Case Study in respect of the Suo Motu Public Interest Litigation entertained by the Hon'ble Gujarat High Court in the matter of allotment of Plots by the Government to the Hon'ble Judges

Gujarat National Law University

Effectiveness, Accountability, Transparency and Integrity of the Judicial System Program

Case-Law Research Report

Introduction

Gujarat National Law University pursues academic, research and training programs aiming to contribute to the overall effectiveness and efficiency of the judicial system of India.

The University, based on extensive empirical survey, has prepared two comprehensive research reports - 'Blue Print for Reducing the Backlog of Cases from the Subordinate Courts of Gujarat', published in 2010, and the 'Effectiveness of Government Measures for the Reduction of Court Cases', published in 2013. The University also initiated an internship program under which the GNLU students can provide direct help to the judiciary at district and High Court level, as well as public sector undertaking, in the reduction of backlog of cases.

GNLU submitted its input on the Appointment of Judges Bill bringing out procedures adopted in the Commonwealth Countries.

GNLU faculty, students conduct research, hold lectures and discuss landmark judgments or contemporary trends and debates in legal and judicial areas on a regular basis. 2015 marked two very important debates concerning the Appointment of Judges Bill and the Neetibagh Judges' Cooperative Housing Society Limited – Public Interest Litigation filed in the Gujarat High Court. Although Neetibagh Judges' PIL has limited geographical inquiry, its repercussions and importance are felt across the nation. The research is mainly conducted by students with the guidance of faculty and the Director and results are brought out or published in various forums. The current case-law research report aims to contribute to the overall research and teaching activities concerning Effectiveness, Accountability, Transparency and Integrity of the Judicial System program.

Gender equality in the judiciary and bar is another important research being finalized by the University. Observations and conclusions will be published in due course of time.

I thank our faculty members and students for their research and invite suggestions for research from the readers.

Dr Bimal N. Patel
Director
Gujarat National Law University
Gandhinagar, April 2016

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- *Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh & Ors.,* (2011) 5 SCC 29
- *U.K. Acharya and Ors. Vs. State of Gujarat and Ors,* AIR 1989 Guj 81, (1988) 1 GLR 209
- *Palitana Sugar Mills Pvt. Ltd. and Anr. Vs. State of Gujarat and Ors,* MANU/SC/0907/2004
- *N.K. Bairwa v. Sripal Jain,* (1997) 1 RLR 129
- *Govinda Prasad Ladia & Ors. v. WBHIDC Ltd. & Ors*
- *Vineet Narain v. Union of India,* MANU/SC/0827/1998 : (1998) 1 SCC 226
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- High Court Judges (Salaries and Conditions of Service) Act, 1954.
- The Constitution of India

Abbreviations

P Private

Ltd. Limited

ed. Edition

Vol. Volume

PIL Public Interest Litigation

AUDA Ahmadabad Urban Development Authority

Ann Annexure

DDA Delhi Development Authority

Ors. Others

Anr. Another

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CHAPTER I: INTRODUCTION

It was in the late 1990s that a group of senior judges of the Gujarat high court made a representation to the government to allot them land at concessional rates, as it had given to IAS, IPS, IFS (Indian Forest Service) officers and other government employees in the state capital, Gandhinagar. Eventually, after more than a decade, the state government agreed to allot the land in the year 2008. The land which has been allotted to Neetibaug Cooperative Housing Society of Sola originally belongs to gauchar land and pond.

In 2008, several high court judges were given plots of 400 square meters each at concessional rates of Rs 25 lakh each. The market rate for these plots today is nearly Rs 2 crore. Among the alleged beneficiaries were a sitting and a retired Supreme Court judge, eight sitting Gujarat High Court judges, 15 former judges and chief justices of the Bombay and Orissa high courts.

The High Court of Gujarat took *suo motu* Public Interest Litigation on the basis of letters dated 2.7.2015, dated 3.7.2015 of Hon'ble Mr. Justice B. J. Shethna, Former Judge of Gujarat and Rajasthan High Court and letter dated 6.7.2015 of Hon'ble Mr. Justice K. R. Vyas, Former Chief Justice, Bombay High Court and Former Judge of Gujarat High Court, who have requested the Chief Justice to treat their letter as PIL. **(Here in attached copy of the Gujarat High Court Order, as Annexure 1).**

So the dispute in this *suo motu* Public Interest Litigation is with regard to allotment of plots by the Government or the Collector to the Hon'ble Judges (present and former) of this Court as well as present and former Judges of the Supreme Court of India as well as former Judges of this Court, who are now working as Chief Justice in other State. Justice Sethna's letter says:

> *"The way in which the resolution in 2008 is passed it speaks volumes about it. It is a big scam. Will be glad if the state government orders prosecution*

against the then collector, Ahmedabad; representatives of AUDA (Ahmedabad Urban Development Authority) and those judges of the High Court who remained present in the informal meeting, before passing of resolution…"

Hon'ble Justice Mr. B.J Shethna was an acting chief justice of the Gujarat High Court twice in March 2006. He was acting Chief Justice of the Gujarat High Court once for five days and thereafter for a week. While, Justice Vyas is a former chief justice of the Bombay High Court. And also earlier he was a Gujarat HC judge. These two former judges i.e Justice B. J. Shethna and Justice K. R. Vyas wrote letters in this matter to the acting chief justice i.e Hon'ble Justice Mr. V. M Sahai, since neither of them had been allotted land. They claimed that irregularities had been committed in allotting land, and judges had constructed bungalows in the name of the Neetibaug Cooperative Housing Society in Sola area on the up market SG Road, near the high court premises.

Hon'ble Justice Mr. V. M Sahai first inquired into the letters and sought the housing society's documents from the Ahmedabad District Collector. Then, he initiated suo motu proceedings in the case and issued notices to the 27 other judges. **(Here in attached copy of the Gujarat High Court Order, as Annexure 1).**

On the part of Hon'ble Mr. Justice B. J. Shethna this matter was raised by him after he sought a plot measuring 400 square meters. This was after he was appointed as the chairman of an inquiry commission to probe the issue of polarization of the population on the basis of religion. Hon'ble Mr. Justice B. J. Shethna is said to have claimed that his appointment to the commission equates him with a sitting High Court judge. However, the Ahmedabad collector had said that as per a 2008 government resolution, "Only sitting judges of the Gujarat High Court, the Chief Justice as well as former judges of the Gujarat High Court who are serving as Chief Justice or judge in the Supreme Court would be entitled for

residential plots." Therefore he was denied of the plot measuring 400 square meters at the said society.

Justice Sahai (former acting Chief Justice of Gujarat High Court), who has retired on August 12, took up the PIL at 12.30 pm of 10th August 2015 and summoned Advocate General Kamal Trivedi at 2:30 pm. Mr. Kamal B. Trivedi, learned Advocate General, states that this Bench should not hear the matter as this Bench was desirous and had been interested in having a plot at Neetibaug Cooperative Housing Society.

For compliance of the *High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010*, a short enquiry was made into the allegation called out in the aforesaid letters and for the purpose, Collector Ahmedabad as well as District Registrar of Cooperative Society, Ahmedabad were requested to produce the documents with regard to Neetibaug Cooperative Housing Society along with its translated copies. They have produced the requisite documents. On the basis of such documents, it is thought fit to treat this as a suo moto PIL under the *High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010*. The letters question the manner in which the plots were allotted, citing alleged irregularities and breach of norms. Serious complaint has been made in the aforesaid letters and after deliberation with heavy heart, this suo moto PIL has been taken up by Hon'ble Justice Mr. Justice Sahai (former acting Chief Justice of Gujarat High Court).

The bench said that since the plot has been allotted to some of Hon'ble Judges, therefore, no one should be heard ex parte against them. Therefore, Hon'ble Judges, who has been allotted the plots, be impleaded as respondents to this PIL. So the High Court has issued notice the following Hon'ble Judges:-

1. Shri Jayant Patel, Sitting Judge, Gujarat High Court.
2. Shri M. R. Shah, Sitting Judge, Gujarat High Court.
3. Shri K. S. Jhaveri, Sitting Judge, Gujarat High Court.
4. Shri Anant S. Dave, Sitting Judge, Gujarat High Court.

5. Shri S. R. Brahmbhatt, Sitting Judge, Gujarat High Court.
6. Ms. Harsha Devani, Sitting Judge, Gujarat High Court.
7. Shri K. M. Thaker, Sitting Judge, Gujarat High Court.
8. Shri Rajesh H. Shukla, Sitting Judge, Gujarat High Court.
9. Shri M. S. Shah, Chief Justice, Bombay High Court.
10. Shri D. H. Waghela, Chief Justice, Orissa High Court.
11. Shri A. R. Dave, Sitting Judge, Supreme Court of India.
12. Shri C. K. Thakkar, Former Judge, Supreme Court of India.
13. Shri K. A. Puj, Former Judge, High Court of Gujarat.
14. Shri Ravi R. Tripathi, Former Judge of High Court of Gujarat.
15. Shri J. R. Vora, Former Judge of High Court of Gujarat.
16. Shri J. C. Upadhyay, Former Judge, High Court of Gujarat.
17. Shri A. L. Dave, Former Judge, High Court of Gujarat.
18. Shri P. B. Majmudar, Former Judge, High Court of Gujarat.
19. Shri C. K. Buch, Former Judge, High Court of Gujarat.
20. Shri D. A. Mehta, Former Judge, High Court of Gujarat.
21. Shri D. N. Patel, Former Judge, High Court of Gujarat now Sitting Judge of Jharkhand High Court.
22. Shri R. P. Dholakia, Former Judge, High Court of Gujarat.
23. Ms. R. M. Doshit, Former Judge, High Court of Gujarat.
24. Shri A. M. Kapadia, Former Judge, High Court of Gujarat.
25. Shri M. D. Shah, Former Judge, High Court of Gujarat.
26. Shri Bhagawati Prasad, Former Judge, High Court of Gujarat.
27. Shri H. B. Antani, Former Judge, High Court of Gujarat.

CHAPTER II: LEGAL ISSUES

Issue 1: Whether after allotment of plots to sitting Judges, if still some plots remained vacant, whether it could be allotted to the former Judges of Gujarat High Court or not and whether the vacant plots could be allotted to Judges who were lawyers or subordinate Court Judges at the time of allotment of plots?

For sitting High Court judges, the allotment of an *official* residence is governed by the High Court Judges (Salaries and Conditions of Service) Act, 1954.

> *Section 22A: Every Judge shall be entitled without payment of rent to the use of an official residence in accordance with such rules as may, from time to time, be made in this behalf. Where a Judge does not avail himself of the use of an official residence, he may be paid every month an allowance of equivalent to an amount of thirty per cent of the salary plus thirty per cent of the dearness pay*

This provides every High Court Judge the use of an official residence without rent. Neither the Act nor its rules address the issue of the *personal residence* of either a sitting or retired High Court judge.

Judges, like any other class of society, are free to form their own co-operative housing groups and apply to the relevant land allotment agencies—like the DDA, for example—but these are or should be processed and approved by seniority of application. If judges acting individually or collectively seek or receive preferential treatment from the government concerned, there is always the danger of an unstated quid pro quo.

A housing scheme floated by the Karnataka State Judicial Department Employees' House Building Co-operative Society for the purpose of providing residential sites to low paid employees in the judicial department of the state at economically viable rates was similarly embroiled in controversy. Not only did some judges of the Karnataka High Court and Supreme Court become members of this co-operative society, they also procured house sites at nominal rates. In an

October 12, 1995 order in ***Subramani v. Union of India***[1], the Karnataka High Court was firm in its assertion that:

> *"Judges of the High Court or Supreme Court, sitting, transferred or retired, cannot be called "employees of the court". In fact, the membership of judges in the cooperative society was held to be an "irregularity" in the conduct of the business of the society, and the allotments made to them were set aside."*

However, in flagrant violation of the High Court's order, a sizeable number of judges accepted plot allotments under this scheme, which, if reports are to be believed, include the present Chief Justice of India, Justice HL Dattu and the next CJI, Justice TS Thakur.

The independence of the judiciary fundamentally hinges on public perception of the judges.

By the apex court's own admission in ***KK Veeraswami v. Union of India***[2]**,**

> *"A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature."*

Judges are expected to keep themselves above suspicion, so as to preserve the impartiality and independence of the judiciary and to retain public confidence. Any negotiation with the government, whether by a sitting or retired judge, in matters of residential accommodation would undoubtedly cast aspersions on the impartiality of the judiciary. On the government's part, it should make the housing shortage for sitting judges and tribunals its first priority, rather than seeking to influence the judiciary through private land allotments. If the housing nexus continues, only a few judges benefit at the expense of the much larger question of the rule of law.

[1] ILR 1995 KAR 3139, 1995 (6) KarLJ 476
[2] 1991 SCR (3) 189, 1991 SCC (3) 655

It's not just the eligibility criteria that at least 82 sitting and retired judges of the Supreme Court and Karnataka High Court violated when they were allotted sites by the Karnataka Judicial employees House building Co-operative Society.

The violations include owning multiple sites, breaching the society's bye-law clause mandating a stipulated number of years of living within Bangalore Development Authority's (BDA's) jurisdiction to be eligible for site allotment, sale deed violation, cornering civic amenities sites, and irregularities pertaining to breach of the spirit of cooperative societies and acquiring sites at rock bottom prices.

It has already been established that judges in the upper judiciary (high courts and Supreme Court) are constitutional authorities and not 'employees' of the Judicial Department; and therefore not eligible for allotment of sites. Articles 217, 233 and 234 of the Constitution make it clear that Supreme Court and High Court judges, and judges of the subordinate judiciary hold constitutional posts and hence there is no question of treating them as 'employees' of the state judicial department.

Section 10 (b) and 10 (c) of the Society's bye-laws state that members should have spent at least five years working in the judicial department, and should have lived in the 'territorial jurisdiction' of the society for not less than 10 years.

The 'territorial jurisdiction', in this society is limited to BDA limits. Those in violation of this law include retired Supreme Court judge GT Nanavati (who headed the Commission of Inquiry into the post-Godhra riots), retired Supreme Court judges S Mohan and P Venkatarama Reddy, and sitting Supreme Court judge Justice Tirath Singh Thakur.

Many sites given to judges are civic amenity sites, set aside to be handed over to the civic agencies to construct common infrastructure, such as parks, bus stops, playgrounds and shopping areas. At least eight of the sites on our list that have been allotted to judges are civic amenities sites.

Housing cooperatives are given land at concessional rates to service those who are in real need of housing. The observation of the Supreme Court in **Ishwar Nagar society Vs Parmanand Sharma i**n November 2010 was:

> *"Cooperative societies are the best system which can suit the needs of poor and weaker sections… Thus, the cooperative societies like the present one, which seek to obtain the land at concessional rate from the government and to build houses, must necessarily have a limitation in that only members who are in real need of houses should be permitted to become members and take the benefit of land allotment."*

This observation serves to highlight the unethical manner in which judges of the higher courts acquired plots, setting a new low in moral conduct. It also stands to reason that the massive sites allotted to them, some larger than tennis courts, and the fact that they have left them vacant, do not indicate a need for a roof over their heads.

Issue 2: Whether the Neetibagh Judges' Cooperative Housing Society Limited was allotted land after the Society was formed as a Society, but it did not purchase the land from the Government or from the Collector as there is no sale deed on record, which is admitted by the Collector, then how the Judges who are Members of the Housing Society were allotted land contrary to the terms of allotment?

In **Common Cause, A Registered Society v. Union of India**[3], a two Judge Bench of this Hon'ble Court considered the legality of the discretionary powers exercised by the then Minister of State for Petroleum and Natural Gas in the matter of allotment of petrol pumps and gas agencies. While declaring that allotments made by the Minister were wholly arbitrary, nepotistic and motivated by extraneous considerations the Court said:

[3] (1996) 6 SCC 530

"The Government today, in a welfare State, provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licenses etc. Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people."

"While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category."

That the allotment of plots of land at concessional rates or without auction to the privileged sections of society, such as IAS and IPS officers, Judges, MPs, and MLAs, is inconsistent with Article 38 (2) [*to minimize the inequalities of income]* and Article 39 (b) *[material resources of the community are so distributed to subserve the common good]* of the Directive Principles of State Policy enshrined in the Constitution and hence, such a distribution of State largesse is unreasonable and violative of Public Trust.

In **Kasturi Lal Lakshmi Reddy v. State of J & K**[4], Bhagwati J. speaking for the Court observed:

"The Directive Principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other Articles enumerating the fundamental rights. By defining the national aims and the constitutional goals, they setforth the

[4] (1980) 4 SCC 1

standards or norms of reasonableness which must guide and animate governmental action. Any action taken by the Government with a view to giving effect to any one or more of the Directive Principles would ordinarily, subject to any constitutional or legal inhibitions or other over-riding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a Directive Principle would incur the reproach of being unreasonable.

Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest."

In Shri Sachidanand Pandey and Anr. Vs. The State of West Bengal and Ors[5]., the Court has held:

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

That the allotment of plots of land by State Governments to Judges, MPs, MLAs, IAS and IPS officers, journalists, even within the framework of a policy, is

[5] (1987) 2 SCC 295

unconstitutional and violative of public trust, as it fails to satisfy the test of reasonableness and therefore, the same is liable to be quashed.

In ***Tarak Singh and Anr. Vs. Jyoti Basu and Ors.***[6], this Hon'ble Court has held,

> *"Again, like any other organ of the State, judiciary is also manned by human beings but the function of judiciary is distinctly different from other organs of the State in the sense its function is divine. Today, judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors failed people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Because of the power he wields, a Judge is being judged with more strictness than others. Integrity is the hall-mark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that temple of justice do not crack from inside, which will lead to catastrophe in the justice delivery system resulting in the failure of Public Confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside.*
>
> *23. Since the issue involves in the present controversy will have far reaching impact on the quality of judiciary, we are tempted to put it on record which we thought it to be a good guidance to achieve the purity of Administration of Justice. Every human being has his own ambition in life. To have an ambition is virtue. Generally speaking, it is a cherished desire to achieve something in life. There is nothing wrong in a Judge to have ambition to achieve something, but if the ambition to achieve is likely to cause compromise with his divine judicial duty, better not to pursue it. Because if a judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be tendency to compromise between his divine duty and his personal interest. There will be conflict in between interest and duty."*

[6] (2005)1SCC201

Issue 3: Whether there is any policy of the Government to allot individual plot at a prime location, if yes, whether any advertisement was issued inviting applications?

In ***Jasvantsingh Laxmansingh Chauhan v. Deesa Municipality***[7], more particularly paragraph 5 thereof, which reads as under:

> *"It is difficult for to agree that in every case where the property is supposed to be disposed of, it can be done only by public auction. There is no provision in Section 65 of the Act to that effect. Of course, the municipality cannot dispose of its property for an ulterior reason or not for the purposes of the Act, nor can it circumvent the provisions of the Act to directly or indirectly give undue benefit to persons or a class of persons. This can, however, not prevent the municipality from considering favourably the demands or the needs of a section of society. Section 65 of the Act contains sufficient safeguards and does not, in our opinion, suffer from the vice of excessive delegation. The challenge to the said provision is without any basis."*

In a three Judges Division Bench decision of the Apex Court[8], which has been relied upon by the Division Bench, more particularly paragraphs 108 and 113, which read as under:-

> *"Such being the constitutional intent and effect of Article 14, the question arises - can auction as a method of disposal of natural resources be declared a constitutional mandate under Article 14 of the Constitution of India? We would unhesitatingly answer it in the negative since any other answer would be completely contrary to the Scheme of Article 14. Firstly, Article 14 may imply positive and negative rights for an individual, but with respect to the State, it is only couched in negative terms; like an admonition against the State which prohibits the State from taking up actions that may be arbitrary, unreasonable, capricious or discriminatory. Article 14, therefore, is an injunction to the State against taking certain type of actions rather than*

[7] 1995 1 GLH 730
[8] (2012) 10 SCC 1

commanding it to take particular steps. Reading the mandate of auction into its scheme would thus, be completely contrary to the intent of the Article apparent from its plain language.

Finally, reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). The said article enumerating certain principles of policy, to be followed by the State, reads as follows:

The State shall, in particular, direct its policy towards securing

a) .....

b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any Court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on distribution built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing distribution is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word distribution. Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the common good."

In another judgment of the Division Bench of this Court in ***Sarvesh Atulbhai Gohil v. Jamnagar Urban Development Authority and others***[9]**,** the Division Bench has observed in paragraph 17 as under :-

"This petition portrays an extremely sorry state of affairs at the end of the authorities, namely, the Jamnagar Urban Development Authority as well as the Jamnagar Municipal Corporation.

We are reminded of the observations made by the Supreme Court in the case of Delhi Development Authority Vs. Skipper Construction Company Private Limited and anr. reported in (1996) 4 SCC 622, in connection with the menace of illegal and unauthorized construction of buildings and other structures. The observations are worth noting.

> *"What happened in this case is illustrative of what is happening in our country on a fairly wide scale in diverse forms. Some persons in the upper strata (which means the rich and the influential class of the society) have made the property career the sole aim of their life. The means have become irrelevant in a land where is greatest son born in this century said means are more important than the ends. A sense of bravado prevails; everything can be managed; every authority and every institution can be managed. All it takes it to 'tackle' or 'manage' it in an appropriate manner. They have developed an utter disregard for law nay, a contempt for it; the feeling that law is meant for lesser mortals and not for them. The courts in the country have been trying to combat this trend, with some success as the recent events show. But how many matters can we handle. How many more of such matters are still there? The real question is how to swing the polity into action, a polity which has become indolent and soft in its vitals? Can the courts alone do it? Even so, to what extent, in the prevailing state of affairs? Not that we wish to launch upon a diatribe*

[9] 2014 (2) GLH 26

against anyone in particular but Judges of this Court are also permitted, we presume, to ask in anguish, what have we made of our country in less than fifty years? Where has the respect and regard for law gone? And who is responsible for it?"

The Apex Court in ***City Industrial Development Corporation v. Platinum Entertainment and others***[10], has held in para 49 and 50 as under :-

"State and its agencies and instrumentalities cannot give largesse to any person at sweet will and whims of the political entities or officers of the State. However, decisions and action of the State must be founded on a sound, transparent and well defined policy which shall be made known to the public. The disposal of Government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favouritism or nepotism influences the exercises of discretion. Even assuming that if the Rule or Regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the Rule of Law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt pick and choose method while allotting the Government land."

Furthermore, this Court has already stated in ***Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh & Ors.***[11]***,:***

"That the State or its agencies or instrumentalities must give largesse founded on a sound, transparent, discernible and well-defined policy, which should be made known to the public at large and further held that a rational policy of allotting land on the basis of individual applications cannot de hors an invitation or advertisement by the State or its instrumentality, bringing it to the knowledge of public at large so that the eligible persons should not be excluded from lodging their competitive claims."

[10] (2015) 1 SCC 558
[11] (2011) 5 SCC 29

Issue 4: Whether the plot can be allotted to the Judges who are having their own house within the radius of 8 km from the land? Whether such a Judge could be legally allotted land contrary to the policy of the Government?

***In U.K. Acharya and Ors. Vs. State of Gujarat and Ors*[12].**

> *"Properties created under a low income group housing scheme shall be allotted only to low income group persons and those under a middle income group housing scheme only to middle income group persons; provided that the benefit of such schemes shall be available to only that person who does not already own a house or a flat or a plot, for, the construction of residential building and who shall be eligible for such allotment as a low income group or middle income group person, as the case may be at the time of the application; provided further that the, Board or the property allotment committee, as the case, may be, may consider the case of any person even if he owns a house or a flat or a plot already, if the Board or the committee, as the case may be, is satisfied that the: additional house or, flat is needed for his bona fide residential purpose; provided further that such consideration shall not be given for any applicant who owns, either in, his own name or in the name of his wife of ,minor children a house or flat for residential purpose within the radius of 5 miles of the city or town where houses or flats are to be given on hire purchase system." (Altered to 8 Kms.)*

Issue 5: Whether Gauchar land or water bodies could be allotted to a Housing Society or to an individual or individuals for the purpose of construction of house?

> In **Palitana Sugar Mills Pvt. Ltd. and Anr. Vs. State of Gujarat and Ors**[13]**.** *"The lands in question being pasture land (Bid land) and not being fit for cultivation was excluded from the purview of the Gujarat Agricultural Land Ceiling Act, 1960."*

[12] AIR 1989 Guj 81, (1988) 1 GLR 209
[13] MANU/SC/0907/2004

Issue 6: Whether the allotment of plots by Neetibagh Co-operative Society was proper?

In the case before us, 12 issues had been framed by the Court. However, the merits of the issues raised can be determined only once pleadings are filed in this behalf by the Parties, which is unlikely to happen any time soon given the stay granted by the Supreme Court in this regard. The broad issue which the case brings to light are partly legal *vis a vis* administrative law and partly ethical.

This is not the first time allotment of land to judges has come into the spotlight. In Karnataka, the Karnataka Judicial Department Employees' House Building Co-operative Society floated a housing scheme meant to benefit the low paid employees of the Karnataka State Judicial Department at nominal rates. In spite of the specified beneficiaries being expressly stated, allotments under this scheme were made to a large number of judges, including 8 former Supreme Court judges, the present Chief Justice of India H. L. Dattu and the next Chief Justice, Justice T.S. Thakur. This was in flagrant violation of the purpose of the scheme. The important issue which this case raised was that land, which was public resource, had to be allotted on the basis of cogent grounds and in a transparent manner. The Executive had to bear in mind the Directive Principles enshrined in our Constitution which mandated division of resources equally among the populace and strived to prevent concentration of these resources in the hands of a few. There was no doubt that the executive authority[14] had the discretion to allot a certain specified limit of the land resources at its disposal to this class of people. However, what is imperative is that the said discretion should exercised in a transparent way, on the basis of valid considerations. Whether that happened in this case was the question. It was alleged that the allotment of land to the Cooperative Society of lower level employees of the Judicial Department was only

[14] The land development authority. In Delhi, Delhi Development Authority (DDA) has the power to allot land. Ahmadabad has the Ahmadabad Urban Development Authority (AUDA).

a veil behind which it was intended to actually allot the land to the judges. The land ended up being procured by the Judges at extremely nominal rates. The Karnataka High Court in the case of ***Subramani v Union of India*** decided in 1995 had specifically held that:

> *"Judges, sitting or retired, of the Supreme Court or the High Court, could not be considered 'employees' of the Court. It was held that judges being part of the aforementioned co-operative society was a definite irregularity. In spite of this, the judges accepted allotment under this scheme."*

In a case prior to this, Rajasthan Housing Board introduced a special window calling for applications for allotments to the Mansarovar Housing Scheme (already in existence) for sitting judges of the Rajasthan High Court. This was pursuant to a request on this behalf by certain sitting judges to the Supreme Court. The matter went up before a Single Judge of the Rajasthan High Court who held struck down this allotment, holding it was improper for a judge of a High Court to seek such a favour from the Executive Branch. Distance should be maintained between these two branches, since the Executive was the biggest litigant before the Court. The allotment of land was observed to be a 'largesse' and a 'favour' asked from the Executive.

This case went before a Division Bench of the Rajasthan HC in appeal and was reported as ***N.K. Bairwa v. Sripal Jain***[15]***.*** The Division Bench overruled the verdict of the Single Judge, finding no infirmity. The jury is still out on whether such allotment was proper or not.

So far, there was no binding ruling from a Court against such allotment. However, recently the Calcutta High Court has held in the case of ***Govinda Prasad Ladia & Ors. v. WBHIDC Ltd. & Ors*** allotment of land to judges, politicians etc. by the West Bengal Housing Development Corporation. Justice Sanjib Banerjee, who constituted the Coram, delved into a detailed analysis of the

[15] (1997) 1 RLR 129.

concept of "discretion" and how it had to be exercised. It was held that no valid considerations were seen to exist which would justify such allotment of land to judges, politicians, etc. Discretion was not exercised judiciously and the allotment was invalidated. It arose from the allotment of land under the discretionary quota of the Chairman of WBHIDCO, the respondents, who happened to be the state Minister for Housing and Development. The Court observed:

> *"The facts show that the erstwhile chairman of the company vainly perceived that he had unfettered discretion to make allotment of plots to whoever he pleased without assigning any reasons or without reference to the guidelines. The discretion was exercised in a most capricious, inequitable and feudal manner. There was no basis in the choice of the beneficiaries from among many and the manner of exercise of discretion does not satisfy the tests laid down by high judicial authorities."*

> *"In an ideal situation, equality of opportunity would be if everyone is impartially situated as equals. In the real world, everyone is not similarly placed. For social justice or distributive justice to be brought about by reconciling liberty and equality in a principled manner, there has to be an element of discretion in distributing State largesse. Since the political executive has an accountability to the legislature and consequently, to the people, the political executive does have the mandate to exercise discretion in how best to distribute land, licence, permits and the like. In judicial review of any impugned distribution of State largesse, the court may not say that it could have been done better or that a different set of parameters ought to have been applied therefore. Whether on Wednesbury reasonableness or on the basis of the doctrine of proportionality, the court will assess whether the process was fair or in furtherance of the object of the exercise. It is found in this case that only some of the applicants under the chairman's discretionary quota were selected for approval without even a rational basis for picking out some and leaving out the others. Even the allotments made by the board of the company on February 28, 2011 were not on any rational basis but on the purported recommendation of a committee that is shown to*

have met long after the board meeting on the same day had commenced and whose purported recommendations were approved by the board apparently on the same day. As to the board allotments, it is true that all the applications that were made to the board may have been approved, but government land cannot be distributed without relevant considerations being taken into account. The paramount consideration may not necessarily have been the best price possible, for government cannot be seen to be driven by profit motive even though such profits may be channelled to programmes for the less privileged citizens. But if the board was to allot plots on the basis of applications and not by invitation, it should have advertised therefore and not have exposed itself to an inference that it may have engineered the applications to allot plots to favourites."

The Court concluded with the following words:

"The concluding thought is as to the adverse impact of the lack of probity in public life which leads to a high degree of corruption. Corruption may not necessarily imply the acceptance of illegal gratification: for when there is political patronage or any form of favouritism or nepotism where the beneficiary of State largesse is chosen not on the character of his application but on other considerations as to his conduct or allegiance, the faith in the system as a whole is shaken and there is a revulsion to conform to order in society. As much as this decision may be used for political mileage, those in office today must remember that they will be judged on the same basis. As a parting thought, one can do no better than repeat the words of the Supreme Court in the ***Vineet Narain v. Union of India***[16] *after quoting from Lord Nolan's Report of 1995 on "Standards in Public Life":*

"55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain

[16] *MANU/SC/0827/1998 : (1998) 1 SCC 226*

powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.""

CHAPTER III: COURT OBSERVATIONS

(Here in attached Order 3 as Annexure 3, for stay order)

Gujrat High court observed following cases and analysis below

In Letters Patent Appeal No.1211 of 2013 rendered by the Division Bench of this Court in ***Sursinhji Rajput Chhatralay Trust Vs. Bavla Nagarpalika*** and others decided on 3rd March, 2015, the Division Bench has held as under :-

"In support of his case, learned counsel for the appellant has relied upon the following decisions:

1) ***Jasvantsinh Laxmansinh Chauhan v. Deesa Municipality***[17], which reads as under:

It is difficult for us to agree with the contention of the learned counsel for the petitioners that in every case where the property is supposed to be disposed of, it can be done only by public auction. There is no provision in Section 65 of the Act to that effect. Of course, the municipality cannot dispose of its property for an ulterior reason or not for the purposes of the Act, nor can it circumvent the provisions of the Act to directly or indirectly give undue benefit to persons or a class of persons. This can, however, not prevent the municipality from considering favourably the demands or the needs of a section of society. Section 65 of the Act contains sufficient safeguards and does not, in our opinion, suffer from the vice of excessive delegation. The challenge to the said provision is without any basis.

In a three Judges Division Bench decision of the Apex Court[18], which has been relied upon by the Division Bench, more particularly paragraphs 108 and 113, which read as under:-

[17] 1995 1 GLH 730
[18] (2012) 10 SCC 1

Such being the constitutional intent and effect of Article 14, the question arises - can auction as a method of disposal of natural resources be declared a constitutional mandate under Article 14 of the Constitution of India? We would unhesitatingly answer it in the negative since any other answer would be completely contrary to the Scheme of Article 14. Firstly, Article 14 may imply positive and negative rights for an individual, but with respect to the State, it is only couched in negative terms; like an admonition against the State which prohibits the State from taking up actions that may be arbitrary, unreasonable, capricious or discriminatory. Article 14, therefore, is an injunction to the State against taking certain type of actions rather than commanding it to take particular steps. Reading the mandate of auction into its scheme would thus, be completely contrary to the intent of the Article apparent from its plain language.

Finally, reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). The said article enumerating certain principles of policy, to be followed by the State, reads as follows:

The State shall, in particular, direct its policy towards securing

A) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any Court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on distribution built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing distribution is furtherance of common

good. But for the achievement of that objective, the Constitution uses the generic word distribution. Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the common good."

In another judgment of the Division Bench of this Court in **Sarvesh Atulbhai Gohil v. Jamnagar Urban Development** Authority and others[19], the Division Bench has observed as under:-

"This petition portrays an extremely sorry state of affairs at the end of the authorities, namely, the Jamnagar Urban Development Authority as well as the Jamnagar Municipal Corporation. We are reminded of the observations made by the Supreme Court in the case of Delhi Development

Authority Vs. Skipper Construction Company Private Limited and anr[20] in connection with the menace of illegal and unauthorized construction of buildings and other structures. The observations are worth noting.

"We feel impelled to make a few observations. What happened in this case is illustrative of what is happening in our country on a fairly wide scale in diverse forms. Some persons in the upper strata (which mean the rich and the influential class of the society) have made the property career the sole aim of their life. The means have become irrelevant in a land where is greatest son born in this century said means are more important than the ends. A sense of bravado prevails; everything can be managed; every authority and every institution can be managed. All it takes it to 'tackle' or 'manage' it in an appropriate manner. They have developed an utter disregard for law nay, contempt for it; the feeling that law is meant for lesser mortals and not for them. The courts in the country have been trying to combat this trend, with some success as

[19] 2014 (2) GLH 26
[20] (1996) 4 SCC 622

the recent events show. But how many matters can we handle. How many more of such matters are still there? The real question is how to swing the polity into action, a polity which has become indolent and soft in its vitals? Can the courts alone do it? Even so, to what extent, in the prevailing state of affairs? Not that we wish to launch upon a diatribe against anyone in particular but Judges of this Court are also permitted, we presume, to ask in anguish, what have we made of our country in less than fifty years? Where has the respect and regard for law gone? And who is responsible for it?"

The Apex Court in City **Industrial Development Corporation v. Platinum Entertainment and others[21],** has held as under:-

"49. State and its agencies and instrumentalities cannot give largesse to any person at sweet will and whims of the political entities or officers of the State. However, decisions and action of the State must be founded on a sound, transparent and well defined policy which shall be made known to the public. The disposal of Government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favouritism or nepotism influences the exercises of discretion. Even assuming that if the Rule or Regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the Rule of Law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt pick and choose method while allotting the Government land.

Furthermore, this Court has already stated in ***Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh & Ors[22]****, that the State or its agencies or instrumentalities must give largesse founded on a sound, transparent, discernible and well-defined policy, which should be made known to the public at large and further held that a rational policy of allotting land on the basis of individual applications cannot de hors an invitation or advertisement by the State or its*

[21] (2015) 1 SCC 558
[22] **(**2011) 5 SCC 29

instrumentality, bringing it to the knowledge of public at large so that the eligible persons should not be excluded from lodging their competitive claims."

CHAPTER IV: CONCLUSION

In gist, it can be seen that, as mentioned before, the issues raised a mix of legal and ethical considerations. The broad view that can be taken is that it is wrong on behalf of the judges to pander to the Executive given the fact that the Government is the largest litigant in the Courts. There is no law which requires this. But these standards are expected to be met by a judge in the performance of his judicial function. However, the fact remains that policies of the various Development authorities do provide for allotment to the class of privileged person which judges comprise. This requires that the Discretion afforded to the Chairmen of the Land Development authorities be exercised on valid and reasonable considerations, especially as it leads to the concentration of resources in the hands of a few.

What can also be seen from the aforementioned analysis is that the issue these matters deal with is the exercise of "discretion". The same can be seen in the *suo motu* PIL taken up by the Gujarat High Court. The issues which have been framed are to determine whether discretion has been exercised properly and the allotment is not an undue largesse extended by the Executive to the Judiciary.