in public office”, and which includes malicious abuse of power. This aspect has been dealt at pp. 789 Et al of the 7th Edn. It has been stated that public authorities or officers may be liable in damages for malicious, deliberate or injurious wrongdoing. The Supreme Court of Canada in *Pon Carelli v. Duplejis* awarded damages against the Prime of Quebec personally for directing the cancellation of a restaurant owner's liquor licence. The Supreme Court of Victoria in *Farrington v. Thomson*, awarded damages against a licensing inspector and a police officer who had ordered the plaintiff to close his hotel and cease supplying liquor, though they knew they did not possess such a power. Smith, J. referred in that case to the statement of Best, C.J. Made in *Henly v. Lyme Corpn. Bingn* at 107 reading as below:

“Now I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that, in an injury to an individual, an action may be maintained against such public officer. The instances of this area so numerous that it would be a waste of time to refer to them.”

While interpreting fraud, the Apex Court in case **Bhaurao Dagdu Paralkar vs. State of Maharashtra and others (2005) 7 Supreme Court Cases 605** observed as under :- “11. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent

misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See *Ram Chandra Singh v. Savitri Devi and Ors.*

12. In *Shrisht Bhawan v. Shaw Bros.*, it was observed as follows :

(SCC p. 553, para 20).

"Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud i"n equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a

misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry and Ors. v. Peek (1886-90) All ER 1 what constitutes "fraud" was described thus: (All ER p. 22 B-C)

"Fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false".

But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in *Khawaja v. Secretary of State for Home Deptt.* (1983) 1 All ER 765, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute.

"If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions

provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive. (See *Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers*, SCC p.554, para 20).

In **Bhaurao Dagdu Paralkar's** case (supra), it has also been observed as under :-

"16. In *Lazarus Estate Ltd. v. Beasley* (1956) 1 QB 702, Lord Denning observed at pages 712 and 713 : (All ER p.345 C).

""No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722). These aspects were recently highlighted in the *State of Andhra Pradesh and Anr. v. T. Suryachandr Rao*."

It would apposite to mention here that the Apex Court in case **Mukund Swarup Mishra vs. Union of India and others, (2007) 2 Supreme Court Cases 536** which refers to the allotment of petrol pump made by the Ministry of Petroleum and Natural Gas, observed as under :-

"19. Learned amicus curiae, on the other hand, submitted that a Herculean task has been performed by the Committee. Keeping in view the directions issued by this Court in *Onkar Lal Bajaj* and considering individual cases in their proper perspective, the Committee submitted a report by dealing with each and every case. The report runs into few thousands pages. The Committee has also observed, as seen in the earlier part of the judgment that no allotment has been cancelled merely on the ground of political linkage/patronage but while considering the legality or otherwise of the allotment, political linkage/patronage was kept in mind as one of the factors. It was submitted that even after recording a finding that there was a political linkage/patronage, the Committee has considered as to whether such political linkage/patronage has weighed with the authorities at the

cost of merits or undue favour in allotment was made ignoring public interest. Only in those cases where merits have suffered or allotment has been made on extraneous considerations that the Committee held the allotment as contrary to law. It is also clear from the fact that out of 409 cases, the Committee had approved on merits more than 100 cases and in respect of 297 allotments, it found that they were not in accordance with the guidelines and, therefore, could not be approved. The counsel also submitted that the directions in Onkar Lal Bajaj were explicitly clear and the Committee was asked to consider claims of all the applicants whether the allotment in their favour was made on merits or on account of any political or “other consideration”. It, therefore, could not be said that the direction to the Committee was to consider a political linkage/ patronage only. The Committee was bound to consider all the cases as per the direction of the Court which has been done and no fault can be found against the report of the Committee and the applications deserve to be dismissed.”

In **Mukund Swarup Mishra's** case (supra), the Apex Court interpreted the word “other consideration”, and further observed as under :-

“22. The phrase “other consideration” in our opinion, therefore, cannot be read ejusdem generis with political linkage/connection/patronage. The expression “other consideration” would take within its sweep all consideration other than merits of the case. Ultimately, the direction of this Court was not a statute nor can it be considered as an enactment.”

The Apex Court in case **A.V. Papayya Sastry and others vs. Govt. of A.P. and others (2007) 4 Supreme Court Cases 221** observed as under :-

“21. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

"Fraud avoids all judicial acts, ecclesiastical or temporal". The Apex Court in case **Meghmala and others vs. G. Narasimha Reddy and others (2010) 8 Supreme Court Cases 383**, while interpreting fraud and consequences thereof, observed as under :-

"28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law." "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu Vs. Jagannath. In Lazarus Estate Ltd. Vs. Besalay the Court observed without equivocation that (QB p.712) "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

29. In Andhra Pradesh State Financial Corporation v. M/s. GAR Re- Rolling Mills and Anr. and State of Maharashtra and Ors. Vs. Prabhu this Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."

30. In Smt. Shrisht Dhawan v. M/s. Shaw Bros, it has been held as under: (SCC p.553, para 20)

"Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

31. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Ors. AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

32. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram Anr. Vs. M. Tripura Sundari Devi; Union of India and Ors. Vs. M. Bhaskaran; Kendriya Vidyalaya Sangathan and Anr. Vs. Girdharilal Yadav; State of Maharashtra v. Ravi Prakash Babulalsing Parmar; Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company; and Mohd. Ibrahim and Ors. Vs. State of Bihar.

33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud i"nvolves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide *Vimla (Dr.) v. Delhi Admn.*; *Indian Bank v. Satyam Fibres (India) (P) Ltd.*; *State of A.P. v. T. Suryachandra Rao*; *K.D. Sharma Vs. SAIL* and *Central Bank of India Vs. Madhulika Guruprasad Dahir.*)

In the light of the aforesaid judgments, which discuss and elaborate the scope of fraud, it would be hard to accept the contention that the respondents are bona-fide purchasers for a consideration with the permission of the Notified Area Committee for reasons discussed herein before. We have already found that the sale of the commercial sites is fraudulent. Now the question arises, "whether the transferors from a person who is a party to the fraud could be said to be ostensible owner?" It is settled by now that the allotment in favour of the transferor having been set aside on account of the fraud, he loses his title from the date of allotment and not from the date of order, therefore, in view of the judgment delivered in case **Smt. Niranjan Kaur and others v. The Financial Commissioner, Revenue and Secretary to Government, Punjab and others, AIR 2011 Punjab 1 (Full Bench)**, wherein their Lordships observed that transferor by virtue of the original allotment can be said to be permissible user of the land before allotment was cancelled but such transferor cannot be said to be ostensible owner as the ownership itself has been set aside either as a result of fraud or for some other irregularity. The transfer in favour of the transferor was invalid and void from the date of transfer though factum of fraud or irregularity came to the notice of the real owner (Central Government) subsequently. Therefore, it cannot be said that the transferor of the appellant was the ostensible owner. Once the allotment is cancelled, such cancellation is not prospective i.e. from the date of order, but as if allotment was never made. A full Bench of this Court in case **Balwant Kaur v. Chief Settlement Commissioner (Lands) Punjab, 1963 Punjab Law Reporter, 1141**, has held that the Chief Settlement Commissioner is competent to cancel or set aside the order of transfer if the sanad is granted or the sale deed has been executed. It has been held that on such order being made, sanad or sale deed will automatically fall with

it. The majority has upheld the earlier judgment of Division Bench of this Court reported as **Bara Singh v. Jogindeer Singh, 1959 PLR 127..** The majority opinion reads as under :-

“49. As regards the second additional ground, the learned Judges have not given any reasons for the same. Moreover, I have already held above that the sale deed was not, in any way, independent of the order of transfer. If the order of transfer is reversed, the sale deed must automatically go with it. Of course, title is created by the execution of the sale deed, but if the transaction behind the deed is set aside, the deed has got no value in the eye of law. Just as under the Code of Civil Procedure when the sale is set aside, the sale certificate automatically goes and is a waste paper, similar is the case of a sale deed or a sanad, when the order of transfer, on the basis of which the sale deed or the sanad was granted, is reversed.

The aforesaid judgment was approved by the Supreme Court in **Pala Singh (deceased) by L.Rs. v. Union of India and others, 1987 R.R.R. 398 : 1987 (Supp) Supreme Court Cases 201.** Thus, the cancellation of the allotments has the effect of loss of title of the allottees from the date of allotments itself. Therefore, keeping in view the principle *nemo dat quod non habet* i.e. No one can convey a better title than what he had, no title could be created in favour of the appellants.

Resultantly, the allotments having been declared as fraudulent, the same do not confer any right, title or interest upon the transferees, their legal heirs, lessees, licensees or otherwise who are in occupation of the same. They cannot get any benefit of the principles as enshrined under Section 41 of the Transfer of Property Act. It was also observed in case **Vyalikaval House Building Coop. Society by its Secretary v. V. Chandrappa and others (2007) 9 SCC 304** that when the entire acquisition emanated from the tainted notification, any settlement on the basis thereof cannot be validated.

On examination of the entire facts and circumstances, we are of the opinion that there was misfeasance in the public office by way of misuse of power by the officers of the Notified Area Committee and/or Administration. Such Officers are

liable for causing loss to public property as a result of fraud and concealment.

In view of the above, we dispose of the present writ petition with the following directions:

1. The allotment of all 12 commercial sites No.815A, 815B, 815C, 815D, 830A, 830B, 830C, 830D, 855A, 855B, 855C and 855D made on 31.7.1979, situated in the East of Chandigarh - Kalka road, are set aside and stands cancelled.
2. The allotment of plots allotted to Vidyawati Sofat and Suresh Sofat are also set aside and cancelled, as such plots were allotted after the administration restrained the Notified Area Committee from allotment of plots.
3. The plot and the super structures thereon shall vest free from all encumbrances with the Municipal Corporation. The occupants of the aforesaid sites shall vacate the same within three months.
4. The allottees shall not be entitled to any compensation for the super structure for the reason that they have utilized the public land since the date of allotment illegally and on the basis of fraudulent allotment.
5. In case, the allottees or their assignees, including the occupiers thereof, fail to vacate the premises within three months, the Municipal Corporation shall take the possession of the same under the provisions of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971.
6. In the meantime, the official respondents shall conduct an enquiry into the entire matter of carving out of plots in the lay out plan, as to whether such plots have been carved out properly and after following the due procedure. If the answer is 'Yes', then the plots along with super structure shall be put to sale by way of public auction after giving wide publicity in at least three newspapers i.e. English, Hindi and Punjabi.
7. If the lay out is found to be not amended in accordance with the procedure or the requirement of law, the super structure shall be razed to the ground and the area be used for parking as originally provided in the lay out plan.

8. The Chandigarh Administration and/or Municipal Corporation shall complete investigations in respect of which report was earlier submitted and launch prosecution against the persons found guilty of malfeasance and misfeasance.

9. It shall be open to the Administration to initiate civil, criminal or any other proceedings against the officials responsible for causing loss to the public exchequer, allottees, occupiers and tenants, as is permissible under the law.

We acknowledge the assistance provided by Mr. Jaskirat Singh Sidhu, Advocate as an Amicus Curiae.

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