

Before M. M. Kumar & Ajay Kumar Mittal, JJ.
**DELHI ASSAM ROADWAYS CORPORATION
LTD.,—Petitioner**

versus

**THE HARYANA URBAN DEVELOPMENT AUTHORITY AND
OTHERS,—Respondents**

C.W.P. No. 7790 of 2007

13th March, 2008

Constitution of India, 1950—Art. 226—Haryana Urban Development Act, 1977—Ss. 2, 3 and 15—Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978—HUDA issuing advertisement for allotment of freehold institutional plots of various sizes for private/non-Govt. and Govt. organizations—Allotment of more number of plots in category of private/non-Govt. organization than advertized—No pre-determined criteria published as per provisions of S.15 of 1977 Act nor any terms and conditions made known to general public—Selection Committee failing to advert to comparative merits of applicants—Respondents adopting pick and choose method—In absence of any declared pre-determined criteria element of arbitrariness has crept in resulting in flagrant violation of Art.14 and statutory provisions of S.15—Petitions allowed while granting Govt. 2 options to dispose of plots either by open auction or by allotment after complying with certain directions imposed.

(New India Public School versus HUDA, AIR 1996 SC 3458, followed)

Held, that no pre-determined criteria was published before the application could be placed before the Selection Committee. It is further clear that respondent No. 1 HUDA was party respondent in the case of New India Public School versus HUDA, AIR 1996 SC 3458 before this Court as well as before the Hon'ble Supreme Court. It is, therefore, fully aware about the law laid down by their Lordships of Hon'ble the Supreme Court. It was incumbent and obligatory on its part to either publish the pre-determined criteria of allotment as per the provisions of Section 15 of

the Act read with Regulations 3, 4 and 5 of the Regulations if the allotment was to be made by any other method, than public auction. Otherwise, the safe method in the larger public interest and in the interest of HUDA-respondent No. 1 would be to resort to public auction as has been held by Hon'ble the Supreme Court.

(Paras 30)

Further held, that no estoppel or principle in the nature of estoppel would apply to the petitioners merely because the petitioners have participated in the selection process for allotment of plots. There is flagrant violation of statutory provisions of Section 15 of the Act especially when 12 years ago the petitioners were told in clear terms by Hon'ble the Supreme Court that before making allotment of plots by interviewing candidate it is obligatory on its part to publish a criteria or any such criteria could have been published by the Government by framing rules.

(Paras 36)

Rajiv Atma Ram, Senior Advocate, with H. R. Mittal, Advocate, for the petitioner in C.W.P. No. 7790 of 2007.

Arun Palli, Senior Advocate, with Tushar Sharma and Jai Bhagwan, Advocate, for the petitioner in C.W.P. No. 2748 of 2007.

R. S. Cheema, Senior Advocate, with Jasdev Singh, Advocate, Amicus Curaie,

M. L. Sarin, Senior Advocate, with Hemant Sarin, Advocate, for HUDA in C.W.P. No. 2748 of 2007.

Ajay Nara, Advocate, for HUDA.

Narender Hooda, Advocate, for respondent Nos. 2, 8 and 15.

Harbhagwan Singh, Senior Advocate, with J. P. Bhatti, Advocate, for respondent Nos. 3 and 22.

Vikas Bahl, Advocate, for respondent No. 5.

Ashim Aggarwal, Advocate, for respondent No. 6.

Tribhuwan Dahiya, Advocate, for respondent No. 7 (in C.W.P. Nos. 7790, 8974 and 11339 of 2007)

Amit Khanna, Advocate, for respondent No. 10.

Sandeep K. Sharma, Advocate, for respondent No. 11 in C.W.P. No. 7790 of 2007.

- Arun Jain, Advocate, for respondent No. 13.
R. K. Malik, Advocate, for respondent No. 14.
Ajay Kaushik, Advocate, for respondent No. 16.
Akshay Bhan, Advocate, for respondent No. 18.
Ajay Tiwari, Advocate, for respondent No. 19.
Sumeet Goel, Advocate, for respondent No. 20.
Sapan Dhir, Advocate, for respondent No. 21.
Vivek Singal, Advocate, for respondent No. 23.

M. M. KUMAR, J.

(1) If settled principles of law are flagrantly violated by those who are entrusted with the duty to apply those principles then gullible public is bound to walk with the impression that the system moves only on extraneous and not on relevant one. When the law declared under Article 141 of the Constitution becomes binding on each and every individual then at least it is safe to presume that it is known to the parties. When those filled with greed gain confidence setting in motion the moves that the settled principle of law could be shelved then such people acquire guts and confidence to defeat such principles. These set of petitions filed under Articles 226 of the Constitution, thus, reveal thinking of such persons who perhaps have hoped that no one is likely to know about their acts and they could execute their operation without being caught. But vigilant petitioners have come forward exposing their designs and unholy intentions to shelve settled law.

(2) This order shall dispose of C.W.P. Nos. 2748, 7790, 8974, 9962, 11339 and 11501 of 2007. It is appropriate to mention that another writ petition being C.W.P. No. 17138 of 2006 (M/s Sigma Corporation India Ltd. *versus* The Haryana Urban Development Authority and others) was also filed involving similar issues. However, the said writ petition has been sought to be withdrawn by filing Civil Misc. No. 15033 of 2007 in C.W.P. 17138 of 2006, which we permitted,—*vide* order dated 3rd October, 2007. At the same time, Civil Misc. No. 16953 of 2007 in C.W.P. No. 16953 of 2007 in C.W.P. No. 11501 of 2007 (Uniway Laboratories Pvt. Ltd. *versus* The Haryana Urban Development Authority and others) was filed by the petitioner of the said petition seeking permission of this Court to withdraw from the writ petition. While allowing the said application,—*vide* our order dated 10th October, 2007, we also directed that C.W.P. No. 11501 of 2007 be treated as ‘Court on its own motion’

in terms of order dated 6th May, 1999, passed in C.W.P. No. 5645 of 1995 (Kulbir Singh *versus* State of Punjab). Mr. R.S. Cheema, Senior Advocate, has readily accepted to act as amicus curiae to assist the Court.

(3) For the sake of brevity, facts are being mentioned from C.W.P. No. 7790 of 2007. This petition challenges the auction of Haryana Urban Development Authority (for brevity, 'the HUDA') in allotting Corporate Offices plots to the private respondents and prays for issuance of direction to HUDA to consider and allot the petitioner one half acre plot in Sector 44, Gurgaon, in terms of the advertisement/brochure. The petitioner is a company having its Head Office at Hisar. It is claimed that the financial position of the petitioner-company is very sound and it has customers all over India, which includes Government bodies, leading Public Sector Undertakings and leading Private Sector Companies etc. The primary objective of the petitioner-company is to carry business of transportation of goods carriers by all means of transport viz. land, sea, inland waterways and air.

(4) In January/February 2006, HUDA issued an advertisement in various National newspapers for allotment of free hold institutional plots of various sizes for Corporate Offices, Research and Development Centres, Corporate Towers and Staff Training Institutes in Sector 18, 32 and 44, Gurgaon and Sector 20-A and 20-B, Faridabad. The booking commenced from 10th February, 2006 and closed on 10th March, 2006. As per brochure Annexure P-3, following is the details of plots, which were offered for allotment :—

GURGAON

| Category of Plots Size in mtrs. | No. of Plots for Govt. Organizations | No. of Plots for Private/ Non-Govt. Organizations |
|------------------------------------|--|--|
| SECTOR-18 | | |
| 1 acre (4000 sqm.) | 1 | - |
| 1/2 acre (2340 sqm.) | - | 1 |

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| Category of Plots Size in mtrs. | No. of Plots for Govt. Organizations | No. of Plots for Private/ Non-Govt. Organizations |
|------------------------------------|--|--|
|------------------------------------|--|--|

SECTOR-32

| | | |
|------------------|---|---|
| 1/2 ACRE (37X60) | 4 | 4 |
|------------------|---|---|

SECTOR-44

| | | |
|------------------|---|---|
| 4 acre (140x120) | - | 1 |
|------------------|---|---|

| | | |
|-----------------|---|---|
| 2 acre (80x100) | 1 | 2 |
|-----------------|---|---|

| | | |
|----------------|---|---|
| 1 acre (50x90) | 1 | - |
|----------------|---|---|

| | | |
|------------------|----|----|
| 1/2 acre (35x60) | 13 | 13 |
|------------------|----|----|

| | | |
|------------------|---|---|
| 1/4 acre (20x50) | 1 | 1 |
|------------------|---|---|

| | | |
|------------------|---|---|
| 2 Bays (13x41.5) | 7 | - |
|------------------|---|---|

| | | |
|------------------|---|---|
| 4 Bays (26x41.5) | 7 | - |
|------------------|---|---|

FARIDABAD

| Category of Plots Size in mtrs. | No. of Plots for Govt. Organizations | No. of Plots for Private/ Non-Govt. Organizations |
|------------------------------------|--|--|
|------------------------------------|--|--|

SECTOR-20A

| | | |
|-------------------|---|---|
| 2 acre (98x75x80) | 6 | 6 |
|-------------------|---|---|

| | | |
|----------------|----|----|
| 1 acre (50x80) | 10 | 10 |
|----------------|----|----|

| | | |
|------------------|---|---|
| 1/2 acre (30x60) | 2 | 2 |
|------------------|---|---|

| | | |
|------------------|----|----|
| 1/4 acre (20x40) | 16 | 16 |
|------------------|----|----|

SECTOR-20B

| | | |
|----------------------|---|---|
| 2 acre (8000 sqm.) | 6 | 6 |
| 1 acre (50x80) | 8 | 8 |
| 1/2 acre (2000 sqm.) | 1 | 1 |
| 1/4 acre (20x50) | 5 | 5 |

(5) The brochure further prescribed terms and conditions under the headings of Eligibility, Permissible Uses, Procedure for Allotment and Mode of Payment, the relevant extract of which reads as under :—

“ELIGIBILITY

The following are eligible to apply for institutional plots.

- (A) Government Organisation : State and Centre Government Departments, Boards and Corporations and Public Sector Undertakings of the State and Central Government.
- (B) Non Government/Private Companies/Organisations.

PERMISSIBLE USES

Only following uses shall be permitted in the buildings to be constructed in the institutional plots.

- (1) Corporate Offices.
- (2) Research and Development Centres (with backup hospital facilities.)
- (3) Staff-Education and Training Centres.
- (4) Offices of Professional Groups/Associations/Societies not engaged in Commercial/Manufacturing activities.
- (5) Other institutional Uses.

10% of the floor areas of the buildings can be used for a purpose ancillary to any of the above uses with the approval of Chief Administrator.

PROCEDURE FOR ALLOTMENT

The applicant will apply on the prescribed form. The applications shall be scrutinised/applicants interviewed by a Standing Screening Committee, constituted for the purpose.

XXX XXX XXX XXX
 XXX
XXX XXX XXX XXX"

(6) The petitioner-company applied for allotment of ½ acre plot in Sector 44, Gurgaon in the prescribed application form along with earnest money of Rs. 26,25,000 (P-4). The petitioner-company also submitted a detailed project report along with the application form (P-5). On 5th June, 2006, the Estate Officer, HUDA, Gurgaon, sent a letter to the Chairman and Managing Director of the petitioner-company for appearing before the Interview Committee on 13th June, 2006 at 5.00 p.m. in the office of the Administrator, HUDA, Gurgaon (P-6). On 13th June, 2006, representative of the petitioner-company appeared for interview, which allegedly lasts only for two minutes. As required by letter dated 5th June, 2006, required documents/information were furnished along with letter dated 12th June, 2006 (P-7). Nothing was heard from HUDA and on inquiries having been made by the petitioner-company it came to know that allotments had already been made in favour of the private respondents and the allotments were also challenged in this Court in C.W.P. No. 17138 of 2006. On 28th October, 2006, the petitioner-company made an application under the Right to Information Act, 2005, for supply of information regarding allotments in question (P-26). When information was not supplied within the stipulated period of 30 days, a reminder was sent on 15th January, 2007 (P-27), which was followed by a complaint/representation dated 14th March, 2007 made to the Central Information Commission (P-28). On 7th May, 2007, the HUDA supplied copy of the recommendations of the Interview Committee in respect of successful applicants (P-29 and P-30). The petitioner-company has prepared a comparative chart giving details of respondent Nos. 2 to 23 in respect of their financial status, turnover of the Company, activities of the Company, profit and employees working etc. etc. The aforementioned

chart since gives a bird's eye view of the selected allottees of corporate plots, deserves to be noticed, which read thus :

| Sr. No. | Name of the Company | Address | Date of incorporation | Financial Status | | | | Reserves & Surplus | Long Term Borrowings (> 1 year) | Nature of Project | Justification of land utilization |
|---------|--|--|-----------------------|------------------------|---------------------------|----------------------------|----------------------------|---------------------------|---------------------------------|--------------------|-----------------------------------|
| | | | | Authorised Capital | Issued Capital | Subscribed Capital | Paid up Capital | | | | |
| 2 | Messrs Delicious Marketing Private Limited | 1204 Sector 4 Pocket A, Vasant Kunj, Delhi-110064 | 22.01.1998 | 1 Lacs | 1 Lacs | 1 Lacs | 1 Lacs | Not available | Not available | Not available | Not available |
| 3 | Messrs Minarch Overseas Private Limited | G-7, Ashoka Plaza Building, 12A/14, WEA Karol Bagh, New Delhi-110005 | 25.11.1991 | 5 Lacs | Not available | Not available | 2.70 Lacs | Nil as on 31.3.2005 | Not available | Not available | Not available |
| 4 | Messrs Matrix Back Office Services Private Limited | 7 Khullar Farm, Mandi Road, Mehrauli, New Delhi-110030 | 9.9.2005 | 1 Lacs | Not available | Not available | Not available | Not available | Not available | Not available | Not available |
| 5 | Messrs IST Limited | A23, New Office Complex, Defence Colony, New Delhi-110024 | 8.9.1976 | 1000 Lacs | 60 Lacs As per BS 2004 | 583.20 Lacs As per BS 2004 | 583.20 Lacs As per BS 2004 | 60 Lacs As per BS 2004 | Nil | IT | Not available |
| 6 | Messrs Creative Looms and Crafts Private Limited | 30A Hauz Khas Village New Delhi-110024 | 30.07.1983 | 21 Lacs As per BS 2006 | 19.81 Lacs As per BS 2006 | 19.81 Lacs As per BS 2006 | 19.81 Lacs As per BS 2006 | 32.38 Lacs As per BS 2006 | Nil | Training Institute | Not available |
| 7 | Messrs PD Education Private Limited | 12, Sant Nagar, East of Kailash, New Delhi-110065 | 9.3.2006 | 1 Lacs | 1 Lacs | 1 Lacs | 1 Lacs | Not available | Not available | Not available | Not available |

| Sr. No. | Name of the Company | Address | Date of incorporation | Financial Status | | | | Reserves & Surplus | Long Term Borrowings (> 1 year) | Nature of Project | Justification of land utilization |
|---------|--------------------------------------|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------|---------------------------------|------------------------------|-----------------------------------|
| | | | | Authorised Capital | Issued Capital | Subscribed Capital | Paid up Capital | | | | |
| 8 | Messrs BLM Software Private Limited | B-62 N.D.S.E. Part I, New Delhi-110064 | 27.10.2004 | 2 Lacs As per BS 2005 | 1 Lacs As per BS 2005 | 1 Lacs As per BS 2005 | 1 Lacs As per BS 2005 | Nil | Not available | Not available | Not available |
| 9 | Messrs Holly Reators Private Limited | B.M.S. Business Centre, 10 Plaza Cinema Building, Conn. Place, New Delhi | 23.03.2005 | 1 Lacs | 1 Lacs | 1 Lacs | 1 Lacs | Not available | Not available | Real Estate Developers | Not available |
| 10 | Messrs Vision Guard Private Limited | 5 Mathura Road, Jangpura A, New Delhi-110014 | 28.06.1996 | 25 Lacs | 25 Lacs | 25 Lacs | 25 Lacs | 37.74 Lacs As on 31.3.2004 | Not available | Not available | Not available |
| 11 | Messrs PSU Finance Private Limited | 301-302, Surya Tower, 31, DDA Community Centre, Paschim Vihar, New Delhi-63 | 8.9.1976 | 100 Lacs | 61.69 Lacs | 61.69 Lacs | 61.69 Lacs | 2.33 Lacs as on 31.3.2005 | Nil available | Not available | Not available |
| 12 | Messrs Cyber Approach | B-36, Sector 31, Noida | Not available | Not available | Not available | Not available | Not available | Not available | Not available | Not available | Not available |
| 13 | Messrs MB International | SCO 853, NAC, Kalka Road, Mani Majra, Chandigarh | 25.4.2001 | 100 Lacs | 25.25 Lacs | 25.25 Lacs | 25.25 Lacs | -37.66 | Nil | Garment sourcing and trading | Not available |

| Sr. No. | Name of the Company | Address | Date of incorporation | Financial Status | | | | Reserves & Surplus | Long Term Borrowings (> 1 year) | Nature of Project | Justification of land utilization |
|---------|--|--|-----------------------|--------------------|----------------|--------------------|-----------------|--------------------|---------------------------------|-----------------------------------|-----------------------------------|
| | | | | Authorised Capital | Issued Capital | Subscribed Capital | Paid up Capital | | | | |
| 14 | Messrs Land Mark Infonet (P) Limited | A-11 Basement C.R. Park, New Delhi-110019 | 5.12.2003 | 1 Lacs | 1 Lacs | 1 Lacs | 1 Lacs | Not available | Not available | Not available | Not available |
| 15 | Messrs New Style Infor System, (P) Limited | 79-A, Kamla Nagar, New Delhi-110007 | 20.4.2005 | 25 Lacs | 2 Lacs | 2 Lacs | 2 Lacs | Not available | Not available | Training Institute for IT and BPO | Not available |
| 16 | Messrs Tejaswini Implex (P) Limited | 751, Kundewalan Street, Ajmeri Gate, Delhi-110006 | 5.4.2005 | 5 Lacs | Not available | Not available | 1 Lacs | Not available | Not available | Steel Venture | Not available |
| 17 | Messrs Acme Telepower Limited | Plot No. 48 Sector 5, IMT Manesar, Gurgaon (Haryana) | 14.1.2003 | 500 Lacs | Not available | Not available | 200 Lacs | Not available | Not available | Not available | Not available |
| 18 | Messrs BSA Realtors Private Limited | 511, Somdutt Chambers II, Bhikaji Cama Place, New Delhi-110066 | 10.3.2006 | 25 Lacs | Not available | Not available | Not available | Not available | Not available | Not available | Not available |
| 19 | Messrs Petro IT (P) Limited | 55, Sultanpur Farms, New Delhi-110020 | 5.3.2004 | 100 Lacs | 80 Lacs | 80 Lacs | 80 Lacs | Not available | Not available | Not available | Not available |

(7) A perusal of the chart shows that respondent No. 7, M/s PD Education Private Limited has been incorporated only on 9th March, 2006, which is after issuance of advertisement and a day before the last date of filing the application. The financial status of respondent Nos. 2, 4, 7, 8, 9, 12, 14, 15, 22 and 23 is extremely doubtful, inasmuch as, the issued and subscribed capital is either nil or too meagre. The petitioner-company has alleged that the State largesse has been distributed without complying with the minimum standards and principles envisaged by Article 14 of the Constitution. As a result, the allotments have been made to the respondent property dealers, defunct, non-functional and loss making companies. It has also been alleged that no criteria before or after the allotment of plots in question has been formulated nor any comparative analysis of the applications was made. It is asserted that no reason for selecting or rejecting an application has been assigned by the Selection Committee. The petitioner-company has also placed on record various documents pertaining to private respondents as Annexures P-8 to P-24 to establish that the claim of the petitioner-company is meritorious than most of the private respondents. There are serious allegations levelled by the petitioner to the effect that allotments have been made to property dealers and in favour of defunct/ non-functional loss making companies ; no criteria was made for allotment of plots in question; comparative analysis of the applicants was not done ; no reasons for selecting or rejecting a company/applicant have been assigned by the Committee constituted for the purpose etc.

(8) The stand taken by the private respondents in their respective written statements is that the promoters of the Company or the Directors of the Company are otherwise financially sound and have share capital in other entities and private companies. Therefore, they have claimed that merely because there is low authorised capital or paid up capital in the name of the allottee companies would not be a circumstance which may constitute basis for concluding that the allottee companies are not qualified.

(9) Mr. R. S. Cheema, learned amicus curiae has pointed out that the institutional plots were sought to be allotted in Sectors 18, 32 and 44, Gurgaon and Sector 20A and 20B, Faridabad. The number of advertised plots do not tally with the number of plots allotted because allotments are more than the number of plots advertised. According to learned amicus curiae, the unacceptable explanation has been given that more plots were carved out after re-planning and adjustments.

(10) He has argued that the applications filed by the allottees do not disclose any of the objectives or permissible uses announced by the brochure. According to learned counsel number of allottees have either no or very meagre authorised capital or paid up capital. He has also pointed out that the Committee does not comprise any member from the Corporate World nor there is any Financial Expert. Another argument advanced by the learned amicus curiae is that there were 382 applicants and interviews were conducted for 371 applicants, which were spread over 7 days. It is, thus obvious that on an average 53 applicants were interviewed in one day. The recommendations made by the Selection Committee were formally approved by the officers of HUDA (R-1). He has further emphasised that the reply filed by the HUDA is very vague, inasmuch as, the stand taken is that sufficient time given to each applicant at the time of interview. According to the learned counsel in a matter of this nature, the respondent HUDA should have filed definite reply in order to overcome and remove any lurking doubt from the mind of the Court. He has then referred to the applications of each of the allottees. For example he referred to the application sent by respondent No. 7 and has submitted that the Company was only incorporated a day or two days before the closing date for submitting the application. The closing date was 10th March, 2006 whereas the Company was floated on 8th March, 2006. Similar lacunas have been pointed out from the applications of various respondents, which are Annexure P-8, P-9, P-10, P-11 and P-12. He has summed up by saying that from the allotments made to the private respondents a highly unconstitutional and woeful position has emerged which is very difficult for the respondents to defend. In respect of distribution of State largesse's, learned amicus curiae has placed reliance on various judgments of Hon'ble the Supreme Court in the cases of **M/s Kasturi Lal Lakshmi Reddy versus The State of Jammu & Kashmir, (1)** and **New India Public School versus HUDA, (2)**. He has also placed reliance on a Division Bench judgment of this Court in the case of **Munish Manufacturing Corporation, Ludhiana versus State of Punjab, (3)**.

(11) Mr. Rajiv Atma Ram, learned senior counsel for the petitioner (in C.W.P. No. 7790 of 2007) has argued that the Selection Committee

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- (1) AIR 1980 S.C. 1992 (Paras 11 & 13)
 - (2) AIR 1996 S.C. 3458 (Paras 5 & 8)
 - (3) 2004 (2) P.L.R. 559

has no jurisdiction or authority to frame any criteria for allotment of corporate plots. According to the learned counsel, the mode of disposal of land can only be framed by HUDA or by the State of Haryana under Section 15 read with Sections 2 and 3 of the HUDAA Act, 1977. Learned counsel has maintained that the State is also empowered to make Rules under Section 53 of the Act and HUDA could also frame Regulations with previous approval of the State Government. He has placed firm reliance on paras 5 and 6 of the judgment of Hon'ble the Supreme Court in the case of **New India Public School** (*supra*) and submitted that in the absence of any criteria framed by the State Government or HUDA, no allotment could have been made by the Selection Committee by framing any criteria. He has also placed reliance on the judgment of Hon'ble the Supreme Court in the case of **Dr. Krushan Chandra Sahu versus State of Orissa**, (4) and argued that it is primary duty of the rule making authority to lay down the suitability criteria. According to the learned counsel, the principles are well settled by string of judgments on which reliance has been placed in **Dr. Krushan Chandra Sahu's** case (*supra*). In that regard he has placed reliance on paras 31, 32 and 33 of the judgment in support of his submission. Another argument raised by the learned counsel is that no comparative analysis of the allottees and non-allottees is available and there is wholesome violation of Article 14 of the Constitution and, thus, this Court could easily assume that the allotments of plots in question have been made on extraneous considerations. He has also pointed out that applicants in respect of one sector have been allotted plots in other sectors despite the fact that they did not apply in respect of plots in that sector. For the aforementioned purpose, learned counsel has placed reliance on the judgment of this Court in the case of **Munish Manufacturing Corporation** (*supra*).

(12) Mr. Arun Palli, learned senior counsel for the petitioner (in C.W.P. No. 2748 of 2007) has argued that it is now beyond dispute that the provisions of the Act, Rules and Regulations would apply to any type of disposal of land by HUDA. In that regard he has placed reliance on the judgment of Hon'ble the Supreme Court in **New India Public School's** case (*supra*). He has pointed out that in para 3 of its reply, HUDA has conceded that few guidelines (to which reference has been made in the succeeding para No. 15 at page 22) were kept in view. He has emphasised

(4) (1995) 6 S.C.C. 1

that respondent No. 17 has been incorporated a day earlier when the allotment was made, whereas respondent No. 18 was incorporated on the same day. Referring to the averments made in para 13, learned counsel has pointed out that foundation has been laid in the petition with regard to non-publication of pre-determined criteria, as required by the provisions of the Act, Rules and Regulations. He has maintained that the allotments made are *mala fide* and suffer from arbitrariness. Placing reliance on para 13 of a judgment of Hon'ble the Supreme Court in the case of **Jalandhar Improvement Trust versus Sampuran Singh (5)**, learned counsel has asserted that there cannot be any estoppel against the Statute. He has also placed reliance on para 30 of the judgment of Hon'ble the Supreme Court in the case of **I.T.C. Bhadrachalam Paper Boards versus Mandal Revenue Officer, A.P. (6)** and argued that the principle of promissory estoppel could be applied by keeping in view the distinction between an administrative act and an act done under a statute. According to the learned counsel, in cases where the subject is regulated by a legislative enactment then the Authorities have to act in accordance with that statute, particularly where the provisions are mandatory in nature and that if it is found that the act done by the Government is invalid and ineffective for non-compliance of mandatory requirement of law then it cannot be held that the rule of promissory estoppel or equitable estoppel would apply notwithstanding such non-compliance because accepting such a plea would amount to nullifying the mandatory requirements of law besides providing a licence to the Government or other authorities to act by ignoring binding provisions of law. He has further pointed out that the fact that two petitions were withdrawn itself is sufficient to show that the respondents have been prevailing upon such persons who are challenging the allotments.

(13) Mr. M. L. Sarin, learned senior counsel for respondent No. 1-HUDA (in C.W.P. No. 2748 of 2007), has argued that the principles of estoppel would be attracted to the facts of the present case because the petitioner has participated in the whole process of allotment of plots and having failed it has approached this Court, as has been pointed out in preliminary objection No. 1. In that regard he has placed reliance on the

(5) (1999) 3 S.C.C. 494

(6) (1996) 6 S.C.C. 634

judgments of Hon'ble the Supreme Court in the cases of **Madan Lal versus State of J&K (7)**, **Munindra Kumar versus Rajiv Govil, (8)** and **University of Cochin versus N. S. Kanjoorjamma, (9)**. According to learned counsel even refund has been taken by the petitioner as is evident from refund order dated 22nd September, 2006 (P-7). He has further submitted that this Court is not to act as an appellate forum by examining *inter se* merit of the candidates who have been selected and who have been ignored. Learned counsel has pointed out that in para 5 of the writ petition, the emphasis of the petitioner is that this Court should enter into the *inter se* merit of the candidates and since the petitioner is more meritorious it should have been preferred. He has maintained that if the Court starts examining the actual decision as against the decision making process then it would result into exercise of appellate power. In that regard reliance has been placed on para 9 of the judgment of Hon'ble the Supreme Court in the case of Madan Lal (*supra*). Learned counsel has maintained that the petitioner has not raised any dispute regarding price to be charged from the allottees and that the absence of criteria would not vitiate the allotments made in favour of the private respondents.

(14) His second submission is that challenge by the petitioner is selective as only 1/2 acre plots in Sector 44 have been made the subject matter of challenge. He has then submitted that there are no allegation of *mala fide* except some allegation made in para 13 of the petition regarding absence of pre-determined criteria. In that regard judgment of Hon'ble the Supreme Court in the case of New India Public School (*supra*), has been relied upon. Referring to the provisions of Section 15 of the Haryana Urban Development Authority Act, 1977 (for brevity, 'the Act') and Regulations 3 and 5 of the Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 (for brevity, 'the Regulations'), learned counsel has emphasised that under Regulation 3(c) of the Regulations, HUDA is well within its right to dispose of its land and buildings by way of sale or lease either by allotment or by auction, which may be by open bid or by inviting tenders. According to learned counsel, once respondent No. 1 has chosen the mode of disposal to be sale by allotment then only

(7) (1995) 3 S.C.C. 486

(8) J.T. 1991 (2) S.C. 537

(9) (1997) 4 S.C.C. 426

criteria required to be followed by the HUDA was to interview the candidates and select them on merit. He has placed reliance on para 7 of the judgment of Hon'ble the Supreme Court in the case of **K. Vinod Kumar versus S. Palanisamy (10)**. According to learned counsel, the HUDA has been entrusted with the task to find out the best suitable candidate. It has exercised that power *bona fide* as it was free to devise and adopt its own procedure subject to satisfying the test of reasonableness and fairness. He has drawn our attention to Regulation 5(3) of the Regulations which provides that the allotment can be on the basis of first come first serve or by draw of lots as may be determined by the authority. Learned counsel has maintained that in the case of **New India Public School (supra)**, on which heavy reliance has been placed by learned counsel for the petitioner, the whole controversy was with regard to the price whereas in the present case no dispute with regard to the price has been raised. He has urged that price of the plot is determined as has been declared in the brochure and in any case if this Court comes to the conclusion that the petitions are to be allowed then the Governmental Organisations may be spared. According to learned counsel, there is world of difference between the judgment of Hon'ble the Supreme Court in **New India Public School (supra)** and the facts of the present case, inasmuch as, in that case the directions were issued for determining the market value of the sites allotted as were prevailing in the year 1992. He has also referred to the Single Bench and Letters Patent Bench Judgments of this Court in the case of **Seven Seas Educational Society versus The Haryana Urban Development Authority (11)**.

(15) Addressing on merit, learned counsel has submitted that only M/s Sigma Corporation India Limited (C.W.P. No. 17138 of 2006) has approached this Court initially but all other petitioners have come forward much later, which would imply that they were satisfied about the fairness of the procedure adopted. He has drawn our attention to the averments made in para 4 of the preliminary objections by asserting that 382 applications were received for allotment of institutional plots in Sectors 18, 32 and 44, Gurgaon. The Committee after examining each application and individually interviewing each applicant made 54 recommendations for allotting such plots in favour of the private respondents and others. He asserted that out

(10) (2003) 10 S.C.C. 681

(11) 1993 (3) P.L.R. 735 (S.B.) & 1996 (2) P.L.R. 17 (D.B.)

of 382 applicants, a small number of disgruntled elements have questioned allotments and vest majority has accepted the same being in accordance with law. Commenting upon the antecedents of the petitioner learned counsel has stated that it has no factory in Haryana and there is nothing wrong if the Committee has ignored it on the ground that it has its enterprise elsewhere in Himachal Pradesh, Punjab or Uttar Pradesh. Learned counsel has maintained that HUDA is not a profit making agency and it works on no profit no loss basis. He has then referred to preliminary objection No. 3 where the constitution of Committee has been given, which comprises of (1) Administrator, HUDA, Gurgaon—Chairman ; (2) Representative of Deputy Commissioner, Gurgaon—Member ; (3) Estate Officer, HUDA, Gurgaon—Member-Secretary ; (4) General Manager, DIC, Gurgaon—Member; and (5) District Town Planner, Gurgaon—Member. He has made an attempt to persuade the Court by stating that there were 7 applicants in Government Organisation category for which interviews were held on 24th April, 2006. The constituted Committee made recommendations for allotment of plots to the successful applicants from Government Organisation and kept in mind the following factors/guidelines :—

- a. The profile of the company, its past tract record, proposed expansions plans etc. were closely assessed and scrutinized.
- b. The number of employees/workers working for the organization was assessed as well as the number of workers likely to work in the proposed corporate office.
- c. It was also assessed as to in future how many more workers/employees are likely to join company in view of their proposed expansion plans.
- d. Public sectors undertaking of the Govt. of India as well as the State Govt. have been encouraged to set up offices thereby fulfilling the objectives of the Govt. of India of decongesting Delhi by shifting offices outside New Delhi to Gurgaon which is part of the National Capital Region (NCR).
- e. Keeping in view of the Govt. policies to encourage Information Technology, companies/orgaizations dealing with software have also been given.”

(16) It was on the basis of the aforementioned guidelines/parameters that the Committee recommended allotment of 1/2 acre plots in Sector 44, Gurgaon to the Housing Board Haryana, Panchkula, National Project Construction Corporation Limited, Faridabad, Punjab and Sind Bank, New Delhi, Rites Limited and Raitel Corporation of India Limited.

(17) Learned counsel has then referred to the allotments made to non-governmental organisations in Sectors 18, 32 and 44, Gurgaon. Referring to the details of plots available in Sectors 18, 32 and 44, Gurgaon, and constitution of the Committee, learned counsel has urged that the interview of the applicants from the category of private organisations were conducted on 9th June, 2006, 10th June, 2006, 12th June, 2006, 13th June, 2006, 14th June, 2006, 17th June, 2006 and 19th June, 2006. There were 371 applicants from non-governmental organisations, who appeared for interviews. The candidates were afforded sufficient time by the Committee to give a presentation regarding its activities, financial status, profile and usage of plot for which allotment was being sought. It is conceded by the learned counsel that the Committee kept in mind the following factors guidelines/criteria in mind while making recommendations for allotment of plots :—

- “(a) Financial status.
- (b) Viability/nature of the project.
- (c) Justification of land utilisation.
- (d) Turn over of the company.
- (e) Activities as per guidelines.
- (f) The profit of the company, its past tract record, proposed expansions plans etc. were closely assessed and scrutinized.
- (g) The number of employees/workers working for the organization was assessed as well as the number of workers likely to work in the proposed corporate office.
- (h) It was also assessed as to in future how many more workers/employees are likely to join company in view of their proposed expansion plans.

- (i) Public sectors undertaking of the Govt. of India as well as the State Govt. were encouraged to set up offices thereby fulfilling the objectives of the Govt. of India of decongesting Delhi by shifting offices outside New Delhi to Gurgaon which is part of the National Capital Region (NCR).
- (j) Keeping in view of the Govt. policies to encourage Information Technology, companies/organization dealing with software is also commenced.”

(18) On the basis of the aforementioned guidelines/criteria, 54 candidates were recommended for allotment of plots by the Committee. Learned counsel has pointed out that thoroughly fair, reasonable and unquestionable procedure was followed and only few disgruntled petitioners have approached this Court.

(19) Mr. Ajay Nara, appearing in the connected petitions for the HUDA, adopts the arguments of Mr. M. L. Sarin, Mr. Ajay Tiwari, appearing for respondent No. 19 in C.W.P. No. 17138 of 2006 (M/s Sigma Corporation India Limited) has argued that neither any allegation that the criteria was arbitrary has been levelled nor the criteria has been challenged. He has placed reliance on para 28 of the Division Bench judgment in the case of **Seven Seas Educational Society** (*supra*) to argue that a number of irregularities were found by the Division Bench, which were upheld by Hon'ble the Supreme Court on appeal in the case of **New India Public School** (*supra*). Those irregularities read as under :—

“28. The skeleton record of the respondent-authority produced before us and the pleading of the parties reveals :—

- (i) that before advertising the school site, the area of such was neither determined nor notified ;
- (ii) that no tentative premium as required under the Regulations was determined before inviting applications ;
- (iii) that the applications were not invited in accordance with the procedure prescribed under Regulation 5 ;

- (iv) that the amount of earnest money was not determined as mandated by Regulation 5(2) ;
- (v) that no terms and conditions were specified to be applicable upon allotment ;
- (vi) that no criterion was determined before initiating the process of allotment.
- (vii) that the Committee was constituted as per some alleged instructions issued by the Authority which were not brought on record or produced before the Court during the pendency of the writ petitions or Letters Patent Appeals ;
- (viii) that the so called criterion adopted by the Committee was more observed in breach than in compliance ;
- (ix) that the criterion adopted was neither reasonable nor proper and did not achieve the object for which the allotments were being made ;
- (x) that the allotments are shown to have been made or rejected mainly on the ground of the recommendations of the Deputy Commissioner ;
- (xi) that no reason was assigned for resorting to the method of allotment by ignoring the method of allotting by auction ;
- (xii) that the interests of the HUDA were admittedly not protected ;
and
- (xiii) that the school sites have been allotted without specifying the amount to be paid as premium for such sites on allotment.”

(20) According to him none of these irregularities are present in the instant cases and, therefore, the judgment of Hon'ble the Supreme Court has no application. He has pointed out that the financial profile of respondent No. 19 (in C.W.P. No. 17138 of 2006) is reflected in para 7, which shows a total turn over of Rs. 3.59 crores for the period 5th March, 2004 to 30th June, 2005. In support of that a copy of the profit and loss account for the financial period has been attached as R-19/1. Likewise, for the period

1st July, 2005 to 31st March, 2006 (9 months of the financial year) total turn over is Rs. 4.78 crores (R-19/2). Therefore, it has been urged that the judgment of Hon'ble the Supreme Court in **New India Public School** (*supra*) would not be applicable to the case or respondent No. 19 as it is eminently qualified.

(21) Similar arguments have been advanced by Sarvshri Narender Hooda (counsel for respondent Nos. 2, 8 and 15), Vikas Bahl (counsel for respondent No. 5), Tribhuwan Dahiya (counsel for respondent No. 7), Sandeep K. Sharma (counsel for respondent No. 11), Arun Jain (counsel for respondent No. 13), R. K. Malik (counsel for respondent No. 14), Ajay Kaushik (counsel for respondent No. 16), Akshay Bhan (counsel for respondent No. 18), Sumeet Goel (counsel for respondent No. 20) and Vivek Singal (counsel for respondent No. 23). The gist of their arguments is that the private respondents after allotment have spent substantial amount although no construction has been raised. the writ petition (C.W.P. No. 7790 of 2007) was filed on 21st May, 2007 although allotment was made on 29th August, 2006. It is, however, conceded that the stay order has been operative since 31st October, 2006. It has further been suggested that their respective companies are fully eligible and the same criteria is being followed since 1990. It has also been pointed out that if the companies at their infancies are not given the plots then the criteria made require the plots to be allotted to highly affluent and big players like Tata, Reliance and Birla.

(22) Mr. Amit Khanna, learned counsel for respondent No. 10 (in C.W.P. No. 7790 of 2007), while adopting the arguments of Mr. M. L. Sarin, has argued that Vision Guard Private Limited (respondent No. 10) is engaged in Security Services and has been imparting training on personal safety to women. Some literature published in the year 2006 has also been shown to us to substantiate the claim of imparting training to women for their personal safety. Learned counsel has claimed that respondent No. 10 was incorporated in the year 1996 and it has 3000 security guards. He has also repeated the argument of estoppel against the petitioners.

(23) Mr. Harbhagwan Singh, learned senior counsel for respondent Nos. 3 and 22 (in C.W.P. No. 17138 of 2006) has drawn our attention to the status of other companies associated with Kamalvallabh Developers Private Limited, as depicted in Annexure R-22/2. After referring to the holdings to respondent No. 22 in Annexure R-22/1, learned counsel has

maintained that gross sales of the group of companies mentioned in Annexure R-22/2 works out to be more than Rs. 33 Crores and the gross profits are worked out to be about Rs. one crore. He has then referred to the receipt accepting draft of Rs. 28,750, dated 23rd October, 2006, claiming that respondent No. 22 deserves to be allotted plot and it has rightly been allotted to it. He has also adopted all the arguments raised by Mr. M. L. Sarin.

(24) In reply to the arguments raised by the learned counsel for the respondents learned Amicus Curiae Mr. R. S. Cheema has reiterated his principal arguments and has further submitted that when the plots are to be allotted on a reserve and subsidised price, the element of public interest steps in. According to the learned counsel, the declared and permissible usages in the brochure (Annexure P-1 in C.W.P. No. 17138 of 2006) are corporate offices, research and development centre, staff education and training centre, offices of professional groups/associations and other institutional uses. He has maintained that a perusal of the applications submitted by the allottees do not even indicate their professional activities, justifying the establishment of a corporate office. There is no whisper that research and development centre, which is a futuristic approach and or staff education and training centre as envisaged in the usages, has even been indicated in their applications. The most essential element of pre-determined criteria has not been keenly defined and the Selection Committee is stated to have kept in mind only some factors.

(25) Mr. Rajiv Atma Ram, learned senior counsel for the petitioner (in C.W.P. No. 7790 of 2007) has submitted that there is no delay in filing the petition because in paras 14 to 17 it has been adequately explained that application to obtain information under the Right to Information Act, 2005, was filed on 28th October, 2006 (Annexure P-26 in C.W.P. No. 7790 of 2007). But the requisite information was not provided within 30 days, resulting into a reminder dated 15th January, 2007 (P-27). He has maintained that respondent No. 1 HUDA was aware about the illegalities committed in making selection and on that account it was dilly delaying in furnishing requisite information to the petitioner. Thereafter, on 14th March, 2007 a complaint was made to the Central Information Commission regarding non-supply of information by respondent No. 1 HUDA (P-28). On 7th May, 2007, respondent No. 1 HUDA supplied the recommendation of the Selection Commission in respect of successful applicants (P-29) and the

writ petition was filed on 21st May, 2007. According to the learned counsel, these facts have been admitted in the written statement filed by respondent No. 1 HUDA and there is no question of approaching the Court belatedly. He has further submitted that the petitioner has not abandoned any of its rights because in order to abandon something, one must be aware of his right first only then he can abandon. Therefore, the doctrine of waiver cannot be invoked against the petitioners, as has been held in para 6 of the judgment of Hon'ble the Supreme Court in the case of **M/s Motilal Padampat Sugar Mills Co. Ltd. versus State of U.P. (12)**. He has further submitted that even otherwise there is no estoppel against Statute, as has been held in various judgments. According to the learned counsel Section 15 of the Act mandates the respondents to dispose of land in accordance with the criteria either finalised by the Government or by HUDA. Therefore, there can be no estoppel against the Statute as has been held in various judgments by Hon'ble the Supreme Court the cases of **Jalandhar Improvement Trust (Supra)** (para 13) ; **M.I. Builders Pvt. Ltd. versus Radhey Shyam Sahu**, (13), (para 75) ; and **M/s Electronics Corporation of India, Ltd. versus Secretary, Revenue Department, Government of Andhra Pradesh**, (14). Learned counsel has also placed reliance on para 52 of the judgment of Hon'ble the Supreme Court in the case of **Union Carbide Corporation versus Union of India (15)** and urged that HUDA cannot plead estoppel by claiming that it does not need to obey the Act, Rules and Regulations. He has reiterated that the criteria for analysing the applications by excluding the eligible one from the ineligible or good companies from the bad companies should have been determined, as has been pointed out in para 13 of the Division Bench judgment of this Court in the case of **Munish Manufacturing Corporation, Ludhiana (supra)**. According to the learned counsel, even the argument that some amount has been spent in raising construction was rejected by their Lordships' of the Division Bench. He has maintained that allotment could be cancelled if no criteria has been followed, as has been held in the case of **Common Cause A Registered Society versus Union of India (16)** and that the Selection

(12) AIR 1979 S.C. 621

(13) AIR 1999 S.C. 2468

(14) AIR 1999 S.C. 1734

(15) AIR 1992 S.C. 248

(16) (1996) 6 S.C.C. 530

Committee could not have evolved any criteria. Learned counsel has then submitted that the argument that fresh industry would not get any chance, is wholly misconceived because the plots were not being allotted for industry but only for corporate offices. According to the learned counsel, the support drawn by Mr. Harbhagwan Singh and other counsel from the group of companies is alien to the Company Law because in order to fulfil the criteria the applicant Company has to show its own worth.

(26) After perusing the pleading of the parties and record produced by the respondents before us, the following main features in these matters are desrenable :

1. That initially in Sectors 18, 32 and 44, Gurgaon 22 plots were advertised for private/non-Government Organisations as per brochure Annexure P-3 and P-35 plots were advertised for Government Organisations. However, in the category of private/non government organisation allotment has been made to 54 persons.
2. The number of applicants in the category of private/non-government organisations were 382 which were much more than the number of plots.
3. No pre-determined criteria was published nor any terms and conditions which were to apply for allotment were made known.
4. That some guidelines were framed by the Committee. Even those were not 'kept in mind'.
5. That there is no emphasis explicit even from the guidelines which were to be kept in view that the allottees would be using the allotted plots for permissible use of research and development center or Staff Education and Training Centre or offices of professional groups/associations/societies who are not engaged in commercial/manufacturing activities. There is no indication in the record that any of those permissible uses were kept in mind which were indicated in the brochure. No reasons have been highlighted for adopting method of allotment in preference to the method of sale by auction.

6. That interview for allotment in respect of 371 applicants from non-Government Organisation were conducted on 9th June, 2006, 10th June, 2006, 12th June, 2006, 13th June, 2006, 14th June, 2006, 17th June, 2006 and 19th June, 2006. In other words, 371 applicants were interviewed in seven days interviewing 53 candidates in one day.
7. That the record further shows that M/s BRC Electronic Limited, M/s Gautam Bultron Private Limited, M/s Kalyan Harbals Private Limited, M/s Trishaa Internationals Private Limited-respondents No. 6 to 9 in C.W.P. No. 11501 of 2007 had never applied for allotment of plots in Sector 32. They had applied for allotment of 1/2 acre plots in Sector 18 and 44, Gurgaon. However, they were allotted 1/2 acre plot each in Sector 32. There is nothing on record to clarify as to how their applications were considered for Sector 32 and it was for the aforementioned reason that when application for withdrawal of the petition was filed,—*vide* order, dated 10th October, 2007 we allowed the petitioner to withdraw but substitute the titled ‘Court its own motion’. We are not able to understand as to how plots in Sector 32 have been allotted to those applicants, who never applied for allotment in that Sector.

(27) It is in the aforesaid facts and circumstances that we are to determine the legality of these allotments. It would be appropriate to make reference to the relevant statutory provisions. Section 15 of the Act has made detailed provisions concerning disposal of any land by HUDA, which reads as under :—

- “15. Disposal of Land.—(1) Subject to any directions given by the State Government under this Act and the provisions of sub-section (5), the authority may dispose of —
- (a) any land acquired by it or transferred to it by the State Government without undertaking of carrying out any development thereon ; or
 - (b) any such land after undertaking or carrying out such development as it thinks fit, to such person, in such manner

and subject to such terms and conditions, as it considers expedient for securing development.

- (2) Nothing in this act shall be construed as enabling the authority to dispose of land by way of gift, but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.
- (3) Subject to the provisions hereinbefore contained, the Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it on such terms and conditions as it may, by regulations, provide.
- (4) The consideration money for any transfer under sub-section (1) shall be paid to the Authority in such a manner as may be provided by regulations.
- (5) Notwithstanding anything contained in any other law, for the time being in force, any land or building or both, as the case may be, shall continue to belong to the Authority until the entire consideration money together with interest and other amount, if any, due to the Authority, on account of the sale of such land or building or both is paid.
- (6) Until the conditions provided in the regulations are fulfilled, the transferee shall not transfer his rights in the land or building except with the previous permission of the Authority, which may be granted on such terms and conditions, as the authority may deem fit.”

(28) In pursuance to powers conferred by Section 54 of the Act, HUDA has framed regulations known as Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 (for brevity ‘the Regulations), which also deal with disposal of land and buildings of HUDA. These regulations have been framed with the previous sanction of the

Government of Haryana. Regulations 3, 4 and 5, which are relevant to the controversy raised, are also necessary to read, which are as under :—

“3. Mode of disposal :—Subject to any direction issued by the State Government under the Act and to the provisions of sub-section (5) of Section 15 of the Act :—

- (a) the Authority may dispose of any land belonging to it in developed or an undeveloped form ;
- (b) any land or building of the Authority may be disposed of by Authority by way of sale or lease or exchange or by the creation of any easement right or privilege or otherwise ;
- (c) the Authority may dispose of its land or building by way of sale or lease either by allotment or by auction, which may be by open bid or by inviting tenders.”

“4. Fixation of tentative price/premium :—(1) The tentative price/premium for the disposal of land or building by the Authority shall be such as may be determined by the authority taking into consideration the cost of land, estimated cost of development, cost of buildings and other direct and indirect charges, as may be determined by the Authority from time to time.

(2) An extra 10% and 20% of the price/premium shall be payable for “preferential” and “Special preferential” plots respectively.”

5. Procedure in case of sale or lease of land or building by allotment :—(1) In the case of sale or lease of residential and industrial land or building by allotment the intending purchaser shall make an application to the Estate Officer concerned in the prescribed form (annexed to these regulations) as given in Forms ‘A’ and ‘B’ respectively.

(2) No application under sub-regulation (1) shall be valid unless it is accompanied by such amount as may be determined by the Authority, which shall not be less than ten per cent of the price/premium in the form of a demand draft payable to the Estate Officer, and drawn on any scheduled bank situated at the local

place of the Estate Officer concerned or any other such place as the Estate Officer may specify.

- (3) In the case of residential plot/building when the application has been so tendered, the Estate Officer or such other officer as may be empowered, shall subject to such directions as may be issued by the Authority in this behalf consider the applicant for allotment of a plot or building of the size applied for. The allotment may be on 'first come first served' basis or by draw of lots, as may be determined by the Authority and the successful applicant shall be sent allotment letter, in Form 'C' or 'CI' by registered post ; provided that for the purpose of proper planning and development of an urban estate, land or building may be reserved for groups or individuals or for persons practising any profession or carrying on any occupation, trade or business or for such other category of persons, Government Department and Institutions, charitable institutions and other organisations of public welfare, as may be decided by the Authority from time to time.
- (4) In the case of industrial land or building, allotment shall be made in accordance with the recommendations of the Directorate of Industries as to the genuineness of the party, priority of the industry, the area required for the industry etc.
- (5) The applicant to whom the land/buildings has been allotted shall communicate his acceptance or refusal in writing within 30 days of the date of allotment, by registered post to the Estate Officer. In case of acceptance, the letter shall be accompanied by such amount as intimated to him in the allotment letter. In case of refusal, he shall be entitled to the refund to the money tendered with the application. In case he fails to either accept or refuse within the stipulated period, allotment shall be deemed to be cancelled and the deposit made under sub-regulation (2) may be forfeited to the Authority and the applicant shall have no claim for damages.

- (6) The payment of balance of the price/premium shall be made, in the manner as may be communicated, either in lump sum or in such number of annual or half yearly equal instalments not exceeding ten, as may be decided by the Authority from time to time. The amount of first instalment shall be payable within one year or six months from the date of allotment and the subsequent instalments shall similarly accrue every/yearly/half yearly on the due date, as the case may be.
- (7) Each instalment would be recoverable together with interest on the balance price/premium, at the rate as may be decided by the Authority at the time of allotment. The interest shall, however, accrue from the date of offer of possession of land/building. No interest shall be payable if the whole of the balance price/premium is paid in full, within sixty days of the offer of possession. If at any time the transferee opts to make the balance payment in full, he shall be entitled to do so and interest shall be charged on the balance amount only for the period from the date the last instalment was due to the date he makes full payment.”

(29) The aforementioned regulation along with Section 15 came up for interpretation and consideration of their Lordships of the Supreme Court in the case of **New India Public School's case** (*supra*). In paras 4 and 5 of the judgment, it has been categorically held that it is mandatory for HUDA that in all cases relevant criterion must be pre-determined either by specific rule framed by the Government or regulation framed by the HUDA. The pre-determined criteria is also required to be published for the knowledge of general public. It has further been held that if no such pre-determined public criterion has been framed then the principle of sale has to be by public auction. In the absence of such a criterion either by HUDA or by the Government by framing regulations, any allotment of site to private institution or person has to be regarded as unlawful. It is further appropriate to notice that HUDA-respondent No. 1 was party to those proceedings before Hon'ble the Supreme Court, which has categorically held in paras 4 and 5 as under :—

“A reading thereof, in particular Section 15(3) read with Regulation 3(c) does indicate that there are several modes of disposal of the property acquired 3461 by HUDA for public purpose.

One of the modes of transfer of property as indicated in sub-section (3) of Section 15 read with sub-regulation (c) of Regulation 5 is public auction, allotment or otherwise. When public authority discharges its public duty the word “otherwise” would be construed to be the consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration. It would depend upon the nature of the scheme and object of public purpose sought to be achieved. In all cases relevant criterion should be pre-determined by specific rules or regulations and published for the public. Therefore, the public authorities are required to make necessary specific regulations or valid guidelines to exercise their discretionary powers ; otherwise, the salutary procedure would be by public auction. The Division Bench, therefore, has rightly pointed out that in the absence of such statutory regulations exercise of discretionary power to allot sites to private institutions or persons was not correct in law. (Emphasis added)

5. The Division Bench has doubted the *bona fides* in the allotments in question, as expressly found in the judgment. Since the learned single Judge had accepted the averments, but the Division Bench was not inclined to accept the same and doubted the *bona fides* of the actions of the authorities and resultant allottees, due to absence of any strong material we cannot lightly brush aside or disagree with the observations made by the learned Judges of the Division Bench. Under those circumstances, we are inclined to uphold the order of the Division Bench subject to the following further directions.”

(30) It was in fact conceded that no pre-determined criteria was published before the application could be placed before the Selection Committee. It is further clear that respondent No. 1 HUDA was party-respondent in the case of **New India Public School** (*supra*) before this Court as well as before the Hon’ble Supreme Court. It is, therefore, fully aware about the law laid down by their Lordships of Hon’ble the Supreme Court. It was incumbent and obligatory on its part to either publish the

pre-determined criteria of allotment as per the provisions of Section 15 of the Act read with Regulations 3, 4 and 5 of the Regulations if the allotment was to be made by any other method, than public auction. Otherwise, the safe method in the larger public interest and in the interest of HUDA-respondent No. 1 would be to resort to public auction as has been held by Hon'ble the Supreme Court.

(31) We do not wish to make detail reference to numerous observations made by their Lordships of Hon'ble the Supreme Court in the case of **Ramana Shetty versus International Airport Authority of India, (17)** ; **Mohd. Rashid Ahmed versus State of U.P., (18)** ; **Jaya Cellular versus Union of India, (19)** ; **Kumari Shri Lekha Vidharthi versus State of U.P. (20)** ; and **M/s Kasturi Lal Lakshmi Raddy versus State of J&K, (21)**. It is suffice to conclude that wherever the authorities are entrusted with the duty of selling public property or granting its lease, than normal method is auction or call for tenders so that all the intending purchasers should have equal opportunity of submitting their bids and tenders. The authority entrusted with such duty or the Government, as the case may be, is required to act fairly in arriving at the best available arrangement in the circumstances. In that regard reference may be made to the judgment of Hon'ble the Supreme Court in **G.D. Zalani versus Union of India (22)**. Therefore, by no stretch of imagination, HUDA-respondent No. 1 can justify the failure either to resort to public auction or proceed for allotment on the basis of a pre-determined published criterion if the allotment was to be made by any other method especially when in the case of New India Public School it was a party before Hon'ble the Supreme Court. Therefore all these allotments are liable to be set aside.

(32) We are further of the view that the so called selection committee failed to advert to the comparative merits of the applicants and it has not been pointed out as to why the allottee was selected from amongst those applicants who have been left out. It was in these circumstances that the

(17) AIR 1979 S.C. 1628

(18) AIR 1979 S.C. 592

(19) J.T. 1994 (4) S.C. 532

(20) AIR 1991 S.C. 537

(21) 1980 (4) S.C.C. 1

(22) J.T. 1995 (2) S.C. 420

Division Bench judgment of this Court in **Munish Manufacturing Corporation, Ludhiana** (*supra*) has held that every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. If the Government awards a contract or leases out or otherwise deals with public property or grants any other largess; it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

(33) A perusal of the table prepared by the petitioner in C.W.P. No. 7790 of 2007 (*supra*) would show that respondents have adopted the pick and choose method. It is not explained that how respondent No. 2 M/s Delicious Marketing Private Limited incorporated in the year 1998 with authorised, issued and subscribed capital of Rs. One lac could be allotted a plot as against the petitioner-Delhi, Assam Roadways Corporation Limited, which was incorporated on 10th December, 1998 as private limited company and later on converted into a public limited company with effect from 1st December 1998. It has received Transport Ratana Award in April, 1989 and Transport of the Millennium award in April, 2000 and many other awards of the same nature. The company has strong human resource back up of 1000 employees to run its operations as is evident from the application (P-4) along with details provided. The business turnover of this company during the financial year 2004-05 was Rs. 393 Crores which was projected for financial year 2005-06 at Rs. 575 Crores.

(34) It is also beyond any explanation as to how respondent No. 18-M/s BSA Realtors Private Limited, which was incorporated only on 10th March, 2006, could be allotted a plot. The financial position of authorised, issued and subscribed capital of Rs. One lac could be seen even in respect of other respondent namely respondents Nos. 4, 7, 8, 9 and 14. As far as respondent Nos. 12, 22 and 23 are concerned, the figures are not even available. The Committee has claimed that they had 'kept in mind' the financial status of the applicant and the profit of the company, past track report and proposed expansion plans etc. It is also claimed to have kept in mind the proposed employees/workers working in the organisation. However, when examined closely, the financial status of the aforementioned respondents in preference to those who have not been selected is completely ignored. Therefore, a necessary conclusion has to be reached that in the

absence of any declared pre-determined criteria element of arbitrariness has crept in which has resulted in flagrant violation of Article 14 of the Constitution.

(35) HUDA-respondent No. 1 has also remained unable to defend the allotment on the touchstone of interviews. It is conceded position that the interviews were held for seven days and during seven days 371 applicants were interviewed. On an average 53 applicants appeared for interview on one day. It is not possible to be just and fair to interview such a large number of candidates in one day and reached a just decision. Therefore, on that score also allotment is liable to be set aside.

(36) The arguments raised by Mr. Sarin on the basis of the judgment of Hon'ble the Supreme Court in **Madan Lal's case** (*supra*) would not require any detailed consideration for the reason that no estoppel or principle in the nature of estoppel would apply to the petitioners merely because the petitioners have participated in the selection process for allotment of plots. We have reached a categorical conclusion that there is flagrant violation of statutory provisions of Section 15 of the Act especially when 12 years ago, the petitioners were told in clear terms by Hon'ble the Supreme Court that before making allotment of plots by interviewing candidate, it is obligatory on its part to publish a criteria or any such criteria could have been published by the Government by framing rules. Therefore, no reliance can be placed on the judgment of Hon'ble the Supreme Court in **Madan Lal's case** (*supra*) or **Munindra Kumar's case** (*supra*). The respondents also cannot derive any benefit from para 4 of the judgment in the case of **University of Cochine** (*supra*) for the same. The observations of Hon'ble the Supreme Court in **Sampuran Singh's case** (*supra*), in para 13 would be fully applicable which reads as under :—

“The High Court as well as the lower appellate court also relied upon the fact that the Trust had made similar preferential allotments as local displaced person in favour of other person. Therefore, the courts below came to the conclusion that even the plaintiff-respondents were entitled to such allotment. In our opinion, before coming to this conclusion the courts below should have first decided the question whether the allotment in

favour of other persons will not create a right in the respondent to claim equality with them; may be, if the allotments were made wrongly in favour of those persons, the same may become liable for cancellation, if permissible in law, but that will not create an enforceable right on the respondents to claim similar wrongful allotments in their favour. In our opinion, even this ground relied upon by the High Court as well as the lower appellate court is unsustainable. The courts below next relied upon the fact that in regard to some of the respondents, the Trust itself at a point of time made allotments and accepted initial deposits towards the consideration of the plots which were subsequently cancelled. Based on those facts, the courts below held that the Trust having once allotted the plots and having collected part of the consideration, it could not have cancelled the allotments, probably basing the respondents' case on the principle of promissory estoppel. Here the courts below have failed to notice the legal principle that there is no estoppel against law. The allotment of plots by the Trust is controlled by the statutory rules. Any allotment contrary to those rules will be against the law. Since the allotments made in favour of some of the respondents was based on wrong application of the reservation made for "local displaced person" those allotments were contrary to law. Hence the principle of promissory/equitable estoppel cannot be invoked to protect such illegal allotments. In the said view of the matter, we are unable to sustain the judgments and decrees impugned in these appeals." (Emphasis added).

(37) There are similar observations made in para 52 by the Constitution Bench in the case of **Union Carbide Corporation** (*Supra*) when plea of estoppel was sought to be raised. The matter has also been considered by their Lordship in the case of **ITC Bhadrachalam Paper Boards** (*Supra*) and the observations made in para 30 which are relevant and fully applied to the facts of the present case, are as under :—

“For a proper appreciation of this contention, it is necessary to keep in mind the distinction between an administrative act and an act done under a statute. If the statute requires that a

particular act should be done in a particular manner and if it is found, as we have found hereinbefore, that the act done by the Government is invalid and ineffective for non-compliance with the mandatory requirements of law, it would be rather curious if it is held that notwithstanding such non-compliance, it yet constitutes a 'promise' or a 'representation' for the purpose of invoking the rule of promissory/equitable estoppel. Accepting such a plea would amount to nullifying the mandatory requirements of law besides providing a licence to the Government or other body of act ignoring the binding provisions of law. Such a course would render the mandatory provisions of the enactment meaningless and superfluous. Where the field is occupied by an enactment the executive has to act in accordance therewith, particularly where the provisions are mandatory in nature. There is no room for any administrative action or for doing the thing ordained by the statute otherwise than in accordance therewith. Where, of course, the matter is not governed by a law made by a competent legislature, the executive can act in its executive capacity since the executive power of the State extends to matters with respect to which the legislature of a State has the power to make laws (Article 162 of the Constitution). The proposition urged by the learned counsel for the appellant falls foul of our constitutional scheme and public interest. It would virtually mean that the rule of promissory estoppel can be pleaded to defeat the provisions of the law whereas the said rule, it is well settled, is not available against a statutory provision. The sanctity of law and the sanctity of the mandatory requirement of the law cannot be allowed to be defeated by resort to rules of estoppel. None of the decisions cited by the learned counsel say that where an act is done in violation of a mandatory provision of a statute, such act can still be made a foundation for invoking the rule of promissory/equitable estoppel. Moreover, when the Government acts outside its authority, as in this case, it is difficult to say that it is acting within its ostensible authority. If so, it is also not permissible

to invoke the principle enunciated by the court of appeal in **Wells versus Minister of Housing & Local Government (1967) 1 AIER 1041.**" (Emphasis added)

(38) Therefore, there cannot be any estoppel against the mandatory requirement of a statute or estoppel when those requirements have been delineated by their Lordships in **New India Public School's case (supra)** while interpreting the 'Act' and the 'Regulations'.

(39) We fail to find any merit in the submission made by learned counsel that the judgment of Hon'ble the Supreme Court in **New India Public School's case (supra)** would not apply to the facts of the present case merely because the price of the plot in the present proceedings have been determined which was determined in that case.

(40) The distinction sought to be drawn by the learned counsel is wholly unwarranted and does not call for any serious consideration. It is true that the fact of fixing of price was taken into account but the ratio of the judgment is that Section 15 of the Act and Regulations 3, 4 and 5 of the Regulation makes mandatory provisions about the pre-determined criteria required to be published either by framing rules by Government or by framing Regulations by HUDA. The aforementioned aspects have already been discussed in detail in the preceding paras.

(41) There is no substance in the argument that some of the respondents have spent substantial amount although no construction has been raised. We are unable to appreciate as to how any investment by spending substantial amount could be made in the absence of any construction especially when the stay order has been operating since 31st October, 2006. The additional argument that the Directors of the applicant-company are extremely affluent by virtue of their financial position in other companies, has failed to impress us because the status of the applicant-company has to be determined by reference to that company alone. It cannot be done by making reference to any other company of which one of the Directors may be either a director of the applicant company or the Managing Director. The whole gamut of corporate veil has been completely misunderstood by those who have advanced such an argument. Therefore, there is no substance in the arguments advanced on behalf of the respondents.

(42) As a sequel to the above discussion, these writ petitions are allowed. The allotment made to the private respondents in Sectors 18, 32 and 44, Gurgaon are hereby set aside.

(43) As per provisions of the Act and law laid down by their Lordships' in **New India Public School's case** (*supra*), the Government has option to adopt either of the two courses 'A' and 'B' which are as follows :—

(A) The State Government may take a conscious decision that these institutional plots may be sold by open auction by allowing only those applicants, who have applied for allotment, to participate in the auction without inviting any fresh applications.

OR

(B) The State Government may take a conscious decision that these plots are to be disposed of by allotment.

Option 'A' and the Directions :

(44) If the State Government decides to opt for alternative 'A' which in fact is the true import of the judgment rendered by Hon'ble the Supreme Court in the case of **New India Public School's case** (*supra*) then it would be just and fair to permit bidding *inter se* the applicants alone without inviting any new applications. The State Government, within one month from today, shall fix a date for open auction by keeping the price of allotment announced in the brochure as reserved price. Thereafter, it should by publication in four reputed newspapers, namely, Punjab Kesari and Dainik Bhaskar (Hindi) as well as The Times of India and Hindustan Times (English), all New Delhi editions, shall publish the date of auction by clarifying that bids in writing be submitted to the Principal Secretary, Urban Development, which must reach him a week before the date of auction. The auction in respect of particular Sector of one size of plot should commence from the highest bid received in writing. A thorough documentation of the bidding shall be prepared. We also make it clear that none of those persons who were associated either members of erstwhile selection committee or otherwise be permitted to be associated with any of the processes while implementing these directions.

Option 'B' and the Directions :

(45) In the alternative the State Government may take a conscious decision that these plots shall be disposed of by allotment. If such a course is adopted then the following directions must be complied with :—

- (i) The official respondents shall seal the record of all the applicants numbering 371. The other record should also be sealed separately. The entire record seals alongwith certificate by the Chief Administrator, HUDA-respondent No. 1 be handed over to the Financial Commissioner and Principal Secretary to Government Haryana, Finance and Planning Department, within a period of two weeks from today.
- (ii) Within two weeks thereafter the State Government shall constitute a three members committee consisting of Financial Commissioner and Principal Secretary to Government Haryana, Finance and Planning ; Financial Commissioner and Principal Secretary to Government Haryana, Industries and Commerce ; and Commissioner and Secretary, Town and Country Planning and Urban Estates Haryana, which shall devise a criteria for allotment, which should have rationale basis answering all the requirements of Article 14 of the Constitution, within a period of one month thereafter. The rationale basis of the criteria must have a reasonable nexus with the object sought to be achieved by the allotments clearly stipulating that all the applicants alone would be entitled for consideration.
- (iii) The criteria finalised by the Committee must be approved by the State Government and then published within a period of two week thereafter. The applicants by an advertisement in four news papers as specified in para 44 be granted an opportunity to bring on record additional data in accordance with the criteria. However, no other change shall be permitted like change of sector and size of plot etc.
- (iv) The State Government shall also fix a date for consideration of the applications made by all the applicants, which should not be later than four weeks of the date of publication of the criteria.

- (v) On the appointed date, three members committee shall open the seal of the record pertaining to all the applicants and in accordance with the criteria, consider the applications by spending reasonable time highlighting that there was proper application of mind to each individual case. The three members committee may announce the list of successful candidates within 30 days.
- (vi) The aforementioned directions be carried out by ensuring that no person/officer who was earlier associated with the allotments one way or the other is to be part of fresh process of allotment.

(46) The writ petitions are disposed of in the above terms. However, the petitioners shall be entitled to their costs, which we assess at Rs. 25,000 in respect of each petition. Costs shall be paid by HUDA-respondent No. 1.

(47) Mr. R.S. Cheema, learned *amicus curiae* has assisted the Court by sparing his valuable time. We record our gratitude for his assistance.

R.N.R.