S. No.2
Suppl.list

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on:- 28.05.2024
Pronounced on:- 19.07.2024

Case No.:- OWP No. 589/2012
CM No. 9176/2021

Kamran Ali Khan, Age 30 years, ...Petitioner(s)
S/o Sh. Ashiq Hussain Khan,
R/o House No. 352,
Mohalla Dalpatian, Jammu.

Through: Mr. Pranav Kohli, Sr. Advocate with
M/S Aftab Malik, Arun Dev Singh &
Anuj Dewan Raina, Advocates.

Vs

...Respondent(s)

1. State of J&K Th.
Chief Secretary, J&K Govt., Civil
Secretariat, Srinagar/Jammu;

2. The Commissioner Secretary to
Govt., Housing & Urban Dev. Deptt.,
J&K Govt., Civil Secretariat,
Srinagar/Jammu;

3. The Vice Chairman,
Jammu Development Auth., Jammu;

4. The Estate Officer,
Director Land Management,
Jammu Dev. Auth., Jammu;

5. The Executive Engineer,
Division 1-Jammu Dev. Auth.,
Jammu.

Through: Mr. Adarsh Sharma, Advocate.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

BRIEF FACTS OF THE CASE: -

01. Before examining the rival contentions of the parties, it would be apposite to refer to the basic facts of the case, which are, in nutshell, summarized as follows.

02. The petitioner through the medium of instant amended petition has called-in-question the order No. JDA/LS/40-42 dated 11.04.2012, whereby, according to the petitioner, the land allotted and duly leased in favour of the petitioner has been cancelled without any cogent or valid reason in law. Besides this, the petitioner is seeking a Writ in the nature of Prohibition, restraining the respondent-authorities from taking the possession of the land from the petitioner, which otherwise has been given to the petitioner after completion of all the necessary formalities. The petitioner is also seeking a Writ in the nature of Mandamus, commanding the respondents to account for the losses and damages suffered by the petitioner on account of the illegal acts of the respondents and also permit the petitioner to make use of the said land for the purpose in addition to the purpose for which it has been allotted by way of additional or alternative relief.

03. It is contended in the instant petition that allotment was made in favour of the petitioner in respect of the land falling under Khasra No. 179 measuring ***01 Kanal 16 Marlas*** and 208 Sq. feet and the petitioner had fulfilled all the necessary formalities vis-à-vis payment of cost of the land, as fixed by the respondent-authorities as also, shifting of HT/LT Line passing over the land. The learned counsel for the petitioner submits that the petitioner has been enjoying the possession of the land in question for about more than five years and even the cost of the land amounting to ₹36,76,471/- (Rupees Thirty Six Lacs, Seventy Six Thousand, Four Hundred and Seventy One) has also been paid by the petitioner to the respondent-Jammu Development Authority (*in short, the "**JDA**"*).

04. The specific case of the petitioner is that the JDA, without any authority of law and after a lapse of five years, has issued a show cause notice dated 17.12.2012 Vide No VC/DS/2012/70, which has been placed on record and subsequently, the respondent has issued the cancellation order dated 11.04.2012, which is impugned in the present amended petition. It is pleaded by the Learned

counsel appearing for the petitioner that after fulfilling all the mandatory requirements, petitioner was allotted the land in question and the respondent-authorities, i.e., JDA were not legally justified in issuing the order impugned is not sustainable in the eyes of law.

05. It is further contended in the instant petition that the petitioner belongs to Scheduled Tribe Category and, as such, had applied for the award of Retail Outlet Dealership of Bharat Petroleum Corporation Limited (*hereinafter referred to as the "**BPCL**"*) on 29.12.2004 and after qualifying the interview and fulfilling all the mandatory formalities, and other prerequisites, the BPCL issued a letter of Intent dated 08.08.2005 in favour of the petitioner, wherein it proposed to offer its Retail Outlet Dealership at Circular Road, District Jammu in favour of the petitioner.

06. The respondent-Authorities while allotting the land in question in favour of the petitioner, imposed certain conditions and pre-requisites upon the petitioner, which included the expenditure for shifting the HT/LT line passing over the land in question and depositing of an amount of ₹36,76,471/- on account of cost of the land. The petitioner in furtherance of the said allotment order and the conditions laid down therein, deposited the whole amount, as demanded by the JDA-authorities vide DD No. 335112 dated 30.04.2007 amounting to ₹7.00 lacs, DD No. 810766 dated 20.06.2007 amounting to ₹15.00 Lacs and further DD No. 0256236 dated 09.08.2007 amounting to ₹43,700/- for shifting of HT/LT lines with the Elect and M&RE Division II, Jammu and the petitioner has placed on record the receipts in this regard.

07. It is also the case of the petitioner that the respondent-JDA after obtaining the payment for the complete cost of the land and other formalities, as envisaged in the allotment order, entered into a lease deed dated 30.04.2008, which was duly registered with the Sub-Registrar, Sub Judge, Jammu on 06.05.2008, on

which date, the petitioner paid the requisite registration/Court fees amounting to ₹4,80,000/-. With a view to fortify his claim, the petitioner has placed on record the duly registered lease deed on 06.05.2008. It is also urged by the Learned Counsel for the petitioner that after the petitioner completed all the necessary formalities, the possession of the plot was formally handed over to him on 17.05.2008, as is evident from a bare perusal of the Communication No. JDA-1/662-70 dated 06.05.2009, which has been placed on record along-with the instant petition.

08. It is further pleaded in the instant petition that the land allotted to the petitioner falls under two Khasra numbers, i.e., 179 & 180 measuring 01 Kanal 16 Marlas and 208 Sq. ft., but due to an error or omission on part of the respondent-authorities, only one Khasra number, i.e., 179 was mentioned in the allotment order and despite the fact that the land measurement had been correctly shown in the allotment order as well as the lease deed as 01 Kanal 16 Marlas and 208 Sq. ft, the authorities deliberately skipped the reference of Khasra No. 180. The petitioner after becoming aware of the aforesaid error, which crept in the record, immediately approached the respondent-authorities as well as the revenue authorities and requested for rectification/modification of the Khasra numbers in the said allotment order/lease deed verbally as well as in writing. The further case of the petitioner is that he was served with a show cause notice thereafter on 17.02.2012, asking him as to why the allotment order in his favour should not been put to auction.

09. It is also contended in the instant writ petition that simultaneously with the allotment of the land in question, the petitioner took all the necessary steps to complete the project, for which the said land was allotted. Moreover, the petitioner had also obtained *"No Objection Certificate"* in the meantime from

different agencies/instrumentalities for setting up of the retail outlet. For facility of reference, the details of such NOCs are reproduced hereunder:-

Date	Name of Department
28.06.2008	Revenue Department
06.08.2008	Directorate of Fire and Emergency Services
16.09.2008	Electricity, M & RE Division II
17.09.2008	S. Engineer PWD (R&B)
04.10.2008	Traffic Police

10. It is not so, even the case set up by the petitioner is that the land at the time of allotment was a bumpy land and was not conducive for setting up of the said outlet and it was only due to the strenuous efforts made by the petitioner, which led to the leveling of the said land for which the petitioner also constructed the '*Pacca*' Boundary wall upto the height of 05 feet as well as a room for guard and watch of the said land, thereby spending an amount of ₹3.00 lacs for the aforementioned purpose. All these steps were taken by the petitioner in furtherance of the allotment of the land in question in his favour. It is the specific case of the petitioner that the respondents, *by no stretch of imagination,* can take away a right, without following due process of law which has been created by the respondents in issuing the allotment order and executing the lease deed in favour of the petitioner.

SUBMISSIONS BY LD. SENIOR COUNSEL FOR THE PETITIONER:-

11. Mr. Pranav Kohli, learned Senior counsel for the petitioner has drawn the attention of the court to communication dated 17.12.2012 by way of a show cause notice, when in fact it was a cancellation order because the same has been issued with a preconceived mind to cancel the allotment, which can be corroborated from the language used in the said show cause notice, in which the decision to cancel the plot has already been taken on the basis of the decision taken

by the Board of Directors. The Learned counsel submits that, on one hand, the respondent-authorities have issued a show cause notice, asking the petitioner as to why the allotment should not be cancelled and in the same show cause notice, the respondents have already taken a decision to cancel the said allotment, which finds mention in the same show cause notice. Feeling aggrieved of the same, reply was furnished by the petitioner vide Communication dated 29.02.2012. The further case of the petitioner is that the allotment was issued in favour his favour way back in2007 and the impugned show cause notice was issued after five long years and subsequently, the order of cancellation was issued on 11.04.2012.

12. According to him, the respondents are estopped under law to question the said allotment or the procedure after five long years through the medium of a show cause notice, which culminated into the cancellation order. According to the learned counsel for the petitioner, the *law of estoppel by conduct and acquiescence* holds good in the instant case in favour of the petitioner as against the respondents. According to him, the respondents are estopped under law to question the said allotment or the procedure at this belated stage, more particularly, when all the requisite formalities, as envisaged under law which finds a mention in the allotment order, were fulfilled by the petitioner and there was no infraction on part of the petitioner, which could be the basis for cancellation of the said land in question.

13. The Learned Senior counsel for the petitioner further submits that the perusal of show-cause notice leads to an irresistible conclusion that the same has been issued with a predetermined mindset to cancel the allotment. Thus, there was no purpose of filing any reply to the show cause notice, when the respondents had already taken a decision to cancel the said allotment through the medium of the said show cause notice and, thus, the issuance of the cancellation order was a mere

formality because the decision to cancel the allotment has already been taken by the Board of Directors and reflected in the said show cause notice.

14. The second limb of argument of learned Senior counsel for the petitioner is that even if it is assumed that the said Government Order, on which the reliance has been placed by the petitioner, is applicable to the case of the petitioner, still the respondent-JDA ought to have accepted the same through the Board of Directors, which till date, has not happened and the policy, which was applicable to the Housing & the Urban Development Department could not have been made applicable insofar as JDA is concerned, unless the same had been accepted by the Board of Directors of the JDA authorities, which in the instant case has not happened. It has been argued that by virtue of execution of the lease deed, a contract is complete and the relationship of the lessor and lessee is a statutorily governed relationship, which cannot be taken away without following due process of law, merely, on the basis of an administrative order, as it has happened in the instant case. Thus, the action of the respondent in issuing the impugned order cannot sustain the test of law and is liable to be rejected.

15. To buttress his arguments, learned Senior counsel for the petitioner has placed reliance upon the judgment of the Apex Court rendered in case titled, "***Siemens Ltd. Vs. State of Maharashtra and ors***., reported in *(2006) 12 SCC 33*". While placing reliance upon the said judgment, he has vehemently argued that there is no quarrel with the proposition that '*ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same, inter-alia, appears to have been without jurisdiction, as has been held by the Supreme Court in catena of judgments.* But the instant case, since an important question has been raised, wherein a notice has been issued in the instant petition with a premeditative mind and a decision has already been taken through the medium of a show cause notice and, thus, the issuance of

the final cancellation order would be a useless formality. In such eventuality, according to learned Senior counsel, a writ petition would be maintainable, as has been held by the Hon'ble Supreme Court. He further submits that in such an event, even if the respondents-authorities are directed to hear the matter afresh by taking into consideration the reply so filed and even a hearing is provided to the petitioner, (which has not happened in the instant petition), such hearing would not yield any fruitful purpose, as the decision to cancel the allotment order, which finds mention in the impugned show cause notice has already been taken by which the respondent-authorities.

ARGUMENTS BY THE LD. COUNSEL FOR THE RESPONDENTS

16. Response has been filed by the respondents, in which a specific stand has been taken by the JDA that the decision to cancel the land in question was taken pursuant to the decision of the Board of Directors of the JDA in its 71st Meeting held on 7th and 29th June, 2011 in light of the fact that the allotment of the commercial property was done without putting the same to auction and decision has been taken by the competent authority pursuant to the decision of the Board of Directors by issuing a detailed show cause notice. The arguments put forth by the learned Senior counsel for the petitioner that the show cause notice has been issued with a preconceived notion, does not hold good in light of the fact that the decision to cancel the allotment of the land in question was taken by the Board of Directors and pursuant to the said decision, the petitioner was issued a show cause notice and was given ample opportunities to reply. Thus, the arguments advanced by the learned Senior counsel for the petitioner that the notice has been issued with a preconceived notion, does not hold good and is contrary to record as per the stand of JDA.

17. Pursuant to issuance of the show cause notice, the reply was filed by the petitioner, which has been duly considered and this aspect of the matter finds

mention in the cancellation order and a detailed consideration order came to be issued which is impugned in the instant amended petition.

18. Learned counsel for the respondents has vehemently argued that initially the matter was placed before the Board of Directors in its 69th Meeting and the Board constituted a committee comprising of the then VC JDA, Commissioner, JMC and Chief Architect, J&K to verify the validity of the allotment of the land for installation of petrol pump and execution of lease deed thereafter and also to find out circumstances and manner, in which the property has not been put to auction. Besides this, the Committee so constituted was asked to investigate the similar cases and to submit its report in the next Board Meeting.

19. The further stand of the respondents is that pursuant to the 69th Meeting, the matter was again placed in the 70th Board Meeting of the Board alongwith the report of the Committee and it was brought to the notice of the Board that as per the Government Order No. 192-HUD/GR of 1991 dated 12.09.1991, all the commercial sites must be disposed of by conducting open auction. Thereafter, the Board constituted a fresh Committee comprising of Divisional Commissioner, Jammu and Vice Chairman, JDA to enquire into the matter in detail and, accordingly, the Government issued Order No. 382-HUD of 2010 dated 16.11.2010 regarding constitution of the Committee to enquire the validity of allotment of the land and to submit its report accordingly to the Board of Directors.

20. The further stand of the respondents is that the Committee submitted its report to the Board of Directors, which was discussed in detail in the 71st Board Meeting and thereafter, the Board accepted the report of the sub-committee to the extent that the process adopted for selection of allottee for allotment of a petrol pump site falls within the realm of a commercial activity and cannot be justified, as the land involving commercial activities have to be disposed of in a transparent

manner and by giving equal opportunities to all the interested parties and this aspect of the matter led to the cancellation of allotment in favour of the petitioner.

21. Learned counsel for the respondent-JDA further submits that the due procedure, as envisaged under law was followed before passing of the cancellation order and the petitioner was provided an opportunity to rebut with respect to the allegations leveled in the show cause notice, which was duly replied and accorded consideration before passing of the cancellation order. The reply to the show cause notice furnished by the petitioner was carefully examined by the respondents while passing the cancellation order.

22. Learned counsel for the JDA has drawn the attention of this Court to the impugned show cause notice, a perusal whereof, reveals that since the allotment order made in favour of the petitioner was in violation of the aforesaid Government Order dated 12.09.1991, which, *inter-alia*, provides that the procedure of the allotment of the commercial sites can be made through auction only.

23. In the instant case, since the procedure has not been followed, the competent authority issued the show cause notice pursuant to the decision taken by the Board of Directors to cancel the said allotment.

24. According to the learned counsel for the respondents, it is not a case that the respondents have taken a unilateral decision to cancel the allotment in a haste manner without hearing him, rather the petitioner was given an opportunity to show cause as to why the allotment made in his favour shall not be cancelled, as reflected in the aforesaid show cause notice, whereby the petitioner was granted time to file the reply within a period of fifteen days from the date of receipt of said notice, failing which it was presumed that the petitioner has nothing to say and the allotment made in his favour shall, in that eventuality, be treated as cancelled, without giving any further notice.

25. Thus, according to the learned counsel for the respondents, The stand of the petitioner is contrary to record. The reply filed by the petitioner pursuant to show-cause notice was accorded due consideration before passing of the final order of cancellation.

26. Learned counsel for the respondents has further referred to the order of cancellation, a perusal whereof, reveals that since the procedure, which relates to the allotment of commercial assets, was strictly by way of an open auction, as envisaged in the aforesaid Government Order dated 12.09.1991 and the same has not been followed and consequently the allotment made in favour of the petitioner, which was in flagrant violation of the norms, was cancelled. Not only the allotment was cancelled, but the amount so deposited to the tune of ₹36,76,471/- by the petitioner on account of the land premium was refunded to the petitioner. This aspect of the matter finds mention in the order of cancellation, which is impugned in the present petition.

27. Learned counsel appearing for the respondents further submits that insofar as the amount paid by the petitioner to the JDA on account of ground rent of the land is concerned, an amount was claimed to have been paid by the petitioner to the Power Development Department for shifting of HT/LT line passing through the aforesaid land, which was to be duly verified from records and from the situation on ground for appropriate decision separately in due course. Thus, the respondents have followed the due procedure and after due application of mind, the aforesaid cancellation order has been issued.

28. A specific query was raised by this Court to Mr. Adarsh Sharma, learned counsel appearing for the JDA that whether the allotment of a petrol pump site, which is a commercial activity, is banned in terms of the aforementioned Government order by way of policy, which has been relied upon by him or else the ban imposed by the Govt. was with respect to the commercial property.

29. Another query was raised by this Court to the learned counsel for the respondents whether the land in question, which was allotted to the petitioner, is a commercial land or else, the activity of allotment of a petrol pump falls within the realm of "commercial activity" which was banned in terms of the aforesaid order. In response thereof, he fairly submitted that since the allotment of a petrol pump falls within the realm of a commercial activity, thus, the same was banned in terms of the aforementioned Government Order and rightly so, the allotment in favour of the petitioner was cancelled.

30. Lastly, learned counsel for the respondents has referred to Sections 17 and 18 of the Development Act and placed reliance upon the same with a view to substantiate that the Board of Directors of JDA is empowered to make allotments within the parameters laid down by the Government from time to time. The specific case of the respondents is that vide Government Order dated 12.09.1991, lays down the mode and manner of the disposal of the State land, all sites/land, which is commercial in nature which shall be disposed of by conducting open auction. Relying upon the aforesaid Government Order and the provisions of law under the Development Act, the instant land allotted to the petitioner, is commercial in nature and allotted for commercial purpose, which is in derogation to the mandate and spirit of the Government Order (mentioned supra) and this aspect of the matter was accorded due consideration by the Board of Directors and a conscious decision was taken, pursuant to which, the impugned order of cancellation was passed. Since the allotment in favour of the petitioner was irregular/illegal and in violation of the aforesaid Government Order, therefore, the same was cancelled and the amount so deposited was refunded back to the petitioner.

ARGUMENTS IN REBUTTAL BY Ld. SENIOR COUNSEL FOR THE PETITIONER

31. In rebuttal, Mr. Pranav Kohli, learned Senior counsel for the petitioner has argued that it is not a case, where JDA has exercised *suo motu* power to cancel the allotment made in favour of the petitioner, rather the issue arises out of an application moved by the petitioner with respect to the rectification of the lease deed, wherein, after scrutiny of the record, it was found that out of 01 Kanal 16 Marlas and 208 Sq. ft. of land, 01 Kanal 08 Marlas and 184 Sq.ft. falls in Khasra No. 179 and 08 Marlas and 24 Sq. ft of land falls in Khasra No. 180 and, on the other hand, the lease deed was executed only for Khasra No. 179 and the land was actually falling in two khasra numbers. This led to the filing of an application before the JDA to make the necessary rectification and this aspect of the matter has been duly admitted by the respondents in the impugned show cause notice, wherein the respondents have admitted that the rectification deed was required to be executed. This led to the placement of the case of the petitioner before 69th Board Meeting to decide the issue of rectification. Accordingly, the matter was placed before the 69th Board Meeting, in which the Board was apprised that the Crime Branch is also conducting enquiry into the matter.

32. How and under what circumstances, the said enquiry got initiated and what was the subject matter of the said inquiry is not apparent from the record. The show cause notice reveals that the matter was discussed in the 69th Board Meeting, in which the issue was only with respect to the rectification of Khasra numbers, but the impugned show cause notice reveals otherwise that the Board Meeting was constituted to verify the validity of the allotment of the land for installation of the petrol pump and execution of the lease deed and also to find out the circumstances and manner, in which the property has not been put to auction.

33. The Learned counsel for the petitioner submits that the subject matter of the constitution of the 69th Board Meeting was only with respect to the rectification deed, but the scope was enlarged with respect to the purpose, for which the

execution deed and the allotment was made and at whose behest. The record doesn't reveal that why the said scope was enlarged and, on whose behest, the said decision was taken.

34. The record further reveals that the matter was again placed in the 70th Board Meeting with the report of the Committee, wherein the issue of passing of the Government Order dated 12.09.1991cropped up for the first time. Accordingly, a fresh Committee comprising of the Divisional Commissioner and Vice Chairman, JDA was constituted to enquire into the matter in detail and, accordingly, the Government issued order No. 382-HUD of 2010 dated 16.11.2010 regarding constitution of a Committee to enquire the validity of the land and submit the report to the Board of Directors, which report was submitted to the Board of Directors and was discussed subsequently in the 71st Board Meeting and thereafter, the Board accepted the report of the sub-committee to the extent that process adopted for the selection of the allotment of the petrol pump site was a commercial activity cannot be justified.

35. Accordingly, the decision was taken to cancel the allotment. Learned Senior counsel for the petitioner further submits that the very initiation and constitution of the Board was at the behest of the petitioner in pursuant to an application filed for seeking rectification, which ultimately led to the constitution of the 71st Board Meeting, which took a decision to cancel the allotment in favour of the petitioner.

36. Learned Senior counsel for the petitioner, in rebuttal, further submits that at the time when the allotment was made in favour of the petitioner, the Government Order dated 12.09.1991 was in vogue by way of said policy. The respondents despite knowing fully very well about the said policy with their eyes open and without any demur, allotted the said plot in favour of the petitioner and pursuant thereto, the lease deed was executed. It is not a case that the said Government order came into existence pursuant to the issuance of the allotment

order, rather the Government order by way of policy was in vogue prior to the issuance of allotment order and yet the allotment was made in favour of the petitioner without any objection/grouse.

37. The next argument of the learned Senior counsel for the petitioner is that even if the said Government order has to be taken on its face value, the same is not applicable to the case of the petitioner in hand, as the same is made applicable with respect to the allotment of the housing plots/flats or residential and commercial purpose. The language of the aforesaid Government order explicitly reveals that the same has been issued pursuant to the Administrative Council Decision No. 115 dated 01.09.1991, which lays down the criteria/guidelines for future allotment of plots/flats to different categories of the people of the erstwhile Jammu and Kashmir State and the same has been issued in supersession of the Government Order Nos. 40-HD of 1977 dated 03.02.1977, 782-HUD of 1981 dated 21.10.1981, 305-HUD of 1982 dated 19.10.1982 & 33-HD of 1987 dated 30.01.1987, whereby it has been ordered that in future, the allotment of the housing plots/flats for residential and commercial purpose will be made in accordance with the procedure, as laid down in the annexure to the aforesaid order. A perusal of the annexure to the aforesaid Government Order categorizes the distribution of plots/flats in housing colony, which is not applicable to the case of the petitioner and also relates to the registration of the plots/flats for residential purpose and also the complete mechanism has been laid down for the disposal of the commercial plots in Clause 6 of the Government Order No. 192 HUD/GR of 1991 dated 12.09.1991 which, *inter-alia*, provides as under:-

> ***"All commercial plots available in the housing colonies or any commercial complex or other complexes like Bus stand, Transport Yard developed by the Government agencies shall as a matter of rule, be disposed of by open auction. This would include plot kept for hotels, restaurants, shops, service stations and also built-up areas for such purposes. However, where a Transport Yard or a***

> ***Bus stand or any other facility is being developed with a view to shifting the same from an existing location, the Government would prescribe the modalities relating to allotment of such plots and other terms and conditions separately in each case."***

38. From the bare perusal of the aforesaid clause, it is apparently clear that the same could not be made applicable to the case of the petitioner, as it does not fall within the realm of Clause-6 mentioned in the aforesaid Government Order and, thus, the grounds urged and the reasons assigned in the cancellation order cannot sustain the test of law and are liable to be rejected.The said clause 6 of the annexure of the Government order further reveals that the same will be applicable to all commercial plots available in the housing colonies or any commercial complex or under complexes like Bus stand, Transport Yard developed by the Government agencies, shall be as a matter of rule, be disposed of by way of open auction, which also includes the plots kept for hotels, restaurants, shops, service stations and also built-up areas for such purpose.

39. He further submits that the land in question does not fall within the aforesaid clause, which was a barren land and has been developed by the petitioner and not by any Government agency, which could be the basis for going for an auction. As per the stand of the petitioner, the Government order, which has been relied upon by the respondents, is not applicable to the case of the petitioner and the reliance placed by the respondents on the same is ill founded and liable to be rejected. Thus, the foundation laid down by the petitioners in the instant petition that the whole action has been taken with a preconceived notion and with an ulterior motive, holds good in light of what has been urged in the instant petition.

40. Lastly, the learned Senior counsel submits that it is not a case, where there was any change of policy by the Government, which could be a basis of

denying the benefits to the petitioner on the basis of the execution of the lease deed, rather, the policy was existing, but the same, was not applicable to the case of the petitioner in hand.

LEGAL ANALYSIS

41. Heard learned counsel for the parties at length and perused the record.

42. Before delving into legal debate, it is pertinent to note that the contents of the show cause notice as also the cancellation order reflect that the same language has been used in both the show-cause notice as also the cancellation order per verbatim. As per the cancellation order, it is apparent that the allotment made in favour of the petitioner was without adhering to the norms fixed for such allotments and the same was allegedly in violation of the Government Order (mentioned supra), which specifies the detailed procedure for making allotments of commercial assets, i.e., strictly by way of an open auction and this was precisely the reason that the allotment made in favour of the petitioner was cancelled. However, the allotment made by the respondent department was on the basis of the decision taken by 66th Board of Directors Meeting which by *no stretch of imagination* could have been over-ruled by Respondent Authorities that too after a lapse of five long years on the basis of the same authority.

43. Further, this court observes that once, a decision to allot the land in question has been made in the 66th Board meeting, and the same has been implemented, the respondents after the lapse of five years after the possession of the land stood delivered to the petitioner on 17.05.2008, can't cancel the allotment made by the respondents in his favour which decision is neither prescribed under the law nor under rules. It goes without saying that the vested right had accrued in favour of the petitioner when the lease deed was executed in accordance with law and there has been no act of commission or omission on part of the petitioner to warrant the cancellation of the allotment already made.

44. Upon careful examination of the show cause notice by this court, it seems that same has been served by the respondents with a preconceived notion to cancel the allotment. It is evident from the record itself, that contents that have been used in the show-cause notice don't only reflect the reason to show cause but the hidden motive to cancel the allotment already made in favour of the petitioner. The respondents with their eyes open, were aware of the policy framed by the Government, which finds mention in the Government Order dated 12.09.1991, whereby it was ordered that in future, the allotment of the housing plots/flats for residential and commercial purpose will be made in accordance with the procedure, and a complete mechanism has been laid down with regard to distribution of plots/flats in a housing colony in the said order. Thus, the Court is of the view that the respondent-JDA being aware of the said policy, promulgated through the medium of the aforesaid Government Order issued in the year 1991 took the decision to allot the said land in question in the year2007 with their eyes open. Thus, the decision of the respondents can be said to have been taken consciously and cognizantly despite having knowledge of the aforesaid policy which was not applicable to the case of the petitioner. Therefore, the respondents are legally *estopped under law* to question the allotment which has been made after due diligence and in accordance with the rules.

45. It is worthwhile to mention that in pursuance of the allotment, a lease deed came to be executed in favour of the petitioner and the petitioner was given the possession of the allotted land. The respondents having accepted the said position for five long years seem to have arisen from a deep slumber and have issued the show cause notice which *prima facie* reflects the preconceived notion, to cancel the allotment The respondents therefore, *by no stretch of imagination*, can place reliance upon the said policy, which is not applicable to the case of the petitioner, as the same pertains to all commercial plots available in the housing colonies or

any commercial complex or other complexes like Bus stand, Transport Yard developed by the Government agencies. Thus, the stand of the respondent-JDA by placing reliance on the aforesaid policy, is misplaced and is not tenable in the eyes of law.

46. Even otherwise also, the respondents after having acquiesced the right in favour of the petitioner by executing lease deed in favour of the petitioner and keeping mum for five long years are estopped under law to question the validity of the said allotment order or for that matter, execution of lease deed in favour of the petitioner allegedly on the basis of the said policy, which don't even apply to the case of the petitioner. Thus, the ***'law of estoppel by conduct and acquiescence'*** holds good against the respondents. On this count, the action of the respondents in issuing the impugned cancellation order cannot sustain the test of law and therefore deserves to be set aside.

47. In this regard I am supported by the observations made by Hon'ble Supreme Court in case titled ***Baini Prasad (D) Thr. LRs. Versus Durga Devi*** reported as ***(2023)6 SCC 708,*** relevant para of which is reproduced as under:

> ***12.2 In the decision in Pratima Chowdhury v. Kalpana Mukherjee, while considering Section 115 of the Evidence Act, this Court held that four salient conditions are to be satisfied before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering a position, should be such, that it would be iniquitous to require him to revert back to the original position. After holding so, it was further held that the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position.***
>
> ***12.3In the decision in B.L. Shreedhar v. K.M. Munnireddy, this Court held that when rights are invoked estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. The appellant relies on***

this decision, more particularly paragraph 30 of the said decision and it reads thus: -

> ***"30. If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct."***

48. Hon'ble Apex Court in case titled ***Mumtaz Yarud Dowla Wakf Versus M/S Badam Balakrishna Hotel Pvt. Ltd. & Ors.*** Reported as ***2023 SCC OnLine SC 1378*** has observed as follows:

> ***16. The conduct of a party assumes significance. If a party is likely to have an undue advantage, despite the availability of an opportunity to raise a plea of lack of jurisdiction at an earlier point of time, it should not be permitted to do so during the execution proceedings. In other words, a plaintiff shall not be made to suffer by the passive act of the defendant in submitting to the jurisdiction. One has to see the consequence while taking note of the huge pendency of the cases before various Courts in the country. There is no gainsaying that but for the adverse decree suffered, a judgment-debtor would not have ventured to raise such a plea. It is clearly a case of an afterthought to suit his convenience. He cannot be allowed to approbate and reprobate. Though we are conscious about the earlier precedents dealing with the stage at which such a plea can be raised, much water has flown under the bridge in terms of the ground reality. Union of India and Others v. N. Murugesan and Others, (2022) 2 SCC 25, "Approbate and reprobate***
>
> > ***<u>26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said</u>***

> ***enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally…***

49. It is settled proposition of law that once an order has been passed, by the respondents and subsequently the same stands implemented and accepted by the other party who derived the benefit out of it, the respondents are estopped under law to challenged the same as they have acquiesced their right. That would only mean that no party can be allowed to accept and reject the same thing, and thus "***one cannot blow hot and cold"*** in the same breath. The principle behind the doctrine of election is inbuilt in the "***Concept of Approbate and Reprobate".*** Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants, cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party.

50. Therefore, the respondent department, having initially allotted the land in favour of the petitioner, and executing the lease deed thereafter by delivering the possession of the said land in favour of the petitioner, are estopped under law to take a contrary stand with respect to the allotment so made. The respondents cannot approbate and reprobate from the decision taken by them five years back.

51. In this regard I am supported by the view taken by the Hon'ble Supreme Court in ***Rajasthan State Industrial Development & Investment Corporation v. Diamond & Gem Development Corporation Ltd. reported in (2013) 5 SCC 470*** on the issue of approbate and reprobate has held as under:

"9. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience."

52. Further, the Supreme Court in ***Union of India v. N. Murugesan, reported in (2022) 2 SCC 25*** has expressed its views as follows:

"**APPROBATE AND REPROBATE**:

These phrases are borrowed from the Scott"s law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."

53. It is settled preposition of law that auctioning of a property is not an invariable a rule, rather the same is an ordinary rule which need not be resorted in

every occasion while putting land to auction. In the instant case, the request for allotment of land was made after the petitioner moved an application to the then Chief Minister by projecting that the petitioner belongs to a displaced family originally from Skardu which is in Northern Frontier Pakistan, and it was in consideration of the same, the matter of the petitioner was duly processed and the land was allotted in his favour at a rate higher than the then market value.

54. The same view has been observed by this Court in ***Trehan Industries Pvt Ltd. Vs State Of J&K reported as 2004 (2) JKL 447 (HC).***

> ***14. In case titled Sachindanand v. State of West Bengal reported as 1987 (1) SCC 295, the Apex Court held that:***
>
> ***"Whether decision of commercial nature taken by State Government after a process of protracted discussions, consultations, negotiations and consideration of various aspects, then absence of few considerations not fatal to the decision on ground of non-application of mind."***
>
> ***"Though to sell the property by public auction or by inviting tenders is the ordinary rule, but it is not an invariable rule."***
>
> ***"There may be compelling reasons necessitating departure from the general rule." "Director negotiations with those who had come forward was without doubt the most reasonable and rational way of proceeding in the matter rather inviting tenders or holding public auction."***

55. It is worthwhile to note that the petitioner had moved an application for rectification/modification/clarification of the Khasra numbers of the allotted land in the lease deed and, accordingly, 69th Meeting of Board of Directors was held, in which the subject matter was to rectify the error crept in the Khasra numbers, but the respondent-JDA *Suo moto,* enlarged the scope of the reference of the said

meeting by going into the question of the very allotment of the land in favour of the petitioner and, accordingly, convened yet another 70th Meeting of Board of Directors, which was followed by another meeting by the Board of Directors on 71st Board Meeting and that too, without associating the petitioner or providing any opportunity of being heard, in which Board Meeting, a decision was taken to cancel the allotment of the plot in favour of the petitioner.

56. It is not understandable to this court that how and under what circumstances and at whose behest, the respondent-JDA has initiated the process for cancellation of the said plot after five years and whether any such decision could be taken by the JDA when it has voluntarily and gladly acquiesced their right in favour of the petitioner by executing the lease deed in favour of the petitioner in the year 2008 and even the amount of ₹36,76,471/- (Rupees Thirty Six Lacs, Seventy Six Thousand, Four Hundred and Seventy One) was also taken by the JDA for the said plot.

57. With reference to same, ***Law of Acquiescence*** holds good against the respondent department, who have acquiesced their right in favour of the petitioner. Inactive acquiescence on the part of the respondent can be inferred till the petitioner moved an application for rectification of Khasra Number. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming that the allotment of land was made in violation of the policy rules.

58. I am fortified by the observations made by Hon'ble Supreme Court In***Chairman, State Bank of India & Anr. v. M.J. 7 AIR 2003 SC 578 James*** reported as ***(2022) 2 SCC 301***

> ***"39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. In literal***

sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence."

59. The respondent authority was fully cognizant of its right to object the allotment during the lapse of five years, but they ignored/neglected such enforcement of right. Therefore, the respondent authority by such inaction to object the allotment during five years, have waived their right. Waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred, only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question.

60. A reference to judgment of the Apex Court rendered in case titled***,Kalparaj Dharamshi v. Kotak Investment Advisors Ltd, 2021 SCC OnLine SC 204,***

121. It has been held, that a waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred, only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. The waiver or acquiescence, like election, presupposes, that the person to be bound is fully cognizant of his rights, and that being so, he neglects to enforce them, or chooses one benefit instead of another.

122. As such, for applying the principle of waiver, it will have to be established, that though a party was aware about the relevant facts and the right to take an objection, he has neglected to take such an objection.

61. I am fortified by the observation of the Hon'ble Apex Court in case titled***"Pravesh Kumar Sachdeva Vs. State of Uttar Pradesh and ors.***reported in *(2018) 10 SCC 628"*, wherein, at para-20, it has been held as under:-

> ***"20…. Through their conduct, in failing to file objections to the auction sale and making an application and accepting the excess amount recovered from the auction sale, the private respondents have waived off their rights in respect of the auction sale and have acquiesced in the auction sale. Today, the private respondents are estopped through their conduct from challenging the auction sale in any manner whatsoever."***

62. A further reference to judgment of the Apex Court rendered in case titled "***Waman Shriniwas Kini Vs. Ratilal Bhagwandas and Co.,*** reported as ***AIR 1959 SC 689"*** would also be relevant and germane herein, wherein, at para-13, the Apex Court has held as under:-

> "***13…Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied."***

63. In "***Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants' Association***, reported as AIR 1988 SC 233, which is also relevant to the case in hand, at para-14, the Apex Court has been held as under:-

> ***"14….. In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppels and where there is no estoppels, there is no waiver. Estoppels and waiver are questions of conduct and must necessarily be determined on the facts of each case."***

64. The judgment rendered by the Apex Court in case titled, "***P. Dasa Muni Reddy Vs. P. Appa Rao***, reported as ***AIR 1974 SC 2089*** is also relevant to the case in hand. For facility of reference, para-13 of this judgment, being a relevant para, is reproduced hereunder:-

> ***"13……Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver party would have enjoyed. Waiver can also be a voluntary surrender of a right…The doctrine which the Courts of law will recognize is a rule of judicial policy that a person will not be allowed to take inconsistent position to gain advantage through the aid of courts."***

65. This Court is also fortified by the view taken by the Supreme Court in cases titled ***Rickmers Verwaltung GMBH v. Indian Oil Corporation Ltd., (1999) 1 SCC 1*****",** in which it has been held as under:-

> ***" An agreement, even if not signed by the parties, can be spelt out from correspondence exchanged between the parties. It is the duty of the court to construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding contract between them but the court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence, except insofar as there are some appropriate implications of law to be drawn. Unless from the correspondence, it can unequivocally and clearly emerge that the parties were ad idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The court is required to review what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the correspondence."***

66. The petitioner before filing the instant amended petition challenging the cancellation order dated 11.04.2012 and also seeking a direction against the respondents to account for losses and damages, had filed petition challenging only the show-cause notice. Ordinarily, a Writ Court may not exercise its discretionary

jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same, *inter-alia*, appears to have been without jurisdiction. When a show cause notice is issued by the respondent authority to any person, calling upon him to show cause, ordinarily the person must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law.

67. Law is settled in this regard that if any equitable right is accrued in favour of the petitioner due to the conduct on part of the respondents the same cannot be taken away without following the due process of law and providing an opportunity of being heard, which right in the instant case has accrued pursuant to the execution of the lease deed after fulfilling all the requisite formalities by the petitioner, pursuant to which, the possession of the land in question was handed over to the petitioner by the respondents. The said right, which has accrued due to the conduct on part of the respondent-JDA, cannot be taken away without following due process of law or for that matter, providing an opportunity of being heard to the petitioner. However, in the instant case, the decision to cancel the allotment of the plot was taken *suo moto* by the Board of Directors with a premeditation mind and that too, without associating the petitioner with the same, which is apparent from the show cause notice. Thus, the right which has been accrued to the petitioner, cannot be taken away without following due process of law and that too, after five long years when the respondents have gladly and voluntarily handed over the possession in favour of the petitioner without any grouse and there was no allegation of violation of the terms and conditions of the lease deed. It appears that the respondent-JDA has arisen from a deep slumber and initiated the process of cancellation through the medium of show cause notice after five long years, relying upon the policy which was not applicable to the case of the petitioner in hand.

Thus, the action of the JDA in issuing cancellation order was loathed with malafide consideration and with a view to deprive the petitioners of the said land which falls within the realm of violation of his constitutional right to property as envisaged under Article 300-A of the Constitution of India.

68. The show cause notice is crucial as it upholds the principles of natural justice by affording the noticee an opportunity to respond to specific allegations and present his case. It ensures that the rights of the party to whom it is issued ,are protected and guarantees a fair hearing before any adverse action is taken. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. In the instant case, the respondent authorities at no point of time gave an effective opportunity of being heard to the petitioner to defend the land allotted in his favour, despite the fact that petitioner responded to the show cause notice which transpires that the show cause notice has been served for a mere formality so as to warrant the issuance of cancellation order. It appears to this court that the cancellation order has been passed in a hasty and slipshod manner without considering the genuineness of the allotment and the execution thereof.

69. This court places its reliance upon the judgment of the Apex Court rendered in case titled, ***Siemens Ltd. Vs. State of Maharashtra and Ors*** , reported in ***(2006) 12 SCC 33"***

> ***"Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from***

a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose"

70. The question in the instant Writ petition as to whether writ petition challenging a show-cause notice issued with premeditation subsequently followed by the final order of cancellation, would be maintainable, has to be considered from a different angle. In such an event, if this Court directs statutory authority to hear the matter afresh, ordinarily, such hearing would not yield any fruitful purpose, as the decision to cancel the allotment of the plot has already been taken by the Board of Directors, which finds its mention in the show cause notice and subsequently the cancellation order was issued. Thus, the impugned show cause notice, which has been issued with a premeditation mind and the offshoot of the same, i.e., the cancellation order cannot sustain the test of law and liable to be set aside.

71. I am supported in this regard by the judgment of Hon'ble Apex Court in case titled ***Union Of India And Another vs Kunisetty Satyanarayana,*** Reported as ***AIR 2007 SC 906*** where it has been observed as follows:

> ***Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.***
>
> ***No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.***

72. Further The Hon'ble Supreme Court of India in the case of ***Secretary Ministry of Defence and others vs. Prabhash Chandra Mirdha [(2012) 11 SCC 565]*** has in paragraphs 10, 11 and 12 observed as under:-

> ***"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise***

to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court.

73. Bearing in mind the above principle laid down by the Supreme Court and looking to the case in hand from all angles, this court concludes that show-cause notice clearly reveals pre-determination of mind which led to the issuance of cancellation order and hence the cancellation which was an offshoot of the show cause notice, deserves to be quashed.

74. From the bare perusal of the language used in show-cause notice and the order of cancellation it is per verbatim the same which means that the respondents have only taken the decision to cancel the allotment of plot by way of a show-cause notice and the issuance of the show-cause notice was a mere formality as the respondents have already taken the decision to cancel the allotment in favour of the petitioner and no fruitful purpose would have been achieved by associating the petitioner as the decision had already been taken. This proves that the respondents had moved with a malafide intention to deprive the petitioner of the property which is a constitutional right guaranteed under Article 300-A of the Constitution of India.

75. Thus, the issuance of the show cause notice was a mere formality. Once the lease deed has been executed in favour of the petitioner and the petitioner has fulfilled all the requisite formalities as envisaged under law and pursuant thereto the petitioner has invested huge amount on the said plot during five long years and no objection was ever raised by the respondents for the aforesaid period and abruptly after five years the respondents have taken a decision in the Board of Directors

meeting to cancel the said allotment, when no fault can be attributed to the petitioner. Even no grouse was ever raised by the respondents for five long years, whereby, the respondents have acquiesced their right to annul the earlier decision of the Board of Directors yet a contrary decision has been taken, which deprives the petitioner of his constitutional right to retain the said property and that too without following due process of law or providing him an opportunity of being heard.

76. Issuance of Show-cause notice in the instant case would have been a useless formality when the decision has already been taken with a premeditation mind by the respondent authorities to cancel the allotment and this court is of the firm opinion that the case stands covered by 'useless formality theory'.

77. In Siemens Ltd**.** ***Supra*** a challenge was thrown to a show cause notice on the ground that if it has been issued with pre-meditation, therefore, issuing notice and seeking explanation would not serve any purpose as the person issuing notice had already made up its mind.

78. Again in ***ORYX Fisheries Private Ltd. vs. Union of India and Others***, ***2010 (13) SCC 427***, the Supreme Court held as follows:

> ***"28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage 3 of the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony."***

"32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice."

79. Further Allahabad High Court in ***M/S Bcits Pvt. Ltd. Vs. Purvanchal Vidhyut Vitran Nigam Ltd.& Anr 2022 SCC OnLine All 1221***wherein it was held as under:

8. In the above backdrop, even if the petitioner offers its explanation, it would be an empty formality and a futile exercise. Fairness demanded that the respondent should have taken care to keep their mind open to the issues while seeking the explanation. The respondent-Corporation having already held that the explanation is not worthy of acceptance, it could not be treated to be a show cause notice but a decision already taken. We accordingly quash the impugned notice leaving it open to the respondent-Corporation to issue fresh notice in accordance with law, if so advised.

80. As regards the instant amended petition is concerned, the situation is similar as the respondents in the impugned show cause notice have already expressed its mind and even if the explanation had been provided by the petitioner, the decision would have been the same.

CONCLUSION: -

81. For the foregoing discussion and what has been discussed hereinabove, coupled with settled legal position, the instant petition is ***allowed***. The impugned Order of Cancellation, which is an offshoot of the show cause notice, are

hereby quashed. Petitioner is directed to keep the amount of ₹36,76,471/- (Rupees Thirty-Six Lacs, Seventy-Six Thousand, Four Hundred and Seventy-One) in the Account of respondent-JDA within a period of two weeks from today. Subject to doing the same, the respondent-JDA is, accordingly, directed to regularize the possession in favour of the petitioner on the basis of allotment order issued way back in the year 2007, followed by the lease deed issued in the year 2008, in favour of the petitioner and the petitioner is at liberty to use the property in question.

The writ petition is ***allowed*** in the manner as indicated above.

(Wasim Sadiq Nargal)
Judge

Srinagar
19.07.2024
Ram Krishan

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No