

IN THE HIGH COURT OF JUDICATURE AT PATNA

LETTERS PATENT APPEAL NO.335 OF 2014

IN

CIVIL WRIT JURISDICTION CASE NO. 4532 OF 2009

1. M/S SCOPE SALES PVT. LTD., A REGISTERED COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANY'S ACT, 1956 HAVING ITS REGISTERED OFFICE AT 1ST FLOOR, MAHALAXMI COMPLEX, RAJENDRA PATH, PATNA- 01 THROUGH ITS DIRECTOR RAMASHANKAR PRASAD SON OF SHRI LAL BABU PRASAD RESIDENT OF MOHALLA- BABUAGANJ, PATNA CITY, P.S. ALAMGANJ, P.O. GULZARBAGH, DISTRICT PATNA- 800007

.... APPELLANT

VERSUS

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY TO THE STATE GOVERNMENT, DEPARTMENT OF INDUSTRIES, BIHAR, PATNA

2. THE BIHAR INDUSTRIAL AREA DEVELOPMENT AUTHORITY THROUGH ITS MANAGING DIRECTOR, 1ST FLOOR, UDYOG BHAWAN, EAST GANDHI MAIDAN, BIHAR, PATNA

3. THE MANAGING DIRECTOR, BIHAR INDUSTRIAL AREA DEVELOPMENT AUTHORITY, 1ST FLOOR, UDYOG BHAWAN, EAST GANDHI MAIDAN, BIHAR, PATNA

4. THE EXECUTIVE DIRECTOR, BIHAR INDUSTRIAL AREA DEVELOPMENT AUTHORITY, 1ST FLOOR, UDYOG BHAWAN, EAST GANDHI MAIDAN, BIHAR, PATNA

5. THE AREA INCHARGE, PATNA INDUSTRIAL AREA, PATLIPUTRA, DISTRICT- PATNA

.... RESPONDENTS

Appearance :

For the Appellant : Mr. Jitendra Singh, Senior Advocate
Mr. Satyabir Bharti, Advocate
Mr. Alok Chandra, Advocate

For the Respondent No.1 : Mr. Rajesh Singh, Advocate, G.P.-6
Mr. Dhananjay Kumar, A.C. to G.P.-6

For the Respondent Nos.2-4: Mr. Lalit Kishore, Senior Advocate
Mr. Piyush Lall, Advocate

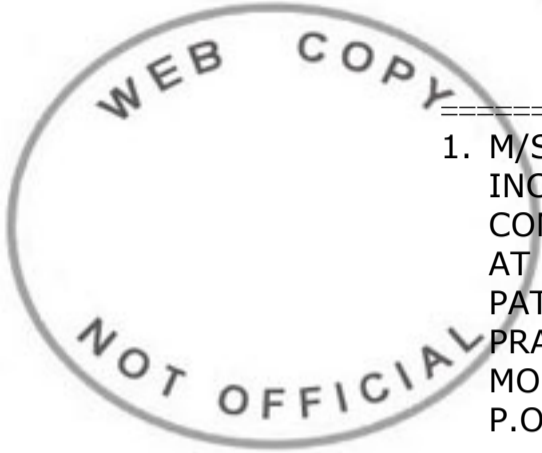
CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV ORDER


(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)



7 21-10-2014

The present litigation is the result of conflict in priorities. The appellant, before us, questions not only the priorities of the Government in cancelling an allotment of land in larger public interest, but also whether the procedure, prescribed by law, in this behalf, permits such a cancellation of allotment, which, according to the appellant, is arbitrary, unreasonable, irrational and not sustainable in law? Thus, when, and under what circumstances, can public interest supervene the tangible rights of an individual forms one of the core issues of the controversy in this appeal? Equally important are the questions as to whether the law, applicable to the case at hand, permits the impugned cancellation of allotment and, above all, whether Article 300A of the Constitution of India permits a legislation, which does not take care of the provisions, embodied in Article 300A of the Constitution of India, while depriving a person of his '*property*'?

2. Following the advertisement issued, on 06.06.2007, by Bihar Industrial Area Development Authority (hereinafter referred to as "the Authority"), which is a statutory body created under the Bihar Industrial Area Development Authority Act, 1974 (in short, "BIADA Act"), inviting participation in auction of plots in the Patliputra Industrial Area, the appellant herein, a



Private Limited Company, registered under the Companies Act, 1956, had surfaced as the highest bidder of Plot No.C-34, appellant's bid amount being Rs.2,32,20,000/-. The appellant was accordingly allotted Plot No. C-34, though the appellant had to pay total sum of Rs.3,38,98,000/-, when the final measurement of the said plot of land, at the time of delivery of possession, turned out to be 2.55 acres. The order, dated 19.06.2007, issued by the Authority, contained the terms and conditions of the allotment and the ground on which the allotment could be cancelled. On allotment of the land, the appellant started raising construction for developing a multiplex-cum-mall on the said plot.

3. The appellant was also asked by letter, dated 09.01.2008, to construct staff quarters, at its own cost, covering an area of around 7,000 square feet involving a total cost of Rs.45 lacs for New Government Polytechnic Institute, Patna, situated adjacent to the land, which stood allotted to the appellant, where the appellant had been raising construction for the purpose of a multiplex-cum-mall.

4. On allotment of the land, the appellant made huge investment by way of construction of boundary walls, excavation of land, preparation of site plan, etc.,


the total investment being, according to the appellant, close to a sum of Rs.5 crore.

5. However, while the construction was in progress, the appellant was served with a letter, dated 29.03.2008, issued by the Authority restraining the appellant from making any further construction till a decision was taken with regard to the recalling of the order of allotment of Plot No. C-34.

6. The State Government, referring to the opinion of the then Advocate General, Bihar, directed, on 16.09.2008, the Authority to act in accordance with the opinion of the Advocate General, with regard to the cancellation of the allotment of the said land in favour of the appellant, the refund of the amount, which the appellant had paid to the Authority, and negotiation with the appellant on the rate of interest to be paid.


7. On 10.11.2008, the appellant was asked to show cause as to why the allotment of the industrial plot be not cancelled and possession thereof be not resumed in the larger public interest inasmuch as the Indian Institute of Technology (commonly known as "IIT"), Patna, stood temporarily established on the land adjacent to the plot of land, which had been allotted to the appellant, but was required to be used as a

playground by the IIT, Patna.



8. The appellant filed, on 12.03.2009, a reply to the said notice of show cause stating therein, *inter alia*, that BIADA Act does not empower the Authority to cancel and resume possession of the land, which stood allotted to the appellant, inasmuch as there was, according to the appellant, no public interest involved in restraining the appellant from coming up with the said project in an industrial area demarcated for the said purpose and that setting up of a multiplex-cum-mall is an industrial activity as defined under the Industrial Incentive Policy, 2006, and there could be no restraint order to the setting up of an industry in an industrial area, which subserves public interest.

9. Having given notice to the appellant that the plot of land, which stood allotted to the appellant, was required by the State Government for providing additional space to IIT, Patna, for its use as a playground, the IIT having been temporarily established adjacent to the plot allotted to the appellant and which was expected to shift, in five to seven years, to its new place, where construction of the IIT campus was underway, and notwithstanding the objection, which had been raised by the appellant to the proposed cancellation




of allotment and resumption of possession of the land by the Authority, an order was passed, on 04.04.2009, by the Authority cancelling the said allotment and refunding a sum of Rs.3,38,98,000/- as cost of the land along with interest at the rate of 5 per cent, which the appellant received *under protest*. While so awarding interest, learned Advocate General's advice was not acted upon that the rate of interest should be in accordance with the prime lending rate.

10. Aggrieved by the order, dated 04.04.2009, aforementioned, the appellant filed a writ petition under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No.4532 of 2009.

11. By order, dated 10.04.2009, passed in the writ petition, a learned single Judge directed to maintain *status quo* as on the date of making of the impugned order, dated 10.04.2009, in respect of Plot No.C-34.

12. So as to enable the parties reach an amicable settlement of the dispute, a meeting, at the instance of the learned single Judge, was convened, on 05.09.2011, under the Chairmanship of the Principal Secretary, Industries Department; but the Authority refused to reconsider even enhancement of the amount of compensation paid to the appellant.



13. By order, dated 24.01.2014, the writ petition has been, eventually, dismissed on the ground that there was no *mala fide* or extraneous consideration in making the order, dated 04.04.2009, aforementioned cancelling the allotment of Plot No.C-34 and that the decision to cancel the allotment of the plot, in question, was for compelling reasons arising out of larger public good inasmuch as setting up of an IIT, at Patna, was not in the horizon, when the decision to auction the land, in question, and allotment thereof to the appellant had been reached and, thus, the respondents were forced to resort to cancellation of the allotment of the said plot of land made in favour of the appellant and resumption of possession thereof in order to enable the IIT, Patna, which had been running on a makeshift basis from temporary campus, to use Plot No.C-34 as a playground.

14. The writ petition was, thus, dismissed upholding the power exercised by the Authority on the ground of larger public interest inasmuch as the learned single Judge took the view that the cancellation of the order of allotment, made in favour of appellant, was permissible and well within the ambit of the BIADA Act.

15. Aggrieved by the dismissal of its writ petition by the order, dated 24.01.2014, the writ

petitioner is, now, in appeal, before us.

16. We have heard Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf the appellant, and Mr. Lalit Kishore, learned Senior Counsel, appearing for the Authority. We have also heard Mr. Dhananjay Kumar, learned Assistant Counsel to Government Pleader No.6, appearing for the State.

SUBMISSIONS MADE ON BEHALF OF THE APPELLANT:

17. Presenting the case on behalf of the appellant, Mr. Jitendra Singh, learned Senior Counsel, submits that the order of cancellation of allotment of the plot is, in the present case, without any sanction of law inasmuch as the order of cancellation, passed by the Authority, is *de hors* the provisions of the BIADA Act as well as the terms and conditions of the order of allotment.

18. It is abundantly clear, submits Mr. Singh, that the order of cancellation was made at the *diktat* of the State, though no such power is vested in the State Government inasmuch as Section 9 of the BIADA Act envisages restoration of possession only of such plot/shed to the State Government, which is *at the disposal of the Authority* and not when the plot of land/shed stands already allotted to an entrepreneur.

Upon allotment, the cancellation of allotment, adds Mr. Singh, is permissible only as a punitive measure, when the allottee fails to take necessary effective steps to establish his industry within the period specified.

19. In the case at hand, the appellant, points out Mr. Singh, had, admittedly, taken effective steps to establish the industry and, more particularly, when it is not the case of the respondents that no effective steps had been taken by the appellant to establish the industry and/or that the impugned order of cancellation of allotment was punitive. This apart, submits Mr. Singh, even the respondents admit that the cancellation of the allotment was not punitive. Thus, the cancellation of allotment was, admittedly, not for any default on the part of the appellant; so contends Mr. Singh.


20. Cancellation of the allotment, in a case of present nature, contends Mr. Singh, is wholly impermissible, arbitrary, unreasonable and untenable in law, when the Authority concedes that the cancellation of the allotment, in the present case, was not as a penal measure but on the ground of supervening public interest. No cancellation of allotment, according to Mr. Singh, is sustainable within the scheme of the BIADA Act on the ground of greater public interest or supervening

public interest.

21. A reading of the relevant provisions of the BIADA Act would reveal, submits Mr. Singh, that BIADA Act does not provide for cancellation of an allotted plot of land for the purpose of restoration of possession thereof to the State Government nor does the BIADA Act vest in the Authority the power to *acquire* the allotted land by taking recourse to the provisions of cancellation so as to restore possession of the allotted land in favour of the State Government.

22. Assailing the impugned order of cancellation, Mr. Singh submits that the law is well settled that the State or its Executive Officers cannot interfere with the right of the citizens unless they can point out to some specific provisions of law authorizing the act of the State or its Executive Officers, which comes to be challenged. Reference, in support of these submissions, has been made by Mr. Singh to the case of **State of W.B. and Others v. Vishnunarayan & Associates (P) Ltd. and Another**, reported in **(2002) 4 SCC 134**.


23. Taking this Court through various provisions of the BIADA Act and, more particularly, the provisions embodied in Sections 6 (2), 6(2-a) and 6(2-b) of the



BIADA Act as well as Rule 6 (ii) of Bihar Industrial Area Development Authority Rules, 1981 (hereinafter referred to as "1981 Rules") *vis-à-vis* Section 9(3), Mr. Singh submits that Section 6(2) of the BIADA Act is not a general power of cancellation and when the provisions, embodied in Section 6(2) of the BIADA Act, are read with Section 6(2- a), Section 6(2-b) and Rule 6 (ii) of 1981 Rules, it becomes clear that the ground of exercise of power of cancellation of allotment or lease is subject to the conditions mentioned in Section 6(2-a) of the BIADA Act, when an allottee fails to take necessary effective steps to establish industry within the period specified.

24. Cancellation of an order of allotment or lease in larger public interest is, therefore, contends Mr. Singh, not envisaged by the BIADA Act and the interpretation of Section 6 (2) read with Section 9 (3) of the BIADA Act by the learned single Judge upholding thereby the impugned order of cancellation amounts to incorporating words into Section 9(3) which do not, otherwise, find place in Section 9 (3) of the BIADA Act.

25. A harmonious reading of the provisions embodied in Section 9(3), either alone or in conjunction with Section 6(2), of the BIADA Act, reveals, reiterates Mr. Singh, that only such land can be restored to the



State Government by the Authority, which is at the disposal of the Authority for the purpose of development or use in accordance with the provisions of the BIADA Act and not such a plot of land, which has already been allotted, in exercise of power of allotment conferred on the Authority, for the purpose of development or use in accordance with the provisions of the BIADA Act.


26. With regard to the above, Mr. Singh points out that a Court cannot read anything into statutory provisions, when the provisions are plain and unambiguous. Legislative *causus omissus* cannot be supplied by judicial interpretative process and what is permissible is only to iron out the creases. References have been made, in this regard, by Mr. Singh to the cases of **Padma Sundara Rao (DEAD) and Others v. State of T.N. and Others**, reported in **(2002) 3 SCC 533**, and **K.T. Plantation (P) Ltd. and Another v. State of Karnataka**, reported in **(2011) 9 SCC 1**.

27. It is the submission of Mr. Singh that in order to uphold the interpretation of the provisions of the BIADA Act by the learned single Judge, one is required to add to Section 9(3) of the BIADA Act, the expression, such as, "*after cancellation of such allotment and resuming possession*", which would amount to reading

words into the Statute, which is not permissible and would amount to doing violence to the provisions of the BIADA Act and run contrary to the very purpose with which the legislation has been made.

28. Thus, the only possible interpretation, which can be attributed to Section 9(3) of the BIADA Act is, according to Mr. Singh, that only such plot of land can be restored to the State Government by the Authority, which is *at the disposal of the Authority* and which has not been allotted for any industrial use by the Authority.


29. Section 6(2), submits Mr. Singh, has to be read with Rule 6(ii) of 1981 Rules, which contains the ground on which the allotment of the land can be cancelled by the Authority under Section 6(2) of BIADA Act and it cannot be interpreted to an extent as interpreted by the learned single Judge enabling the Authority to cancel allotment without satisfying the conditions precedent specified in Section 6 (2-a) of the BIADA Act read with Rule 6(ii) of the 1981 Rules. Reliance, in support of this submission, is placed by Mr. Singh on **Union of India v. Shardindu**, reported in **(2007) 6 SCC 276**, and **Union of India and Another v. Ind-Swift Laboratories Ltd.**, reported in **(2011) 4 SCC 635**.



30. Referring to Article 300A of the Constitution of India, Mr. Singh submits that Article 300A of the Constitution of India proclaims that no person can be deprived of his *property* save by authority of law, meaning thereby that a person cannot be deprived of his *property* merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature.

31. The expression '*property*', appearing in Article 300A of the Constitution of India, is, contends Mr. Singh, not confined to land alone; rather, the expression '*property*' includes intangible like copyright and other property and embraces every possible interest recognized by law.

32. The allotment order, which contains the terms and conditions of the allotment, is, thus, according to Mr. Singh, a *property* within the meaning of Article 300A of the Constitution of India. Reliance, in support of this proposition, is sought to be derived by Mr. Singh from the decisions in **M. M. Pathak v. Union of India (AIR 1978 SC 803)**; **Dwarkadas Shrinivas v. The Solapur Spinning and Weaving Co. Ltd. (AIR 1954 SC 119)** and **State of Mysore v. K. Chandrasekhara Adiga (AIR 1976 SC 853)**.



33. Mr. Singh, learned Senior Counsel, also points out that the BIADA Act is a legislation relatable to Entry 24 of List II (Industries subject to the provisions of Entry 7 and 52 of List I) and is not a legislation under Entry 42 of List III (Acquisition and Requisition of Property). Hence, words, such as, '*cancellation and resumption of possession of land for its restoration to the State Government*' cannot but be regarded as indirect *acquisition* or *requisition*, which is wholly alien to the object and scheme of the BIADA Act.

34. It is also of some significance to note, points out Mr. Singh, that the BIADA Act is completely silent as to what would or would not be the norms and procedure for compensation, which is inherent in Article 300A of the Constitution of India, if an allottee is deprived of its '*property*' and the interpretation, given to the BIADA Act by the learned single Judge, would, if accepted, render the BIADA Act invalid and *ultra vires* the Constitution inasmuch as it would amount to permitting deprivation of *property* without making any payment of compensation for the '*property*' acquired or sought to be acquired. It is further submitted by Mr. Singh that the right to claim compensation is inbuilt in Article 300A of the Constitution of India. A reference, in this regard, is made to the case

of **K.T. Plantation (P) Ltd.** (supra).

35. It is the contention of the respondents, points out Mr. Singh, that when the power is vested in the Authority to allot a plot of land, this power of allotment, under Section 21 of the General Clauses Act, 1897, includes the Authority's power to cancel such allotment. This contention, submits Mr. Singh, is wholly incorrect inasmuch as Section 21 of the General Clauses Act, 1897, has no application to the case at hand, when the decision is *quasi judicial*.


36. Explaining his above contention, Mr. Singh submits that Section 21 of the General Clauses Act, 1897, does not come into play, when an authority is required to exercise *quasi judicial* power. In this regard, it needs to be borne in mind, points out Mr. Singh, that the power of punitive cancellation of allotment is a *quasi judicial* power and, hence, this power cannot be exercised by the Authority by taking recourse to Section 21 of the General Clauses Act, 1897.

37. The expression '*order*', employed in Section 21 of the General Clauses Act, 1897, shows, submits Mr. Singh, that such an order must be in the nature of notification, rules, bye-laws, etc., whereas the impugned order is neither a legislative nor an executive order, but

a *quasi judicial order*. Reference may be made, in this regard, submits Mr. Singh, to the cases of **Indian National Congress (I) v. Institute of Social Welfare and Others**, reported in **(2002) 5 SCC 685**, and **K.P. Khetan v. Union of India (AIR 1957 SC 676)**.

38. Mr. Singh submits that the impugned order of cancellation is projected to have been passed after considering the appellant's reply to the notice of show cause issued to the appellant. This contention of the Authority, submits Mr. Singh, is *ex facie* sham and stands vitiated, when the decision with regard to cancellation had already been taken by the State Government on the basis of the opinion of the learned Advocate General of the State and this position is not in dispute.

39. in fact, Annexure-D clearly shows, points out Mr. Singh, that the decision for cancellation of the allotment of the plot of land was based on the opinion of the learned Advocate General and the State's direction to the Authority was to act in accordance with the opinion of the learned Advocate General, where the opinion of the learned Advocate General has incorrectly said that it was in larger public interest to cancel the allotment and resume possession after issuing show cause notice.



40. Mr. Singh submits that when the Authority had already been directed to act on the said opinion, issuance of notice to show cause was a mere formality and had no meaning in the context of facts of the present case. Such a pre-determined order of cancellation, on the basis of the decision already taken, is, emphasizes Mr. Singh, wholly illegal and may not be sustained.


41. The impugned order of cancellation, submits Mr. Singh, raised a false bogey of larger public interest inasmuch as the decision has been taken on the whims of the Law Officers of the Department concerned without there being any decision of the Government on record inasmuch as a decision of a Government has to be expressed in terms of Article 166 of the Constitution of India and no Government decision is in existence on record to justify the bogey of public interest and what has been revealed to the Court is that a team, comprising of learned Advocate General, Commissioner, Industries Development Department and Managing Director of the Authority, was satisfied, on their visit to the site, that it should not be permitted to be developed as a commercial establishment and that IIT would require the campus for many of its activities, like

playground, etc.

42. However, points out Mr. Singh, despite cancellation of the order of allotment, the plot of land, in question, has remained unutilized till date and IIT would be shifted to the new campus within a year.

43. It is also submitted by Mr. Singh, learned Senior Counsel, that the appellant herein had earlier pointed out, by way of rejoinder to the counter affidavit of respondent Nos. 2 to 4, that at least, 5 to 7 acres of land is existing in and around the IIT and Polytechnic campus, which had remained unutilized, and the appellant had also made an offer to put its project on hold till IIT shifts to its new campus; but this offer, too, was declined, which demonstrates that a false plea of larger public interest has been raised under the cover of the IIT.

44. The admitted facts of the case clearly show, contends Mr. Singh, that the cancellation of the allotment of the plot of land is not a punitive cancellation, but akin to acquisition of rights or their deprivation, more particularly, when the Authority's opinion itself is that the impugned cancellation of allotment is not as a penal measure. In these circumstances, according to Mr. Singh, compensation



amount ought to have been specified simultaneously with the deprivation; whereas even after more than five years of deprivation, no compensation has yet been decided and what has been refunded to the appellant is the principal amount with interest @ 5 per cent and not even the commercial rate of interest. In this regard, Mr. Singh also points out that payment of 5 per cent interest is not even the return of the original value of money inasmuch as the admitted investment, like construction of staff quarters for Polytechnic, construction of boundary wall, site development, architect fees, have not been refunded.


45. Reference, made by learned single Judge to the case of **Kasinka Trading and Another v. Union of India, (AIR 1995 SC 874)**, is, contends Mr. Singh, wholly misplaced inasmuch as the decision, in **Kasinka Trading** (supra), relates to issuance of exemption notification and its withdrawal under the Customs and Excise Act, 1964, which empowers the Central Government to exempt or withdraw exemption in public interest and that the issuance or withdrawal of such notification was not in exercise of an executive action, but by way of a delegated legislative power to be exercised in public interest; whereas no such power, in

the case at hand, exists with the Authority under the BIADA Act and, hence, the impugned order of cancellation of allotment amounts to cancellation of a conferred right of *property* upon the appellant and acquisition thereof.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS:

46. Repelling the submissions made on behalf of the appellant, it is contended by Mr. Lalit Kishore, learned Senior Counsel, appearing on behalf of the Authority, that Section 6(2) of the BIADA Act contains general power of the Authority to allot and lease out industrial land to entrepreneurs and also to cancel the same after its allotment and the power to do an act entails the power to undo the act, subject to any limitation provided by law, customs, etc. In other words, according to learned Senior Counsel, the power of allotment and lease, in the present case, carries with it the power to cancel the allotment and lease. Reference, in this regard, is made to the cases of **Union of India v. Paras Laminates (P) Ltd., (AIR 1991 SC 696)**; and **Khargram Panchayat Samiti v. State of West Bengal**, reported in **(1987) 3 SCC 82**.


47. Referring to Rule 6 (ii) of 1981 Rules, it is



submitted by Mr. Lalit Kishore, learned Senior Counsel, that though the only ground for cancellation of allotment, under Section 6(2-a) of the BIADA Act, is failure, on the part of the allottee, to take necessary effective steps to set up industry within the fixed period, yet the fact remains that making failure, on the part of the allottee, to take necessary effective steps to set up industry within the fixed period, embodied in Section 6(2-a) of the BIADA Act, as a ground for cancellation of allotment, does not take away the general power of cancellation, which the Authority, otherwise, has under Section 6 (2) of the BIADA Act, for, the rules, framed under the BIADA Act, cannot override the provisions of the substantive law or restrict its meaning and, secondly, had such been the intention of the legislature, then, Section 6 and, more particularly, Section 6 (2) of the BIADA Act would have provided that the cancellation of allotment and lease shall be in the manner as provided for by the Rules framed under Section 14 of the BIADA Act and not otherwise. Even addition of Sections 6(2-a) and 6(2-b) by the Bihar Industrial Area Development Authority (Amendment) Act, 1991, does not, submits Mr. Lalit Kishore, learned Senior Counsel, changes the above position of law and it cannot be contended that the


legislature, by adding Sections 6 (2-a) and 6(2-b), has made its intention clear that failure to take necessary steps to set up industry within the fixed period shall be the only ground for exercise of power of cancellation of plot of land.

48. In order to lend support to the above submission, it is contended by Mr. Lalit Kishore, learned Senior Counsel, that the object and aim of 1991 Amendment of Section 6 of the BIADA Act would show that the said amendment was necessitated on account of the fact that the Authority, despite having the power to cancel allotment, had been facing difficulties in taking back possession of land without taking recourse to civil courts of competent jurisdiction, especially, where lease had been executed, because of the principle of tenancy by sufferance and, secondly, 1991 Amendment was with retrospective effect, i.e. with the date of coming into force of the BIADA Act, showing thereby the intention of the legislature that even if the allotment or lease was cancelled before the BIADA Act underwent amendment in the year 1991, the Authority can take back possession without facing the bar of tenancy by sufferance and, hence, reading of the said retrospective Amendment of 1991 to the contrary would mean that in any other case,




had the Authority cancelled the allotment or lease on a ground other than what has been mentioned therein, i.e., failure to take necessary effective steps to set up an industry within a fixed period; such cancellation would be impermissible; Consequently, resumption of possession, according to Mr. Lalit Kishore, upon such cancellation, would become unauthorized by law requiring, in turn, the Authority to restore the land back to the allottee, though the Authority, before the BIADA Act underwent amendment in the year 1991, had cancelled the allotment. Such cannot, submits Mr. Lalit Kishore, be the object of the 1997 Amendment.

49. It is also submitted by Mr. Lalit Kishore, that whatever cancellations of allotment has been done by the Authority since 1997 on any ground other than what has been mentioned in Section 6(2-a) read with Section (2-b) would become illegal. This certainly, according to Mr. Lalit Kishore, could not have been the intention of the legislature, while making Bihar Industrial Area Development Authority (Amendment) Act, 1991, and, thirdly, the amendments, carried out, in the year 1991, by way of Sections 6 (2-a) and 6(2-b), cannot be read to restrict the general power of cancellation of allotment or lease under Section 6 (2) of the BIADA Act,




because it is well settled law that where a statute confers particular power without prejudice to the generality of the general powers already conferred, the particular powers are only illustrative of the general powers and do not, in any way, restrict the general power and also because such a restrictive meaning would be against the aims and objects of the BIADA Act, i.e., to promote industrialization in the State, and also because the legislature cannot foresee all the grounds, which would arise after 1974 requiring exercise of powers, under Section 6(2) of the BIADA Act, by way of punitive measure and the intention of the legislature to add Section 6 (2-a) providing for the ground of cancellation of allotment or lease, as provided under Rule 6(i) and (ii) of 1981 Rules, was to make the ground mentioned therein a part of substantive law than to let it remain a part of delegated legislation in the form of Rules, because of the difficulty being faced by the Authority in resumption of the cancelled land due to tenancy in sufferance.

50. It is the further submission of Mr. Lalit Kishore that had it been the intention of the legislature to restrict the general power of cancellation, conferred on the Authority, to the above ground as provided under




Rule 6 (i) and (ii) by the 1991 Amendment, then, it would have made the said amendment in the form of a proviso to Section 6 (2) restricting its general power; on the contrary, the legislature, having added Sections 6 (2-a) and 6(2-b), independently of Section 6(2), has made its intention clear that the act of providing specific ground of cancellation, i.e. *failure to set up industry within the fixed period*, does not divest the Authority of its general power of cancellation, which the Authority has under Section 6(2).

51. By way of illustration, Mr. Lalit Kishore submits that suppose an entrepreneur puts up an industry, on obtaining permission from competent authority; but, later on, it is found that the discharge from the industrial premises is being absorbed by the soil and by mixing with its contents, it is producing a chemical, which is poisonous or harming the ground water adversely affecting thereby people, farm lands, cultivation, then, such entrepreneur could claim that the sole ground, under Section 6 (2-a) read with Rule 6 (i) and Rule 6(ii), did not exist and even if there is any harmful effect of his industry, its order of allotment cannot be cancelled and possession of the allotted land cannot be resumed.




52. Clarifying the stand of the respondent, Mr. Lalit Kishore, submits that it is the specific case of the Authority that in the present case, it did not cancel the allotment as a *punitive measure* as provided under Section 6 (2-a) of the BIADA Act inasmuch as it also decided to return to the appellant the amount the appellant had deposited with the Authority towards the cost of the land with interest; whereas Section 6 (2-a) mandates that after punitive cancellation thereunder, the amount, deposited by an entrepreneur, shall be forfeited.

53. Countering the submissions made on behalf of the appellant, Mr. Lalit Kishore submits that it was never the case of the Authority that it was relying upon Section 21 of the General Clauses Act, 1897, in order to cancel the allotment in the present case inasmuch as the Authority, in this regard, places reliance on the provisions of Section 6 (2) itself that even if it has not been provided in so many words in Section 6 (2), yet the Authority has the general power to cancel allotment of land and lease inasmuch as the same would be an incidental and ancillary power to the power of allotment and lease and, therefore, reference made to the case of **Indian National Congress (I)** (supra) is not applicable to the facts of the present case.




54. With regard to the above, Mr. Lalit Kishore also points out that **Indian National Congress (I)** (supra) was a case, where the Tribunal was not provided with the specific power of review of its order and answering the question whether, by taking recourse to Section 21 of the General Clauses Act, 1897, the Tribunal could exercise power of review, the Supreme Court held that since as Section 21 of the General Clauses Act, 1897, was for exercise of executive powers and not for *quasi-judicial* authority, which is exercising statutory power under a legislation, which did not provide for review of its order, the Tribunal cannot exercise the power of review. Reference, in this regard, is made by Mr. Lalit Kishore, to the cases of ***Maharashtra State Board of Secondary and Higher Secondary Education and Another v. Paritosh Bhupesh Kurmarsheth, (AIR 1984 SC 1543)*** and ***D.K. Trivedi and Sons and Others v. State of Gujarat and Others (AIR 1986 SC 1323)***.

55. Drawing attention of this Court to the expression '*at any time*', appearing in Section 9(3) of the BIADA Act, Mr. Lalit Kishore, learned Senior Counsel, submits that it is incorrect to contend that the power of the Authority to restore possession of a plot/shed is



limited to a stage before allotment is made and possession is handed over to an entrepreneur inasmuch as the expression '*at any time*' shows, according to Mr. Lalit Kishore, that the intention of the legislature is that the restoration of the plot/shed by the Authority to the State Government is permissible both, either before allotment or lease, or, as the case may be, after allotment has already been made and possession of the plot/shed has already been handed over to the allottee. Points out, Mr. Lalit Kishore, in this regard, that the expression '*at any time*' would become redundant if the expression '*at any time*' is not given the meaning, which it demands, and is kept excluded, while interpreting Section 9(3) of the BIADA Act.

56. The contention of the appellant, based on the application of Article 300A of the Constitution of India, is also, according to Mr. Lalit Kishore, wholly misplaced inasmuch as the deprivation, if any, is not by executive act, but under a given legislation. Mr. Lalit Kishore submits that the Authority has the power to cancel allotment of land under Section 6(2) of the BIADA Act if the State Government decides that the land, which may have been allotted, be restored to the State Government. The Authority in this regard, is required to




act, submits Mr. Lalit Kishore, in accordance with the decision, which the State Government may take, under Section 9(3) of the BIADA Act as regards restoration of the land to the Government and, hence, the impugned order would fall outside the provisions of Article 300A of the Constitution of India.

57. With regard to the appellant's contention of absence of provisions of compensation under the BIADA Act and, therefore, inability to read into the scheme of the BIADA Act process of acquisition of *property* without payment of compensation, it is submitted by Mr. Lalit Kishore that in ***Jilubhai Nanbhai Khachar v. State of Gujarat, (AIR 1995 SC 142)***, the Supreme Court has explained the meaning of '*property*' to be everything, which is subject of ownership; the right to possess, use and dispose; free use and disposal of all of one's acquisition; something created out of one's own labour.

58. It is the submission of Mr. Lalit Kishore, that in the case at hand, as there was no lease, the appellant did not acquire the right to possess and enjoy the land as may be available to a lessee and it would not be, therefore, *property* of the appellant within the meaning of Article 300A of the Constitution of India.

59. The appellant was, emphasizes Mr. Lalit




Kishore, merely an allottee and the order of allotment can, at best, be construed, as a *licence* in favour of the appellant and, therefore, its right to use the land, in question, would be subject to the conditions provided in the license, i.e. the allotment letter.

60. In a case of present nature, according to Mr. Lalit Kishore, the appellant did not have any right in the land, but had, if at all, a right arising out of the land, which was to put up a mall.


61. It is, thus, contended, on behalf of the respondents, that inasmuch as the appellant had not started actual construction works of the building of the said mall, the appellant's right, if any, was at a stage prior to its fructuation into a right arising out of the land and, at such a stage, no indefeasible right, within the ambit of Article 300A, can be treated to have been acquired by the appellant on the allotted land, particularly, when he was not the owner of the land.

62. Thus, compensation paid to the appellant, in the form of 5 per cent interest *per annum*, on the amount deposited towards the cost of the allotted land *vis-à-vis* its right to use the land, as a licensee, and also the return of the entire money paid by it to the Authority towards the cost of lands were sufficient, which should,



now, be seen in the light of the fact that as per the appellant's own case, after receiving the total amount i.e. Rs.3,64,82,775/-, on 06.04.2009, it has placed it in a fixed deposit and, thus, has also earned further interest for five years, which would be substantial amount, somewhere close to Rupees One Crore. Apart, therefrom, in order to ensure that the appellant is not put to suffer, because it had constructed staff quarters, etc., of the Polytechnic Institute as had been directed by the respondents, the impugned order itself directs, points out Mr. Lalit Kishore, that assessment of damages, in this regard, would be made separately. Reference, in support of his submissions, is placed on by Mr. Lalit Kishore on the decision in ***Amar Singh and others v. Custodian, Evacuee Property Punjab and Another, (AIR 1957 SC 599)***, wherein the Court has held that a *quasi permanent allotment of land* does not fall within the meaning of 'property' as under Article 31 of the Constitution of India.

63. Above all, the appellant, points out, Mr. Lalit Kishore, did not challenge, in the writ petition, the *vires* of Section 6(2) of the BIADA Act on the ground that Section 6(2) does not specifically provide for compensation or the manner of its determination.



64. Lastly, it is submitted, on behalf of the respondents, that this Court, in exercise of its discretionary power under Article 226 of the Constitution of India, may not hold the impugned action of cancellation of the allotment as bad in law, because the allotment of land was cancelled for facilitating establishment of the IIT, Patna. Thus, the said impugned action, submits Mr. Lalit Kishore, learned Senior Counsel, was in public interest and this public interest would override private interest of the appellant. In this regard, reliance is placed on the decision, in ***Sales Tax Officer and another v. Shree Durga Oil Mills and another***, reported in **(1998) 1 SCC 572**, and the principles, as noticed by Prof. De Smith, which stands quoted in ***Kasinka Trading (supra)*** that public interest is implied in a contract.

ANALYSIS OF THE RELEVANT PROVISIONS OF BIADA ACT:

65. We, now, proceed to determine the correctness of the rival submissions made before us.

66. While considering the present appeal and, more particularly, while interpreting the provisions of the BIADA Act and the Rules framed thereunder, one has to be dispassionate and keep out of consideration the facts of the present case so that the facts of the case do not

mar the judicial interpretative process.

67. It is the dispassionate interpretation, which would enable one to appreciate correctly Section 9(3) *vis-à-vis* Section 6 of the BIADA Act. It is rudimentary that interpretation of a statute must be on neutral facts so that in the process of interpretation of the statute, the facts of a case do not influence the process of interpretation and, therefore, having interpreted the law on the basis of neutral facts, one has to apply the law to the facts of a given case.

WHAT DOES SECTION 9(3) OF THE BIADA ACT CONVEY?

68. The core issue, which arises for determination, in the present appeal, is: Whether Section 9(3) of the BIADA Act, which empowers the Authority to restore, '*at any time*', to the State Government possession of any plot of land, which has been placed by the State Government *at disposal of the Authority*, makes it legally permissible for the Authority to restore to the State Government possession of such a plot of land, which the Authority has, upon receiving the plot of land from the State Government, already allotted to an entrepreneur, who has, upon taking possession of land, already made construction of significant value for the purpose of establishing industry?

69. In order to find correct answer to the question, posed above, we may, first, take notice of the provisions, contained in Section 9 of the BIADA Act. With this end in view, we reproduce hereinbelow Section 9 of the BIADA Act, which reads :

"S.9. MISCELLANEOUS PROVISIONS


(1) *The State Government may acquire any land required for the purpose of the Authority, which shall be deemed to be "public purpose", under the Land Acquisition Act, 1894.*

(2) *The State Government may, by a deed of lease, transfer on terms and conditions as may be decided by the State Government, to the Authority any developed or undeveloped land vested in the State of Bihar for the purpose of development or use in accordance with the provisions of this Act.*

3) *If any land so placed at the disposal of the Authority under subsection (2) is required at any time by the State Government, the Authority shall restore it to the State Government.*"

(Emphasis is supplied)

70. A careful and dispassionate reading of the provisions, embodied in Section 9 of the BIADA Act,



shows that the State Government may, by a deed of lease, transfer, on the terms and conditions, as may be decided by the State Government, to the Authority any developed or undeveloped land vested in the State Government, the transfer of the land being *for the purpose of development or use in accordance with the provisions of the BIADA Act.*

71. Thus, sub-section (2) of Section 9 of the BIADA Act shows that the land, which the State Government may transfer to the Authority, would be utilized for the purpose of development or use in accordance with the provisions of the BIADA Act and not otherwise, the purpose of the BIADA Act being not only planned development of industrial area, but promotion of industries and matters incidental thereto.

72. So long as, therefore, a plot of land, transferred to the Authority by the State Government, remains *at the disposal of the Authority*, the land can not, but be used only *for the purpose of development or use in accordance with the provisions of the BIADA Act.*

73. Closely following sub-section (2) of Section 9 of the BIADA Act, Sub-Section (3) of Section 9 of BIADA Act makes it obligatory, on the part of the Authority, to restore, '*at any time*', to the Government

any land, which may have been placed by the State Government *at the disposal of the Authority*, if the Government requires such restoration.

74. A combined reading of the provisions of Sub-sections (2) and (3) of Section 9 of the BIADA Act show that so long as a plot of land, which the State Government may have transferred to the Authority, remains *at the disposal of the Authority*, the land can be utilized for the purpose of development or use in accordance with the provisions of BIADA Act, the object of the BIADA Act being development of the land for industry, promotion of industries and matters appurtenant thereto.

75. Naturally, therefore, so long as a plot of land, allotted to the Authority from the State Government, remains with the Authority, the land cannot be used for a purpose other than what the BIADA Act envisages.

76. A careful reading of Sub-section (3) of Section 9 of the BIADA Act, now, shows that any land, which has been placed *at the disposal of the Authority*, shall be restored, '*at any time*', to the State Government if the State Government so requires.

77. If analyzed cautiously, it would, as a



corollary, clearly follow that the restoration of a land to the State Government, in exercise of the power under Section 9(3) of the BIADA Act, is legally permissible if a third party right has not been created on the land.

78. What, thus, Section 9(3) of the BIADA Act, in simplest of words, conveys is that a plot of land, which has been placed *at the disposal of the Authority* and which has remained *at the disposal of the Authority*, can only be restored to the State Government. The expression '*at any time*', appearing in Section 9(3) of the BIADA Act, does not alter this position inasmuch as the expression '*at any time*' cannot be read to mean a stage, where the land no longer remains *at the disposal of the Authority*, the same having already been allotted to an entrepreneur for establishment of an industry and if the entrepreneur, who has been so allotted the plot of land, has already established his industry.

79. The expression '*at any time*' would necessarily, therefore, mean the '*stage*' between the date, when State Government leaves the land *at the disposal of the Authority*, and the date, when the Authority, in turn, allots the land to an entrepreneur and, upon allotting the land in favour of the entrepreneur, the land would cease to remain *at the disposal of the*


Authority.

80. Consequently, until the time a land remains *at the disposal of the Authority* and no third party right has been created by allotment of the land to an entrepreneur, possession of the plot/shed can be restored to the Government if the Government so requires.

81. The above inference gets strengthened, when one microscopically analyzes the words used in the statute inasmuch as the land, which the Authority has already allotted in favour of an entrepreneur for the purpose of establishment of an *industry* and when an entrepreneur has already established the *industry* on the allotted land, it can no longer be said that the land has still remained *at the disposal of the Authority* for the purpose of making allotment to any entrepreneur under the scheme of the BIADA Act.

82. The question, therefore, of possession of a land being restored to the State Government does not arise merely because the Government requires the land if the land already stands allotted to a third party, who may have establishment his industry on the allotted land.

83. Mr. Jitendra Singh, learned Senior Counsel,



appearing for the appellant, is, in our considered view, correct, when he submits that if Section 9(3) of the BIADA Act is read alone, what Section 9(3) of the BIADA Act conveys is plain and its plain meaning is that Section 9(3) of the BIADA Act does not envisage cancellation of allotment of land already made to a third party, resumption of possession thereof by the Authority and, then, restoration of such a land to the State Government inasmuch as the power to cancel an allotment made to a third party, resumption of possession thereof and, then, restoration of the land, whose possession has been resumed, to the State Government would require reading into sub-Section (3) of Section 9 of the BIADA Act, *“restore the land after cancelling the allotment and resuming possession thereof”*. Mr. Singh is also correct that reading of so many words into sub-Section (3) of Section 9 of the BIADA Act will be impermissible inasmuch as what is not available in Sub-section (3) of Section 9 of the BIADA Act cannot be read into it.

84. Interpretation of statute requires a Court not to read anything in statutory provisions, which is, otherwise, plain and unambiguous. Legislative *causus omissus* cannot be supplied by judicial interpretative process. What is permissible is merely to iron out the

creases. References made, in this regard, to the cases of **Padma Sundara Rao (supra) K.T. Plantation (P) Ltd.** (supra), are not wholly misplaced.

85. Situated thus, it is clear that the only feasible and permissible interpretation attributable to Section 9 of the BIADA Act, more particularly, sub-Section (3) thereof, is that Section 9(3) of the BIADA Act permits restoration of only such land to the State Government, which, at the time, when the Authority requires restoration of possession of the land, must be *at the disposal of the Authority* and has not been allotted to any third party.

86. It would, therefore, do violence to the provisions of Section 9(3) of the BIADA Act if one reads into sub-Section (3) of Section 9 of the BIADA Act that the land, which already stands allotted to a third person by the Authority and which is no longer *at the disposal of the Authority*, can be restored to the State Government by taking recourse to the provisions of sub-Section (3) of Section 9 of the BIADA Act.


87. The expression "*placed at the disposal of the Authority*" would, we reiterate, mean a land, wherein no third party right has been created. Logically extended, this would mean that if the land has already been

allotted by the Authority to any third person, such a land shall no longer be treated to have remained *at the disposal of the Authority* and cannot, therefore, be restored to the State Government.

88. However, *passionately* Section 9(3) of the BIADA Act is read, it does not provide for cancellation of allotment of a land for the purpose of restoration of the land to the State Government.

89. In fact, it is not even contended by the respondents that Section 9 of the BIADA Act, if read as a whole, empowers the Authority to cancel an allotment for the purpose of restoration of the land to the State Government.

90. Interestingly, not even the respondents contend that a land, which has already been allotted to a third party, can still remain *at the disposal of the Authority*. In order to, therefore, comply with sub-section (3) of Section 9 of the BIADA Act and enable the Authority to restore possession of such a land to the State Government, what is contended, on behalf of the respondents, is that the provisions of Sub-section (2) of Section 6 of the BIADA Act can be resorted to for the purpose of cancellation of the allotment already made by the Authority to a third person irrespective of the fact as




to whether the allottee is at fault or not inasmuch as Section 6(2) of the BIADA Act empowers cancellation of the allotment made by the Authority, resumption of possession thereof and, on such resumption of possession, the land comes *at the disposal of the Authority* and, thereafter, restoration of the land would be permissible no matter whether the allotted is at default or not.

91. Situated thus, what becomes clear is that sub-Section (2) of Section 6 of the BIADA Act empowers the Authority to cancel allotment or lease, which has already been made in favour of a third party.

WHETHER THE POWER OF CANCELLATION, EMBODIED IN SECTION 6(2) OF THE BIADA ACT, CAN BE EXERCISED IN ORDER TO RESTORE AN ALLOTTED LAND TO THE STATE GOVERNMENT?

92. Whether the power of cancellation, under Section 6(2) of the BIADA Act, can be exercised in order to restore the allotted land to the State Government is the predominant question.

93. While considering the above aspect of the present case, one has to also keep in mind that the interpretation, which the respondents seek to attribute to Section 9 (3) of the BIADA Act, would have been possible, had there been something available in sub-Section (3) of Section 9 of the BIADA Act to indicate that




if required, the Authority, which may not have, *at its disposal*, a plot of land, because of the land having already been allotted to a third party, would be empowered to cancel the allotment for the purpose of restoration of the land to the State Government, bring the land under its disposal and, then, restore the land to the State Government.

94. Thus, adding to sub-section (3) of Section 9 of the BIADA Act the power of the Authority to cancel the allotment of land in order to restore possession thereof to the State Government would be wholly impermissible unless the power of cancellation of the allotment, embodied in Section 6(2), can be justifiably linked to sub-Section (3) of Section 9.

95. The question of all questions, therefore, which falls for determination, is: *whether cancellation of allotment is permissible merely for the purpose of restoring the allotted land to the State Government?*

96. There can be, no doubt, that legislation has to be read as a whole so as to understand its own meaning.

97. Since the respondents rely, in the case at hand, on Section 6 of the BIADA Act, in order to show that there is available, with the Authority, the power of



cancellation of allotment of land so that the land comes at the disposal of the Authority in order to, then, enable the Authority to restore the land to the State Government, let us carefully analyze the relevant provisions embodied in Section 6 of the BIADA, Act, which, we find, read:

"6. General duties and powers of the authority

(1) Subject to the provisions of this Act, the Authority shall be responsible for the planned development of the Industrial Areas (including preparation of the Master Plan of the area) and promotion of industries in the area and other amenities incidental thereto.

(2) The Authority shall be responsible for planning, development and maintenance of the Industrial Area and amenities thereto and allotment of land, execution of lease and cancellation of such allotment or lease, realization of fees rent charges and matters connected thereto.

(2-a) In case necessary effective steps are not taken within the fixed period to establish the industry, the authority shall in such condition, cancel the allotment of allotted plot/shed and also forfeit the amount deposited in this connection. The authority shall,



before cancelling the allotment allow one month time to the allottee to put up his case. The allottee on being dissatisfied with the order of the Authority may file an appeal to the State Government within one month and the State Government shall, after due consideration dispose it of within two months from the date of receipt of the appeal.

(2-b) The authority shall, after cancellation of allotment of the plot/shed take possession of the said plot shed.”

(3)	xxx	xxx	xxx
(4)	xxx	xxx	xxx
(5)	xxx	xxx	xxx
(6)	xxx	xxx	xxx
(7)	xxx	xxx	xxx
(8)	xxx	xxx	xxx

(Emphasis is added)


98. What, now, needs to be taken note of is that the Authority has been made responsible for planned development of the *industrial areas*, promotion of industries in the *industrial area* and other amenities appurtenant thereto. Sub-section (2) of Section 6 of BIADA Act makes the Authority responsible to, *inter alia*, cancel allotment of land.

99. While dealing with Section 6(2) of the

BIADA Act, we need to bear in mind that when the power of cancellation, embodied in Sub-section (2) of Section 6 of the BIADA Act, can be exercised is the question in controversy.

100. While it is the contention of Mr. Singh, learned Senior Counsel, appearing on behalf of the appellant, that cancellation is possible only within the ambit of powers available under Section 6 (2-a) and Section 6(2-b) of the BIADA Act, Mr. Lalit Kishore, learned Senior Counsel, contends that the power of cancellation, embodied in Sub-section (2) of Section 6 of the BIADA Act, is generic power of cancellation and only one of the grounds for such cancellation has been mentioned in Sub-section (2-a) read with Sub-section (2-b) of Section 6 of the BIADA Act and that making of special provisions, for the purpose of cancellation by Sub-section (2-a) read with Sub-section (2-b) of Section 6 of the BIADA Act, does not take away the Authority's general power to cancel allotment of a land for reasons or on grounds other than what has been mentioned in Sub-section (2-a) read with Sub-section (2-b) of Section 6 of the BIADA Act.


101. At the first blush, the argument, advanced on behalf of the respondents, is, undoubtedly,



attractive. However, on a closer look, the submissions, so made on behalf of the respondents, does not stand scrutiny of law. If the power of cancellation under Sub-section (2) is relatable to general power of cancellation, the power given by Sub-section (2-a) would have been implicit in Sub-section (2) of Section 6 and no specific provisions, in the form of Sub-Section (2-a), would have been necessary.


102. Since the State Government was conscious of the fact that the power of cancellation for omission to take necessary steps to establish an *industry* is not available in Sub-section (2-a) of Section 6 of BIADA Act, such a provision has been made meaning thereby that though there was a general power of cancellation, the legislature was conscious of the fact that the exercise of this power shall not be arbitrary unless the reason enabling such cancellation is made explicit.

103. Therefore, it was for the purpose of laying down as to when the power of cancellation is possible that Sub-section (2-a) has been added, which lays down that if the allottee does not take necessary effective steps to establish industry within the period specified, the allotment shall be cancelled.



104. Thus, the condition precedent for cancellation of allotment is what Sub-section (2-a) provides, namely, that an allottee has failed to take necessary effective steps to establish his industry within the specified period. A contrary view is not possible inasmuch as the respondents have not been able to explain as to why the legislature deemed it necessary that incorporation of Sub-section (2-a) of Section 6 of BIADA Act is required. Inability, on the part of the respondents, to explain, as to why incorporation of sub-Section (2) of Section 6 of the BIADA Act, had become imperative, where even without incorporating Sub-Section (2-a), it was possible to cancel the allotment of land if effective steps were not taken within the fixed period to establish an industry, for, this power is, otherwise, also traceable to Section 6(2) of the BIADA Act, as the respondents themselves contended.

105. In order to justify their argument of incorporation of Sections 6(2-a) and 6(2-b) of the BIADA Act, Mr. Lalit Kishore, learned Senior Counsel, submits that since the BIADA Act had not initially provided for resumption of possession of the land, whose allotment had been cancelled, Sub-Sections (2-a) and (2-b) have been added by way of amendment in the year 1997.



106. While considering the above argument, it needs to be noted that the power of cancellation was already available with the Authority by taking recourse to Section 6(2) and, hence, it would have been enough for the legislature to make provisions, by way of amendment, enabling the Authority to resume possession of the land, whose allotment had been cancelled. Instead of providing for merely resumption of possession of the land, whose allotment had been cancelled, the legislature has deemed it fit to incorporate Section 6 (2-a) too.

107. With regard to the above, we may hasten to add that it is sub-section (2-a) of Section 6, which provides for resumption of possession of land, whose allotment has been cancelled; whereas sub-section (2-b) of Section 6 provides for cancellation of allotment. When the power of cancellation of allotment was, as the respondents contended, already available with the Authority under sub-Section (2) of Section 6, it was not necessary to incorporate, once again, Section 6(2-a) making therein provisions for cancellation of allotment; rather, mere incorporation of sub-section (2-b) of Section 6 would have sufficed in order to enable the Authority resume possession of the land, whose

allotment has been cancelled.

108. The answer to the question, as to why Sub-section (2-a) became imperative, or the question, as to why Sub-section (2-a) was incorporated, has to be found within the four corners of the BIADA Act.

109. A minute reading of the provisions embodied in Section 6 of the BIADA Act shows that Section 6(2-a) of BIADA Act leaves the Authority with no discretion, but to cancel allotment of land if an allottee does not take necessary effective steps within the fixed period to establish his industry; whereas the power of cancellation, under Section 6 (2) of the BIADA Act, is discretionary inasmuch as a reading of Section 6(2-a) shows that it is not necessary but mandatory on the part of the Authority to cancel allotment of land made to an allottee, who has not taken necessary effective steps to establish the industry within the specified period subject to the condition if the allottee can reasonably justify the delay in taking necessary effective steps and that is why, provisions for appeal have been made, in the BIADA Act itself, against the cancellation of the allotment. This is the precise distinction between Section 6(2) and Section 6(2-a) of the BIADA Act and also the predominant purpose with which Sub-section (2-a) has been added to

Section 6 of the BIADA Act. No other interpretation is possible to be attributed to Sub-section (2-a) of Section 6 of the BIADA Act.

110. To put it a little differently, while the general power of cancellation of an allotment, conferred upon the Authority by Section 6(2), is *discretionary*, Section 6(2-a) withdraws such discretion from the Authority and makes it *obligatory*, on the part of the Authority, to cancel the allotment if the allottee fails to establish his industry within the specified period. No other rational interpretation is possible to be attributed to sub-Section (2-a) of Section 6; more so, when the power of resumption is not available in Section 6(2-a); rather, it is Section 6(2-b), which empowers the Authority to resume possession.

**POWER OF CANCELLATION OF ALLOTMENT:
CONSTITUTIONAL STANDPOINT:**

111. The question, therefore, is: Whether the power of cancellation of allotment, conferred on the Authority by Sub-section (2-a) of Section 6, is so wide that the Authority can cancel the allotment on any ground whatsoever?

112. Before answering the question, posed above, the question, which, confront us, now is: *whether it is possible for the Authority to deprive a person of his*

'property' by cancelling allotment even if the allottee is not at fault or has not committed default?

113. It needs to be borne in mind, while considering the question posed above, that whenever an act of the State attracts applicability of Article 300A of the Constitution of India, the legislation, which makes provisions for exercise of power of depriving a person of his *property*, must not only provide for payment of compensation, but also the mechanism of compensation to the deprived person; or else, the exercise of power of depriving a person of his *property* would be nothing, but arbitrary.

114. No wonder, therefore, that in ***K.T. Plantation (P) Ltd.*** (supra), the Constitution Bench has, in no uncertain words, laid down, at paragraph 190, that *Article 300A would be* equally violated if the provisions of law, authorizing deprivation of *'property'* have not been complied with. Further adds, the Supreme Court, therefore, in ***K.T. Plantation (P) Ltd.*** (supra), at para 192, thus,

"At this stage, we may clarify that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private property for public purpose cannot say that "no compensation shall be paid". However,

there could be a law awarding "nil" compensation in cases, where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the Government to establish validity of such law. In the latter case, the Court in exercise of judicial review will test such a law keeping in mind the above parameters."


(Emphasis is supplied)

115. Not leaving anyone in doubt that Article 300A is not a dead letter in law, the Supreme Court observes, in ***K.T. Plantation (P) Ltd.*** (supra), in para 219, thus:

"One of the fundamental principles of a democratic society inherent in all the provisions of the Constitution is that any interference with the peaceful enjoyment of possession should be lawful. Let the message, therefore, be loud and clear, that the rule of law exists in this country even when we interpret a statute, which has the blessings of Article 300A."

(Emphasis is added)

116. Notwithstanding the fact that the *vires* of the legislation is not in question in the present appeal, nothing can be read into the legislation, which would render the legislation *ultra vires*.



117. One has to, therefore, necessarily read into the legislation at hand that it does not empower the Authority to appropriate to itself the power of doing any act, which would deprive a person of his '*property*' and thereby denying to him the constitutional protection, which Article 300A of the Constitution of India provides.

118. It has been contended, on behalf of the respondents, that what an allottee, in the land allotted, has, is merely an *interest* and such *interest* would not amount to '*property*' and, hence, when cancellation of allotment of a plot of land takes place, a person is not deprived of his '*property*'; rather, what he is deprived of, if at all, is an *interest* in the allotted land.

119. The argument, so advanced, loses sight of the fact that mere allotment of land to an allottee stands on a footing different from the other allottee, who, on receiving the allotment, has raised his *industry* on the allotted land and has been running the *industry* and taking care of the land in accordance with law and in terms of the allotment of lease. While such an allottee may have *interest* only in the land, the fact remains that the *industry* would be the allottee's *property* and no one, not even the Authority, can deprive such an allottee of the enjoyment of such a *property* without there

being any mechanism for payment of compensation. Cancellation of an allotment of a plot of land, where no *property* exists, is different from cancellation of allotment of a land, where *property* of an allottee stands.

120. In the case at hand, there is no dispute that some constructions, such as, boundary wall, etc., have been made on the allotted land by the appellant. Whatever construction has been done on the allotted land cannot but be construed as the *property* of the allottee and, in such circumstances, when there is no mechanism for compensation available in the BIADA Act, the power of cancellation, depriving allottee of his *property*, without his fault or default, cannot be said to be available with the Authority.

121. With regard to the above, it is also of immense importance to note that an allottee, who has his *property* on the allotted land, commits a fault or is on default, cancellation of his allotment by taking recourse to sub-section (2) to Section 6 would be permissible, for, such cancellation would be penal in nature. This case of cancellation is wholly distinguishable from the case of an allottee, who has his *property* on the allotted land and has committed no fault or default. In the latter case, it would not be possible to cancel allotment, when the

BIADA Act does not provide for compensation to the allottee, who is deprived of his *property*.

122. Logically, therefore, one cannot read into sub-section (2) of Section 6 the Authority's power to cancel allotment and thereby deprive an allottee of his *property* if the allottee is not at fault and has not committed any breach of any law or terms and conditions of the allotment and/or lease.

123. When Section 9 (3) of the BIADA Act is read independent of other provisions of the BIADA Act, it clearly follows that Section 9(3) of the BIADA Act does not conceive of restoration of possession of a plot of land to the State Government by cancelling, if necessary, the allotment already made in favour of a third party. Even the respondents do not boldly contend that the power to cancel the allotment of a plot of land made by the Authority in favour of an entrepreneur, who has made investment to set up his *industry*, is available to the Authority merely for the purpose of restoration of possession of such land to the State Government. However, what has been contended, in order to cancel the allotment of the plot of land in the present case, is that cancellation, for the purpose of restoring possession of a plot of land to the State Government, is possible


even if the plot of land is no longer *at the disposal of the Authority* if the State Government so requires in larger public interest and support for that purpose is sought to be derived from sub-section (2) of Section 6 of the BIADA Act.

CANCELLATION OF ALLOTMENT: PUBLIC INTEREST PERSPECTIVE:

124. The question, therefore, is: whether cancellation of an allotment is possible merely in larger public interest than the interest of the allottee if the allottee has not committed any fault or default and who has made huge investment, on the allotted land, by establishing an *industry* and has been running the *industry* so established.

125. The question, framed above, bring us back to the scope of power of cancellation of the Authority under Sub-section (2) of Section 6 of the BIADA Act.

126. So far as Section 6 of the BIADA Act is concerned, it clearly shows that the power of cancellation, which has been conferred on the Authority by Section 6(2-a) of the BIADA Act, is punitive in nature inasmuch as this power is, admittedly, exercisable only and only when an allottee does not take necessary effective steps within the fixed period to establish




industry. Even if the ground mentioned in Section 6(2-a) of the BIADA Act may not be the sole ground for cancellation of an allotment, is it permissible to cancel allotment, made in favour of a third party for a purpose other than penal, is the question and needs to be, now, answered.

127. Our search for an answer to the above question brings us to the object with which the BIADA Act has been enacted. There is no dispute that the Authority has been created, under the BIADA Act, to provide for development of land in industrial area, promotion of industries and matters appurtenant thereto.

128. The Authority, which State Government can create under Section 3, has been empowered to acquire, hold and dispose of properties, both movable and immovable, and to contract.

129. Section 6 of the BIADA Act vests, in the Authority, the responsibility to plan development of industrial area, promotion of industries in the industrial area and other amenities incidental thereto.

130. Sub-Section (2-a) of Section 6 of BIADA Act, as already pointed out above, makes it obligatory for the Authority to cancel allotment of the allotted plot/shed if necessary effective steps are not taken




within the fixed period to establish industry and forfeit the amount deposited with the Authority. Section 6(2-b) of the BIADA Act makes it incumbent upon the Authority to take possession of the plot/shed on cancellation of the allotment of the plot/shed. There is nothing in Sub-Section (2-b) empowering the Authority to take possession, on cancellation of the allotment of the plot/shed, any *property* of the allottee except the allotted plot/shed. Obviously, when cancellation of allotment under Section 6(2-a) is on the ground that the allottee has not taken necessary effective steps to establish *industry* within the fixed period, the question of the allottee having '*property*' on the allotted land, in the form of *industry*, does not arise at all.

131. Nowhere, therefore, the Authority is empowered to take possession of the *property* of the allottee. While, thus, the Authority can cancel the allotment and take possession of the plot/shed, it does not have power to take possession of the *property* of the allottee. If Sub-Section (2-b) is read as the adjunct of Sub-Section (2-a), then, the cancellation of allotment can be only as a penal measure, when the allottee fails to take necessary effective steps to establish industry within the fixed period and, upon such cancellation, the

Authority has the power to take possession of the allotted plot/shed and not the *property* of the allottee.

132. Sub-section (2) of Section 6 of the BIADA Act cannot, therefore, be read to vest in the Authority the power to cancel allotment and deprive an allottee of the *property*, which the allottee may have on the allotted plot or under the allotted shed.


133. Without providing for any mechanism for payment of compensation, if the Authority is treated to have the power to deprive an allottee of his *property*, it would obviously dissuade an allottee to seek allotment of land for the purpose of establishing an *industry*. If an *investor* knows that *at any time*, the Government may choose to take back the plot of land and if the State Government so requires, the Authority would be bound to cancel the allotment and take back the allotted plot of land, depriving the allottee of his right to enjoy his *property* without having been compensated for such acquisition, no *investor* would come forward to seek allotment of land from the Authority and/or to establish *industry* by making investment. Such wholly unreasonable, illogical, irrational and unjustifiable meaning cannot be attributed to the scheme of the BIADA Act.



134. What logically follows from the above is that if the State Government is held to have the power to cancel allotment of land in supervening public interest, it will have disastrous consequences for an *investor*. Assuming, for a moment, a plot of land is allotted in favour of an *investor* and with the consent of the Authority, the *investor* makes an investment of Rs.10,000 Crore and, sometime after the *industry* starts its production, another *investor* seeks the said plot of land in order to set up an *industry*, which involves larger sum of money and generates more employment.

135. Since such an investment, as projected above, would enable the State Government to receive more revenue in the form of exercise duty, tax or otherwise and generate hundred times more employment than the allottee, who has set up the *industry* on making investment of Rs.10,000 Crore, would it not be in the interest of public to cancel the allotment of the allottee, take possession thereof by the Authority and make allotment of such a land to the *investor*, who has come forward to make bigger investment and thereby generate more employment?

136. Since supervening public interest is nothing, but clash of interest of one person or one class



of persons as opposed to another person or another class of persons, the Government can always contend that it is in larger public interest to cancel the allotment of the land made in favour of the allottee, who has already established and running the *industry*, so that the new *industry* should be set up on the said plot of land to generate more revenue and open larger employment avenues leading to engagement of more working force.

137. If such becomes the scheme of the BIADA Act, as depicted above, no *investor* would come forward to make investment and the very purpose of enacting the BIADA Act would stand frustrated. Without reasonable degree of assurance that if he continues to function within the ambit of law and if he does not violate the terms and conditions of the allotment or lease, he would not have his allotment cancelled, no *investor* will come forward to make investment in a situation of uncertainty if such uncertainty is allowed to prevail.

138. Conscious of the above nature of consequences, which may ensue following deprivation of a person of his '*property*' and desist investment, the Constitution Bench eloquently remarks, in ***K.T. Plantation (P) Ltd.*** (supra), thus :


"Deprivation of property may also

cause serious concern in the area of foreign investment, especially in the context of international law and international investment agreements. Whenever a foreign investor operates within the territory of a host country, the investor and its properties are subject to the legislative control of the host country, along with the international treaties or agreements. Even if the foreign investor has no fundamental right, let them know that the rule of law prevails in this country."

(Emphasis is added)

139. If the interpretation, which the State and the Authority have sought to attribute to Section 6(2) of the BIADA Act, is allowed to prevail, the consequences would be, if we may repeat, disastrous and the very purpose of enacting the law and constituting the Authority would stand defeated. Such an unreasonable and, if we may add, wholly illogical interpretation would, if allowed to be attributed to the provisions of Section 6(2) of the BIADA Act, frustrate and, as we have already observed, defeat the very salutary object with which the BIADA Act has been enacted. Such interpretation, in the light of plain and unambiguous words of Section 9(3), is, to our mind, wholly untenable.


140. The logical conclusion will, therefore, be



that if an allottee, on having received an allotment, does not commit any violation of law or of the terms and conditions of an allotment or lease, his allotment cannot be cancelled by taking resort to Section 6(2) of the BIADA Act in the name of larger public interest or supervening public interest.

141. The general power of cancellation, as embodied in Section 6(2) of the BIADA Act, must, therefore, be held to be available only as a punitive measure. One of the circumstances, whereunder cancellation is not only possible but mandatory, as a punitive measure, is under Section 6(2-a) of the BIADA Act and since the legislature cannot envisage all such eventualities, which would warrant cancellation of allotment, a general power of cancellation, on punitive grounds, has been made available by the legislature to the Authority in the form of Sub-Section (2) of Section 6 of the BIADA Act.


142. However, the power available to the Authority to cancel allotment has to be exercised, and can only be exercised, when the allottee is at fault and has committed any default and not, on the ground that a larger public interest demands restoration of the land to the Government.



143. In the interest of supervening public interest, if an allotment is required to be cancelled, it would amount to acquisition and not a mere cancellation and such acquisitional nature of cancellation would require payment of compensation and mechanism therefor; whereas no such mechanism has been provided by the BIADA Act. One cannot, therefore, help but hold, in such a situation, that the power of cancellation, conferred on the Authority by Section (2), can be exercised only as a punitive measure and not otherwise.

144. No wonder, therefore, that the illustration, which has been cited before this Court, on behalf of the respondents, relates to penal cancellation inasmuch as the illustration given by Mr. Lalit Kishore, learned Senior Counsel, appearing on behalf of the Authority, reads thus:

"Suppose an entrepreneur puts up its industry, obtaining permission under the Air and Water Acts, but it is in commercial production, but later on it is found that the discharge from its industrial premises is being absorbed by the soil and mixing with its contents, it is producing a chemical which is poisonous or harming the ground water which, in turn, is affecting people and




farms. Then, in such a situation can such entrepreneur claim that as the sole ground under Section 6 (2-a) read with Rule 6 (i) and (ii) does not exist and as he has taken necessary effective steps thereunder, now even if there is any harmful effect of his industry exists its allotment/lease cannot be cancelled and possession cannot be retaken. "

145. In the case at hand, it is of paramount importance to note that the Authority asserts that it has not cancelled the allotment of the plot of land, in question, as a punitive measure.

146. We have already reached the conclusion that other than punitive, there can be no cancellation of an allotment made in favour of a person.

147. Situated thus, it becomes crystal clear that when the cancellation of allotment, in the case at hand, was not penal, such cancellation was not legally permissible.


148. It logically follows further from what have been concluded above, if we may reiterate, is that merely to restore to the State Government possession of a plot of land, the allotment already made to a person, cannot be cancelled without any fault or default on the part of the allottee and if larger or supervening public



interest is made the ground of cancellation, then, such ground must also be punitive and not merely acquisitional, when the BIADA Act does not take care of the constitutional scheme of governance as envisaged by Article 300A inasmuch as cancellation, in the name of larger public interest, which is not punitive in nature, would warrant payment of compensation if the allottee is deprived of his *property*; or else, such cancellation of allotment, when the cancellation is acquisitional in nature, would be nothing, but arbitrary.


149. If a person knows that even if he abides by law and the terms and condition of the allotment/lease, the Authority can cancel such allotment and deprive him of the industry, which he may establish, without any responsibility to pay any compensation, no one would accept such an allotment and will invest money to establish industry. Without any reasonable assurance that the allotted land will be enjoyed by the allottee during the period of allotment of the lease if he does not violate any law or the terms and conditions of the allotment of the land, no reasonable person would make any investment at all and the very object, with which the BIADA Act has been enacted, would stand defeated. Such cannot, therefore, be construed as

legislative intent.



150. It cannot be read into the power of cancellation available under Section 6(2) of the BIADA Act that in order to restore possession of a plot of land to the State Government, the Authority can, without any default on the part of the allottee, cancel the allotment and deprive the allottee of the industry, which he may have established, and, that too, without being even responsible for making any payment of compensation, for, there is no mechanism either for determination or payment of compensation to the allottee, whose allotment may have been cancelled in terms of the respondents' interpretation of the scheme of the BIADA Act.


151. Such an arbitrary construction of a legislation, as the respondents have sought to construe, is wholly alien to the scheme of our Constitution and even though the concept of eminent domain may have undergone change and the right to property has ceased to be a fundamental right, the Parliament, as a countenance of check and balance, has brought in Article 300A, in the Constitution of India, in order to assure everyone that no one, not even a foreigner, would be deprived of his *property* except in accordance with law



and the law, which provides for one's deprivation of his *property*, has to also provide for compensation if a person is deprived of his *property*, for, a law depriving a person of his '*property*' must be *just, fair and reasonable*. [See ***K.T. Plantation (P) Ltd.*** (supra)]

152. In the case at hand, the BIADA Act does not provide for making of payment of compensation to the allottee, whose allotment has been cancelled without his fault or default, and he is thereby deprived of his right to enjoy the *property*. If a car is parked on an allotted land, the allottee may have a mere interest in the allotted land, but the car would be his *property* and he cannot be deprived of his *property* without payment of compensation. Similarly, in place of car, an *industry* is established, the allottee cannot be deprived of his *industry* without payment of compensation; whereas no mechanism of compensation has been embodied in the BIADA Act.

153. Since the BIADA Act has to be read as a reasonable and realistic piece of legislation, it would logically follow that the BIADA Act cannot be held to empower cancellation of an allotment without any fault or default on the part of the allottee and deprive him of his *property*.




154. Article 300A of the Constitution of India proclaims that no person can be deprived of his *property* save by the authority of law meaning thereby that a person cannot be deprived of his *property* merely by an executive fiat without any specific legal authority or without the support of law made by a competent legislature. The expression '*property*', in Article 300A, is confined not to land alone; it includes intangible like copyright and other intellectual property and embraces every possible interest recognized by law. The allotment order, which contains the terms and conditions of allotment and its cancellation, is, thus, a '*property*' within the meaning of Article 300A of the Constitution of India.

155. Mr. Singh is correct in submitting that the legislation, in question, is relatable to Entry 24 of List II (Industries subject to the provisions of Entry 7 and 52 of List I) and is not a legislation under Entry 42 of List III (Acquisition and Requisition of Property) and, hence, the legislation cannot be held to be have vested in the Authority the power to deprive an allottee of his *property*; more so, when the legislation is completely silent as to what would or would not be the norms and procedure for compensation, which is inherent in Article 300A of the Constitution of India, inasmuch as right to

receive compensation is inbuilt in Article 300A of the Constitution of India.

156. Coupled with the above, it is also noteworthy, as has been correctly submitted by Mr. Singh that in the case at hand, the show cause notice, which had been issued to the appellant, was merely a formality and carried no meaning, when the decision had already been taken that the allotment of the land, in question, be cancelled. There is, therefore, considerable force, in the submission of Mr. Singh, that entire process of cancellation by giving the notice of show cause is *sham*.


157. Though it has been contended, on behalf of the respondents, that the power to make allotment also includes the power of cancellation, the appellant submits that such power is exercisable under Section 21 of the General Clauses Act, 1897, but Section 21 of the General Clauses Act, 1897, has no application, where the statutory authority is required to act *quasi-judicially*. There can be no doubt that when cancellation of allotment is penal in nature, the exercise of this power is *quasi judicial*; hence, the principle, underlined 21 of the General Clauses Act, 1897, would not be applicable to such a case.



158. The argument that the power to make allotment shall be held to include the power to cancel allotment, it needs to be borne in mind that the cancellation of the allotment cannot be at the whims and fancies of the Authority or the State Government and every cancellation has to be made within the scheme of the BIADA Act and not otherwise and, hence, general power of cancellation of the Authority, in a case of present nature, has no application.


PURPOSIVE INTERPRETATION:

159. Ordinarily, the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where, however, the words, used in a statute, are capable of bearing two or more constructions, it is necessary to adopt *purposive interpretation* in order to identify the construction to be preferred. For the purpose of adopting *purposive construction* of statutory provisions, one has to answer following questions, namely, (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of




the provision? The answers to these questions will enable the court to identify the *purposive interpretation* to be preferred, while excluding others. Such an exercise, involving ascertainment of the object of the provision, can, however, be undertaken only where, as already indicated above, the language of the provision is capable of more than one construction. (See **Bengal Immunity Co. Ltd. v. State of Bihar (AIR 1955 SC 661)**, and **Kanai Lal Sur v. Paramnidhi Sadhukhan (AIR 1957 SC 907)**) See also **Grid Corporation of Orissa Ltd. V. Eastern Metals & Ferro Alloys**, reported in **(2011) 11 SCC 334**).

160. The purpose of the BIADA Act is to develop industries and this would necessarily involve inviting *investors* into the State of Bihar in order to make *investment*. Before Section 6(2-a) and Section 6(2-b) were added by way of amendment, in the year 1997, conditions of cancellation of allotment were indefinite and uncertain. Moreover, cancellation had been *discretionary* in nature inasmuch as Section 6(2) of the BIADA Act had made the Authority responsible to cancel allotment without indicating as to when the allotment might be cancelled or when the allotment must be cancelled or, in other words, when the power of



cancellation was necessary to be exercised and when the power of cancellation was discretionary, there was no indication in the legislation. This apart, there was also no specific provision empowering the Authority to resume possession of the allotted plot/shed in the event of cancellation of allotment due to default or fault on the part of the allottee.

161. With the help of the amendments, carried out in the year 1997, Section 6(2-a) of the BIADA Act has made it mandatory for the Authority to cancel allotment of the land if necessary effective steps are not taken by the allottee to establish *industry* within the fixed period subject, of course, to the showing cause, if any, by the allottee that the necessary effective steps to establish *industry*, within the fixed period, could not be taken for reasons beyond his control. This apart, the amendments, introduced in the year 1997, made provisions for resumption of possession of the plot/shed upon cancellation of allotment, particularly, in the cases, wherein necessary effective steps to establish industry, within the fixed period, have not been taken by the allottee. By means of the amendments aforementioned, the deficiencies, indicated hereinbefore, have been sought to be removed by the legislature.



162. If the BIADA Act is allowed to be interpreted in the manner as has been sought for by the respondents, it would make the distinction between the provisions, embodied in Section 6(2), and the provisions, embodied in Section 6(2-a), disappear, evaporate and become redundant.

163. Lastly, the interpretation, sought to be attributed to the provisions, in question, would defeat the object with which the legislation has been made and the subsequent amendments have been carried out; whereas the interpretation, which we have been able to discern, would advance the object of the legislation and arrest the legislation from being defeated at the instance of respondents.

164. So far as the case of ***Kasinka Trading*** (supra) is concerned, this is a case, where exemption of *excise duty* granted in terms of Section 25 of the Customs Act, 1962, was subsequently withdrawn. Undisputedly, Customs Act does not provide for granting of exemption as well as withdrawal exemption from payment of *excise duty*. ***Kasinka Trading*** (supra) was a case, wherein fell for consideration the application of doctrine of *promissory estoppel*.


165. Before we point out as to what the facts in

Kasinka Trading (supra) were and what law has been laid down therein and whether the decision, in ***Kasinka Trading*** (supra), is relevant at all in the case at hand, it is necessary to determine, in the context of the facts of the present case and the law laid down in ***Kasinka Trading*** (supra), what the doctrine of *promissory estoppel* conveys and how this doctrine has been developed and applied in India.

DOCTRINE OF PROMISSORY ESTOPPEL: MEANING, OBJECT AND APPLICATION:

166. Put shortly, when a person, acting upon the representation made by another, alters his position, the doctrine of *promissory estoppel* estops the person making the representation from going back on his words to the detriment of the one, who has altered his position. The doctrine of *promissory estoppel* was evolved, in England, as a principle of *equity* to mitigate the rigours of strict law and to prevent injustice taking place from strict adherence to law. The development and expansion of this doctrine, particularly, in the realm of its application against Governments, in India, in the post-independence era of this country, makes a fascinating reading.


167. The earlier English decisions, which involved the application of this doctrine, particularly, the decisions in ***Hughes v. Metropolitan Railway Co.***



[1877] ACJ 439 and Birmingham & District Land Co. v. London & North Western Rail Co. [1888] 40 Ch. D. 268, seemed to suggest two limitations in the application of this doctrine, the first limitation being that the parties must have a contractual or legal relationship in order to apply the doctrine and the second one being that this doctrine can operate only as a shield and not as sword.


168. To put it differently, the doctrine of *promissory estoppel* had no application if the parties were not bound by some contractual or legal relationship and that the doctrine could have been applied only as a defence and could not have formed the basis of a *cause of action* against anyone. Both these limitations imposed on the operation of this doctrine have, as we shall indicate shortly, been dispensed with in its application in India.

169. In the post-independence era of our country, there are two remarkable decisions, which applied the doctrine of *promissory estoppel* and recognized that a *cause of action* can be founded even by taking resort to this doctrine, the first case being **Ganges Manufacturing Co. v. Sourujmull ILR [1880] Cal 669**. This doctrine was also applied as a formation for *cause of action* against the Government in **Municipal Corporation of the City of Bombay v. Secretary of the State ILR**




[1905] 29 Bom 580. In the latter case, Jenkinson, C.J., speaking on behalf of the Division Bench, observed that the doctrine, which was being applied, took its origin "from the jurisdiction assumed by the *courts of equity* to intervene in the case or to prevent fraud". This decision, in ***Municipal Corporation of the City of Bombay*** (supra), as expressed by Bhagawati, J., speaking for the Court in ***Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh*** reported in ***[1979]118ITR326(SC)*** , is a clear authority for the proposition that it is open to a party, who has acted on a representation made by the Government, to claim that the Government shall be bound to carry out the promise made by it even though the promise is not recorded in the form of a formal contract as required by the Constitution.


170. The first glimpses of the application of this doctrine, in its full vigour, can be noticed, very early in post independent era, in the decision of the Constitution Bench in ***Collector of Bombay v. Municipal Corporation of the City of Bombay [1952]1SCR43*** . The facts giving rise to this case were, in brief, thus: In the year 1865, the Government of Bombay called upon the predecessor-in-title of the Municipal Corporation of Bombay to remove old markets from a certain site and



vacate the same. On the application of the Municipal Commissioner, the Government passed a resolution approving and authorizing the grant of another site to the Municipality. The resolution adopted by the Government further stated, "the Government do not consider that any rent should be charged to the Municipality as the markets will be, like other public buildings, for the benefit of the whole community". Although possession of the site was made over to the then Municipal Commissioner, no formal grant was, in fact, executed as required by the relevant statute. Acting, however, on this resolution, the Municipal Corporation gave up the site on which the old markets were situated and spent a sum of Rs. 17 lakhs in erecting and maintaining markets on the new site. In 1940, the Collector of Bombay assessed the new site to Land Revenue and the Municipal Corporation, thereupon, filed a suit for a declaration that the order of assessment was *ultra vires* and it was entitled to hold the land forever without payment of any assessment. The suit was dismissed, for, notwithstanding the said resolution, the fact remained that no formal grant, in terms of the relevant statute, had been made by the Government. An appeal was preferred before the High Court. The High Court of Bombay held that the Government had lost its



right to assess the land, in question, by reason of the *equity* arising out of the facts of the case in favour of the Municipal Corporation. The High Court accordingly reversed the decision of the trial Court and held the Corporation entitled to hold the land forever without payment of any rent. The Collector preferred an appeal before the Supreme Court. There was no dispute that by reason of non-compliance with the statutory formalities, the Government's resolution of 1865 was not a formal grant passing title in the land to the Corporation. There was also no dispute that there was, legalistically speaking, no formal enforceable contract between the State Government and the Municipal Corporation. Of the five Judges, Das, J., speaking for the majority, observed that the possession of the Corporation, not being referable to any legal title, was adverse to the legal title of the Government and the right acquired by the Corporation to hold the land in perpetuity included immunity from payment of rent. Patanjali Sastri, J., expressed a contrary view holding that the express provisions of the statute could not be overridden by considerations of *equity*. Chandrasekhara Aiyar, J., concurred with the conclusion of Das, J., but based his reasoning on the fact that by the resolution, representations had been made to the



Corporation by the Government and the accident that the grant was invalid did not wipe out the existence of the representation. The observations, so made by Chandrasekhara Aiyar, J., in ***Municipal Corporation of the City of Bombay*** (supra), have been treated as the single most exposition of law on the doctrine of *promissory estoppel* involving Governments. The relevant observations may, therefore, be taken note of, which read as follows:

“21. ...In the present case, the Corporation stands on much firmer ground. They have acquired a title to the land which the Government cannot upset or challenge. This acquisition of title is as a result of the law of limitation. It has nothing to do with any conduct on the part of the Corporation which can be said to have rendered the representation about non-liability to assessment of no legal effect or consequence. The invalidity of the grant does not lead to the obliteration of the representation.

22. Can the Government be now allowed to go back on the representation, and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a court of equity must prevent being

*committed ? If the resolution can be read as meaning that the grant was of rent-free land, the case would come strictly within the doctrine of estoppel enunciated in Section 115, Evidence Act. But even otherwise, that is, if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfil it. Whether it is the equity recognised in **Ramsden's case [1866] L.R. 1 H. L. 129: 14 W. R. 926**, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power. As pointed out by Jenkins, C.J. in **Dadoba Janardhan's case ILR [1901] 25 Bom 714**, a different conclusion would be 'opposed to what is reasonable, to what is probable, and to what is fair'."*

171. A careful reading of the above observations made by Chandrasekhara Aiyar, J., would indicate that the doctrine was applied in the **Municipal Corporation of the City of Bombay** (supra), without there being any formal contractual or legal relationship existing between the parties concerned, for the representation sought to be enforced against the Government, in **Municipal**

Corporation of the City of Bombay (supra), was legally invalid inasmuch as the representation had not been made in the manner as the statute had prescribed. This apart, the doctrine was resorted to not merely as a shield for defence, but for founding the *cause of action* against the Government. To this extent, the decision in **Municipal Corporation of the City of Bombay** (supra), deviated from the traditional views of the English Courts and can be treated as the path-breaking judgment on the doctrine of *promissory estoppel*.

172. What also needs to be emphasized is that contrary to the conclusion reached by Patanjali Shastri, J., in **Municipal Corporation of the City of Bombay** (supra), that the expressed provisions of a statute could not be overridden by considerations of equity, Chandrasekhara Aiyar, J., opined, "...*The invalidity of the grant does not lead to the obliteration of the representation*". Noticing this change, the Supreme Court in **State of Punjab v. Nestle India Ltd., reported in [2004]269ITR97(SC)**, while referring to the observations of Chandrasekhara Aiyar, J., explained as follows:

"25. *In other words, promissory estoppel, long recognised as a legitimate defence in equity, was held to found a*


cause of action against the Government, even when, and this needs to be emphasised, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute."

173. What crystallizes from the above discussions is that the observations made by Chandrasekhara Aiyar, J., in ***Municipal Corporation of the City of Bombay*** (supra), reveal that the doctrine of *promissory estoppel*, which had long been recognized as legitimate defence in *equity*, was held to found a cause of action against the Government even when the representation sought to be enforced against the Government was not strictly in accordance with the statute in the sense that the representation was made in a manner, which was not in conformity with the procedure prescribed by the statute. we may also hasten to point out that though the observations of Chandrasekhara Aiyar, J., that *"the invalidity of the grant does not lead to the obliteration of the representation"* do not *stricto sensu*, form the *ratio* of the decision in ***Municipal Corporation of the City of Bombay*** (supra), yet these observations contained the seed and, in fact, laid the foundation for the subsequent development of the scope and ambit of the

doctrine of *promissory estoppel*, in India, particularly, in its application to the promises made by the Government.

174. Disagreeing with the contrary views expressed by Patanjali Shastri, J. in ***Municipal Corporation of the City of Bombay*** (supra), that the expressed provisions of the statute cannot be overridden by considerations of the equity and, at the same time, approving the views expressed by Chandrasekhara Aiyar, J., in ***Municipal Corporation of the City of Bombay*** (supra), that courts must do justice by the promotion of justice and good faith as far as it lies within their power, a three-Judge Bench of the Supreme Court, speaking through J.C. Shah, J., in ***Union of India v. Indo Afghan Agencies (AIR 1968 SC 718)***, held, "*Under our jurisprudence, the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot, on some undefined and undisclosed ground of necessity or expediency, fail to carry out the promise solemnly made by it nor claim to be the judge of its own obligation to the citizen on an ex parte appraisal of the circumstances in which the obligation has arisen*".

175. The decision in ***Indo Afghan Agencies*** (supra) not only strengthened the application of the




doctrine of *promissory estoppel*, in India, against the Government by firmly laying down that the Government is not exempted from carrying out the representation made by it as regards its future conduct, the Court, further, emphasized that in order to save itself from the operation of the doctrine of *promissory estoppel*, the Government must disclose the grounds of necessity or expediency, which make the Government fail to carry out the promise made by it. No wonder, therefore, that the decision in ***Indo Afghan Agencies*** (supra) has been described in ***Motilal Padampat Sugar Mills Co. Ltd.*** (supra), as the epoch-making decision.

176. Close on the heels of the epoch-making decision in ***Indo Afghan Agencies*** (supra), the two-Judge Bench of the Supreme Court in ***Century Spinning & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council***, reported in **[1970] 3 SCR 854**, observed and held "*....If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law, if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting therefor, but the law is not powerless to raise in appropriate cases an*

equity against him to compel performance of the obligation arising out of his representation."

177. If taken to its logical conclusion, the observations, made in **Century Spinning & Mfg. Co. Ltd.** (supra), would mean that if the statute prescribes a particular manner, which has to be followed by the Government for the purpose of enabling it to keep to its promises, law is not powerless, in appropriate cases, to compel the Government to act in such a manner as would be necessary to enforce the contract. Logically, therefore, when the statute does not bar making of a promise or the statute does not bar the Government from granting exemption from sales tax, the Government must, acting upon its industrial policy, bring out a notification in terms of the taxing statute in order to keep to its promises rather than resile therefrom on the pretext that unless exemption is granted in the manner in which the statute has prescribed for granting of exemption, no enforceable contract can be made out.

178. It is, however, the decision in **Motilal Padampat Sugar Mills Co. Ltd.** (supra), which has really built a complete structure for application of the doctrine, in India, against the Government, for, this decision lays down the conditions precedent subject to



which the doctrine can be resorted to, it also lays down as to when the Government can be forced, with the help of the equitable doctrine of *promissory estoppel*, to abide by, and carry out, its promises, and as to when this doctrine may not be allowed to prevail upon and shall succumb to the Government's decision not to abide by or carry out the promises made by the Government.

179. Noticing that the earlier English decisions seemed to suggest that the doctrine of *promissory estoppel* is limited in its operation to the cases, where the parties are already contractually bound and one of the parties induces the other to believe that the strict rights under the contract would not be enforced, made it clear the Supreme Court, speaking through Bhagawati, J., in ***Motilal Padampat Sugar Mills Co. Ltd.*** (supra), thus, "*The doctrine would seem to apply even where there is no pre-existing legal relationship between the parties, but the promise is intended to create legal relations or affect a legal relationship which will arise in future.*"

180. Also noticing that the decisions in ***Hughes*** (supra), and ***Birmingham & District Land Co.*** (supra), lay down that the doctrine of *promissory estoppel* cannot itself be the basis of a cause of action and it cannot found a cause of action ; it can only be used as a shield and not

a sword, the Court reacted, in **Motilal Padampat Sugar Mills Co. Ltd.** (supra), by observing as follows:


"This narrow approach to a doctrine which is otherwise full of great potentialities is largely the result of an assumption, encouraged by its rather misleading nomenclature, that the doctrine is a branch of the law of estoppel. Since estoppel has always been traditionally a principle invoked by way of defence, the doctrine of promissory estoppel has also come to be identified as a measure of defence."

181. The true meaning and scope of the doctrine of *promissory estoppel* has been eloquently propounded by Bhagawati, J., in **Motilal Padampat Sugar Mills Co. Ltd.** (supra), thus,


"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 it, 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 of whether there is any pre-existing relationship between the parties or not."

182. In short, what the decision, in **Motilal Padampat Sugar Mills Co. Ltd.** (supra), lays down is that where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee, acting upon the promise, 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 the fact that there was no consideration for the promise and the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution. The doctrine of *promissory estoppel* would be attracted in such a case, because, on the facts, *equity* would require that the Government should be held bound by the promise made by it. When the Government is able to show that *public interest* would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest *vis-a-vis* the position of the one, who has altered his position, and it is the Court, which has the duty to determine which way



the equity lies. It would, however, not be enough for the Government merely to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. If the Government wants to resist the liability, it will have to disclose to the court what are the facts and circumstances on account of which the Government claims to be exempted from the liability and it would be for the court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability; the Government would have to show what precisely is the changed policy and also its reason and justification so that the court can judge for itself which way the public interest lies and what the equity of the case demands. The court would not act on the mere *ipse dixit* of the Government, for, the Government cannot be the judge of its own cause and it is the court, which has to decide and not the Government, whether the Government should be held exempt from liability. This is, as Bhagawati, J., in **Motilal Padampat Sugar Mills Co. Ltd.** (supra), observes, "*the essence of the rule of law*".



183. Elaborately dealing with the various facets of the decision in **Motilal Padampat Sugar Mills Co. Ltd.** (supra), a two-Judge Bench in (supra)), has pointed out that the Court, in **Motilal Padampat Sugar Mills Co. Ltd.** (supra), has reiterated the two well-known preconditions for the operation of the doctrine, namely, that (1) *a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee ; and that (2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.*

184. The Court, in **Nestle India Ltd.** (supra), also pointed out the limitations placed on the doctrine laid down in **Motilal Padampat Sugar Mills Co. Ltd.** (supra), namely, that (1) The doctrine of promissory estoppel, being an equitable doctrine, must yield, when the equity so requires, means that the doctrine would yield only if the court is satisfied, on proper and adequate materials placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise, but should be free to act unfettered by it : and that (2) No representation can be enforced, which is prohibited by law, means that if the person or authority making the representation or promise has the power to

carry out the promise, then, subject to the preconditions and the two limitations indicated hereinbefore, the doctrine must be applied.


185. Making the ambit of the doctrine explicit, observed the Court in **Nestle India Ltd.** (supra), *"....Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax."*

186. What emerges from the above discussion is that when the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute; but if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax.

187. It may, now, be noted that it was in ***Jit Ram Shiv Kumar v. State of Haryana [1980] 3 SCR 689***, that a two-Judge Bench took the view that the plea of estoppel is not available against the Government in exercise of its *legislative or statutory functions*.

188. *Jit Ram Shiv Kumar* (supra), is, of course, a case in which the representation was made by a person, who had no authority to make the representation. The note of disagreement, which was so struck in ***Jit Ram Shiv Kumar*** (supra), from the one, which the three-Judge Bench in ***Motilal Padampat Sugar Mills Co. Ltd.*** (supra), had propounded, was formally disapproved by a Bench of three Judges in ***Union of India v. Godfrey Philips India Ltd.*** reported in ***[1986] 158 ITR 574 (SC)***, and the law, which was laid down in ***Motilal Padampat Sugar Mills Co. Ltd.*** (supra), was reaffirmed in the following words:

"12. *There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of the executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. We must concede*




that the subsequent decision of this Court in **Jit Ram Shiv Kumar v. State of Haryana [1980] 3 SCR 689**, takes a slightly different view and holds that the doctrine of promissory estoppel is not available against the exercise of the executive function of the State and the State cannot be prevented from exercising its functions under the law. This decision also expresses its disagreement with the observations made in **Motilal Sugar Mills case [1979] 118 ITR 326 (SC)**, that the doctrine of the promissory estoppel cannot be defeated by invoking the defence of executive necessity, suggesting by necessary implication that the doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel. We find it difficult to understand how a Bench of two Judges in **Jit Ram's case [1980] 3 SCR 689**, could possibly overturn or disagree with what was said by another Bench of two Judges in **Motilal Sugar Mills' case [1979] 118 ITR 326 (SC)**. If the Bench of two Judges in **Jit Ram's case [1980] 3 SCR 689**, found themselves unable to agree with the law laid down in **Motilal Sugar Mills' case [1979] 118 ITR 326 (SC)**, they could have referred **Jit Ram's case [1980] 3 SCR 689**, to a larger Bench, but we do

not think it was right on their part to express their disagreement with the enunciation of the law by a co-ordinate Bench of the same court in **Motilal Sugar Mills' case [1979] 118 ITR 326 (SC)** .

13. We have carefully considered both the decisions in **Motilal Sugar Mills' case [1979] 118 ITR 326 (SC)**, and **Jit Ram case [1980] 3 SCR 689**, and we are clearly of the view of that what has been laid down in **Motilal Sugar Mills' case [1979] 118 ITR 326 (SC)**, represent the correct law in regard to the doctrine of promissory estoppel and we express our disagreement with the observations in **Jit Ram's case [1980] 3 SCR 689**, to the extent that they conflict with the statement of the law in **Motilal Sugar Mills' case [1979] 118 ITR 326 (SC)**, and introduce reservation cutting down the full width and amplitude of the propositions of law laid down in that case."

189. The limitations on the doctrine of promissory estoppel delineated in **Motilal Padampat Sugar Mills Co. Ltd.** (supra), were also reaffirmed in **Godfrey Philips India Ltd.** (supra), when the Court said, "Of course we must make it clear, and that is also laid down in **Motilal Sugar Mills' case (supra)**, that there can




be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise, which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires ; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with

fully in **Motilal Sugar Mills'** case (*supra*), and we find ourselves wholly in agreement with what has been said in that decision on this point."

190. The principles, governing the application of *promissory estoppel* against the Government, flowing from the decision in **Godfrey Philips India Ltd.** (*supra*), are that if the Government possesses a power, it is bound to wield that power to enforce its promise, the limitation on the enforcement of the promise being when the statute prohibits the exercise of powers necessary for carrying out the representation made by the Government or when the overriding public interest permits the Government not keep itself within the bounds of the promise made by it. In short, as long as, by asking the Government to keep to its promise, the court does not force the Government to act contrary to law or against supervening public interest, the court will not be doing anything wrong.

191. Closely following the decision in **Godfrey Philips India Ltd.** (*supra*), a two-Judge Bench of the Supreme Court, in **Pournami Oil Mills v. State of Kerala** reported in [1987] 165 ITR 57 (SC), had the occasion to deal with the doctrine of *promissory estoppel*.

192. What emerges from the decision in **Pournami Oil Mills** (*supra*), is that when the



Government makes an announcement promising to grant exemption from sales tax if specified industries are set up at specified place(s) within a specified date without, however, bringing out corresponding notification granting exemption in terms of the relevant statute, the notification, which makes no reference to the provisions of the relevant statute, while making the announcement, would still be treated as a notification under the relevant provisions of the statute and the doctrine of *promissory estoppel* would force the Government not to deny the incentive of exemption from payment of sales tax promised by it provided, of course, that the other conditions for application of the doctrine exist. One may also profitably refer to the decision in **Assistant Commissioner of Commercial Taxes (Asst.) v. Dharmendra Trading Company** reported in **[1988] 172 ITR 395 (SC)**.


193. Reiterating broadly the above aspects of the doctrine of *promissory estoppel*, the Supreme Court clarified in **Pine Chemicals 1993 (67) ELT 25 (SC)** (See at page 441 of [1992] 85 STC), by observing as follows:

"It is well-settled that if power to do an act or pass an order can be traced to an enabling statutory provision, then

even if that provision is not specifically referred to, the act or order shall be deemed to have been done or made under the enabling provision.”

194. The decision of the three-Judge Bench in ***Pine Chemicals*** (supra), too, makes it clear that when an order granting exemption or reduction on payment of sales tax can be referred to an enabling provision in the relevant statute, the order granting exemption shall be deemed to have been one made under the enabling provisions of the relevant statute.


195. What emerges from the above discussion, as a whole, is that if the representation made by the Government is not barred under any law or if the same is not against larger public interest, the Government will be bound by the representation that it has made if a person, acting on the representations made by the Government, has altered his position to his detriment. In such a case, it will be no defence for the Government to say that no notification, in terms of the relevant statute, having been brought out to give effect to the representations made by the Government, the Government is not bound by the promise. In fact, in a case, wherein doctrine of *promissory estoppel* is applicable and Court can force the Government to carry out the representations that it had made. Any



notification, issued under the relevant statute, which runs contrary to the Government's representation, may be interfered with. A mere claim by the Government that larger public interest permits the Government not to abide by its representation will not be enough to free the Government from the commitments that it had made, for, the Government cannot be the judge of its own cause and the Government would have to lay bare all the facts and circumstances, which had induced the Government not to carry out the representation that it has made, and if, on balancing between the two competing *equities*, that is, the commitment made to the promisee, on the one hand, and the public interest, on the other, the court finds that the public interest has the overriding effect, the promise would not be enforced, for, the doctrine of *promissory estoppel*, being an *equitable relief*, must yield, when so required.


196. The decision in *Kasinka Trading (supra)*, which the respondents and also the learned single Judge have heavily relied upon, now, needs to be dealt with.

197. In *Kasinka Trading (supra)*, the Supreme Court was required to consider the question as to whether the notification issued under Section 25 of the Customs Act, 1962, granting complete exemption from payment of



customs duty to PVC resin imported into India by manufacturers of certain products requiring the said resin as one of the raw materials, which was issued in public interest and which had stated that the exemption would remain in force up to March 31,1981, could be withdrawn before the expiry of the said period by a fresh notification issued by the Government in exercise of the very same power under Section 25 of the Customs Act. The Supreme Court took the view that while issuing the notification, in question, *no promise can be said to have been held out or any representation made to the importers, in general, on the basis of which they could insist, on the strength of the doctrine of promissory estoppel, that the customs duty exemption granted earlier by the first notification could not be reduced by the second one and since the said notification was issued in public interest, it could be withdrawn in public interest even before the time fixed therein for its operation.*


198. It is of immense importance to note that in ***Kasinka Trading*** (supra), the Court found that the so-called exemption notification was actually designed to offset the excess price, which the local entrepreneurs were required to pay for importing PVC resin at a time, when the difference between the indigenous product and the



imported product was substantial, for, no importer could have been expected to import PVC resins after paying duty and incur losses. The said notification was, therefore, according to the Supreme Court, issued with a view to offsetting the losses to the extent possible. The said notification, in the view of the Supreme Court, was not issued as a potential source of extra profit for the importer. In fact, the specific finding of the Court in ***Kasinka Trading*** (supra), was that *the exemption notification did not, in reality, hold out to the appellants any enforceable promise.*

199. Coupled with the above, the specific finding, recorded in ***Kasinka Trading*** (supra), was that the Government had presented sufficient materials before the Court to show that it was, in the larger public interest, that the exemption be withdrawn. *It was, thus, on the basis of twin factors, namely, that there was no promise held out by the notification, in question, and also that larger public interest justified the withdrawal of exemption that the decision in ***Kasinka Trading*** (supra), was rendered.*

200. The decision, in ***Shrijee Sales Corporation v. Union of India***, reported in **1997 (89) ELT 452 (SC)**, relied upon by respondents, is a case,



wherein the correctness of the decision in **Kasinka Trading** (supra), came to be re-examined by a Bench of three Judges of the Supreme Court and the decision reached in **Kasinka Trading** (supra), came to be affirmed therein. In **Shrijee Sales Corporation** (supra), too, the specific finding of the Court was that *"there is a supervening public interest and hence it should not be mandatory for the Government to give a notice before withdrawing the exemption"* and it was, in these circumstances, that the Court, in **Shrijee Sales Corporation** (supra), declared that the decision in **Kasinka Trading** (supra), has been correctly reached. In **Shrijee Sales Corporation** (supra), the Supreme Court has reiterated its earlier decision that in case there is supervening public equity, the Government would be allowed to change its stand; but the Court must satisfy itself that such a public interest exists. The three-Judge Bench in **Shrijee Sales Corporation** (supra), approved the position of law propounded in **Motilal Padampat Sugar Mills Co.** (supra), to the effect that *"it is only if the court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that*


the court would refuse to enforce the promise against the Government."

201. What crystallizes from the above discussions is that **Kasinka Trading** (supra) is a case involving application of the doctrine of *promissory estoppel*, wherein the Supreme Court, apart from laying down as to why the facts of the case did not invite the application of the doctrine of *promissory estoppel*, has also made it clear that the Government may be allowed to resile from his promise in supervening public interest, that is to say, when there is clash of *equity* and it is the dominant equity, which would be allowed to prevail.

202. The case at hand is not at all a case involving application of the doctrine of *promissory estoppel*. It is not in *equity* that the Authority has cancelled the allotment, in question. The respondents seek to submit that the cancellation is in exercise of their statutory power. When resort to statutory powers is taken to contend that the power is available to cancel the allotment, in the present case, the question of withdrawing or resiling from a *promise* made does not arise at all. Hence, the case of **Kasinka Trading** (supra) was not at all applicable to the facts of the present case.

203. It is of paramount importance to note that

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while *cancellation* amounts to annulling what had existed or to abolish what had prevailed or to obliterate what was present or to destroy what had survived; *withdrawal* implies drawing back, taking back and to move away. Thus, the expression '*cancellation*' is miles away from the expression '*withdrawal*'.

204. In *Kasinka Trading* (supra) the Court, quoted, Prof. S. A. De Smith's observations in his celebrated treatise "Judicial Review of Administrative Action", 3rd Edn. at p. 279, which the respondents rely upon, read thus, "*Contracts and Covenants entered into by the Crown are not to be construed as being subject to implied terms that would exclude the exercise of general discretionary powers for the public good : On the contrary they are to be construed as incorporating an implied term that such powers remain exercisable. This is broadly true of other public authorities also. But the status and functions of the Crown in this regard are of a higher order. The Crown cannot be allowed to tie its hands completely by prior undertakings is as clear as the proposition that the Courts cannot allow the Crown to evade compliance with ostensibly binding obligations whenever it thinks fit : If a public authority lawfully repudiates or departs from the terms of a binding contract in order to have been bound in law by an ostensibly binding*

contract because the undertaking would improperly fetter its general discretionary powers the other party to the agreement has no right whatsoever to damages or compensation under the general law, no matter how serious the damages that party may have suffered."

205. So far as Prof. S. A. De. Smith's comments on "Judicial Review of Administrative Action", which is quoted in **Kasinka Trading** (supra) and relied upon by the respondents, are concerned, we may point out that comments of Prof. S.A. De Smith on the question of judicial review of administrative action" in a case of contract entered into by the State is concerned, Prof. S. A. De. Smith's comments do not deal with the statutory powers of the State or any of its instrumentalities. What the observations, made by Prof. S.A. De. Smith, convey is that the discretion is available to the State or its instrumentality to resile from its contractual obligation. The observations of Prof. S.A. De. Smith cannot be made applicable to a case, where the statute did not give discretion to the State and its instrumentalities to opt out of, or resile from, its promise, particularly in a case of present nature, wherein it is not the contention of the public authority that it is departing from a binding contract in the larger public interest; rather, the contention of the Authority concerned is that it is, indeed,

empowered, under the relevant legislation, to exercise the power of cancellation of the allotment, which it had made.

CONCLUSION:

206. What emerges from the above discussion is that since the object of BIADA Act is to develop *industry*, it follows that the object of the BIADA Act is enacted to attract and invite *investment*. If the BIADA Act is read and interpreted in such a manner that it would dissuade *investment*, the very purpose/object of the BIADA Act would stand defeated. Such a wholly unrealistic and unreasonable approach of the interpretation of the statute, in question, needs to be eschewed.

207. In the result and for the reasons discussed above, this appeal succeeds. The impugned order, dated 24.01.2014, passed in CWJC No. 4532 of 2009, is hereby set aside. We also set aside and quash the order, dated 04.04.2009, which stood impugned in CWJC No. 4532 of 2014. The respondents are hereby accordingly directed to take necessary consequential steps, which may be warranted as a result of the fact that the order, dated 04.04.2009, which stood impugned in CWJC No. 4532 of 2009, has, now, been set aside and quashed.

208. Before parting with this appeal, we hasten to make it clear that considering the fact that the writ



petitioner-appellant had offered to wait for utilization of the plot of land, which stood allotted to the writ petitioner-appellant, until the time the IIT, Patna, is built at its allotted site, we leave it to the parties concerned to work out a satisfactory settlement in terms of the appellant's offer if they so choose.

209. No order as to costs.

(I. A. Ansari, J.)

Anjana Mishra, J.: I agree.

(Anjana Mishra, J.)

Prabhakar Anand/AFR

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