Before R. N. Mittal and D. V. Sehgal, JJ.

S. R. DASS,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 6536 *of* 1987.

January 20, 1988.

A. Haryana Urban Development Authority Act (XIII of 1977)—*Sections* 3, 14, 15, 30, 50, 52, 53, 54 *and* 58—*Punjab Urban Estate (Sale of Sites) Rules,* 1965—*Rule* 3—*Haryana Urban Development (Disposal of Land and Buildings) Regulations,* 1978—*Regulation* 3—*Constitution of India,* 1950—*Articles* 14 *and* 226—*Reservation of quota by Government for discertionary allotment of residential plots—Power to reserve certain percentage conferred by Statute—Such reservation—Whether reasonable—Absence of guidelines for allotment—Effect—Stated—Cancellation of allotment of plots from discretionary quota by blanket order of Government—Order passed without issuing show cause notice or affording opportunity of hearing to allottees—Order—Whether liable to be struck down—Natural justice—Violation of—Rule of* audi alteram partem—*Effect on cancellation—Stated—Post-decisional hearing—Whether could meet the ends of justice—Executive discretion—Abuse of discretion by authority—Judicial control of arbitrary action—Extent of—Doctrine of* ultra vires—*Applicability of—Fixation of April* 1, 1977 *as cut-off date for the purpose of cancellation—Whether arbitrary and violative of Article* 14—*Guidelines for allotment laid down by the High Court in exercise of writ jurisdiction.*

Held, that it is evident from the perusal of Sections 3, 14, 15, 30, 50, 52, 53, 54 and 58 of the Haryana Urban Development Authority Act, 1977, the Rules and Regulations that the State Government has the power to give any directions including those for reservation of plots to HUDA for the purpose of development of an Urban Estate and the latter is bound to carry out the directions issued by the State Government to it from time to time. If HUDA neglects or fails to perform any of its duties, the State Government or any person appointed by it may perform such duties. Thus, the powers vested in the State Government are unlimited. If in pursuance of such powers, it has reserved a small percentage of plots for allotment in its discretion, the reservation cannot be held to be bad, as the reservation of discretionary quota is reasonably incidental to the powers conferred by the Legislature on the State Government unless the Government is prohibited by Legislature to do an incidental act, it can do the same in its executive powers.

(Para 19).

Held, that the number of plots reserved by Government for allotment in its discretionary quota cannot be held to be unreasonable.

(Para 20).

Held, that the Government should have laid certain guide-lines for allotting the plots. In case it found that some person who deserved to be allotted a plot, was not covered by the guide line it could after giving reasons, allot a plot to such person. If the Government was unable to find deserving persons for allotment of the plots, the plots could be transferred to general category.

(Para 35).

Held, that it appears that while making allotments, the Government did not consider that the plots were in trust with it and these were to be allotted to deserving persons only. It is evident that in most of the cases when the allotments were made, the Government either did not apply its mind and acted arbitrarily.

(Para 27).

Held, that it is beyond comprehension as to why such a blanket order of cancellation was passed in a country where rule of law prevails. Apparently the order of cancellation was in the nature of Farman-e-Shahi.

(Para 46).

Held, that it was incumbent upon HUDA which is an independent body, to have applied its mind and taken a formal decision before issuing the letter of cancellation in compliance with the orders of the Government. Even the proforma of letter of cancellation was provided by the Government and the letter was issued by the Estate Officer on the proforma and thus there was no application of mind.

(Paras 49 and 50).

Held, that the Government though in the first order had ordered that the representation could be made by allottees but in the subsequent order it, for the reasons best known to it, it did not say so. In this situation, it will not be proper to direct the allottees to file a representation before the authorities when their allotment had already been cancelled. Post decisional hearing would not meet the ends of justice. The order of cancellation is liable to be quashed on the ground that tht allottees were not provided with an opportunity to represent their case before the order of cancellation was passed and thus the salutary principle of *audi alteram partem* was violated by the authorities.

(Paras 53 and 54).

Held, that Government could have a discretionary quota out of which it could allot the plots. It cannot be said that the orders of allotment of the plots by the Government are void *ab initio* merely because the order of allotment was in consonance with Section 15 of the HUDA read with Rule 3 and Regulation 5(3) of the Regulations, the same cannot become valid, if it is suffering from the vice of *ultra vires*.

(Paras 51 and 56).

Held, that when the order of allotment passed by the Government is *ultra vires* then Section 17 of the HUDA Act or Section 53-A of the Transfer of Property Act have no applicability in such cases.

(Para 58).

Held, that where the order of allotment is *ultra vires*, it can always be set aside by the Government. Although Section 15 excludes the jurisdiction of Civil Court with regard to the orders passed under the Act, this provision has, however, no applicability to orders which are *ultra vires*.

(Para 60).

Held, that abuse of discretion by an authority is included in the doctrine of *ultra vires*.

(Para 22).

Held, that when an executive authority is required to act in its discretion, it should do so in good faith and fairly and not in an arbitrary way. The notion of unlimited power does not exist in the rule of law. If any act of an executive authority is outside the limits of its powers or if it is done by abuse of its discretionary powers, or by following wrong procedure, or with improper motive, or in disregard of relevant considerations, it is subject to judicial review. Unchecked power is alien to rule of law. The courts have always judicial control over the arbitrary acts of an executive authority.

(Para 24).

Held, that it is expected from a Government that it should treat public property as trust property and, while it deals with such property, it should follow relevant and rational norms and it should not act in an irrational and arbitrary way. Nothing should be done by it which may give an impression that favouritism is being shown in favour of any person. Factors such as relationship, friendship or political gains should not weigh with the Government for conferring benefits. A private party should not be benefited at the cost of State. Absolute discretion is unknown to rule of law. When wide power vests in a high dignitary, it is expected of it to act fairly and legally. However, if he misuses his power, the Court is empowered to strike down the act.

(Para 25).

Held, that the Haryana Urban Development Authority Act came into force on May 2, 1977. There is no rationale in fixing April 1, 1977 for the purpose of cancellation of allotments of the plots. April 1, 1977 the cut-off date has been selected arbitrarily and is clearly so. Hence it has to be held that the order of cancellation is liable to be struck down as violative of Article 14 of the Constitution of India as it impinges upon the fundamental right of equality before the law.

(Paras 63, 64 and 66).

Guide-lines laid down:

Category (*a*)—Cases of the allottees where the possession of the plots has been given to them but they have not started construction, require to be decided taking into consideration the following principles:—

(i) If the allottee himself or his spouse or any of the dependent children has any house or plot either at Delhi, Chandigarh or in any 'A' Class Municipal Town in the States of Punjab and Haryana, or in Urban Estates established by HUDA, or under the Punjab Urban Estates (Development and Regulation) Act, 1964, or in the scheme area under the Punjab Town Improvement Act, 1922, or in any other colony established by a Coloniser in the Punjab and Haryana and approved/regularised by the State Government concerned, he shall not be allowed to retain only one plot;

(ii) In case an allottee got allotted in his favour more than one plot either in his own name, or in the name of his spouse, or dependent children, the allottee shall not be allowed to retain all the plots. He can be allowed to retain only one plot :

Provided in both the above-said cases if all the plots have been constructed, the allotment of the plots in view of the principle of promissory Estoppel, should not be cancelled. But if one plot has been constructed and the others have not been constructed, the allotment of the remaining unconstructed plots can be cancelled.

(Para 74).

Category (*b*)—Where the allottees after the delivery of the possession of the plots to them started construction, but the same has not been completed and where the construction on the plots has been completed but the allottees have not been issued Completion Certificates, the allotments cannot be cancelled because the rule of Promissory Estoppel shall apply.

(Para 72).

Category (*c*)—Where the plots (including plots carved out from green belt or the land reserved for the purpose of public utility) have been transferred by the original allottees to others with the permission of the prescribed authority of HUDA irrespective of the fact whether the sale deed has been executed, or not, the allotments cannot be cancelled because they are *bona fide* purchasers for consideration from the allottees and are protected under Section 41 of the Transfer of Property Act.

(Para 72).

Category (d).—Where the plots have been carved out exclusively from the green belt or from the land reserved for the purpose of public utility, before cancelling allotments, the Government should take into consideration the following principles:

(i) If construction has been started or completed on the plot after obtaining sanction from the sanctioning authority, the allotment should not be cancelled;

(ii) If on the plot construction has not been started, the allotment can be cancelled but if area on which the plot has been carved out cannot be utilised for the purpose of green belt in view of the constructions on many adjacent plots carved out of such area, the allotment may not be cancelled ;

(iii) If the allotments of such plots have been cancelled, the Government shall be liable to use the land of the plots for the purpose of green belt, or public purpose, as the case may be;

(iv) The plots allotted in green belt shall be liable to be cancelled on the grounds mentioned in clauses (i) and (ii) of Category (a), but such plots, if cannot be utilised for the purpose of green belt, may be allotted/sold by the HUDA; and

(v) If the allotment of an allottee is cancelled from such a belt and he is otherwise a deserving person to be allotted a plot for the reasons mentioned in clause (i) under category (a) above, he may be allotted another plot. If the plot of that category which has been taken away from him is not available, he may be allotted a plot of lower category preferably of the next lower category.

(Para 75).

B. Transfer of Property Act (IV of 1882)—Sections 41 and 53-A—Doctrine of part-performance—Applicability to cases of ultra vires actions—Bona fide purchaser of plot from original allottee—Whether protected by Section 41 of the Act.

Held, that when the order of allotment passed by the Government is *ultra vires* and if that is so, the authorities have the right to cancel the allotment. In such cases Section 53 of the Transfer of Property Act has no applicability.

(Para 58).

Held, that the *bona fide* purchaser for valuable consideration is protected by the provisions of Section 41 of the Transfer of

Property Act. Therefore, the allotment of the plot which stands transferred in favour of a *bona fide* purchaser cannot be cancelled by the authorities. A *fortiori*, the plots of all the *bona fide* transferees for consideration from the original allottees cannot be cancelled.

(Para 70).

C. Haryana Urban Development (Erection of Buildings) Regulations, 1979—Regulations 2 and 3-A—Zoning plan—Mode of changing—Carving out of plots therefrom for discretionary allotment—Propriety of.

Held, that it appears from reading of Regulation 2(iii) and 3-A of the Regulations that Zoning Plans have been given great importance and these cannot be changed on the directions of an individual. It can be changed only by the committee constituted for this purpose and for valid reasons. It is evident that in order to oblige influential persons, the zoning plans were changed and the green belts were mutilated.

(Paras 31 and 32).

D. Haryana Urban Development Authority (Preservation of Trees) Regulations, 1979—Green belts—'Protected trees and 'protected wood land areas' marked in Zoning plan—Conversion of green belts or parts thereof into plots—Authority for changing user.

Held, that while changing the green belts due formalities have to be observed by the HUDA. Even if some decision to change zoning plan was taken by the committee constituted for preparing the Zoning Plan by the HUDA in pursuance of the directions of the Chief Minister to carve out plots from green belts for allotment by him, that could not have been said to be a good decision.

(Para 33).

E. Evidence Act (I of 1872)—Section 115— Cancellation of allotment—Promissory Estoppel—Applicability of.

Held, that the principle of promissory estoppel is not applicable where an order on the basis of which estoppel is claimed is *ultra vires*. The principle is further not applicable to compel a party to do an act prohibited by law or to prevent it from discharging its legal duty. The principle is likewise not applicable to the Legislature in exercise of its legislative function. It also cannot be invoked if it is found to be inequitable or unjust.

(Para 40).

Held, that promissory estoppel cannot legitimize actions which are *ultra vires*. Another limitation is that the principle of estoppel does not operate at the level of Government policy. Estoppels have

however, been allowed to operate against public authority in minor matters of formality where no question of *ultra vires* arises.

(Para 39).

Held, that if an allottee started construction of the house, it did not make any difference whether the plot was carved out from the green belt or from the area originally meant for construction of the residential houses of a different category or size, or the use of which was to be determined later, or the area was reserved for any other public purpose. Hence, it has to be held that all allottees who had started construction after getting the plans sanctioned, before the order of cancellation was passed, would be entitled to the benefit of the rule of Estoppel.

(Para 41).

Petition under Articles 226/227 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable writ, order or Direction be issued, directing the respondents:—

(*i*) *to produce the complete records of the case;*

(*ii*) *the orders at Annexures P/3 and P/4 be quashed;*

(*iii*) *it is further prayed that during the pendency of the writ petition, the operation of the impugned orders at Annexures P/3 and P/4 be stayed. The respondents by a suitable direction/order be called upon to sanction immediately—*

(*a*) *Electricity Connection;*

(*b*) *Water connection;*

(*c*) *Sewerage connection; and also the*

(*d*) *Completion Certificate.*

(*iv*) *this Hon'ble Court may also pass any other order which it may deem just and suitable in the circumstances of the case;*

(*v*) *this Hon'ble Court may also grant all the consequential reliefs to which the petitioner may be found entitled to after the decision of the present writ petition;*

(*vi*) *the petitioner be exempted from filing the originals of Annexures;*

(*vii*) *the petitioner be exempted from serving the notice of the writ petition on the respondents in advance;*

(*viii*) *costs of this writ petition may also be awarded to the petitioner.*

J. L. Gupta, Senior Advocate with Rakesh Khanna and T. S. Dhindsa, Advocates, *for the Petitioners.*

A. S. Nehra, A.G. Haryana with J. S. Duhan, Advocate, *for the Respondents State.*

Anand Sarup Senior Advocate with Ajay Tewari and Sunidh Kashyap, Advocates, *for the Respondents No. 2 and 3.*

S. C. Mohanta, Senior Advocate with A. Mohanta, Advocate, *for the HUDA.*

JUDGMENT

R. N. Mittal, J.

This judgment will dispose of Civil Writ Petitions Nos. 6536, 6249, 4227, 3903, 6516, 6437, 4397, 4528, 6583, 4712 and 6544, all of 1987 which involve similar questions of law and fact. The petitioners through these petitions and several hundred other petitioners have challenged the orders of cancellation of allotments of residential plots in various Urban Estates in the State of Haryana made by the successive Ministries from the discretionary quota of the Government from April 1, 1977, by Haryana Urban Development Authority respondent No. 2 (hereinafter called HUDA), at the instance of Lok Dal Ministry. The facts in the judgment are being given from Civil Writ Petition No. 6536 of 1987.

(2) The petitioner addressed an application dated January 31, 1981 to the Minister for Town and Country Planning, Haryana, Chandigarh, for allotment of a plot out of the discretionary quota of the Government, which was allowed and a plot measuring 420 Square Metres in Sector 6, Panchkula was allotted to him by the Estate Offiicer, HUDA, Panchkula, on August 25, 1981,—*vide* letter Annexure P-1, for a tentative price of Rs. 32,100.60 Paise. He was directed to deposit 25 per cent amount of the tentative price, viz. Rs. 8,025.15 paise immediately and the balance amount in six equal half-yearly instalments. The first instalment became due after the expiry of one year from the date of the issue of the letter. It

is alleged that the petitioner has deposited all the instalments. He was further called upon to deposit an additional sum of money on account of extra expenditure incurred by HUDA and he deposited that amount too.

(3) He applied to HUDA for permission to construct a residential house on the plot, which was granted subject to his giving an undertaking that he would start construction within six months and complete the same within one year. It is alleged that he, in compliance with the undertaking, started construction in May, 1987 and has almost completed the construction.

(4) It is further pleaded that after the petitioner paid all the instalments, he applied for a Non-Encumbrance Certificate. He was granted the Certificate dated August 13, 1987 certifying that the plot was free from all encumbrances.

(5) Now a decision has been taken by the Haryana Government to cancel all allotments of plots made out of its discretionary quota after April 1, 1977 and the same has been communicated to the Chief Administrator, HUDA, who, in turn, communicated the order to all the Estate Officers in the State of Haryana,—*vide* his letter dated September 8, 1987, Annexure P-3. The Estate Officer, HUDA, in pursuance of that decision, issued a letter dated September 10, 1987, Annexure P-4, to the petitioner cancelling the allotment of his plot. He has challenged letters, Annexure P-3 and P-4 through this writ Petition.

(6) The Writ petition has been contested on behalf of the respondents. A joint written statement has been filed on their behalf by Shri G. Parsana Kumar, Director, Urban Estates, Haryana-cum-Chief Administrator, HUDA. Two preliminary objections have been taken by them. Firstly, that according to Clause 22 of the allotment letter, all disputes and differences arising out of or in any way touching or concerning the allotments whatsoever shall be referred to the sole arbitration of the Chief Administrator or any officer appointed by him. It is pleaded that in view of the alternative remedy provided in the Clause, the Writ Petition is not maintainable. Secondly, that the petitioner is party to a fraud on the statute and he used his undisclosed influence with the then Industries Minister, Haryana for his unjust and illegal enrichment. As no legal right of the petitioner has been infrigned, therefore, he is not entitled to the relief in a petition under Article 226 of the Constitution.

(7) On merits, it is pleaded by the respondents that 21 plots of one Kanal each and 2 plots of Two Kanals each were carved out by revising the Zoning Plan of Sector 6, Panchkula out of the land reserved for Government Quarters, which were put in the discretionary quota of the Chief Minister. According to the decision of the Government, the Zoning Plan could not be changed unless the change was for the interest and welfare of the community. All the aforesaid plots were allotted to various highly influential persons who were special favourites of the then Chief Minister for the purpose of advancing his political influence. Some of the persons to whom the plots had been allotted, had got plots allotted in the names of their other family members earlier.

(8) It is admitted by the respondents that the petitioner has completed his house. However, it is pleaded that the electric fittings have not been done and the doors, windows and gates have not been fitted there and, consequently, the application of the petitioner for Completion Certificate has been rejected on October 9, 1987.

(9) It is further pleaded that the orders passed by the Government for allotting the plot to the petitioner were *ultra vires* its power and, consequently, no right regarding the plot is conferred on the petitioner. Thus, the Government was duty bound to cancel and recall the unjust order and rectify the irregularity committed by it earlier.

(10) At this stage, it is appropriate to mention that in all 925 Writ Petitions have been listed before us, which have been put into eight categories by the respondents. These are as under :—

(i) Where the possession of the Plots has not been delivered to the petitioners;

(ii) Where the possession of the plots has been given to the petitioners, but they have not started construction;

(iii) Where the petitioners after the delivery of possession of the Plots to them, started construction but the same has not been completed;

(iv) Where the petitioners after taking possession of the Plots completed the construction thereon but they have not been issued Completion Certificates;

(v) Where the plots have been carved out of the green belt or from the land reserved for the purpose of public utility ;

(vi) Where the Conveyance Deeds have been executed in favour of original allottees by HUDA ;

(vii) Where the Conveyance Deeds have been executed in favour of the transferees from the allottees by HUDA ; and

(viii) Where the Plots have been transferred by the original allottees to others, but the Sale Deeds have not been executed either in favour of the original allottee or the transferree.

(11) The abovesaid eleven Writ Petitions belong to the following categories :—

Serial No.	No. of Writ Petition	Category
1.	6536 of 1987	III and II
2.	6249 of 1987	V
3.	4227 of 1987	I
4.	3903 of 1987	I
5.	6516 of 1987	VIII
6.	6437 of 1987	IV
7.	4397 of 1987	V
8.	4528 of 1987	II
9.	6583 of 1987	II
10.	4712 of 1987	III
11.	6544 of 1987	VII

The respondents filed written statements only in the above-mentioned cases. Therefore, we have considered it fit to dispose of these Writ Petitions by this judgment.

(12) The first question that arise for determination is, whether some plots in the Urban Estates of HUDA could in view of the provisions of the Haryana Urban Development Authority Act be reserved for the purposes of allotment by the State Government in its discretion. Mr. Gupta contends that the Government under the provisions of the Haryana Urban Development Authority Act (hereinafter referred to as the Act) can give any direction in connection with the disposal of the land belonging to HUDA. Its power are very wide and these are not even hedged in any way. In pursuance of the power, 5 per cent Plots could be reserved for allotment at the discretion of the Government. It does not violate the mandate of the Act, the Punjab Urban Estate (Sale of Sites) Rules, 1965 (hereinafter referred to as the Sale of Sites Rules) and the Haryana Urban Development (Disposal of land and buildings) Regulations 1978 (hereinafter referred to as the Regulations).

(13) On the other hand, Mr. Anand Swaroop, learned counsel for HUDA has argued that there is no provision in the Act, Sale of Sites Rules or Regulations which allows the State Government to place at its discretion certain Plots for allotment. Absolute discretion is unknown to rule of law. The Government treated the plots carved out of the public property as its private property and allotted them to the important persons for political gains. Such a power is *ultra vires.*

(14) We have duly considered the matter. In order to determine the question, it is necessary to refer to the provisions of the Act, Sale of Sites Rules and Regulations. The preamble of the Act provides that it has been enacted to provide for the establishment of an Urban Development Authority for undertaking urban development in the State of Haryana and for matters ancillary thereto. It is well settled that preamble is regarded as a guide for interpreting and a good means to find out the meaning of various provisions of the Statute. So while interpreting the provisions of the Act, we can have recourse to its preamble. According to the preamble, the Act enacts provisions not only with regard to the establishment of Authority for making developments in urban areas but also for subservient matters.

(15) Section 3 relates to the establishment and constitution of the Haryana Urban Development Authority, which is a body corporate having perpetual succession with power to acquire, hold and dispose of property. Section 14 relates to acquisition and Section 15 to disposal of land. Section 15 reads as follows :—

"15. Disposal of land—(1) *Subject to any directions given by the State Government under this Act* and to the provisions of sub-section (5), the Authority may dispose of—

(a) any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon ; or

(b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing development.

(2) Nothing in this Act shall be construed as enabling the Authority to dispose of land by way of gift, but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement, right or privilege or otherwise.

(3) Subject to the provisions herein before contained, the Authority may, sell, lease, for otherwise transfer whether by auction, allotment or otherwise any land or building belonging to it on such terms and conditions as it may, by regulations, provide.

(4)

(5) Notwithstanding anything contained in any other law, for the time being in force, any land or building or both, as the case may be shall continue to belong to the Authority until the entire consideration money together with interest and other amount, if any, due to the Authority, on account of the sale of such land or building or both it paid."

(Emphasis supplied)

(16) Section 30 provides that *the Authority shall carry out the directions issued by the State Government from time to time for efficient administration of the Act.* Under Section 52, the State Government has been authorised to exercise any power or perform any duty under the Act or appoint a person for that purpose if in its opinion, the Authority neglects or fails to exercise or perform any power conferred or duty imposed upon it by the provisions of the Act.

(17) The State Government has been conferred powers under Section 53 to frame rules for carrying out the purpose of the Act. No rules for sale of sites have been framed under the above said Section. However, Sale of Sites Rules had been framed earlier, which are still applicable to the sales of plots made under the Act. Rule 3 *inter alia* provides *that for the purpose of proper planning and development of an urban estate sites may be reserved for group of individuals or for persons practising any profession or carrying on any occupation, trade or business.*

(Emphasis supplied)

(18) HUDA, under Section 54, with the previous approval of the State Government has powers to make regulations. Regulation 3 *inter alia* provides that HUDA, *subject to the directions issued by the State Government under the Act, may dispose of its land or building by way of sale or lease either by allotment or by auction.*

(Emphasis supplied)

(19) It is evident from a perusal of the aforesaid Sections, Rule and Regulation that the State Government has powers to give any directions including those for reservation of plots to HUDA for the purpose of development of an Urban Estate and the latter is bound to carry out the directions issued by the State Government to it from time to time. If HUDA neglects or fails to perform any of its duties, the State Government or any person appointed by it may perform such duties. Thus, the powers vested in the State Government are unlimited. If in pursuance of such powers, it has reserved a small percentage of plots for allotment in its discretion, the reservation cannot be held to be bad, as the reservation of discretionary quota is reasonably incidental to the powers conferred by the Legislature on the State Government. It is observed in de Smith's Judicial Review of Administrative Action, Fourth Edition, at page 95 as follows :—

> "The House of Lords has laid down the principle that 'whatever may fairly be regarded as incidental to, or consequent upon, those things which the Legislature has authorised, ought not (*unless expressly prohibited*) to be held, by

judicial construction, to be '*ultra vires*'. This principle has been applicable to the statutory powers of all public bodies, and a high proportion of the reported cases involving the vires of administrative action have been concerned with the question whether a transaction is to be regarded as reasonably incidental to the exercise of statutory powers expressly conferred."

The words "unless expressly prohibited" in the above citation go a long way to show that unless the Government is prohibited by Legislature to do an incidental act, it can do the same in its executive powers.

(20) Now we advert to the facts of the case. In the agenda of sixth meeting of the HUDA held on February 15, 1978 Annexure P-7 attached with Civil Writ Petition No. 3903 of 1987, it was stated that since 1972 a certain percentage of plots were being reserved for allotment exclusively by the Government at their discretion. Normally whenever a new Sector was released, five per cent of the total number of plots in each category were reserved to be allotted by the Government at its discretion and another five per cent were reserved for allotment to the Government Servants. In addition to the above reservations, small number of plots which became available from time to time on account of their having been surrendered by the original allottee or on account of their having been resumed for violation of any condition of allotment, were also allotted by the Government at its discretion. It was further mentioned that excepting at Gurgaon and Karnal, there was not much demand of plots. The matter was placed for decision in the meeting, whether the practice was to be following in the other Urban Estates. After discussion, the above proposal was approved. The aforesaid stand was reasserted in the 19th meeting of the HUDA held on October 6, 1981 and was approved. It appears from the agenda of this meeting that in the first instance the policy dated February 15, 1978 was made applicable to Faridabad and Panchkula and by the above resolution it was made applicable to other Urban Estates as well. We think that the number of plots reserved by Government for allotment in its discretionary quota cannot be held to be unreasonable.

(21) Before dealing with the contention of Mr. Anand Swaroop, it is relevant to mention that Government did not lay down any criteria for allotment of the plots. In some of the applications no

doubt it is stated that the applicants did not own any house either in Chandigarh or Panchkula or Mohali but there are scores of applications where even this fact is not mentioned. For example see applications at Serial Nos. 12, 14, 18, 19, 21, 22, 33, 35, 37, 39, 40, 48 on the basis of which plots were allotted to the applicants in Sector 6. There are also several cases in which the plots were allotted separately to husbands and wives and also to their children. In this background, it is to be seen whether allotment of the plots by the Government out of its discretionary quota is *ultra vires*.

(22) Doctrine of *ultra vires* has been defined in Administrative Law by H.W.R. Wade, Second Edition at Pages 45, 46 and 47 as follows :—

> "The general theory of judicial control is correspondingly simple. It is commonly called the doctrine of *ultra vires*, Administrative power derives from statute. The statute gives power for certain purposes only, or subject to some special procedure, or with some other kind of limits. The limits are to be found not only in the statute itself but in the general principles of construction which the courts apply, provided, of course, that the statute has not expressly or impliedly modified them—for every statute is an of sovereign legislation and can abrogate all principles of administrative law if Parliament so wishes. *But in where the expressed limits are indefinite, the courts are where the expressed limits are indifinite, the courts are all the more inclined to find that limits are implied. The notion of unlimited power has no place in the systems. Every power is limited somehow.*

It then follows that any act outside the defined limits (ultra vires) *is an act unjustified by law, if it is also a wrongful act by the ordinary law (such as a trespass to person or property), it is illegal, and the ordinary remedies lie.* The ordinary remedies include prevention as well as cure, so that it is necessary to want for the wrong to be done : an injunction or a declaration may be asked for in advance, and similar results may be obtainable from the special remedies of prohibition and *certiorari*.

> When Parliament grants powers to authorities, it inevitably also gives them discretion. *The authority has to decide*

for itself whether to act or not to act, and how it wishes to act. If this discretion is not conferred, the authority has not a power but a duty. Many of the most difficult problems of judicial control are concerned with the question where power stops and duty beings. Even if the authority had undoubted power to do something, there may be duties as to how it is to be done. *The* ultra vires *doctrine is therefore not confined to cases of plain excess of power; it also governs abuse of power, as where something is done for the wrong reasons, or by the wrong procedure. In law the consequences are exactly the same : an improper motive, or a false step in procedure, make an adminstrative act just as illegal as does a flagrant excess of authority.*

But there are many situations in which 'merits' may govern 'legality'. Most powers are exercisable for certain purposes but not for others, and many powers are required to be exercised reasonably. *The Courts have been deeply drawn into this field, so that they frequently have to pass judgment on the motives and properiety of government action in order to determine whether it is legal.* Thus they are accustomed to operating in the borderland which in some other countries is the province of special administrative courts. It would be a great mistake to suppose that the doctrine of *ultra vires* need prevent the development of wider-ranging judicial review."

It is evident from the above definition that if there is abuse of discretion by an authority, that it included in the doctrine of *ultra vires.*

(Emphasis stressed)

(23) What is abuse of discretion has been succinctly dealt with by Griffith and Street in Principles of Administrative Law, 1952 Edition at Pages 214 to 218, as detailed hereinafter :—

"The courts have for a long time claimed the right to interfere with the exercise of an administrative discretion. They used to veil justification for quashing the purported exercise of a discretion in comprehensive but vague and

ambiguous language. Characteristice is this dictum of Lord Halsbury '.....*When it is said that something is to be done within the discretion of the authorities..... that something is to be done according to the rules of reason and justice, not according to private opinion ..... according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular.*'

The United States has preferred the flexibility which reliance on words like "arbitrary" affords, but in English administrative law a more scientific classification of the circurstances which amount to an abuse of discretion which the courts will quash can be made. *They will intervene if powers are used for an improper purpose or if they are exercised without taking into account all relevant considerations (and no others).*

It must be understood that this rule of improper purpose gives the lie to any suggestion that English law known two types of discretion, qualified and uncontrolled or absolute discretions. This rule is essentially an implied maxim of statutory interpretation—that even though a discretion is expressed in *unqualified* terms the statute must be taken to read that the discretion must be exercised for the purposes contemplated by the statute, and what these purposes are it is for the court to ascertain.

Ministers, impatient of judicial control, have persuaded Parliment with increasing frequency to vest in them subjective discretions, by using such expressions as "If the Minister is satisfied". *Liversidge* v. *Anderson* (1942) A.C. 206 and *Carltona Ltd.* v. *Commissioners of Works* (1943) 2 All. E.R. 560 decide that such expressions may prevent the courts from deciding whether the Minister had reasonable grounds for his belief or from reviewing his act because he took into account the wrong considerations. *Yet the courts in both cases said that they would quash if the power were not exercised in good faith. By this, they mean that he must, in the words of Sir Alfred Denning, have "the state of mind of an administrator who will..... after due consideration come to an honest decision as to*

whether to exercise the power or not, for the purpose authorised by Parliament." Even though unable to evaluate the reasons for a decision, the courts will investigate the honesty and the motives of the actor in order to ascertain whether the act was being performed for the purposes sanctioned by the statute.

Improper purpose then is wider than bad faith in the sense of dishonesty or corrupt motive. As Lord Summer said in *Roberts* v. *Hopwood,* (1925) A.C. 578, even though the Administration act *bona fide* the *Courts can quash if the discretion is exercised "for objects which are beyond their powers." Obviously, "improper purpose" is an increasingly important ground of control now that subjective powers are being conferred so extensively on administrative bodies.*

It is now a settled principle of English law, recognised by the House of Lords, that the courts will quash administrative acts if those performing them have either acted on extraneous considerations or ignored material considerations. The courts deny that they can interfere with the way in which discretion is exercised, or that they are acting as a court of appeal. They are ensuring only that the discretion is exercised properly, or "according to law" or that the Administration "is not declining jurisdiction."

Although the courts frequently say that erroneous interpretation of a statute is not an excess of jurisdiction, *they will always interpret the statute to find what are the relevant considerations implied by it and quash if these are not taken into account. Nor will the courts necessarily be deterred from defining the limits of the relevant factors even if the body is entitled to act "as it thinks fit".* In *Roberts* v. *Hopwood* (1925) A.C. 578 the House of Lords held that although a local authority was empowered to pay its employees such wages as it "may think fit" if it were guided by "eccentric principles of Socialist philanthropy" the act would be *ultra vires."*

de Smith's Judicial Review of Administrative Action, Fourth Edition, deals with the same matter at page 322 as under :—

> "* * * * * if it is claimed that the authority for the exercise of a discretion derives from the royal prerogative, the Courts seem generally to have limited themselves to determining whether the prerogative power exists and whether it has been exercised in the appropriate form ; they will not review the adequacy of the grounds for exercising the power. *If the source of authority relied upon is statutory, the Courts begin by determining whether the power has been exercised in conformity with the express words of the statute and may then go on to determine whether it has been exercised in a manner that complies with certain implied legal requirements.* In some contexts they have confined themselves to the questions whether the competent authority has kept within the four corners of Act and whether it has acted in good faith. *Usually they will pursue their inquiry further and will consider whether the repository of a discretion, although acting in good faith, has abused its power by exercising it for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness.*"

It is further observed at page 326 :—

> "In all these cases the statutory powers held to have been misapplied had been defined with reference to purpose. As we have already observed, nowadays the courts will not reading be deterred by subjectively worded statutory formulae from determining whether acts done avowedly in pursuance of statutory powers bore an adequate relationship to the purposes prescribed by statute."
>
> (Emphasis stressed)

(24) It emerges from the above observations that when an Executive Authority is required to act in its discretion, it should do so in good faith and fairly and not in an arbitrary way. The notion of unlimited power does not exist in the rule of law. If any act of an Executive Authority is outside the limits of its powers, or if it is done by abuse of its discretionary powers, or by following wrong procedure, or with improper motive, or in disregard of relevant considerations, it is subject to judicial review. Unchecked power is alien to rule of law. The Courts always have judicial control over the arbitrary acts of an Executive Authority.

(25) It is expected from a Government that it should treat public property as Trust property and, while it deals with such property, it should follow relevant and rational norms and should not act in an irrational and arbitrary way. Nothing should be done by it which may give an impression that favouritism is being shown in favour of any person. Factors such as relationship, friendship or political gains should not weigh with the Government for conferring benefits. A private party should not be benefited at the cost of State. Absolute discretion is unknown to rule of law. When wide power vests in a high dignitary, it is expected of him to act fairly and legally. However, if he misuses his power, the Court is empowered to strike down the act. In this view, we are fortified by the observations in *Ram and Sham Company* v. *The State of Haryana and others,* (1) *Mohinder Singh Gill and another* v. *The Chief Election Commissioner, New Delhi and others,* (2) *The State of Punjab and another* v. *Gurdial Singh and others,* (3) *Express Newspapers Pvt. Ltd. and others* v. *Union of India and others,* (4) and *Sachidanand Pandey and another* v. *State of West Bengal and others,* (5).

(26) In *Ram and Sham Company's case* (supra), it was observed that there was clear demarcation between the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else. Public property is to be dealt with for public purposes and in public interest. In *Mohinder Singh Gill's case* (supra), it was held by Krishna Iyer, J., that the rule of law postulates the pervasiveness of the spirit of law throughout the whole range of government in the sense of excluding arbitrary official action in any sphere. No one is an *imperium in imperio* in our constitutional order. It is reasonable to hold that the Commissioner cannot defy the law armed by Article 324. Likewise, his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system. In *Gurdial Singh's case* (supra) Krishna Iyer, J., speaking for the Court, observed :—

> "If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to

(1) AIR 1985 S.C. 1147
(2) (1978)1 S.C.C. 405.
(3) A.I.R. 1980 S.C. 319
(4) AIR 1986 S.C. 872
(5) (1987) 2 S.C.C. 295

reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated "I repeat ..... that all power is a trust—that we are accountable for its exercise—that, from the people, and for the people, all springs, and all must exist."

In *Express Newspapers' case* (supra), it was held that use of power for an 'alien' purpose other than the one for which the power is conferred is *mala fide* use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power. In *Sachidanand Pandey's case* (supra), it was reiterated :—

"State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

(27) It is now necesary to advert to the facts of the case again. We have already mentioned above that in many cases more than one plot were allotted to a person either in his own name or in the names of the members of his family. Annexure R/3 contains the names of such 50 persons. Four persons and their family members were allotted five plots each, the others and their family members were allotted plots varying from two to four each. Some of them were allotted two and some three in their individual names. Some

were allotted plots even without applications. No reasons were given in the orders as to why the allottee deserved to be given a plot. In many cases in the application even no reasons were given as to why he was entitled to be allotted a plot. Some allottees might be having houses in Chandigarh, or Mohali or other important towns but still they had been given plots. It appears that while making allotments, the Government did not consider that the plots were in trust with it and these were to be allotted to the deserving persons only. It is thus evident that in most of the cases when the allotments were made, the Government either did not apply its mind or acted arbitrarily.

(28) It is common knowledge that the market prices of the plots were much higher than those at which they were allotted. That was the reason that there was great clamour for plots in the Urban Estates. Some influential persons got the plots allotted and further sold them at a premium after some time. Most of such sales were even permitted by HUDA. It goes a long way to show that many allotments were made to those who wanted to make profit out of these transactions. What is the effect of transfers by the allottees will be considered by us at a later stage.

(29) It also deserves mention that the Government, in order to oblige some of the influential persons, got carved out plots out of green belts or areas reserved for public purposes such as schools and allotted the same to them. One of such cases is that of Gen. Hoon who was allotted a 2 Kanal plot. It was carved out of 2½ acres area reserved for a similar purpose. A building was constructed on that plot along with boundary wall for a school by the HUDA. The Administrator, Panchkula, on March 11, 1987, wrote a note that the school building was on 2½ acres of land whereas the norm for primary school was 1½ acres. He suggested that the building be allotted to the school with whole of the land and school be upgraded. He also gave the names of various institutions which had applied for some premises to start the educational institutions in Panchkula. Thus he impliedly suggested that any one of them could be allotted the same. The file was marked to the Chief Administrator who proposed that the building be first offered to the education department with a condition that the land measuring 1.5 acres would be given free of cost and the remaining one acre on payment of price.

(30) The file was again marked to the Administrator, Panchkula, who stated in his note that the Director of Public Instructions was

keen to have the possession of the building and whole of the land at once by making payment of the price of one acre of land. It is also relevant to point out that the Education Department had also sent a draft to purchase one acre of extra land. The file was then sent to the Commissioner, Town and Country Planning, who put a querry as to what the school would do with one acre extra land. In nut-shell in spite of the fact that the Education Department was keen to have the building along with the extra land and had sent a draft for payment, was not given the extra land by the authority, for the reasons best known to it. Later the Secretary after noticing that a number of green belts had been mutilated directed the Chief Administrator that a 2 Kanal plot be carved out in one corner of the said one acre plot. This is how a 2 kanal plot was carved out and allotted to Gen. Hoon. After carving out the 2 Kanal plot the rest of the land was again allotted to the school. It can safely be asusmed from the above said circumstances that the Government in order to give a plot to Gen. Hoon did not allot one acre of land to the school for which purpose the plot had been reserved.

(31) Regarding carving out of the plots from the green belts and the areas to be planned, later in Sector-6 the matter was initiated by the Senior Town Planner on January 14, 1981, at the instance of the Chief Minister. He was told by the Commissioner/Secretary to Government, Town and Country Planning Department, that the green spaces along with the unused plots be divided into plots of one Kanal area and 15 Marlas area so that 24 plots became available for allotment. Though, the Secretary Town and Country Planning, in a subsequent note date January 25, 1981, mentioned that the case had been discussed with the Finance Minister in the presence of the Director and the Deputy Principal Secretary to the Chief Minister, and it had been decided that there should be no change in the green belt, yet, we were informed, that a part of green belt was used for carving 29 plots which were placed in the discretionary quota of the Chief Minister. Out of the said plots the Chief Minister allotted 21 plots,—*vide* order dated June 1, 1981. We have been informed that in other Sectors as well plots were carved out of the green belt for allotment at the discretion of the Government. It is thus evident that in order to oblige influential persons, the zoning plans were changed and the green belts were mutilated.

(32) The word 'Zoning Plan' has been defined in Clause (iii) of Regulation 2 of the Haryana Urban Development Authority (Erection of Buildings) Regulations, 1979 (hereinafter referred to as "the

Erection of Buildings Regulations") as under:—

> "(iii) 'Zoning Plan' shall mean the detailed layout plan of the sector or part thereof as approved by the Chief Administrator showing the sub-division of plots, open spaces, streets, position of protected trees and other features and in respect of each plot, permitted land use, buildings lines and restrictions with regard to the use and development of each plot in addition to those laid down in the building rules."

Regulation 3-A relates to preparation of zoning plans and it provides that the Haryana Urban Development Authority may constitute committees for preparation of zoning plans. It appears from the above said regulations that zoning plans have been given great importance and these cannot be changed on the directions of an individual. It can be changed only by the committee constituted for this purpose and for valid reasons.

(33) Another regulations was framed under section 54 of the Act known as Haryana Urban Development Authority (Preservation of Trees) Regulations, 1979. As the name suggests it was framed for the purpose of preservation of trees in the Urban Estates. In Regulation 3 it was said that no person would, except with the previous permission in writing of the Estate Officer or such other authorised officer cut down, lop or destroy or cause or permit the cutting down, lopping or destruction of any tree in any part of the wood-land area shown in the zoning plan as "protected trees" or "protected wood land areas". The open spaces and the trees are necessary to keep the air free from pollution and to maintain ecological balance in the towns in these days of industrialisation. It is but natural that when green belts were converted into plots, the trees standing thereon must have been removed and in future no trees can be planted there. It has not been shown that while changing the green belts due formalities were observed by the HUDA. In fact the stand of Mr. Anand Swaroop is that proper formalities were not followed for carving out the plots in the green belts and open spaces. Nothing has been brought to our notice that the stand of Mr. Anand Swaroop is not correct. Even if some decision to change zoning plan was taken by the Committee constituted for preparing the zoning plan by the HUDA, in pursuance of the directions of the Chief Minister to carve out plots from the green belt etc. for allotment by him, that could not have been said to be good

decision, as the members of such a Committee would not have dared to defy the Chief Minister.

(34) The matter is not *res integra*. The interpretation of similar regulations came up before this Court in *Daya Swarup Nehra and others* v. *The State of Punjab and others* (6). In that case certain citizens of Chandigarh finding that a plot marked as public space near their residential houses, was being utilized for installation of a petrol pump contrary to the statutory provisions relating to the construction in the area, made representations to the Minister and Secretary concerned of the State Government. But finding that there was no response from the authorities and the work of installation was going on with speed, they filed a writ petition under Article 226 of the Constitution. I. D. Dua, J., as he then was, speaking for the Bench observed that an administrative agency, which was purely the creature of statute, had no powers except those given by the statute which must be found in the statute itself read as a whole by discovering the legislative intent. In this Republic, as indeed, in any decent society governed by the rule of law of our responsible democratic pattern, it is unthinkable that any officer of the Government or even the Government itself can be contended to possess arbitrary and uncontrolled power over the person, property or interests of the individual citizen, which can be claimed to be exercised to the citizen's prejudice without the author being called upon to justify his action on the basis of a valid law. The constitutional set up in this republic does not favour vesting of absolute and uncontrolled power in the administrative agency of indeed in any single governmental agency and every government authority in the republic is governed and controlled by the rule of law. Regarding the 'Zoning Plan' the learned Judge observed that it is not open to the Chief Administrator at any moment to change the same. Consequently, the writ was accepted by the Court. The above case was followed in *Mali Ram Sharma and others* v. *Employees State Insurance Corporation and another* (7). In that case a park shown in the master plan in Faridabad Complex was allotted for construction of an Employees State Insurance Hospital. The action of the Government was challenged on the ground that the open park could not be used for the purpose of hospital. The learned Judge accepted the contention and held that the master plan was not a

(6) A.I.R. 1964 Punjab 533.
(7) 1987 P.L.J. 215.

simple plan but had a statutory base. The plot holders in the vicinity were aware of the park when they purchased the plots and consequently they were entitled to open air, light and the use of park. We are in respectful agreement with the above observations.

(35) It also requires emphasis that the Government should have laid certain guide-line for allotting the plots. In case it found that some person who deserved to be allotted a plot, was not covered by the guide line it could after giving reasons, allot a plot to him. The contention of Mr. Gupta that it was not possible for the Government to lay guide line as all the situations could not be covered, has no basis. If the Government was unable to find out deserving persons for allotment of the plots, those could be transferred to general category, in which lacs of people who had applied for the plots were waiting for the allotments.

(36) It is next contended by Mr. Gupta that on the faith of the order of allotment the petitioner paid the price of the plot which had been accepted by the respondents. In accordance with the provisions of the Erection of Buildings Regulations, he submitted, a plan of the house which was duly sanctioned. He constructed the house which is almost complete now. It is in the faith of the orders of the respondents that he incurred the huge financial expenditure in purchasing and constructing the plot, and, therefore, they are estopped from cancelling the allotment in any way. In support of his contention, he placed reliance of *M/s Motilal Padampat Sugar Mills Company Limited* v. *The State of Uttar Pradesh and others* (8), *Union of India and others* v. *Godfrey Phillips India Limited* (9) and *Express Newspapers' case* (supra).

(37) The contention of the learned counsel has been examined by us in great depth. However, as a large number of cases having different facts have been argued, we propose to discuss this aspect in detail and then arrive at a decision which will apply to the present case and to the cases of other allottees who have raised construction on their plots.

(38) The promissory estoppel is a rule by which if a party, by words or conduct has made promise or assurance to another for the

(8) A.I.R. 1979 S.C. 621.
(9) (1985)4 S.C.C. 369.

purpose of creating or effecting legal relationship and the other party has acted upon such promise or assurance, the former cannot afterwards be allowed to go back on the promise or assurance. The principle involved in the rule is that it would promote injustice if a man is allowed to back out from his promise or assurance on the basis of which another person was induced to act. Bhagwati, J. as he then was in *Motilal Padampat Sugar Mills's case* (supra) defined promissory estoppel as follows:—

> "The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."

The learned Judge further observed:

> "The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negatived. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception."

The above case was followed in *Godfrey Phillips India's* case (supra) in which Bhagwati, Chief Justice, as he then was, again wrote the main judgment and observed, thus:

> "Now the doctrine of promissory estoppel is well established and the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form stepped into mitigate the rigour of strict law."

The matter was next examined by the Supreme Court in *Express Newspapers'* case (supra). In that case notice of re-entry was given by the government to the petitioner on the ground that it had forfeited the lease because of breach of certain clauses of the lease deed. A. P. Sen J., laid down that the petitioner having acted upon the grant of permission by the then Minister Works and Housing and constructed the new Express Building with an increased FAR of 360 and a double basement in conformity with the permission granted by the lessor i.e., the Union of India. Ministry of Works and Housing with the concurrence of the Vice-Chairman Delhi Development Authority on the amalgamation of Plots Nos. 9 and 10, as ordered by the Vice-Chairman by his order dated October 21, 1970, as on 'special Appeal' as envisaged in the Master Plan having been directed, the lessor is clearly precluded from contending that the order of the Minister was illegal, improper or invalid by application of the doctrine of promissory estoppel.

(39) However, there are some exceptions to the above principle. One of them is that if the Government can show that in view of the facts which came to light later, great injustice would be done to it if it is forced to hold its promise, the Court will not force the promise made by the Government. It is based on the principle that doctrine of promissory estoppel is an equitable doctrine and it should yield if enquity so requires. Bhagwati, J. elaborating the point in *Motilal Padampat Sugar Mills' case* (supra) laid down as follows :—

> "But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold

the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, enquiry would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government determine which way the equity lies :—

Bhagwati, J. has dealt with other exceptions in the same judgment. It has been held by the learned judge that where the Government owes a duty to the public to act in a particular manner, the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The doctrine of promissory estoppel cannot be applied in teeth of an obligation of liability imposed by law. It also cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the exercise of legislative power. The following observations of Professor S.A.De Smith in his book *Judicial Review of Administrative Action*, Fourth Edition made at pages 335 and 336 also support the above view:—

"The concept of bad faith eludes precise definition but in relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. *A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred.*

A power is exercise maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise.

If the Court concludes that the discretionary power has been used for an unauthorised purpose it is generally immaterial whether its repository was acting in good or bad faith. But there will undoubtedly remain areas of administration where the subject matter of the power and the evident width of the discretion reposed in the decision-maker render its exercise almost wholly beyond the reach of judicial review. In these cases the Courts have still asserted jurisdiction to determine whether the authority has endeavoured to act in good faith in accordance with the prescribed purposes. *In most instances "the reservation for the case of bad faith is hardly more than a formality". But when it can be established, the Courts will be prepared to set aside a judgment or order procured or made fraudulently despite the existence of a generally worded formula purporting to exclude judicial review."*

At page 103 of the same book, the following observations may be read with advantage :—

"However, there is a growing body of authority, attributable in large part to the efforts of Lord Denning, to the effect that in some circumstances when public bodies and officers, in their dealings with a citizen, take it upon themselves to assume authority on a matter concerning him, the citizen is entitled to rely on their having the authority that they have asserted if he cannot reasonably be expected to know the limits of that authority ; and he should not be required to suffer for his reliance, if they lack the necessary authority. *But it is extremely difficult to define with any degree of precision the circumstances in which the Courts will be prepared, in the interest of "fairness" to the individual, to deroqate from orthodox notions of* ultra vires.

First, public authorities have been held bound by assurances given in this regard of formal or procedural statutory requirements upon which individuals have relied to their detriment. This principle was applied to a determination by a planning official upon whom the power to decide had not been delegated in proper form. *The further suggestion that the authority would be similarly bound if it had no power at all to delegate is probably wrong."*

In *Godfrey Philips India's case* (supra) again it was reiterated that the doctrine of promissory estoppel was not applicable to the cases as given in *Motilal Padampat Sugar Mills' case* (supra). In *Express Newspapers case* (supra) Sen J., while discussing this matter said that in public law, the most obvious limitation in doctrine of estoppel is that it cannot be evoked so as to give an overriding power which it does not in law possess. In other words, no estoppel can legitimate action which is *ultra vires*. Another limitation is that the principle of estoppel does not operate at the level of Government policy. Estoppels have however been allowed to operate against public authority in minor matters of formality where no question of *ultra vires* arises.

(40) It emerges from the above discussion that the principle of promissory estoppel is also not applicable where an order on the basis of which estoppel is claimed is *ultra vires*. When an order can be said to be *ultra vires*, has already been discussed. The principle is further not applicable to compel a party to do an act prohibited by law or to prevent it from discharging its legal duty. The principle is likewise not applicable to the Legislature in exercise of its legislative function. It also cannot be invoked if it is found to be inequitable or unjust. These are the broad outlines. However, as pointed out by de Smith, the Courts can in certain circumstances, in the interest of justice derogate from the notions of *ultra vires*. But it is difficult to define with precision the circumstances in which they can do so.

(41) Now it is to be seen whether the principle of Promissory Estoppel is applicable to the present case. The petitioner started construction of the house after getting the plan sanctioned and almost completed the same by spending a huge amount when the order of cancellation of the plot was passed by the Chief Minister. In case the cancellation is allowed to stand, he will suffer a huge loss. It may also be pointed out that the Chief Minister, even though not aware of the rule of promissory estoppel, had given due consideration to the rule when he passed the order, dated September 8, 1987, by which he ordered that the allotments of plots from the discretionary quota on which the houses had already been completed and the Completion Certificate had been issued by the concerned Estate Officer, be not cancelled. The aforesaid order was applicable to all the allottees of the plots from the discretionary quota. They included even those allottees, who had been allotted plots carved out of green belts or areas reserved for

public use. Thus, the contention of Mr. Anand Swaroop that the rule of Promissory Estoppel cannot be applied to the petitioner runs counter even to the decision taken by the Chief Minister. At the same time, it is difficult to distinguish the cases of the allottees who had completed the contruction but not been able to secure Completion Certificate, from those who had been fortunate enough to secure the same. On the basis of the same logic, it is not reasonably possible to put in different category the cases of the allottees who had started construction of their houses on the plots allotted to them after getting the Plans sanctioned from the prescribed Authority but were not able to complete the construction up to the date when the cancellation of the plots was ordered. We are further of the view that if an allottee started construction of the house, it did not make any difference whether the plot was carved out from the green belt, or from the area originally meant for construction of the residential houses of a different category or size, or the use of which was to be determined later, or the area was reserved for any other public purpose. Therefore the petitioner and all the other allottees, who had started construction after getting the plans sanctioned, before the order of cancellation was passed, would be entitled to the benefit of the rule of Estoppel.

(42) It is next contended by Mr. Gupta that the petitioner was not afforded any opportunity to represent his case before the order of cancellation of the plot was passed against him. Such an order should not have been passed without giving him a hearing. Thus the order violates the principle of natural justice. He has also referred to some provisions of the Act and submitted that if any penal action is required to be taken thereunder, an opportunity of hearing is provided by the Legislature to the person concerned. According to Mr. Gupta, if an opportunity had been given to him he could have shown that he was entitled to retain the plot. On the other hand, Mr. Anand Swaroop has argued that the order of allotment of the plot in favour of the petitioner was *void ab initio* and therefore, it was not necessary for the respondents to give a show cause notice to him. He further contends that if the Court finds that the show cause notice was necessary, the respondents can be directed to give to the petitioner a show cause notice and if after hearing him they find that the order of cancellation of the plot should not have been passed, they would recall the same. According to him post-decisional hearing is equally efficacious.

(43) We have given our thoughtful consideration to the arguments. Before dealing with the contentions of the learned counsel,

it is appropriate to have a general idea as to what natural justice is and to what cases the principle of natural justice applies. The question as to what the phrase 'natural justice' means has been dealt with by the Supreme Court in *Swadeshi Cotton Mills etc.* v. *Union of India etc.* (10) as follows:—

> "Well then, what is "natural justice"? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth", "Natural Justice" by Paul Jackson, 2nd Edition, page 1. In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural Justice" was considered as "that part of natural law which relates to the administration of justice." Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules.
>
> But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of latin tags these twin principles are : (i) *audi alteram partem* and (ii) *nemo jude in re sua.* For the purpose of the question posed above, we are primarily concerned with the first. This principle was well-recognized even in the ancient world. Seneca, the philosopher, is said to have referred in Medea that it is unjust to reach decision without a full hearing. In Maneka Gandhi's case (AIR 1978 SC 597) Bhagwati, J. emphasied that *audi alteram partem* is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed."

(10) AIR 1981 S.C. 818.

Before 1967, it was thought that the principles of natural justice were applicable only to the judicial or *quasi* judicial decisions and not to the administrative decisions. But later the concept changed and it was held in *State of Orissa* v. *Dr. Binapani* (11) that even an administrative order or decision in matters which involve civil consequences should be made consistently with the rules of natural justice. The meanings of phrase "civil consequences" have been given in *Mohinder Singh Gill and another* v. *The Chief Election Commissioner, New Delhi and others* (12). The relevant observation made by Krishna Iyer, J. speaking for the Bench, is as follows:—

> "But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? 'Civil consequence' undoubtedly cover infraction of not merely liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."

In A. K. Kriapak v. *Union of India,* (13) these principles were held to be applicable to administrative enquiries. The Court observed thus :—

> "If the purpose of these rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi judicial enquiries ... Arriving at a just decision is the aim of both quasi judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry."

It was further observed in that case that the aim of the rule is to secure justice or to put it negatively to prevent miscarriage of justice. The rule can operate only in area not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The maxim *audi alteram partem* is a universally respected rule and unless it is followed, there is possibility of miscarriage of justice. In a recent judgment in

(11) AIR 1967 S.C. 1269.
(12) AIR 1978 S.C. 851
(13) AIR 1970 S.C. 150

K. I. Shephard's and others v. *Union of India and others* (14) Ranganath Misra, J. laid down that fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of rule of law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. Two of the essential features of the maxim *audi alteram partem* are : firstly, show cause notice to the concerned party, secondly, an opportunity to him to explain his case.

(44) The circumstances in which observance of the principle may not be compelled have been succinctly dealth with in *S. L. Kapoor* v. *Jagmohan and others,* (15). The relevant observations are as follows :—

> "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who was denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

The above observations were followed by a Constitution Bench in *Olga Tellis and others* v. *Bombay Municipal Corporation and others,* (16) and it was held that these sum up the true legal position regarding the purport and implication of the right of hearing. The matter

(14) (1987) 4 S.C.C. 431.
(15) AIR 1981 S.C. 136.
(16) AIR 1986 S.C. 180

also came up for decision in *Swadeshi Cotton Mills' case* (supra). The learned Court after quoting a para from Judicial Review by Professor de Smith observed :—

> "In short, the general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the predecisional stage. Conversely, if the statute conferred the power is silent with regard to the giving of a predecisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the predecisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short rule of fairplay "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands." The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with the situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

Again, in *K. I. Shephard's case* (supra) the matter was examined by the Supreme Court. In that case the services of certain employees had been terminated and they came to the Court against the order of termination of services. During arguments, a contention was raised on behalf of the respondents that the employees could make a representation and if they did so, their cases would be examined. R. N. Misra, J., speaking for the Court observed that the post-decisional hearing would not meet the ends of justice. The petitioners have been turned out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an

opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is further observed that it is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. These observations are aptly applicable to the present case.

(45) Keeping in view the general principles stated above let us examine the orders passed by the Chief Minister for cancelling the plots. Two orders have been passed on behalf of the Chief Minister; one dated June 24, 1987 and the other dated September 8, 1987. Both the orders bear the signatures of the Principal Secretary to the Chief Minister. It seems curious that although the fate of thousands of persons stands sealed by the aforesaid orders yet the Chief Minister did not even care to sign the orders himself. It appears from the language of the orders that he did not even read his earlier order dated June 24, 1987 when he passed the order dated September 8, 1987 nor his principal Secretary, in whose hand the orders are written, brought the earlier order to his notice at the time when he wrote the order dated 8th September, 1987. By the first order he had cancelled the allotments made by the previous Government only and by the latter order he cancelled the allotments made since April 1, 1977. In the first order he specifically said that if the representations were received against the cancellation and it was found that such allotments were made to persons who did not own any plot or house anywhere in the country either in their own names, or in the name of their spouses or the children, in such cases the plots could be restored after verification but while making the latter order no such order was incorporated therein. However, another exception was made in the cancellation order. It was that if any allottee had completed the construction and obtained completion certificate from the HUDA, his allotment would not stand cancelled. It is thus evident that the Chief Minister, at that stage, did not consider it proper to allow the allottees even to make representations to the Government against the order of cancellation.

(46) It is beyond comprehension as to why such a blanket order of cancellation was passed in a country where rule of law prevails. It was nothing else but in the language of I. S. Tiwana, J., a Farmana-Shahi. The learned Judge used the word while he was examining the legality of the order of the Government in rejecting the recommendations of the former Chairmen of the Improvement Trusts

regarding allotment of plots to various persons out of Government quota, in *Baldhir Kaur* v. *The State of Punjab and another* (17). He said that all that the State Government could examine or go into before granting or not granting its approval was to see as to whether the various Trusts had acted within the framework of rules while making the allotments. It just could not disapprove or decline to grant approval for any reason or no reason. Apparently the impugned order was in the nature of Farman-a-Shahi.

(47) It is not understandable as to why the Chief Minister did not consider it necessary at the time of passing the subsequent order to allow the allottees to retain the plots in certain circumstances as had been done by him at the time of passing the order dated June 24, 1987. We think that if a plot was given by the Government for construction of a house for residence to a citizen of India, who did not own any house in Delhi, Chandigarh, Mohali or any other town with 'A' class Municipality in the Punjab or Haryana either in his own name, or in the name of his spouse or dependent children, his allotment should not have been cancelled without giving any reason. A house for residence for a person in the present age is a primary necessity and is as important as good food, medicine, education and clothing. It may be highlighted again that this principle to some extent was recognised even by the Chief Minister while passing the order of cancellation dated June 24, 1987, wherein he had said that the allotment of the plots be restored to the allottees if they did not own any plot or house anywhere in the country, either in their own names or in the name of their spouse or minor children. It cannot be overlooked that some houses had been completed by the allottees, on which they had spent their life-savings but could not obtain completion Certificates, while many were near completion.

(48) It is relevant to point out at this stage that a plot in Panchkula was allotted to Smt. Satwanti predecessor-in-interest of the petitioner in Civil Writ Petition No. 6516 of 1987, by Shri Khursheed Ahmad, who was a Minister for Local Self Government at that time. He is also a Minister in the present Government. In the written statement a plea was taken by the respondents that the allotment made by Mr. Khursheed Ahmad was *ultra vires* the provisions of the Act and the Regulations. It was pleaded, that first she sought to transfer the plot in favour of Shri Vijay Kumar but later she transferred that in favour of Shri Lachhman Dass and Shri Hem

(17) 1983 P.L.J. 414.

Raj. It was not transferred in favour of Shri Vijay Kumar as she got more profit from Lachhman Dass etc. It was further pleaded that it was a racket meant to distribute public properties to their favourites by the Ministers in the erstwhile Governments. As Mr. Khursheed Ahmad is the Minister in the present Government as well, we directed him to file an affidavit. He defended his order of allotment and commented adversely on what was pleaded in the written statement. It goes to show that the Chief Minister while taking a decision of such far-reaching consequences did not consult his collegues in the Cabinet. It is regrettable that whereas the former Ministries allotted some plots to the undeserving persons, the present Government cancelled all the allotments including those made in favour of the deserving persons. Some of them had even constructed houses by spending their life-savings thereon. The *bona fide* purchasers from the original allottees have not been spared either.

(49) In pursuance of the order of the Chief Minister the Chief Administrator HUDA issued memo. No. 229-34 dated 8th September, 1987, annexure P-3, to the Estate Officers, Panchkula, Karnal, Rohtak, Faridabad, Guragon and Hissar, informing them that the Government had decided that all the residential plots allotted under discretionary quota from 1st April, 1977 till date should be cancelled with immediate effect. However, such plots over which construction had been completed and completion certificate had already been obtained from the authorities concerned, should not be cancelled. He directed them to carry out the orders of the Government and report compliance. He also prescribed a proforma to be sent to the allottees. In pursuance of the above memo., the Estate Officer, Panchkula wrote memo. No. E.O. (P)-87/DQ-206, dated 10th September, 1987, annexure P-4, to the petitioner cancelling his plot. The memo. reads as follows:—

"Dear Sir,

In terms of its policy decision dispensing with discretionary quota allotments, the State Government has ordered cancellation of the allotment of plot No. 591, Sector 6, Panchkula already made to you,—*vide* allotment letter No. 17241 dated 20th August, 1981.

The amount deposited by you towards any instalment of the price of the plot is being refunded separately."

From a reading of the memo. it is evident that no opportunity to make representation against the order of cancellation was even provided to the petitioner by the Estate Officer. No order has been brought to our notice by which a formal decision was taken by the HUDA after receipt of the order of the Government, to cancel the plots. As already mentioned, HUDA is a statutory body and before issuing the letters it was incumbent upon it to have taken a formal decision.

(50) Mr. Anand Swaroop, learned counsel for HUDA has argued that the order of the Chief Minister dated 24th June, 1987 wherein he had ordered that the allottees could make a representation in certain circumstances be read as a part of the order dated 8th September, 1987. Thus, the allottees had the right to make a representation and in case they had done so, the HUDA would have considered the same. We do not find any substance in the submission. It appears from the two orders of the Chief Minister that the latter order was passed in supersession of the former order. Moreover, the orders of the Chief Minister were not brought to the notice of the allottees. They, therefore, could not know about the former order. If the HUDA from the aforesaid orders understood that an opportunity was to be provided to the allottees it should have done so. It was incumbent for the HUDA which is an independent body, to have applied its mind before issuing the letter of cancellation in compliance with the orders of the Government. It is also worth mentioning that even the proforma of the letter of cancellation was provided by the Government and the letters were issued by the Estate Officers on the proforma. Thus, there was no application of mind by the Estate Officer even.

(51) Now it is to be seen by us whether the orders of allotments are *void abinito* as contended by Mr. Anand Swaroop. We have already held that the Government could have a discretionary quota out of which it could allot the plots. In the circumstances, it cannot be said that the orders of allotments, of the plots by the Government are *void ab initio*. Mr. Anand Swaroop in this context had referred to *Deep Chand and another* v. *The Additional Director, Consolidation of Holdings, Punjab, Jalandhar and another* (18) wherein it was observed that the case of void order or orders which are without jurisdiction stand on a different footing. An order which is a nullity or which is invalid does not require to be set

(18) 1964 P.L.R. 318.

aside and may be ignored for it is not only bad but is incurably bad. It is automatically null and void without more ado, though it is sometimes convenient to have it declared to be so. The above observations are unexceptionable out in our view they are not applicable to the present case as the orders of allotment are not *void ab initio.*

(52) Mr. Anand Swaroop also placed reliance on a recent decision of Delhi High Court in Civil Writ Petition No. 866 of 1986 (Vikas Vihar Co-operative Group Housing Society *v.* Union of India and another) decided on 1st June, 1987, wherein allotments of land in South Delhi to the respondent-Cooperative Societies the members of which were members of Parliament and other important persons were set aside by the Court. The facts of that case are, however, different. There, a decision had been taken by the Government imposing a ban on allotment of land to the Cooperative Societies in South Delhi. The petitioner-society requested for allotment of land in South Delhi in 1981. They were informed about the ban. Some of the Co-operative Societies the members of which were members of Parliament and Ministers made an application for allotment of the land in South Delhi. The Official of the Ministry cautioned the Co-operative Socities that if land was allotted to the Co-operative Societies the membership of which was wholly of M.Ps. that would be discriminatory. Thereafter membership was increased and the relatives of M.Ps were included so as to give a look that the societies were not wholly for M.Ps. After it had been done the ban on allotment of land in South Delhi was removed and the land was allotted to such societies. The petitioner-society which had come into existence prior to the abovesaid Societies and had applied for allotment of land earlier, was not allotted land. In the above circumstances, the order of allotment was cancelled . We are of the view that the ratio in the said case is not applicable to the facts of the present case.

(53) The other argument of Mr. Anand Swaroop is that the respondents can give a hearing to the petitioner in case he makes an application and if it is found that he is entitled to retain the plot, the order of cancellation will be recalled. He has placed reliance on the observations in *Smt. Maneka Gandhi* v. *Union of India and another* (19) and *Swadeshi Cotton Mills' Case (supra).* The matter has already been discussed at some length. The HUDA while issuing the notices of cancellation did not apply its mind at

(19) A.I.R. 1978 S.C. 597.

all. It is a statutory body and it should have taken an independent decision before issuing letter of cancellation. The Government though in the first order had ordered that the representation could be made by allottees but in the subsequent order it, for the reasons best known to it, did not say so. In this situation, it will not be proper to direct the petitioners to file a representation before the respondents, when their allotments have already been cancelled. In *Maneka Gandhi's case* (supra) the Government had accepted even in its written statement to give post decisional hearing. It had further stated that if the impounding of the passport was ordered, it would not continue for a period of more than six months from the date of the decision. Moreover, the order which was sought to be quashed related to impounding of the passport. In the above circumstances the post decisional hearing was considered to be sufficient compliance with the principles of natural justice. In *Swadeshi Cotton Mills' case* (supra) the Legislature had provided post decisional hearing in Section 18-F of the Industries (Development and Regulation) Act. In view of the Section it was conceded by the Government in the High Court that the petitioner had a right of such hearing. Moreover, the Solicitor General also gave an undertaking in the Court that the Central Government would give a hearing to the appellant within a reasonable time after the take over, if it approached the Government. We are, therefore, of the view that Mr. Anand Swaroop cannot derive any benefit from the observations in the said cases.

(54) However, in the facts and circumstances of this case, in our opinion, the post decisional hearing, would not meet the ends of justice. Consequently, the impugned order is liable to be quashed on the ground that the petitioner was not provided with an opportunity to represent his case before the order of cancellation was passed and thus the salutary principle of *audi alteram partem* was violated by the respondents.

(55) It is next contended on behalf of the petitioner that the order of allotment in favour of the petitioner was a valid order. After the order of allotment, he deposited the price of the plot. The order was in consonance with section 15 of the Act, read with rule 3 and Regulation 5(3) and did not violate any provisions of the Act rules or regulations. Therefore, the order of allotment cannot be said to be void *ab initio*. He also made reference to section 58(2) of the Act.

(56) We have duly considered the argument of the learned counsel. The argument is not relevant in the the case of the petitioner, as we have already observed that the Government is estopped from cancelling his plot. The reply to the argument in the case of other allottees, who have not started construction, depends on the fact whether the plot was got carved out by the Government in abuse of its power, or the allotment of the plot was made by it arbitrarily. If their cases fall within the purview of the above categories, the allotments in their favour can be cancelled. We, are, however, quashing the order of cancellation of all the plots and laying down the guidelines as to who are entitled to retain the plots and directing the Government to give notices and consider the matter in accordance with those guidelines. It may be observed that merely because the order of allotment was in consonance with Section 15 read with rule 3 and Regulation 5(3), the same cannot become valid, if it is suffering from the vice of *ultra vires*. Section 58(2) provides that anything done or any action taken including any order or rule made under any provisions of the Punjab Urban Estates (Development and Regulation) Act, 1964, shall so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been done or action taken under the provisions of this Act, unless and until it is superseded by anything done or any action taken under this Act. We do not think that the section is applicable to this case. No provision from the Punjab Urban Estates (Development and Regulation) Act has been brought to our notice in pursuance of which the order of allotment was passed by the Government. The said Act has been repealed with effect from the date the HUDA came into existence. All the allotments have been set aside from the date HUDA had come into existence. Consequently, Mr. Gupta, cannot derive any benefit from the said Section.

(57) It is then contended by Mr. Gupta that under section 15(5) of the Act title in the allotted porperty passed to the allottee when the entire consideration together with interest had been paid. The petitioner after he had paid all the dues had been issued a certificate of non-encumbrance. There was no power in the Act, rules or the regulations authorising the respondents to cancel the allotment. He further contends that even if whole of the money has not been paid, it does not make any difference. The possession of the plot has been given to the petitioner in part performance of the contract and he is ready to perform his part of the agreement. Therefore, in view of Section 53-A of the Transfer of Property Act, the order of cancellation cannot be passed by the HUDA.

(58) Again the basic question is whether the order of allotment passed by the Government is *ultra vires*. If it is so, the respondents have a right to cancel the allotment. Section 17 of the Act or Section 53-A of the Transfer of Property Act have no applicability in such cases.

(59) Section 50 of the Act, it is next contended by Mr. Gupta, provides that every order passed by the State Government is final and cannot be questioned in any suit or legal proceedings. The order of allotment passed by the Government in favour of the petitioner is final under the said section and the respondents have no jurisdiction to review the said order.

(60) We have given our thoughtful consideration to the argument. As already mentioned, in case the order of allotment is *ultra vires*, it can always be set aside by the Government. No doubt Section 50 excludes the jurisdiction of the Civil Court with regard to the orders passed under the Act. This provision has, however, no applicability to the orders which are *ultra vires*. It is not necessary to deal with this matter any further.

(61) Yet another argument raised by Mr. Gupta is that,—*vide* the impugned order, all the residential plots allotted under the discretionary quota from April 1, 1977 have been cancelled. The date April 1, 1977 has been picked up from a hat and there is no rationale behind it as there is no basis for classifying separately the allottees prior to April 1, 1977 and those after the said date. He submits that selection of date is thus arbitrary and violative of Article 14 of the Constitution of India. He sought support for his submission from *D. R. Nim* v. *Union of India* (20) and *D. S. Nakara and others* v. *Union of India* (21).

(62) Mr. Anand Swaroop in reply to the contention, has submitted that the Act came into force with effect from April 1, 1977 and the HUDA was constituted from the said date. Thus, the allotments prior to the date of coming into force of the Act have been retained and those made after the said date have been cancelled. According to him, Article 14 permits reasonable classification of persons and the persons whose plots have been cancelled fall within a reasonable classification.

(20) A.I.R. 1967 S.C. 1301.
(21) A.I.R. 1983 S.C. 130.

(63) We have given our thoughtful consideration to the argument of the learned counsel. The submission made by Mr. Anand Swaroop, however, does not appear to be correct. The Act received the assent of the President of April 30, 1977 and it was published in the Haryana Gazette (Extraordinary) Legislative Supplementary Part I, dated May 2, 1977. Thus, the Act came into force with effect from the date of its publication in the Gazette, i.e. May 2, 1977. Thus the HUDA could not come into existence in pursuance of the Act on April 1, 1977. However, it is relevant to point out that the Government had earlier promulgated an Ordinance called the Haryana Urban Development Authority Ordinance, 1977 which was repealed by virtue of section 60 of the Act. It was neither pleaded nor argued before us that the HUDA was constituted on April 1, 1977 in pursuance of the said Ordinance. It is, thus, evident that the date April 1, 1977 has been selected arbitrarily by the Chief Minister.

(64) It is well settled that Article 14 of the Constitution of India forbids Class Legislation. However, it permits reasonable classification for the purpose of legislation provided the classification satisfies the twin tests, namely, the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and the differentia must have a rational nexus to the object sought to be achieved by the statute in question (See A.I.R. 1958 S.C. 538). In the present case, there is no *rationale* in fixing April 1, 1977 for the purpose of cancellation of allotment of the plots. Therefore, we are of the view that the impugned order is liable to the struck down on this ground as well.

(65) In the above view, we got force from the observations of the decisions referred to by Mr. Gupta. In *D. R. Nim's case* (supra) in the impugned order, an artificial and arbitrary date was selected for classifying members of Indian Police Service. It was held by the Supreme Court that the Central Government could not pick out a date from a hat and that was what seemed to have been done in the case. Consequently, the impugned order was quashed. In *D. S. Nakara's case* (supra), briefly, the facts are that the Government,—*vide* order, dated May 25, 1979 liberalised the formula for computation of pension and it was made applicable to Government servants who were in service on March 31, 1979 and retired thereafter. The petitioners who had retired prior to the said date, claimed the benefit of liberalisation of pension on the ground that the

date fixed was arbitrary and was violative of Article 14 of the Constitution of India. Desai, J. while speaking for the Court, observed that the classification being not based on discernible rational principle and being wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in the memoranda, violates Article 14 and is unconstitutional and liable to be struck down. The above observations are fully applicable to the present case.

(66) Faced with this situation, Mr. Anand Swaroop has submitt-that the impugned order of cancellation of plots may be treated as effective from May 2, 1977 instead of April 1, 1977. According to him, in that situation some more allottees can get the benefit of retaining the plots. We, however, do not think that the Court can change the date at the instance of the Government when no formal order has been passed by it. In case we allow the Government to change the date, it can cause greater injustice in certain cases to the concerned parties. For example, if the Government is allowed to change the date to some previous date at its request so that the date ceases to be arbitrary, it would affect thousands of other allottees against whom the Government never intended to pass an adverse order. The net result is that April 1, 1977, the cut-off date is clearly arbitrary. We, therefore, strike down the impugned order on the ground that it is violative of Article 14 of the Constitution of India, as it impinges upon the fundamental right of equality before law vested in the petitioners.

(67) It is next contended by Mr. Gupta that no averment has been made by the respondents that the discretionary quota has been abolished. That being so, the order of cancellation is wholly illegal. Even if it is assumed that the discretionary quota has been abolished it can operate prospectively and not retrospectively. It is further submitted that no executive order can divest a person of the rights which had vested in him, and, therefore, the order of cancellation is bad. On the other hand, Mr. Anand Swaroop has submitted that the Government has decided that in future no allotments shall be made from the discretionary quota. According to him, the doctrine of retrospectivity does not arise in the present case as the order of allotment is *ultra vires* and such an order does not confer any vested right on an allottee.

(68) We have duly considered the argument. Again, the main question is whether the order of allotment of the plots made by the Government is *ultra vires*. If it is so, it can always be set aside. We have already dealt with the matter at a considerable length. Further we have held that the orders of cancellation of plots are liable to be set aside. Mr. Anand Swaroop has also given an undertaking that the plots shall not be allotted in future out of the discretionary quota. In the circumstaces, it is not necessary to go into the matter any further.

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(69) In the above case, Shri Ram Kishan allottee of the plot had transferred the same in favour of the petitioner for valuable consideration and the transfer had been sanctioned by the Estate Officer. Mr. Bhandari, counsel for the petitioner, has submitted that the petitioner had purchased the plot for consideration from the allottee and the Conveyance Deed had been executed by the Estate Officer, in his (petitioner's) favour. The Estate Officer issued a Certificate, Annexure P4, saying that he had a marketable title in the property. He also obtained permission to construct a house thereon and applied for grant of loan from the Army Authorities. He was sanctioned a loan of Rs. 75,000 payable in instalments. Even one instalment thereof had been withdrawn by him. He submits that the petitioner is a *bona fide* purchaser for consideration and in view of section 41 of the Transfer of Property Act the respondents could not cancel the allotment in his favour.

(70) We find force in the argument. Section 41 provides that where with the consent, express or implied, of the persons interested in immovable property a person is an ostensible owner of such property and transferred the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it. It was not disputed before us that the original allottee had an allotment letter in respect of the said plot from the HUDA in his favour. The entire consideration was paid by the petitioner to the allottee and it was after the permission was granted by HUDA, the plot was transferred. It is not proved that the petitioner was a privy to the allotment of the plot by the Government from its discretionary quota to the original allottee. Even the Estate Officer accepted the sale and executed the Conveyance Deed in petitioner's favour. Thus, the petitioner is a *bona fide* purchaser of the plot, from Ram Kishan for valuable consideration and is protected by the provisions of section 41. Therefore, the allotment of the plot which now stands transferred in favour of the petitioner cannot be

cancelled by the respondents. *A fortiori,* the plots of all the *bona fide* transferees for consideration from the original allottees cannot be cancelled.

(71) No new point was raised in any other Writ Petition by the counsel. For the reasons given above, the impugned orders are liable to be set aside in all the Writ Petitions.

(72) Now, it is to be seen that if the HUDA proposes to give show cause notices to cancel the allotments of the allottees, in which cases it can do so. Mr. Anand Swaroop has grouped the cases into eight categories which, in view of the above dicussion, can be categorised in four categories which are as follows:

(a) Where the possession of the plots has not been delivered to the petitioners and where the possession of the plots has been given to them but they have not started construction [categories (i) and (ii)] ;

(b) Where the petitioners after the delivery of the possession of the plots to them started construction, but the same has not been completed and where the construction on the plots has been completed but the petitioners have not been issued Completion Certificates [categories (iii) and (iv)] ;

(c) Where the plots have been transferred by the original allottees to others with the permission of the prescribed authority of HUDA irrespective of the fact whether the sale deed has been executed, or not (category No. (viii); and

(d) where the plots have been carved out exclusively from the green belt or from the land reserved for the purpose of public utility (category no. v).

Categories (vi) and (vii) enumerated in the earlier part of the judgment have become superfluous for the reason that after the allotment of the plots, full consideration had been paid by the allottees and consequently the ownership in the plots vested in them. The fact whether conveyance deed had or had not been executed by HUDA in favour of such allottees, is immaterial.

(73) Now, we deal with the aforesaid four categories. We are clearly of the view that the allotments in favour of the petitioners falling in category (b) cannot be cancelled because the rule of Promissory Estoppel shall apply. The allotments in favour of the petitioners who fall in category (c) also cannot be cancelled because they are *bona fide* purchasers for consideration from the allottees and are protected under section 41 of the Transfer of Property Act. These observations apply to those cases in which the plots have been carved out from green belt or the land reserved for the purpose of public utility as well.

(74) However the cases falling in categories (a) and (d) have to be dealt with differently. The cases of the allottees who fall in category (a) require to be decided taking into consideration the following principles:

(i) If the allottee himself or his spouse or any of the dependent children has any house or plot either at Delhi, Chandigarh or in any 'A' Class Municipal town in the States of Punjab and Haryana, or in Urban Estates established by HUDA, or under the Punjab Urban Estates (Development and Regulations) Act, 1964, or in the scheme area under the Punjab Town Improvement Act, 1922; or in any other colony established by a Coloniser in the Punjab and Haryana and approved/regularised by the State Government concerned, he shall not be allowed to retain the plot;

(ii) In case an allottee got allotted in his favour more than one plot either in his own name, or in the name of his spouse, or dependent children, the allottee shall not be allowed to retain all the plots. He can be allowed to retain only one plot.

Provided in both the abovesaid cases if all the plots have been constructed, the allotment of the plots in view of the principle of Promissory Estoppel, should not be cancelled. But if one plot has been constructed and the others have not been constructed, the allotment of the remaining unconstructed plots can be cancelled.

Provided further that in a case covered by (ii) above, if a plot has been sold by an allottee, allotment of the remaining unconstructed plots can be cancelled.

(75) Now, we advert to category (d). If the allotments of the plots carved out wholly from the green belts, or from the area reserved for public purpose are to be cancelled, the Government should take into consideration the following principles before doing so:—

(i) If construction has been started or completed on the plot after obtaining sanction from the sanctioning authority, the allotment should not be cancelled;

(ii) If on the plot construction has not been started, the allotment can be cancelled but if the area on which the plot has been carved out cannot be utilised for the purpose of green belt in view of the construction on many adjacent plots carved out of such area, the allotment may not be cancelled;

(iii) If the allotments of such plots have been cancelled, the Government shall be liable to use the land of the plots for the purposes of green belt, or public purpose, as the case may be;

(iv) The plots allotted in green belt shall be liable to be cancelled on the grounds mentioned in clauses (i) and (ii) of category (a), but such plots, if cannot be utilised for the purpose of green belt, may be allotted/sold by the HUDA; and

(v) If the allotment of an allottee is cancelled from such a belt and he is otherwise a deserving person to be allotted a plot for the reasons mentioned in (i) under category (a) above, he may be allotted another plot. If the plot of that category which has been taken away from him is not available, he may be allotted a plot of lower category preferably of the next lower category.

Genl. Hoon's plot is liable to be cancelled in view of the above observations. In his application, he stated that he served in the Army for 39 years and he did not own any house or plot anywhere in the country. He had a distinguished record of service and, therefore, deserved to be allotted one plot. The fact was even admitted by Mr. Anand Swaroop. In the circumstances, it will be proper for the

Government to allot one, two-kanal plot to him. In case two-kanal plot is not available, he may be allotted one-kanal plot.

(76) We trust that the respondents will issue Show Cause Notices after due verification of facts and only to such persons who are not entitled to retain the plots in view of the above observations.

(77) The allottees, in view of the blanket orders of cancellation having been passed against them, may be feeling that they will not get justice if their replies to the Show Cause Notices are examined by the respondents themselves. In the circumstances, we direct the respondents to appoint a Retired Judge of a High Court for going through the explanations furnished by the allottees and rendering opinion to the respondents whether the plots in favour of the allottees out of the discretionary quota be cancelled, or not.

(78) For the aforesaid reasons, we accept the Writ Petition with costs and set aside the impugned orders in all the Writ Petitions. Costs in each petition Rs. 1,000.

R.N.R.

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