

WPC PIL 9095 OF 2014 LINK

ODISHA DQ

PIL challenging discretionary allotment of plots posted to June 26 *Odisha Sun Times Bureau Cuttack, May 14:*

The hearing on the PIL filed jointly by Delhi-based NGO Commoncause and Jayanti Das in the Odisha High Court questioning the arbitrary allocation of plots by the Housing & Urban Development department of the Odisha government to sitting judges, IAS and IPS officers as well as other influential persons, which was listed for the day, will be taken up by the court on 26 June, the counsel of the petitioners Sunil Mathews said today.

After a brief, introductory hearing today, during which the Delhi-based lawyer Mathews apprised the court of the gravity of the matter raised in the PIL, the Chief Justice of the Odisha High Court Justice Adarsh Kumar Goel ruled that the hearing would take place at the earliest possible date after the summer vacation i.e. June 26.

The PIL was originally filed by eminent lawyer Prashant Bhushan on behalf of Commoncause in the Supreme Court. However, the court had advised the petitioners to move the Odisha High Court in the matter. The PIL raises crucial questions about the lack of a well defined policy and guideline as well as transparency in the allotment of land and houses from the discretionary quota, Mathews said.

According to the lawyer, the petitioners have drawn the attention of the court to instances of malpractice and grossly arbitrary allocation of government plots and land to judges, senior government officials and other influential individuals on the basis of suo motu request letters written, under their hand and seal, by the beneficiaries.

They have also pointed out that the whole exercise was done in a clandestine manner without the knowledge of the people at large and in gross violation of Article 14 of the Constitution as well as relevant court judgements in the matter, he said.

” There was no policy, no advertisements were issued and everything was decided by the departmental minister’s discretion. We will present important earlier judgements of the Punjab High Court and even the Odisha High Court to bolster our argument that it was indeed a shady and highly objectionable practice,” Matthews told OST over phone.

However, there is a view that such practice has been in vogue not only in Odisha but in the other states for years because there is no established or uniform procedure or law yet that applies to the country as a whole in such matters.

In Bhubaneswar, for instance, where government is the landlord, all the plots in the residential areas of the city were allotted to people purely on the basis of discretion until the BRIT and later the BDA came into existence. Legal experts say, there is a great need for an Act which would decide once for all the law, guideline and procedures that would apply to all allotments of government land, housing plots and houses,

It may be noted here that the state government has abolished the system of discretionary quota for allotment of plots and houses in December 2012 after it kicked up a huge controversy.

Politicians grab prime Bhubaneshwar land at dirt cheap rates- Gulail

-INVESTIGATION-LEAD STORY-by [Shazia Nigar](#) -18 sept 2013

Beneficiaries of the land scam worth Rs 252 crore include judges, journalists and bureaucrats

Odisha is the latest to enter the club of states that are witnessing land scams and loot of scarce natural resources. In a shameless act of abuse of power and public trust, carried out on official papers, ministers, bureaucrats, businessmen, journalists and judges have been pocketing large chunks of land that belongs to the state government. The CAG report on the social sector in Odisha, tabled in April this year, put the loss due to such transactions at Rs 251.92 crore from 1998-2009.

The CAG report test checked 164 (49 per cent) cases out of the 377 land allotments made from 2000-2012. The report noted, "Absence of any rule or criteria to guide the allotment process gave room for arbitrariness in allotment. There was no uniformity in disposal of applications, sanction of concession on premium to be paid, changes in land use plan and resumption of encroached land." Collaborating information put together through a series of RTIs filed by activist Jayanti Das from Bhubaneswar and other sources, Gulail has compiled a list of Ministers who have pocketed government land for their personal benefits. It was found that land has been allotted to Ministers or their next of kin below the market rate resulting in losses for the state government. In some cases, many acres have been allocated for commercial purposes without an auction. In others, the discretionary quota (DQ) of the Minister for Housing and Urban Development has been indiscriminately misused to add to the already bludgeoning assets of senior ministers.

BOX: As per a [2001 Supreme Court judgement](#), "When a State property as distinct from a private property is being dealt with by a Minister, then it is of paramount importance that such public property must be dealt with for public purpose and in the public interest." It further states that DQ can be used to allot land only to:

- The dependent of a person who has made a supreme sacrifice for the nation but has not been properly rehabilitated so far
- Member of a family which has been a victim of unforeseen circumstances (e.g. terrorist attack, earthquake, flood etc.)
- Physically handicapped person, defence/paramilitary/police personnel/other Central/State Government employees who are permanently disabled on duty
- Immediate next of kin, namely widow, parents, children of those who lost their lives in abnormal circumstances
- Eminent professionals like outstanding sportsmen, artists, literary personnel and women of high achievements **in distress**
- Individual cases of extreme hardship which in the opinion of the Government are extremely compassionate and deserve sympathetic consideration in view of special circumstances of the cases.

Houses and plots being developed by the Bhubaneswar Development Authority (BDA) have been allotted to former and sitting Members of Parliament and Members of Legislative Assembly through DQ. None of the Ministers investigated qualifies for a DQ allotment under the stipulated conditions. The BDA does not permit allocation of more than one plot/house to an individual under the scheme. In complete violation of this provision, several ministers have pocketed more than one house/plot under the BDA.

The ministers that oversaw these allocations include Samir Dey (2000-04), KV Singh Deo (2005-08) and BN Patro (2009-11). Following severe criticism, the DQ system was finally abolished in December 2011 by the Chief Minister Naveen Patnaik. However, the cancellation does not have any implications for the beneficiaries of the arbitrary and illegal land transactions.

On the other hand, even after a government order directing allotment of homestead land to the next of kin of police personnel killed in anti-Naxal operations, implemented from April 2010, as of January 2012 the family of only one of the 108 deceased has been allotted land under the scheme.

Bimbadhar Kuanr

A senior BJP leader, Kuanr was the Minister for Labour and Employment for the BJD-BJP alliance between 2000 and 2004. Kuanr has acquired 2400 sq. feet of prime land in Bhubaneswar's Chandrasekharapur area under the dubious BDA scheme. Given the price of Rs 3,300 per sq. feet in the area, his property is worth Rs 78 lakhs. Documents with Gulail show that the then Minister of Housing and Urban Development, Samir Dey, himself directed the BDA Vice Chairman to allot this sprawling plot to Kuanr. Kuanr also opted to not disclose that this piece of land was allotted to him in 2003 in the affidavit filed with the Election Commission while contesting the 2004 elections. What the affidavit revealed instead was another property was allotted to him by the BDA in Udayagiri, Bhubaneswar. This is a violation of the rules that the BDA displays on its brochure, as per which an individual cannot be in possession of more than one plot under the scheme.

Rules Violated:

- Acquiring houses under DQ
- Allotment of more than one house under a scheme is not permissible as per the provision incorporated in the brochure prepared for BDA
- Acquired house at below the market price
- Did not mention property allotted by the BDA in 2000 in his affidavit filed with nomination papers for the 2004 elections

Action taken: NONE

Value of land Currently owned as per disclosure: Rs 93,29,250

Minister in charge of DQ during allotment: Samir Dey

Veteran BJP leader Samal was a Member of Parliament in the Rajya Sabha from 2000 to 2004. It was he who later introduced the Orissa Land Reforms (Amendment) Bill, 2006 in the Odisha Assembly during his stint as a BJP MLA from 2004-08. Samal is presently the BJP state general secretary.

On an order from the former Minister of Housing and Urban Development, Samir Dey, Samal was allotted a Duplex in Baramunda. This plot had been previously been allotted to a certain Pratap Kumar Samal. In exchange, a plot measuring 2400 sq. feet in Prachi Enclave earlier allotted to Manmohan Samal was transferred to Pratap Kumar Samal. It is unclear if Pratap Kumar Samal is related to Manmohan Samal or not.

As per the Affidavit filed with his nomination papers, Samal owns two houses under the BDA scheme. One of them, the Duplex in Baramunda, is jointly owned with his wife Pranati Samal. Surprisingly, Samal states in the affidavit that the approximate value of the house he bought is Rs.85,000. Presently the market value of this property is between Rs 50,00,000 to 60,00,000. The second house under the BDA scheme owned by Samal's wife Pranati is valued at Rs 35,00,000.

Samal was also unduly granted a request to pay the Rs 10,77,500 over three months without any interest, instead of an upfront payment, as is usually the practice.

This is not the first time Samal has been involved in an illegal act. He had to step down as the Revenue Minister over alleged involvement in a sex scandal in 2008. Ironically, once the CAG report was tabled Samal was one of the leaders demanding the resignation of Chief Minister Naveen Patnaik and senior BJD leader Surjya Narayan Patro on grounds of moral responsibility. The CAG report had pointed to several violations in allocation of land to a project led by Patro's son.

Rules Violated:

- Acquiring houses under DQ
- Allotment of more than one house under a scheme is not permissible as per provision incorporated in the brochure
- Acquired house at below the market price

Action taken: Claims to have returned one of the houses

Land Currently owned as per disclosure: Rs 62,25,000

Minister in charge of DQ during allotment: Samir Dey

Bikram Keshari Arukha

Four time MLA from Bhajanagar constituency (once for Janata Dal and thrice from Biju Janata Dal), Arukha is currently the Minister for Rural Development and Law.

In 2007 Arukha was allotted a house through the Ministers discretionary quota (DQ) under the BDA housing scheme. The house allotted in the name of his wife Jayalaxmi Arukha, is situated in the prime locality of Kalinga Vihar. The provisional allotment for this property had already been made when he applied for a house under the BDA housing scheme for a second time. A copy of his second request for allocation of land under the BDA scheme is with Gulail.

Rules Violated: Acquiring houses under DQ

Allotment of more than one house under a scheme is not permissible as per provision incorporated in the brochure prepared for different schemes.

Acquired house at below the market price

Action taken: NONE

Value of land Currently owned as per disclosure: Rs 49,95,215

Minister in charge of DQ during allotments: Kanak Vardhan Singh Deo (2005-2008), Badri Narayan Patra (2009-2011)

Dharmendra Pradhan

Currently a Member of the Rajya Sabha from Bihar, Pradhan is a senior BJP leader who served as the national secretary of the party during the years 2007-2010. He was previously a member of the Lok Sabha from the Deogarh constituency in Odisha. He is the son of veteran BJP leader Debendra Pradhan who was elected to the 13th Lok Sabha from the same constituency.

In a letter available with Gulail, the then Minister of UD AND PG & PA directs the VC of B.D.A to cancel a allotment to Dharmendra Pradhan. In the same letter he asks for the same plot to be allotted to Debendra Pradhan, then Union Minister of State for Agriculture. In the letter, the minister states “ The order may be issued at your level and the file need not be sent to me.”

As per the Association for Democratic Reforms Pradhan faces charges of :

- 1 charges related to Obscene acts and songs (IPC Section-294)
- 2 charges related to Wrongful restraint (IPC Section-341)
- 1 charges related to Obstructing public servant in discharge of public functions (IPC Section-186)
- 1 charges related to Acts done by several persons in furtherance of common intention (IPC Section-34)
- 1 charges related to Punishment (IPC Section-143)
- 1 charges related to Danger or obstruction in public way or line of navigation (IPC Section-283)
- 1 charges related to Intentional insult with intent to provoke breach of the peace (IPC Section-504)
- 1 charges related to Every member of unlawful assembly guilty of offence committed in prosecution of common object (IPC Section- 149)

Rules Violated:

- Acquiring houses under DQ
- Could have been acquired below the market price

Action taken: NONE

Value of land currently owned as per disclosure: Did not disclose

Minister in charge of DQ during allotment: Samir Dey

Nagendra Pradhan

An erstwhile BJD MLA, Pradhan currently serves as the spokesman and General Secretary for the party. In a surprise move, he had been dropped from the Naveen Patnaik cabinet in 2006 while he was serving as the Minister of State for School and Mass Education.

In an application for allocation of land under BDA, Sovamayee Dehury, wife of the Minister, requested the then Minister of UD and PG&PA to allot a plot out of his discretionary quota. She signed off in the C/O Nagendra Kumar Pradhan, MLA. On the same application a note by the Minister to the VC of BDA says “the allotment made in favour of Shri Nagendra Kumar from my discretionary quota maybe cancelled. The said plot may be allotted in favour of Sovamayee Dehury, W/O Shri N Pradhan.”

Rules Violated:

- Acquiring houses under DQ
- Could have been acquired below the market price

Action taken: NONE

Worth of land Currently owned as per disclosure: Rs 8,29,875

Minister in charge of DQ during allotment: Samir Dey

Debi Prasad Mishra

Currently the Minister of Urban Development and Housing, Prasad himself has violated the honour of the office he is in charge of. As per a letter forwarded to the VC of the BDA from the Minister of Housing and Urban Development in 2001, Mrs Anusaya Mishra, wife of Debi Prasad Mishra, had been allotted land under the BDA scheme through DQ. Mishra's affidavit declares the property to be worth Rs 5,23,815.

Rules Violated:

- Acquiring houses under DQ
- Could have been acquired below the market price

Action taken: NONE

Worth of land Currently owned as per disclosure: Rs 68,57,815

Minister in Charge of DQ during allotment: Samir Dey

Dillip Ray

A founding member of the BJD, Ray was expelled from the party just before the 2002 elections by Chief Minister and BJD President Naveen Pattnaik. Not one to back down easily, he went onto win a Rajya Sabha seat ten days later as an independent candidate. He had previously served a term as a member of the Rajya Sabha on a BJD seat. Owner of the luxury Mayfair Lagoon chain of hotels Ray exercises tremendous control over politics in Odisha. Currently, he is a member of the executive committee of the BJP and speculation has it that he is likely to contest elections this year. He has previously served as Union Minister of Industry for State in 1998.

The Mayfair Lagoon, a 5-star hotel in Bhubaneswar is where the Indian Cricket team is hosted when playing a match in Odisha, it is where the big business houses put up their representatives and the Government of Odisha holds various workshops. Spread out over acres

of prime land this is the place where the elite of the state party. The allocation of land to this luxury hotel is fraught with violations as per the CAG report. Forest land was diverted for this resort without obtaining the requisite clearance from the Union Ministry of Forest and Environment. It was acquired below market price in the absence of an auction. The land was allotted in phases arbitrarily, indicating a lack of proper planning. To top it all, the resort has also encroached upon another 3.237 acres of land.

The CAG report states “It was noticed that the entire allotment was made within two years, with the last phase of allotment (3.237 acre) carried out within three months. Further, the land was allotted without obtaining the land use plan and the recommendation of the Administrative Department as well as the SSC. The lessee was allotted the entire 10.237 acre land out of forest “Kisam” (Jungle-2) land without the concurrence of the Central Government in pursuance to the Forest Conservation Act, 1980. Further the hotel was allowed to pay lease premium in eight equal half yearly instalments without the approval of the Finance Department though required. The lessee was also extended undue benefit of Rs 19 lakh due to charging of lease premium at Rs 1.62 crore against the prevalent market value of the land of Rs 1.81 crore.”

Niten Chandra, Special Secretary to the General Administrative (GA) department, which owns and allocates all government land through various schemes in Bhubaneswar, said “It is up to the private agency to take action. We have told them to get permission from the concerned authorities.” The DGM of Mayfair Lagoon, Biju John, has however denied this claim. He says “The GA department has not asked us to get any clearances. They have not contacted us.” Chandra on being asked to provide proof of having instructed Mayfair to get the required clearances said, “I am busy working. I do not have the time.”

Rules Violated:

- Acquired prime land below the market price without an auction
- Arbitrary allocation of land in phases
- Acquired forest land without clearances from the concerned Ministry
- 3 acres of land has been encroached upon as per the CAG audit

Action Taken: None. Despite the CAG audit Mayfair Lagoon has not acquired clearances from the concerned authorities and neither has the GA department taken any action in this direction.

Worth of land currently owned as per disclosure: Affidavit not available

Total assets as per disclosure: Affidavit not available

Surjya Narayan Patro

Five times MLA, twice on a Janta Dal and thrice on a BJD ticket, Patro is as much a businessman as a politician. His family promotes the agency South Pac Private Limited that came under heavy criticism in the CAG report for the arbitrary nature of land allocation it benefited from

and the resulting loss to the state. The land was leased by the GA department to Ambassador Hotel, a project Patro's son Biplab Patro is said to be leading in Bhubaneswar.

The time taken to allot land to South Pac was a mere 56 days in comparison to 7 years for the Ekamra Saraswati Sishu Mandir School and Blossom School, Bhubaneswar. An individual, Lt Col P.C.Jena had to wait 24 long years for a piece of land to be allotted to him. The land allocated for the hotel, having been reserved for residential purposes, was also in violation of the Land Use Zone.

Rules Violated:

- Land reserved for residential purposes was leased out for a hotel violating the Land Use Zone
- Land was leased at an institutional rate, at a loss of Rs 25 lakh per acre, in comparison to the applicable commercial rate
- Construction was not completed within the stipulated time and an undue extension of nine years was granted to the leases.

Further, against the applicable commercial rate of Rs 75 lakhs per acre, the land was leased at an institutional rate of Rs 50 lakhs per acre, providing an undue benefit of Rs 25 Lakh per acre to Patro. The CAG has also critiqued the GA department for entertaining a request to accept the amount over eight instalments.

The lessee failed to meet the deadline for completion of construction within the stipulated time frame ending June 2003. Three years later the government responded with a soft nudge through a show cause notice in Feb 2006. When this failed to illicit a response an instruction to complete the construction was brought to Patro's notice. As per the rules his lease should have been cancelled. The CAG report notes that Patro was given an undue extension for completion of construction.

In November 2012, after opposition party members raised the issue, the state government cancelled the lease and forfeited the premium and interest.

Action Taken: Lease was cancelled

Total assets as per disclosure: Rs 1,82,69,654

MEDIA J DAS DQ

TIMES-NOW-INTERVIEW

Excl: The connected win, martyrs lose

13 Apr 2013, 2202 hrs IST, TIMES NOW

This is Odisha Rural Development Minister Vikram Aruka, one of the alleged beneficiaries of two plots of land under the Odisha Government's discretionary quota.

Reporter: This is regarding the discretionary quota that you got in the past. Among the two plots, you have surrendered one. Why haven't you surrendered the other plot?

Bikram Keshari Aruka: I had taken one plot in my wife's name and the other in my name. I surrendered the plot that I had bought in my name.

Reporter: Why didn't you surrender the second plot taken in your wife's name?

Bikram Keshari Aruka: But I surrendered one plot.

Reporter: But why didn't you surrender the second plot?

Bikram Keshari Aruka: I told you I surrendered the plot taken in my name.

Reporter: But ideally you shouldn't be in possession of this plot.

Aruka surrendered one plot of land in his name when Comptroller and Auditor General (CAG) questioned the allocations but he continues to hold on to the second plot even though he isn't eligible. The guidelines formulated by Odisha Government clearly state that discretionary quota allocations are only meant distressed families of defence personnel or the physically challenged.

But an RTI accessed by **TIMES NOW** exposes the names of influential politicians and bureaucrats who have reaped the benefits of discretionary quota allotments while martyrs' families were ignored. Jayanti Das, RTI activist, said, "Through RTI I asked that how many martyr families have got the land under discretionary quota since 2000. To my surprise I found that only one family got land out of 108 martyr families. Rest all of them are waiting. I wrote a letter to several authorities and Ministry but action has been taken yet."

Its not just politicians, over the years several hundred acres of land have been allocated to influential bureaucrats and police officers in Cuttack and Bhubaneshwar. But with the Odisha Government refusing to act, civil society has woken up with social activist and senior lawyer Prashant Bhushan ready to file a PIL against the Naveen Patnaik Government.

With Chief Minister at epicenter of suspicion Chief Secretary should take all land allocation files to his custody immediately

Posted on December 23, 2014 by Subhas Chandra Pattanayak
orissamatters.com/tag/corruption-in-discretionary-quota

Subhas Chandra Pattanayak

Allocation of housing plots and houses from discretionary quota were as per orders of Chief Minister Naveen Patnaik, his former cabinet colleague Samir De has disclosed. This is a serious disclosure.

Concerned files can say whether or not De's claim is correct. Applications to affidavits, initial clerical notes to final orders of authorities are in the files.

Under Order No. 22188, dated 11.08.2014, Additional Chief Secretary Taradatt, heading a three-member Task Force comprising Commissioner-cum-Secretary of Housing and Urban Development Department as well as Special Secretary to Government in the Department of General Administration as members, had to work under the following Terms of Reference:

1. The scope of review by Task Force will cover the period to from 01.01.1995 31.07.2014 in Bhubaneswar and Cuttack urban areas in respect of (a) all cases of allotment of land/ house/ flat out of discretionary quota and (b) allotment of more than 1 unit of land/ house/ flat to members of the same family; and,
2. The Task Force should submit its findings and recommendations to Government within a period of four months. Simultaneously, the concerned agencies like BDA, CDA, OSHB and GA Department should take action on irregular allotments within this period.

The Terms of Reference is vitiated with serious mischiefs. One is: Making the Secretaries of both the departments where illegal allocations were complained of, members of the Task Force and another is authorizing in the ToR itself "the concerned agencies like BDA, CDA, OSHB and GA Department" to "take action on irregular allotments within this period" of inquiry "simultaneously".

Such mischief strengthens the suspicion that Chief Minister Naveen Patnaik, as disclosed by his former ministerial colleague Samir De, is involved with the illegal allocations of housing parcels and readymade houses in prime locations to persons, some of whom have the potentiality to be used as shock absorbers in his vehicle of corruption and some others, whom he uses as his

image builders and/or suppressors of news that might be carrying the capability of exposing his misdeeds.

The Task Force has already attracted criticism for not making any mention of many beneficiaries of the discretionary quota. Tallied with the reply of the concerned Minister Puspendra Singhdeo to a question in the Assembly on 11.07.2014, the TF report looks deficient. Some allege, the TF has deliberately omitted certain names to oblige undisclosed power that be; but the report strongly indicates that some of the relevant files were not made available to TF. Non-availability of files must be the reason of the TF's inability to locate all the instances of criminal favoritism in land/house allocations. So, the TF has very rightly recommended for further in-depth investigation into the misuse of discretionary power by the Minister/Chief Minister. Either the CBI or Judicial Commission of Inquiry can conduct this in-depth investigation.

Had the Chief Minister been honest, he could have used his prerogative by this time to suspend all the illegal and dubious allocations located by TF and taking the involved properties into Government possession in State interest, should have asked the lease holders as to why the allocations would not be nullified. When the illegality in allocation has been located by the TF, the persons involved with this illegality are also known. Criminal prosecution that they deserve should have been initiated by this time.

But the Government is not moving this way, apparently because, besides influential executives – former and incumbent, and Judges of higher judiciary, and commanding commercial tycoons against whom the Government cannot go, the Chief Minister is also involved in this criminal offense.

When a very abysmally small number of news media persons are acting active sentinels of people in this matter, majority of newspapers and channels have started insinuating on credibility of the TF findings. Crabs are making the water muddy when admittedly the TF has not been helped with all required files to locate the full extent of illegal allocations.

But the good news media personnel and judiciary may not be hoodwinked and time may come, the judiciary may ask the CBI or appoint a judicial commission to investigate into the allocation scam.

It is imperative for the Judiciary to appoint such a Commission of Inquiry, because, there are Judges who have grabbed benefits from discretionary quota by swearing in false affidavits. All of these judges and their modus operandi need be brought to clear light and they need be prosecuted for punishment under criminal procedure if the judiciary is to save its own image. If it happens, the concerned files will be source of information.

Therefore, there is every reason to apprehend that concerned files may be destroyed or tampered with to save the scoundrels.

Unless the Chief Secretary, as chief of the Executive Government, immediately warrants every file of every allotment to his custody for safe-keeping thereof, the high-power investigation, which is now of immense imminence, may be defeated.

It is incumbent upon the Chief Secretary to immediately keep the files under lock and key under his direct control with such meticulousness that responsibility for illegal use of discretionary quota could be fixed and penal prosecution could succeed.

MEDIA J DAS DQ

Quota PIL glare on bigwigs

LALMOHAN PATNAIK

Cuttack, Sept. 10 2014: A petition filed in Orissa High Court has sought a CBI probe into alleged abuse of official positions by bureaucrats and ministers in allotment of residential plots through discretionary quota in Bhubaneswar and Cuttack.

The petition alleged that the Bhubaneswar Development Authority and the Cuttack Development Authority had distributed state largesse in “arbitrary and discriminatory” manner by way of allotment of plots of land “at concessional rates to influential persons” between 1991 and 2011.

The petition, filed by way of a PIL by Kamal Kant Jaswal, director of Common Cause, a New Delhi-based organisation along with Cuttack-based social activist Jayanti Das, expected the high court to order a CBI probe and monitor it.

Earlier, they had filed a petition in the Supreme Court, challenging the discretionary allotment of prime residential plots to influential persons in Gujarat and Odisha. The Supreme Court had dismissed the petition on February 21, but granted liberty to them to move the high court.

The division bench of Chief Justice Amitava Roy and Justice A.K. Rath, before which the petition came up on Monday, adjourned the matter till the petitioner counsel submits the background in which the top court had declined to consider their petition.

The petition, along with copies of list of influential persons allotted land (assessed through RTI), has also sought “cancellation of the entire allotment of plots of land by the development

authorities to government officials, MPs, MLAs, judges and others through discretionary quota since 1991”.

The PIL was moved in the high court at a time when there has been a clamour for a CBI probe by Opposition parties and the state government had formed a task force, headed by additional chief secretary Taradatt, to probe irregularities regarding allotment of plots and houses under the quota.

The task force, formed a month ago, has been assigned the job of examining cases between January 1, 1995 and July 31, 2014 in Bhubaneswar and Cuttack urban areas in respect of all cases of allotment of land, flats and houses out of the quota. It will also review allotment of more than one plot of land, flat and house to the members of the same family and submit report within four months.

In December 2011, the high court had dismissed on grounds of maintainability of a PIL seeking CBI probe into the alleged misuse of the discretionary quota in allotment of land to judges and officers of the IAS and the IPS cadres by the development bodies. Niranjana Tripathy, a resident of Patkura in Kendrapada district, had filed the PIL

http://www.business-standard.com/...3040400411_1.html

Jayajit Dash | Bhubaneswar April 4, 2013 Last Updated at 19:12 IST

Business standard-AG asks Odisha to scrap irregular allotments in discretionary quota

Auditor cites SC order on 'Whistling Woods' case

The controversial allotment of plots under the erstwhile 'discretionary quota' has brought in fresh trouble for the Odisha government.

Though the state government abolished the system in December 2011 to avoid controversies, the office of the state Accountant General (AG) has urged the government to scrap all irregular allotments made under the quota even if construction has been raised on such land.

"All irregular allotment of plots including those under discretionary quota without any authority of law or government should be cancelled, terminated and resumed even if constructions have already taken place on the said land. This is in view of the apex court's judgement upholding the orders of the Bombay High Court which held such allotments to be arbitrary, unreasonable

and illegal in the cases of Mukta Arts Ltd. Similar action may be taken for allotment of apartments/flats”, Amar Patnaik, accountant general (Odisha) wrote to Injeti Srinivas, principal secretary (housing & urban development).

The AG has cited the Supreme Court order of April 2012 that upheld the Bombay High Court judgement that the allotment of 20 acre of land in Film City for film maker Subhas Ghai's acting school Whistling Woods was 'illegal, arbitrary and without authority of law.' The land deal was described by the apex court as "The largesse of a state doled out at the behest of the chief minister at a paltry sum to a blue-eyed boy."

In November 2011, the 'discretionary quota' kicked up a storm in Odisha in the aftermath of an investigative exposure by a leading national news channel. Ministers, bureaucrats, former and sitting judges, top cops and even journalists were beneficiaries of this quota which had landed the government in deep embarrassment.

The then minister for law and rural development Bikram K Aruk had come under attack for availing two plots under the discretionary quota.

The name of senior BJP leader K V Singhdeo figured along with his former ministerial colleague Samir Dey and BJD leader Badri Narayan Patra in an exposure by a leading national news channel. The allegations centred around offering flats and land parcels to sitting and former judges as well as IPS officers and bureaucrats at concessional rates through use of minister's discretionary quota.

The discretionary quota stood at 10% for BDA and five% for Cuttack Development Authority (CDA).

The AG during audit found that no government order or circular existed for introduction of such a scheme in 1985 by the then housing and urban development minister Basant Kumar Biswal under JB Patnaik led Congress regime.

Till December 2011, when the quota was scrapped by the state government, 832 persons had got core houses or plots under the discretionary quota system.

http://zeenews.india.com/...and-allotment_745865.html

Zeenews-Orissa lifts discretionary quota in land allotment

Last Updated: Wednesday, December 07, 2011, 21:53

Bhubaneswar: Criticised from different quarters over "gross misuse" of discretionary quota, the Odisha government on Wednesday directed all development authorities and the State Housing Board to stop allotment of land, plots and houses based on quota.

Chief Minister Naveen Patnaik issued this direction which would be effective immediately, an official at the chief minister's office (CMO) said.

In case of land allotment in the state capital by the general administration (GA) department, the chief minister maintained that there would be no discretionary quota here also, the official added.

The GA department allots land in the state capital based on the recommendation of a committee headed by the director of estate since 1998.

"To further streamline the allotment process in the state capital, the chief minister has directed that a committee headed by the chief secretary and consisting of secretaries of finance, law, revenue, housing and urban development and special secretary of GA department, will take final decision in this regard," the official said.

In case of land allotment by the Industrial Infrastructure Development Corporation (IDCO) in the state capital, the government has decided to constitute a separate committee to take the final decision.

<http://www.indianexpress.com/...quire-houses/1086119/>

CAG tells Orissa govt to cancel or acquire houses

Debabrata Mohanty : Bhubaneswar, Mon Mar 11 2013, 01:00 hrs

Citing the 2012 Supreme Court order cancelling the 20 acre land allotted to filmmaker Subhash Ghaqi for his acting school, Whistling Woods, the CAG office has asked the Naveen Patnaik government to cancel, terminate or resume the land or houses allotted in Bhubaneswar under discretionary quota (DQ) of Bhubaneswar Development Authority.

The Indian Express had in January 2012 detailed how houses and plots in Bhubaneswar were dispensed to politicians, High Court and Supreme Court judges, bureaucrats, policemen and journalists under BDA's discretionary quota, in vogue since 1985.

Till December 2011, when the quota was scrapped by Naveen Patnaik government, 832 persons had got houses or plots under the discretional quota.

Over the 26 years, the beneficiaries have included Supreme Court and High Court judges, politicians, IPS/IAS officers, district collectors, bank managers, income tax officials, peons, journalists of vernacular newspapers as well as correspondents and editors of prominent English dailies.

In 1996-97, the then urban development minister Amarnath Pradhan of the Congress gave out 439 plots and houses under the quota. The CAG, which is now doing a performance audit of "Development and allotment of land/plot/buildings for residential use by BDA" for 2002-12, had in February wrote to the state urban development secretary Injeti Srinivas to cancel/terminate and resume even if constructions have already taken place on the land if the same have been allotted under discretionary quota.

The CAG in the draft audit report has said the DQ system is illegal Under the Orissa Development Authorities Act, 1982, the BDA and Cuttack Development Authority have no provision for discretionary allotments by the executive.

The CAG during audit found that no government order or circular existed for introduction of such a scheme in 1985 by the then housing and urban development minister Basant Kumar Biswal under JB Patnaik regime of the Congress. The CAG also advised the government that it may consider filing a caveat before the appropriate court to enable smooth cancellation/termination/resumption of land and other assets even if they belonged to the period prior to the audited period of 2002-2012.

<http://www.timesnow.tv/...ose/articleshow/4425307.cms>

Excl: The connected win, martyrs lose

13 Apr 2013, 2202 hrs IST, TIMES NOW

This is Odisha Rural Development Minister Vikram Aruka, one of the alleged beneficiaries of two plots of land under the Odisha Government's discretionary quota.

Reporter: This is regarding the discretionary quota that you got in the past. Among the two plots, you have surrendered one. Why haven't you surrendered the other plot?

Bikram Keshari Aruka: I had taken one plot in my wife's name and the other in my name. I surrendered the plot that I had bought in my name.

Reporter: Why didn't you surrender the second plot taken in your wife's name?

Bikram Keshari Aruka: But I surrendered one plot.

Reporter: But why didn't you surrender the second plot?

Bikram Keshari Aruka: I told you I surrendered the plot taken in my name.

Reporter: But ideally you shouldn't be in possession of this plot.

Aruka surrendered one plot of land in his name when Comptroller and Auditor General (CAG)

questioned the allocations but he continues to hold on to the second plot even though he isn't eligible. The guidelines formulated by Odisha Government clearly state that discretionary quota allocations are only meant distressed families of defence personnel or the physically challenged.

But an RTI accessed by **TIMES NOW** exposes the names of influential politicians and bureaucrats who have reaped the benefits of discretionary quota allotments while martyrs' families were ignored. Jayanti Das, RTI activist, said, "Through RTI I asked that how many martyr families have got the land under discretionary quota since 2000. To my surprise I found that only one family got land out of 108 martyr families. Rest all of them are waiting. I wrote a letter to several authorities and Ministry but action has been taken yet."

Its not just politicians, over the years several hundred acres of land have been allocated to influential bureaucrats and police officers in Cuttack and Bhubaneswar. But with the Odisha Government refusing to act, civil society has woken up with social activist and senior lawyer Prashant Bhushan ready to file a PIL against the Naveen Patnaik Government.

<http://www.thestatesman.net/...835&catid=35&Itemid=66>

SC poser on CM land quota

PIL says salt lake plots allotted illegally

press trust of india

NEW DELHI, 30 AUG: The Supreme Court today wanted to know whether the policy of allotment of plots under the chief minister's discretionary quota since 1977 in West Bengal was examined by Calcutta High Court on its merits or not.

"We want to know whether the policy of allotment of land under chief minister's discretionary

quota has been examined on its merits or not by the High Court," a Bench comprising Chief Justice SH Kapadia and Justice Swatanter Kumar said.

The Supreme Court wanted an answer in this regard during the hearing of a PIL alleging that plots in Salt Lake City had been allotted by flouting rules since 1977 by the Left Front government in West Bengal.

The question to this effect was put as the West Bengal government and its leaders, who have been named as party in the PIL, contended that identical writ petitions were dismissed by the High Court in the past. The Bench said no appeals have been filed before the Supreme Court against the dismissal of such petitions by the High Court.

The Bench was hearing the PIL filed in 2006 by a Kolkata resident and advocate Mr Joydeep Mukherjee, who has named chief minister Mr Buddhadeb Bhattacharjee and his Cabinet colleagues urban development minister Mr Asok Bhattacharya and finance minister Mr Asim Dasgupta as respondents.

Former chief minister of West Bengal Jyoti Basu was also named along with his son Mr Chandan Basu as respondents in the PIL.

The court deleted the name of Jyoti Basu as respondent since he is dead.

During the hearing, senior advocates Mr KK Venugopal and Mr Rajeev Dhavan, opposing the PIL, said the petitioner was seeking to revive the petitions dismissed by the High Court.

However, Mr Mukherjee's counsel, said the High Court has not gone into the merits of the policy on land allotment and sought setting up of a committee to examine it. He claimed one of the judges of

the High Court, since retired, was also the beneficiary of the policy. At one stage, the Supreme Court Bench wanted to know from the petitioner as to how it could entertain a PIL directly in the Supreme Court when the identical relief has been declined by the High Court. "You should have come with the Special Leave Petition (SLP)," the Bench said when the state government and others pointed out that three writ petitions on the issue have been dismissed by the High Court. They also claimed that in one of them, even the Supreme Court has decided the matter on merit.

The Bench adjourned the hearing for two weeks asking counsel for the petitioner to come out with a specific answer whether the policy was examined on merit or not.

The PIL had alleged that in 1977-78, the chief minister's discretionary quota was created by unlawful and confidential executive orders without even informing the Cabinet.

The petitioner had contended that in 1985 the state government started carving out new residential plots from the land earmarked for civic amenities, ecological balance etc in violation of the approved master plan.

<http://www.istream.com/...lotted-to--the-influentia>

12 Apr 2013 ... Newshour | he Odisha government scrapped discretionary quota but allottees are unaffected. Land meant for martyrs were allotted to Martyrs' land allotted to the influential

Times Now : Newshour

Newshour | The Odisha government scrapped discretionary quota but allottees are unaffected. Land meant for martyrs were allotted to bureaucrats and politicians and they are not willing to do away with it. Rural development minister Vikram is one of the beneficiaries of two plots of land under the discretionary quota and has returned only one of them and refuses to return the other. The Odisha government has allotted the land only to the distressed families of defense personal or the handicapped. But the state government is unwilling to take action.

<http://www.financialexpress.com/...n-orissa/1061008/0>

CAG smells Rs.4,000-cr land scam in Orissa

Dilip Bisoi: Bhubaneswar, Jan 18 2013, 00:36 IST

The Comptroller & Auditor General of India(CAG) has detected large-scale irregularities in allotment of land and houses by the Orissa government and estimates a scam of about R4,000 crore.

While sending a draft report to the Orissa government, a copy of which is available with FE, the CAG has suggested that the land and houses allotted to various individuals and organisations is in violation of the laws and policies and be cancelled immediately.

The state government has started cancelling the land and houses allotted by it on receipt of the draft report. "We have initiated the process of cancelling the land and houses allotted to various individuals and organisations in violation of the prevailing norms," admitted a state government official, adding that about 15 houses and land have already been cancelled.

The CAG report, to be tabled in the Orissa Assembly during the budget session in February, is based on the audit conducted on land allotment by the general administration (GA) department —which owns most of the land in the capital city of Bhubaneswar — and development

authorities like the Bhubaneswar Development Authority (BDA) and the Cuttack Development Authority(CDA). The CAG is doing a performance audit of acquisition, development and allotment of land by the BDA, the allotment of government land by the GA department and the commitments on land made in the MoUs for setting up of industries in the state by the revenue department”.

The GA department has allotted prime land in Bhubaneswar to individuals and organisations, including hotels, educational institutions, cultural societies, NGOs and corporate houses. Similarly, the BDA and CDA have allotted plots and houses to various people and organisations from the discretionary quotas of the housing & urban development minister, who happens to be the ex-officio chairman of the two development authorities.

The CAG has found out that the government and the ministers have allotted plots and houses from their discretionary quota to several politicians, senior bureaucrats, judges, and journalists during the last 20 years. It has stated that there is no policy in exercising the allotments from the discretionary quota. What is worse, it has pointed out, some of the senior politicians, senior bureaucrats, journalists have cornered two and three plots and houses filing false affidavits.

Even as the land scam exposes the unholy nexus among the politicians, bureaucrats, judges and journalists, the CAG initially found it difficult to access the land records of the GA department, the BDA and the CDA due to stiff resistance from the concerned authorities. Particularly, the BDA was resisting the demand for production of the records. The GA department was reticent about producing records pertaining to land allotted to corporate houses like Jindal Steel & Power, Monnet Ispat & Energy, Bhusan Steel, Rungta Mines, JITPL, Action Ispat & Power, Easter Steel & Power, Brahmani River Pellet, Essar Steel, Adhunik Metalics, besides hotel Ashirbad, Hotel Soumya, Siksha 'O' Anusandhan University, Sibananda Public School, and Saraswati Sisumandir. Similarly, the BDA was reluctant to give records pertaining to several highrise buildings and apartments besides several individuals.

Such was the situation that the Orissa accountant general Amar Patnaik had to seek intervention of his seniors in Delhi to obtain the records. The additional deputy comptroller & auditor general Revathy Iyer wrote to chief minister Naveen Patnaik on October 15, 2012, seeking the government's cooperation in the audit. It was following the intervention of Patnaik that the records were made available to the CAG's auditors for verifications, said a government official.

Unveiling a new plot

* CAG has suggested the land and houses allotted to individuals and organisations is in violation of the laws and be cancelled immediately

* The draft report is based on the audit conducted on land allotment by general administration dept and other development authorities

* Prime land in Bhubaneswar was allotted to organisations, including hotels, educational institutions, NGOs and corporate houses

The general administration department had allotted land to corporate houses like Jindal Steel & Power, Monnet Ispat & Energy, Bhusan Steel, Rungta Mines, JITPL, Action Ispat & Power, Easter Steel & Power, Brahmani River Pellet, Essar Steel, and Adhunik Metalics

<http://articles.economictimes.indiatimes.com/...a-pil>

SC dismisses PIL against land allotment during Mulayam regime

PTI Aug 16, 2012, 02.05PM IST

<http://www.lawyersclubindia.com/...ngal-Ors--2508.asp>

NEW DELHI: The [Supreme Court](#) today dismissed a PIL seeking quashing of land allotted in Lucknow to relatives of [Samajwadi Party](#) leaders and bureaucrats by the [Mulayam Singh](#) government in 2005.

A bench headed by justice [Aftab Alam](#) refused to interfere in the land allotment issue after it the Uttar Pradesh Government contended that the petitioner is also a beneficiary of the allotment under the discretionary quota of the state.

"We are not inclined to interfere in the matter," the bench said.

The court also queried whether the petitioner is willing to surrender the plot allotted to him, but his lawyer contended that there is no illegality in the land given to the petitioner by the state government.

The petition was filed in 2005 by [Vishwanath Chaturvedi](#), a practising lawyer, who according to Mulayam Singh was also a member of the Congress party.

5 November 2011

The Lie of the Land

An investigation finds Odisha state government ministers misusing their discretionary quota to allot land to judges and bureaucrats

<http://www.openthemagazine.com/...the-lie-of-the-land>

BY [Aniruddha Bahal](#), [Prabhanjan Verma](#), [Chandra EMAIL AUTHOR\(S\)](#)

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Rot

It took place in the span of a decade from 2000 to 2010. Three cabinet ministers in the Naveen Patnaik-led Odisha state government—namely, Housing and Urban Development Minister Samir Dey (of the BJP), Urban Development Minister Kanak Vardhan Singh Deo (also BJP), and his successor Badri Narayan Patra (of the BJD)—used their discretionary quota to allot land to judges, ministers, IAS/IPS officers, and other powerful politicians and residents of the state in areas under the Cuttack Development Authority (CDA) and Bhubaneswar Development Authority (BDA).

The land was given away at marginal prices, about a tenth of the market rates then: at Rs 245 per sq ft or less, by the CDA, while the market was charging Rs 2,000 per sq ft (a rate that has risen to around Rs 2,500 per sq ft now).

Among other prominent people, Singh Deo used his discretionary power to allot land to Justice Madan Mohan Das, Justice Sanju Panda, Justice Laxmikant Mohapatra and Justice Nityanand Prusty (who was allotted the land in 2007, retired in 2008, and is now a member of Odisha's State Administrative Tribunal).

Allotments to Judges/ Minister

RECIPIENTS OF LAND/PLOT	MINISTER EXERCISING DISCRETION
YEAR OF ALLOTMENT 2009	
Minister BK Arukha	Badri Narayan Patra
YEAR OF ALLOTMENT 2008	
Justice MM Das	Kanak Vardhan Singh Deo
YEAR OF ALLOTMENT 2007	
Jayalaxmi Arukha W/o Minister BK Arukha	Kanak Vardhan Singh Deo
YEAR OF ALLOTMENT 2007	
Justice Nityanand Prusty	Kanak Vardhan Singh Deo
YEAR OF ALLOTMENT 2007	
Justice Sanju Panda	Kanak Vardhan Singh Deo
YEAR OF ALLOTMENT 2006	
Justice Laxmikant Mohapatra	Kanak Vardhan Singh Deo
YEAR OF ALLOTMENT 2006	
Shree Parichha w/o Justice AK Parichha	Kanak Vardhan Singh Deo
YEAR OF ALLOTMENT 2002	
Justice Debapriya Mohapatra	Samir Dey
YEAR OF ALLOTMENT 2000	
Justice Bimal Prasad Das	Samir Dey
YEAR OF ALLOTMENT 2000	
Justice Prafulla Kumar Tripathi	Samir Dey
YEAR OF ALLOTMENT 2000	
Justice Radhakrishna Patra	Samir Dey
YEAR OF ALLOTMENT 2000	
Justice Gopal Ballabh Patnaik	Samir Dey

Singh Deo, of course, was not alone in making such allotments. In 2000, Samir Dey used his discretionary authority to allot land to Justice Bimal Prasad Das, Justice Prafulla Kumar Tripathi (who retired from the Orissa High Court in 2009) and Justice Radhakrishna Patra (who retired from the court in 2003 and is now chairperson of the Odisha Human Rights Commission). In 2002, Samir Dey allotted land to Justice Debapriya Mohapatra.

Justice Arun Kumar Parichha, who retired in 2008, got land in his wife's name in 2006. Significantly, even the former Chief Justice of India Gopal Ballav Patnaik (who retired on 8

November 2002) got 4,000 sq ft of land (plot no 1B/22, Sector 11, CDA) allotted to him in 2000. He was then a Supreme Court judge. He paid Rs 2.5 lakh at a time that the property's market price was Rs 20 lakh; it would now be worth about Rs 80 lakh.

Of those mentioned, Justice Bimal Prasad Das, Justice Madan Mohan Das, Justice Sanju Panda and Justice Laxmikant Mohapatra are still sitting judges at the Odisha High Court in Cuttack.

Apart from these men of law, Singh Deo and Badri Narayan Patra made use of their discretionary power to allot land to the Odisha government's Law Minister Bikram Keshari Arukha and his wife Jayalaxmi Arukha. In fact, Arukha himself wrote to his party BJD minister Patra for the allotment of a plot.

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The Orissa Development Authorities Act of 1982, on which the state's Housing and Urban Development Authority is based, and the Housing Board Act of 1968 have no provision for such discretionary allotments by the Executive. These powers have been settled by various High Court and Supreme Court judgments.

In 2002, a judgment delivered by the Orissa High Court stated that 'reservation of plots/houses for categories like Green Card holders, Scheduled Castes, Scheduled Tribes, and the like, and for staff of development authorities, is not permissible in law. However, reservation of some plots/houses for defence personnel, retiring/retired government servants and reservation of some plots/houses for allotment under the discretionary quota has to be strictly in accordance with the principles and guidelines framed for the purpose in the light of the judgments of the Apex Court in V Purusottam Rao's case and Centre for Public Interest litigation (1995).'

A 2001 Supreme Court judgment states that: 'When a State property as distinct from a private property is being dealt with by a Minister, then it is of paramount importance that such public property must be dealt with for public purpose and in the public interest.' It further states: 'The disposal of a public property undoubtedly takes the character of a trust and, therefore, in the matter of such disposal, there should not be any suspicion of lack of principle.'

According to the Supreme Court, such discretion (*Centre for Public Interest Litigation vs Union of India, SCC.382*) can be used only to allot land to: 'The dependent of a person who has made a supreme sacrifice for the nation, but has not been properly rehabilitated so far, member of a family which has been a victim of unforeseen circumstances (terrorist attack, earthquake, flood etc), physically handicapped person, defence/paramilitary/police personnel/ other Central/State government employees who are permanently disabled on duty, immediate next of kin, namely widow, parents, children of those who lost their lives in abnormal circumstances, eminent professionals, outstanding sportsmen, artists, literary personnel and women of high achievement in distress, and individual cases of extreme hardship, which in the opinion of the government are extremely compassionate and deserve sympathetic consideration in view of special circumstances of the cases'.

Interestingly, the number of such 'deserving' beneficiaries of ministerial discretion in Odisha is unknown. Nor have CDA/BDA allotments been transparent overall. Some sectors in these areas of Cuttack and Bhubaneswar did not have any draw-of-lots, the standard procedure when applications exceed plot availability. Several litigants approached the High Court, demanding to know why no draw was held and why their application money was refunded out of hand. This, even as the high and mighty in the state have had no trouble getting allotments.

So brazenly have court judgments been twisted to suit special interests that it appears to have been the norm. Many sitting judges actually wrote letters to the authorities requesting land allotments. Justice Nityanand Prusty wrote to the Housing and Urban Minister on his official High Court letterhead: 'I do not have any plot in CDA (sector areas). After my retirement, I desire to settle in the Sector Area. Kindly allot me a suitable 'B' category plot, preferably Sector-13, out of discretionary quota.'

Not only Justice Prusty, another sitting High Court judge, Justice Laxmikant Mohapatra, wrote on his official letterhead to the Chairman of the CDA (and Housing and Urban Development Minister), asking for land: 'I understand that some plots of land of Cuttack Development Authority are available for allotment to individuals within Cuttack Municipal Area. I have no land at Markat Nagar, Abhinaba Bidanasi, Cuttack, either in my name or in the name of any of my family members. I, therefore, request you to allot a 'B' category plot in Sector-11, CDA in my favour for the purpose of construction of a residential house.'

Justice Madan Mohan Das, another sitting judge of the Odisha High Court, who already had a plot in favour of his wife, asked the then Chairman and Minister of Housing and Urban Development, for land: 'Dear Mr Singh Deo, I have earlier requested your good-self to allot me a 'B' category plot in Abhinaba Bidanasi Project Area, preferably in Sector-6, 7, 8 and 9, from your discretionary quota. I am willing to have a plot in Sector 10 also on payment of the price at fixed by the CDA. In case of allotment of a 'B' category plot in my favour, as already stated in my earlier letter, the 'C' category plot along with the structure which stands in the name of my wife, will be disposed of by way of a third party transfer with due permission of the CDA.'

One of the letters even came from the wife of a sitting judge. Shree Parichha, wife of Justice AK Parichha, wrote the Urban Minister and Chairman of the CDA: 'My husband is a sitting judge of the High Court of Orissa and we desire to stay at Cuttack after his retirement. We have no land in Cuttack. If land in Markat Nagar, Abhinab Bidanasi, Cuttack is allocated in my favour, we can utilise the same for [our] residential purposes only. I request you kindly allot a plot in Markat Nagar, Abhinab Bidanasi, Cuttack, preferably in sector 11, [on] discretionary quota [at] the usual price fixed by the authority in my favour to use the same for residential purposes.'

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The deeds of the Odisha judges draw sharp reactions from members of India's legal fraternity. The *IBN-Cobrapost* team contacted several retired judges of the Delhi High Court and Supreme Court for their views on the findings of the investigation. While some speak about the strict

guidelines laid down by the Supreme Court in this regard, some lambast the High Court judges for taking undue favours from state ministers.

Says former Chief Justice of India VN Khare: “I have always maintained that discretion is the source of corruption. I have said this many times—that discretion should be eliminated. If there are financial implications [of the use of government land], the matter must be decided by a group of ministers, and not individual ministers or bureaucrats. If the discretionary power that is not governed by any rule or law rests with a bureaucrat or minister, it will lead to corruption. For example, if hundreds of applicants are there, and plots are given to a few, one who has a discretionary quota at his disposal may give it by virtue of your good looks. This is wrong.”

The judges come in for particularly heavy criticism for writing letters on official letterheads. Justice SN Dhingra of the Delhi High Court, asked for his views on the revelations, says: “It is against our professional ethics. It is against all canons of judicial standards. I would say this is absolute corruption. You just cannot do this. To stop such things, guidelines have already been laid down. Quite an elaborate guideline has been prepared by the Supreme Court [as part of] the judges’ code of ethics. The Supreme Court prepared it and circulated it to all high courts. It is clearly stated that judges cannot have direct contact with ministers or bureaucrats. This was precisely to stop such activities. It is an absolute case of conflict of interest. Judges enjoy a lot of discretion themselves. If they take obligations from a minister or bureaucrat, it will never be without a reason. It is bound to be a give-and-take process. Judges have absolute discretion in giving or refusing bail. They have discretion on whether to issue a stay in a case or not. They have absolute discretion over the final judgment itself. In that case, if they take obligations under the discretionary quota of a minister or bureaucrat, the minister or bureaucrat in turn will take advantage of their discretion. Nothing comes free. But time and again, such unfortunate things keep recurring. These are not isolated cases. Judges, after all, come from the same society that bureaucrats and others do. We have come to a [point] where the Judiciary is no different from the bureaucracy.”

Discretionary quota property being passing on to children also draws reproach. Taking note of the series of events in Odisha, says former Delhi High Court Chief Justice AP Shah: “Judges being allotted plots [via] discretionary quotas is an unhealthy practice. Eventually, it may lead to conflicts of interest. Judges... should follow rules and norms as per the law. The practice of acquiring land and passing it on to children should be stopped. The process should be at par with [that in] other societies and [for] individuals. There should be some provision [on such practices] in the Judicial Accountability Bill. There is a separate chapter on judicial ethics. This should be made part of it.”

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Of course, as mentioned earlier, judges are not the only beneficiaries. Arukha, the Odisha government’s law minister, also sought land from his cabinet colleague Badri Narayan Patra. As Arukha wrote in a letter to the latter: ‘It is learnt that there are still a few HIG (duplex) houses left for distribution by the Hon’ble Minister Urban Development, Orissa, out of his discretionary

quota. I would, therefore, request you kindly to consider the above facts and allot me a HIG (duplex) house from 'A' Block in the above scheme [under the]... quota.'

The law minister even provided an affidavit that he had read all the terms and conditions of the brochure in detail and agreed to abide by them. Under these terms and conditions, a person cannot be allotted two residential plots within the Bhubaneswar Municipal area; but Arukha managed to grab two plots—one in his name and another for his wife Jayalaxmi. According to his declaration-of-assets when his nomination papers were filed for his Assembly election, as on 27 March 2009, he only had a fixed deposit of Rs 5.5 lakh, cash of Rs 3 lakh, and a savings bank balance of Rs 5 lakh. He also stated that his wife had only Rs 6 lakh. But the minister paid Rs 59 lakh in February 2010, and another Rs 50,000 in May 2010 for the house allotments.

Later, Arukha issued a clarification saying that his wife had paid Rs 7 lakh for her Subudhipur BDA house in the city's Kalinga Bihar Housing Scheme. But, according to Odisha Assembly records, his wife paid Rs 12 lakh. The state's law minister has therefore filed two false affidavits: one while getting his house allotted by the BDA, and the other when his nomination papers were filed for the 2009 Assembly polls.

Besides, it raises a vexing question: how can a minister avail of a cabinet colleague's discretionary quota? Though the minister supposedly paid Rs 59 lakh for the property, the actual market price of the house would be above Rs 1.2 crore. Another politician, Debendra Pradhan, an ex-minister and father of BJP General Secretary Dharmendra Pradhan, got 2,400 sq ft of land for only Rs 3 lakh. The market price is now about Rs 70 lakh.

Samir Dey, when confronted with his trail of discretionary quota allotments, admits that there is no such provision under the law. Says Dey: "There is no such quota in Odisha. It's a simple calculation that whatever land has been given under the BDA, 10 per cent of it, and land given under the CDA, 5 per cent of it is under the minister's discretion. There is nothing specified on record about how this land is to be given by the minister, who is also the chairman. The land has been given on this basis."

If Dey is blasé about its lack of legal sanction, he is equally adamant that the "quota" gives him the right to allot land to "anybody" he wants. "There is no pressure on the chairman to allot land under the minister's discretionary quota," he adds, "It's a prerogative of the chairman...Those who fulfill the guidelines automatically fall under the discretionary quota of the minister. I cannot tell whether the beneficiary has been an IAS officer or judge. We cannot be compelled to allot land to anyone. It's up to the minister, whom he wants to give the land to."

Kanak Vardhan Singh Deo, who granted a flat to Arukha's wife, tries to use the Supreme Court as a shield when asked about the allotments. "As an urban development minister," says Odisha's former Urban Development Minister, "whatever schemes were launched by the CDA and BDA, and the allotments that were made from 2004 to 2009, a Supreme Court ruling clearly stated that persons who will not be allotted land through the lottery system, only those would

be entertained under the discretionary quota of the minister, which would not be more than 5 per cent. In the same way, land was allotted in Bhubaneswar. There were so many requests for consideration under the discretionary quota. As far as I remember, there were many plots in Cuttack that had no takers even in the plotted scheme.”

Singh Deo cites this figure as a sign of propriety: “During my tenure as minister, not more than 5 per cent was given under the discretionary quota, as there was a clear guideline of the Supreme Court in this context, so we didn’t go beyond that limit.”

What Deo forgets to add is that the Supreme Court explicitly lays down who can be deemed as deserving of the State’s largesse, as executed via ministerial discretion on land allotment, and it is amply clear that judges and bureaucrats do not satisfy those criteria by any stretch of the definition of a ‘supreme sacrifice’, ‘extreme hardship’, or any other such circumstance specified in the judgment.

Badri Narayan Patra, who parcelled out land to his ministerial colleague Arukha, puts the blame on ministers of earlier cabinets in general and the Congress in particular. Says Patra: “In the Congress’ time, there was a lot of misuse of rules. I was present in the department for only two years. Ministers prior to me, I have heard, distributed plots through their discretionary quota beyond their limits. But I have only given three plots... all these can be verified... if somebody gives a affidavit that he doesn’t have a plot, what can we do? We work on affidavits.”

But where there are rules, in Odisha, there are waivers. The BDA’s current Vice-chairman Deoranjana Kumar Singh admits that at one point of time, there was even a waiver of the ‘one-person, one-allotment’ rule. Says Deoranjana Singh: “As per my knowledge, at that time, the rules were waived on only two schemes. One was the Kamara Housing Scheme at Netaji Subhash Enclave; as there was low acceptability of the flats, the criterion was waived so that other people could also purchase the flats. The second was the HIG quarters at Pokhariput. As the cost of the flats here was quite high and beyond the reach of general people, and as the number of applicants was not too high and we still needed to sell them, some rules were waived.”

Deoranjana Singh goes on to talk about how, if a person becomes a beneficiary through one housing scheme, he cannot avail of a plot of land in another scheme. But he also adds that even this criterion was waived by officials. Says the BDA vice-chairman: “Not only for the discretionary quota, but even for the allotment, if a person has benefitted through one scheme for acquiring land, he will not be a beneficiary in the second scheme and will not get a plot. This is a standard procedure. From 2010, this has been standardised in the allotment procedure manual prepared by the government and is being strictly followed. Generally, in previous years, it was only a general procedure [printed] on the scheme brochure. According to it, if you already happen to own property, then you cannot apply under such schemes. But later, officials thought of waiving this procedure, as the cost of such plots was higher and there were only a few takers. Such schemes of the government did not go well with the people.”

Interestingly, the BDA claims that the authority never prepared a document listing how many times such waivers were granted. The BDA also refuses to disclose information on the names of people who applied for assorted housing or plot schemes. In fact, Deoranjana says, he can only remember two occasions when exceptions were made. The one-person one-plot criterion was waived by the BDA for the Pokhariput HIG housing scheme. Interestingly, this is the same scheme where Law Minister Arukha got a house under his cabinet colleague's discretionary quota. The question is whether this special waiver was made specially to facilitate Arukha's application.

+++

It is worthwhile to mention here that Sangita Kumari Singh Deo, wife of Kanak Vardhan Singh Deo (who was Urban Development Minister then), declared in an affidavit that three criminal cases were pending against her. In case No 7/2004, she was accused of offences under Sections 294, 506, 34 of the Indian Penal Code, read with Section 3 (1) (x) of the Prevention of Atrocities Act, 1989. She approached the Orissa High Court and got a stay on the proceedings against her (CRLMC 203 of 2005).

In another case, under Sections 294, 323 and 506, read with Section 3 (1)(x) of the Prevention of Atrocities Act, 1989, she was again successful in obtaining a stay on the proceedings against her by virtue of the same court order in 2006.

Moreover, she was also a co-accused along with her husband Kanak Vardhan Singh Deo, vide GR case No 758 of 2007. All these criminal matters are still pending in the names of the former minister Singh Deo and his wife Sangita. While Singh Deo allotted plots to judges and senior police officers during the period 2005 to 2008, Sangita was a member of the Lok Sabha (her term: 2004-2009).

Samir Dey, who also stands accused of allotting plots to judges during his tenure, is additionally accused of criminal offences under Sections 341, 353 and 34, since 1991. While Dey was Odisha's Urban Development Minister during the first term of the Naveen Patnaik government, Singh Deo held the same portfolio during the regime's second term.

Says an advocate who practises in the Odisha High Court: "It's a matter of record whether cases involving the ministers or their kin came before the judges who were beneficiaries of the discretionary quota of ministers."

In February this year, the widespread misuse of ministerial discretionary quotas was raised as an issue by Congress MLA Naba Kishore Das in the Odisha Assembly. But Chief Minister Naveen Patnaik has taken no action so far. Says Naba Kishore Das: "Everybody in Odisha, including the Chief Minister, says that he has a clean image. He does not indulge into corrupt practices. So many ministers and bureaucrats have been given prime land under the minister's discretionary quota, which makes it amply clear that even the Chief Minister is not free of corruption. This means all these people are hand in glove. Everything would be revealed if an inquiry is ordered

in this case. This government belongs to a handful of corrupt people. This is not a government for the common man. The present government wants to influence a handful of people this way... This land was to be given to widows of Army men who lost their lives, to farmers, and to people who really needed it. This is a corrupt government.”

Bureaucrats on the take

Bureaucrats have been big beneficiaries of ministerial largesse too. Here’s a list:

» IAS officer Nikhunja Bihari Dhal got a housing plot (No 13-2B/275) in Markat Nagar in Cuttack for Rs 10 lakh (market price: Rs 90 lakh). He also paid only Rs 2.88 lakh for plot No 82/A in Chandrasekharpur Prachi enclave, worth Rs 70 lakh. That’s two plots for the same person.

» IAS officer Vishal Kumar Dev, commissioner, Bhubaneswar Municipal Corporation, got BDA land under the minister’s discretionary quota. He paid only Rs 2.88 lakh (market price: about Rs 70 lakh).

» IAS officer Alka Panda paid Rs 3.6 lakh for a 7,875 sq ft plot (No HIG-K-8-B) in Bhubaneswar worth over Rs 1 crore.

» 1996 batch IPS officer BK Sharma, Commissioner of Police, Bhubaneswar-Cuttack, got a plot (No B/738) in 2007.

» IPS officer Sudhanshu Sarangi got a CDA plot (No 3B/1293) in Sector 13 for Rs 9.9 lakh, sold it for Rs 23 Lakh and booked an Antriksh Heights flat, Sector 84, Gurgaon.

» 1982 batch IPS officer Binoy Kumar Behara got a plot (No C/6GH/1150/C-18) for under Rs 1 lakh (market price: Rs 75 lakh).

» 1988 batch IPS officer Binayanand Jha got a CDA plot (No 3B/1334) in Sector 13, and did not submit mandatory information as part of his Immovable Property Return. He works as a joint director in the Ministry of Home Affairs in New Delhi. According to the Odisha government website, he is posted as joint director, IB, in SIB Imphal.

» IPS officer M Akhay, an Inspector General of the Orissa Police, got 2,700 sq ft of CDA land (plot no 1378/4) in Sector 6, Markat Nagar, for Rs 3 lakh (market price: about Rs 50 lakh).

» IPS officer Prakash Mishra, an additional DGP, got a 2,700 sq ft housing plot (No 1377/4) in 2001. He paid Rs 1.8 lakh (current market price: about Rs 50 lakh).

» IAS officer Bishnupad Sethi, director, Census Operation, Odisha, was allotted a 3,750 sq ft plot in BDA’s Kalinga Vihar development scheme in 2008. He paid Rs 5 lakh (current market price: about Rs 70 lakh). He has also been allotted land in Puri by the Orissa Cooperative Housing Corporation Ltd.

» IAS officer Raj kumar Sharma, secretary, Revenue and Disaster Management, got a 2,400 sq ft BDA residential plot (No 130) in Prachi Enclave, Chandrasekharpur, for only Rs 3.6 lakh.

» IAS officer Suresh Chandra Mohapatra got a plot in Kalinga Vihar (HIG-393)

Another notable point is that the Kalinga Vihar Housing Scheme, Phase I and Phase II, was developed by the BDA in the period 1994-2000 without the required approvals from the Ministry of Environment & Forests. The BDA ended up allotting the developed land to beneficiaries at very low prices. After the Environment Ministry raised questions, some of the 'connected' allottees exchanged their allotted plots with land under other schemes. For instance, in 2000, IAS officer Alka Panda got 6,750 sq ft of land under the Kalinga Vihar Housing Scheme (plot No K-8-91). But in 2006, she got another HIG plot (7,875 sq ft) in exchange for the earlier plot. This exchange is illegal and she got more land than allotted earlier.

Top bureaucrats are appalled by all this. Says former Cabinet Secretary of India TSR Subramanian: "I will go to the extent of saying that this practice of discretionary quotas should be completely stopped now. It is not serving any purpose. I also took a piece of land in Lucknow way back in 1993 because, as I said, I wanted to stay there post-retirement. But when I decided to move to Delhi, I returned the plot to the government, saying 'I will not be using it personally'. So, in my view, the practice of discretionary quotas must be stopped immediately, and ministers or bureaucrats using or benefitting from such quotas should be prosecuted." On some bureaucrats having converted their allotted plots into commercial buildings, he adds: "It's wrong. It is misuse of authority. You see, earlier, officers used to get Diwali gifts like a pack of sweets or maybe a bottle of whisky. To that extent, it is okay. But now I hear officers are given free holiday trips to Mauritius and Hong Kong. Officers are being given gold pendants or things like that. We earlier used to think that it's a small matter, let us not interfere. But now this should be stopped... We are exceeding limits. In fact, not even a pack of sweets should be allowed, let alone a flat or plot. Action should be taken against officers who indulge in such practices."

5% discretionary quota on govt houses can stay'

Dhananjay Mahapatra, TNN Apr 17, 2012, 04.10AM IST

Tags:

- [Supreme Court](#) |
- [non-public servants](#) |
- [discretionary quota](#)

NEW DELHI: The Centre has told the Supreme Court that a proposal to scrap allotment of government accommodation to persons other than those in legislature, executive and judiciary would not be desirable as the SC itself had formulated guidelines permitting 5% discretionary quota to non-public servants.

"Allotment of government accommodation to persons belonging to categories other than the three wings of government, for example for journalists, eminent artistes, freedom fighters and social workers, is made as per provisions in the guidelines framed as per direction of the SC in Shiv Sagar Tiwari vs Union of India. In view of this, cancellation of such allotments already made and discontinuation of further allotments may not be desirable," the directorate of estates in the ministry of urban development said.

1995 SUPPL (3) SCC 382 GUIDELINES DQ PETROL PUMP

CAG tells Orissa govt to cancel or acquire houses

Debabrata Mohanty : Bhubaneswar, Mon Mar 11 2013, 01:00 hrs

Citing the 2012 Supreme Court order cancelling the 20 acre land allotted to filmmaker Subhash Ghaqi for his acting school, Whistling Woods, the CAG office has asked the Naveen Patnaik government to cancel, terminate or resume the land or houses allotted in Bhubaneswar under discretionary quota (DQ) of Bhubaneswar Development Authority.

The Indian Express had in January 2012 detailed how houses and plots in Bhubaneswar were dispensed to politicians, High Court and Supreme Court judges, bureaucrats, policemen and journalists under BDA's discretionary quota, in vogue since 1985.

Till December 2011, when the quota was scrapped by Naveen Patnaik government, 832 persons had got houses or plots under the discretional quota.

Over the 26 years, the beneficiaries have included Supreme Court and High Court judges, politicians, IPS/IAS officers, district collectors, bank managers, income tax officials, peons, journalists of vernacular newspapers as well as correspondents and editors of prominent English dailies.

In 1996-97, the then urban development minister Amarnath Pradhan of the Congress gave out 439 plots and houses under the quota. The CAG, which is now doing a performance audit of "Development and allotment of land/plot/buildings for residential use by BDA" for 2002-12, had in February wrote to the state urban development secretary Injeti Srinivas to cancel/terminate and resume even if constructions have already taken place on the land if the same have been allotted under discretionary quota.

The CAG in the draft audit report has said the DQ system is illegal Under the Orissa Development Authorities Act, 1982, the BDA and Cuttack Development Authority have no provision for discretionary allotments by the executive.

The CAG during audit found that no government order or circular existed for introduction of such a scheme in 1985 by the then housing and urban development minister Basant Kumar Biswal under JB Patnaik regime of the Congress. The CAG also advised the government that it may consider filing a caveat before the appropriate court to enable smooth

cancellation/termination/resumption of land and other assets even if they belonged to the period prior to the audited period of 2002-2012

- See more at: <http://www.indianexpress.com/news/cag-tells-orissa-govt-to-cancel-or-acquire-houses/1086119/#sthash.fFjo9DUl.dpuf>

The department may fix responsibility for all the cases of irregular allotments, transfers and encroachments of land and irregular approval of building plans as pointed out in audit for the period under review and initiate appropriate/punitive action on those responsible so that such irregularities/illegalities do not recur," the letter to the State government said.

It further said "auction may be made the guiding principle for allotment of land/assets with exemptions to take care of public utilities for public purposes or for socially and economically backward class of people, which however need to be clearly defined and specified".

Under the Orissa Development Authorities Act, 1982, the BDA and Cuttack Development Authority have no provision for discretionary allotments by the Executive.

- See more at: <http://www.indianexpress.com/news/cag-tells-orissa-govt-to-cancel-or-acquire-houses/1086119/2#sthash.BMbocJOi.dpuf>

Bhubaneswar, June 20: People availing more than one residential plot under the discretionary quota of Bhubaneswar Development Authority (BDA) and Cuttack Development Authority (CDA) will have to surrender the additional plots as it violates the norms of the allocation. The State Government has started cancelling the additional plots.

According to sources, individuals have gained more than one plot under the quota by submitting false affidavits.

After the BDA's notifications to individuals availing additional plots, the State Housing and Urban Development (HUD) Department has accelerated the process of cancellation of plots.

"No one can avail more than one plot under the discretionary quota by filing false affidavits. We have started the process of cancelling it and very soon the cancellation process would be completed," HUD Principal Secretary I Srinivasan said.

The General Administration (GA) Department, the custodian of the lands falling under the jurisdiction of BDA and CDA, is also contemplating action against such erring individuals.

"After the Comptroller and Auditor General (CAG) pointed out irregularities on allotment of lands, the GA Department has been keeping a tab on the allocations. The process would be streamlined soon and stringent action would be taken against the violators," Chief Secretary

Bijay Kumar Patnaik said.

According to sources, during 1986-2010, more than 800 people have availed plots from BDA under the discretionary quota, while there are as many as 50 individuals who have availed lands from CDA. PNN

United call to abolish discretionary quota

Posted on Nov 12, 2011 at 01:20pm IST

BHUBANESWAR: Amid the row over misuse of discretionary quota in allotment of government houses here and in Cuttack, CPM on Friday demanded a CBI probe into the matter while political parties, including the BJD, favoured abolition of such a provision.

CPM activists staged a protest rally outside the Bhubaneswar Development Authority (BDA) alleging that precious houses and land in the Capital are being looted by influential people like ministers, ruling party MLAs, judges, bureaucrats and senior police officers.

Alleging that BDA's guideline of 'one house to one family' is violated, the CPM alleged that ministers and their family members are getting undue favours by the Urban Development (UD) ministers. Under discretionary quota, the Urban Development minister is entitled to allot 10 per cent of BDA and 5 per cent of Cuttack Development Authority (CDA) houses.

Criticising Chief Minister Naveen Patnaik for his alleged inaction on the matter, secretary of the CPM Bhubaneswar regional committee Prabhat Panigrahi demanded publication of a list of those who availed more than one houses or plots under discretionary quota.

Panigrahi alleged that not only Law Minister Bikram Arukh there are several other ministers who have acquired huge patches of land here and in Cuttack under the discretionary quota.

Meanwhile, the three major political parties, including the ruling BJD, have favoured a proposal for abolition of the discretionary quota provision.

Niranjan Patnaik, OPCC president, supported the idea of scrapping the provision saying it has widened the divide in the society. "Action should be taken against the UD ministers who misused the discretionary quota," he said.

Similarly, the BJP State president Jual Oram too supported the proposal saying the politicians, who misused the provision, should be booked under the provision of the law. The issue of discretionary quota hogged the limelight after release of the property list of ministers by the Chief Minister.

Naveen had said the government was seriously examining the provision of the discretionary quota system. Arukh had admitted to have taken two BDA houses under the discretionary quota. The Minister offered to return one of the houses amid demands of his resignation.

Orissa: Judges' children got 'quota' flats

Jajati Karan, [CNN-IBN & Cobrapost](#) | Updated Jan 11, 2012 at 09:29pm IST

Bhubaneswar: A Cobrapost-IBN Network investigation had in November 2011 revealed how judges, IPS officers and bureaucrats from Orissa received plots, meant for the economically disadvantaged, war widows and people with special needs, through the discretionary quota of ministers.

A follow up to that investigation has now shown how it is not just judges, but their children as well who have benefited from the quota.

Orissa is seeing a real estate boom, sprawling bungalows and posh apartments with the land rates climbing every day. And many are cutting corners to acquire prime property.

In 2000, a 4000 sq ft plot was allotted to then Orissa High Court Justice PK Mohanty, by then Urban Development Minister Sameer Dey from his discretionary quota. Ironically, in a 2002 property case, Mohanty himself had ruled that the discretionary land allotments should be for the needy, the handicapped or people recognised in their field.

The guidelines of the government say only one member of a family can be allotted a government owned plot. However, in 2007, another plot was allotted to Justice Mohanty's daughter, Lipi Mohanty, by then Urban Development Minister KV Singh Deo under his discretionary powers.

CNN-IBN has accessed Lipi Mohanty's letter asking for a plot, specifically mentioning the plot she wanted. In August 2007, Deo issued the letter, ordering that the plot be allotted within 24 hours.

A flat in Sector 10 of Cuttack's Abhinav Bidanasi Project is owned by Justice A K Samantarey's son Deepak Samantarey. According to documents, Deepak wrote to KVS Deo on September 26, 2007 and was allotted the flat on the same day.

Justice P K Tripathi's son Saroj Kumar Tripathi too was allotted a flat in Sector 11, also from the minister's quota.

A flat in Sector 10 in the Abhinav Bidanasi Project was allotted to Orissa High Court Justice VK Patel in 2008 again, thanks to KV Singh Deo.

Justice SK Mohanty too benefited from KV Singh Deo's quota, getting a plot in Bhubaneswar Development Authority's posh Mahatvakanshi Multistorey Pariyojana Netaji Subhash Enclave.

Some of the civil judges too benefited. Patnagadh's senior divisional judge, Mohd Ajmal was allotted Flat 13-3C 928 in Cuttack's Abhinav Bidanasi Project in January 2008, after a letter from KV Singh Deo. The minister also happens to be the MLA from Patnagadh.

KV Singh Deo has obliged judicial officers too. In May 2008, Judicial Officer GR Purohit wrote to Singh Deo asking for a plot and was duly allotted Plot No 2D-345.

Our investigations, carried out over the last few months, show that 16 judges from the Orissa High Court have benefited from the minister's quota at some point in time. It is now evident that even children of judges have benefited too. It is a sad comment on the ills of discretionary quota and it is the people of Orissa that are paying the price.

Expose to reveal housing scam in Orissa High Court

Last updated on: November 02, 2011 19:59 IST

A major expose by *Cobra Post* and *CNN IBN* on how the judges of the Orissa High Court got houses under the discretionary quotas available with the ministers, is set to be released around 8 pm on Wednesday.

The names of the judges and the manner in which this racket worked will be part of this expose.

The expose gains importance, as the judiciary across the country has been playing a significant role in battling corruption.

More importantly, the Supreme Court and several high courts in the country have taken the lead role in sending big politicians behind bars on corruption charges.

Members of the judiciary will keenly watch the expose, as the institution is likely to come under

scrutiny after this. Will the judiciary act against its own men is something that we would know once the programme is aired.

Modi government offered prime plots to judges

Last updated on: July 27, 2010 01:13 IST

Sheela Bhatt lifts the lid off a Gujarat government scheme, piloted by Law Minister Amit Shah, currently in the dock over the Sohrabuddin encounter, to offer prime plots cheap to judges

Three months before his [arrest](#) in the Sohrabuddin Sheikh fake encounter case, former Gujarat Minister of State for Home and law minister Amit Shah had offered prime land near Ahmedabad to all judges of the Gujarat high court on behalf of the state government at a price considerably lower than the prevailing market rate.

A Gujarat high court office-bearer has, off-the-record, confirmed this development. Except a couple of judges, most judges have accepted the offer.

According to him, "The Gujarat government mooted a scheme some months back to allot land to all Gujarat high court judges and also to some judges who were elevated or transferred out of Gujarat."

A lot of deliberation took place over the allotment between the judiciary and the state government, he added.

In a season of intense politics, the land allotment to judges at a cheap rate is likely to turn controversial.

A senior Gujarat high court lawyer told *rediff.com* that the piece of land, which originally belonged to Sola and Gota villages in the outskirts of Ahmedabad, was offered by the state government at throwaway prices to the honourable judges.

Sola village has now turned into a modern township. Land rates have inflated, making it beyond the reach of poor and middle class people.

The lawyer, who was involved in fighting the case of farmers in this area, said this prime piece of land was valued at around Rs 30,000 per square metre in the open market. It was, however, given for around Rs 10,000 per square metre.

While the plots measuring around 400 square metre were given to judges at a very low price by the government, this has not been appreciated by many lawyers in Ahmedabad, but none of them agreed to come on record with their reaction.

Rediff.com tried to contact a couple of judges who did not accept the state government's offer, but they were unavailable for comment.

Judges expose on cards-November 2, 2011

All eyes are on a major expose by the Cobra Post and CNN IBN on the judges of the Orissa High Court. Members of the judiciary will keenly watch this expose as the institution is likely to come under scrutiny after this.

The expose according to sources is about how some of the judges of the Orissa High Court have got houses under the discretionary quotas available with the ministers. The names of the judges and the manner in which this racket worked will also be part of this expose.

The expose gains importance since the judiciary across the country has been playing a significant role in battling corruption. More importantly the Supreme Court and several High Courts in the country have taken the lead role in sending big politicians behind bars on corruption charges. Will the judiciary act against its own men is something that we would know once the programme is aired.

Posted from WordPress for BlackBerry. <http://www.vickynanjappa.com>

IN THE HON'BLE HIGH COURT OF JUDICATURE ORISSA: CUTTACK

W.P.(PIL) NO. _9095_____ OF 2014

(Extra Ordinary Writ Jurisdiction Case)

Code No. _____

IN THE MATTER OF:

An application under Articles 226 & 227 of the

Constitution of India; and

IN THE MATTER OF:

An application under Articles 14, 19, 21, 48-A read with Article 51A(g) of the

Constitution of India; and

IN THE MATTER OF:

Public Interest Litigation; and

IN THE MATTER OF:

SEEKING CANCELLATION OF THE ENTIRE ALLOTMENT OF PLOTS OF LAND BY BHUBNESWAR DEVELOPMENT AUTHORITY AND CUTTACK DEVELOPMENT AUTHORITY TO GOVERNMENT OFFICIALS, M.P.S, M.L.A.S, JUDGES AND OTHERS THROUGH DISCRETIONARY QUOTA SINCE 1991 AND SEEKING A THOROUGH COURT MONITORED CBI INVESTIGATION OF ABUSE OF OFFICIAL POSITION BY CONCERNED OFFICIALS AND MINISTER(S) IN ODISHA STATE IN ALLOTMENT OF LAND THROUGH DISCRETIONARY QUOTA

IN THE MATTER OF:

1. COMMON CAUSE
THROUGH ITS DIRECTOR
5, INSTITUTIONAL AREA
NELSON MANDELA ROAD
VASANT KUNJ, NEW DELHI-110070

...PETITIONER NO. 1

2. JAYANTI DAS
W/O- KUMUDABANDHU DAS
CHINTAMANI NIWAS
MOHAMADIA BAZAR
CHANDANI CHOWK,
CUTTAK- 753002

...PETITIONER NO. 2

VERSUS

1. STATE OF ODISHA
THROUGH ITS CHIEF SECRETARY
GOVERNMENT OF ODISHA
SECRETARIAT, BHUBANESWAR
ODISHA

...RESPONDENT NO. 1

2. BHUBANESWAR DEVELOPMENT AUTHORITY
THROUGH ITS CHAIRMAN
BHUBNESWAR, ODISHA

..... RESPONDENT NO. 2

3. CUTTACK DEVELOPMENT AUTHORITY
THROUGH ITS CHAIRMAN
CUTTACK, ODISHA ... RESPONDENT NO. 3

4. CENTRAL BUREAU OF INVESTIGATION
THROUGH ITS DIRECTOR
CGO COMPLEX, LODHI ROAD
NEW DELHI-110003 ... RESPONDENT NO. 4

5. UNION OF INDIA
THROUGH ITS CABINET SECRETARY
CABINET SECRETARIAT, GOVERNMENT OF INDIA
RASHTRAPATI BHAWAN,
NEW DELHI - 110 004 ... RESPONDENT NO. 5

The matter out of which this writ application arises was never before this Hon'ble Court in any form whatsoever as per instruction of the Petitioner.

To,

Hon'ble Shri Justice Adarsh Kumar Goel, B.A., LL.B., the Hon'ble Chief Justice of the Hon'ble High Court of Orissa and His Lordship's companion Justices of the said Hon'ble Court.

The humble petition of the
petitioner named above;

MOST RESPECTFULLY SHOWETH: -

1. That the petitioners have filed the instant writ petition in public interest challenging the arbitrary and discriminatory distribution of state largesse by way of allotment of plots of land at concessional rates by Respondent No.1 - State Government of Odisha. The plots of land have been allotted to high ranking public servants, Members of Parliament and State Legislatures, Judges either through discretionary quota, without following any statutory regulation / guidelines, or through questionable policy decisions. The Petitioners submit that in either case such allotments are in violation of public trust and Article 14 and 21 of the Constitution. The Petitioners are constrained to seek interference of this Hon'ble Court as even certain Hon'ble Judges of this High Court have been co-opted as beneficiaries in such colourable exercise of executive power. The Petitioners submit that such unconstitutional distribution of State largesse to all three organs of State has adverse ramifications on the Rule of Law, independence of judiciary and separation of powers, which are components of the basic structure of our Constitution.

2. That the Petitioner no. 2 has made several representations against allotment of plots of land through discretionary quota in Odisha. The representations of Petitioner no. 2 and related documents are annexed herewith as Annexure P-21 (Series) to P- 28. However, no concrete action has been taken on the representations.

3. That Petitioner No. 1 is a registered society (No. S/11017). It was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before the Hon'ble Supreme Court of India as well as Hon'ble High Courts various Constitutional and other important issues and has established its reputation as a *bona fide* public interest organization fighting for an accountable, transparent and corruption-free system. Mr. Kamal Kant Jaswal, Director of Common Cause and a former Secretary to the Government of India, is authorized to file and pursue this PIL. The Petitioner No. 2 has been authorized to institute this PIL on behalf of the Petitioners.
4. That the Petitioner No. 2 is a public spirited citizen of India residing in Cuttack, Odisha. She is an RTI activist. She has filed several PILs in Orissa High Court, Cuttack on issues of public importance. Since 2011-12, she has obtained crucial information relating to the subject matter of the present PIL through RTI applications. She has made several representations in relation to the allocation of plots of land through discretionary quota by the Bhubaneswar Development Authority and the Cuttack Development Authority (Respondents No. 2 and 3 herein).
5. The facts and circumstances necessitating this petition are set out hereinafter.
6. That the Orissa Development Authority Act, 1982 (Act 14 of 1982) was enacted to provide for the development of urban and rural areas in the Respondent No.1 State of

Odisha according to plan, and for matters ancillary thereto. It came into force in different areas of the State of Odisha by notification of the State Government. The Act, under section 3(1), empowers the State Government to declare the area under notification as Development Area for proper development of such areas. Under Section 3(3) of the Act the State Government is empowered to constitute a body corporate by the name of the development area. According to Section 5 of the Act, the Chairman, Vice Chairman and members of the Development Authority are appointed by the State Government and they hold office during the pleasure of the State Government. Section 7 of the Act provides that the object of the Authority shall be to promote and secure the development of the Development Area according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property. The Authority undertakes development in any area under its jurisdiction by framing and executing development schemes. Under section 21(3) (k) of the Act, the Development Scheme provides for *undertaking housing schemes for different income groups, commercial areas, industrial estates and similar type of development*. Similarly, town planning schemes are prepared by the Authority. Under section 72 of the Act, the State Government may acquire any land for the development purpose under the provisions of Land Acquisition Act, 1894. The land so acquired is transferred to the Authority or Local Authority for the purpose for which the land has been acquired.

7. That in exercise of the powers conferred by Section 123 of the Orissa Development Act, 1982 the Respondent No.1 - State Government framed the Orissa Development

Authorities Rules, 1983. Rule 52 provides for the disposal of property by Development Authority. Rule 53 states, *“Nothing in these rules shall be construed as enabling the Authority to dispose of land by way of gift, mortgage or charge”*. Rule 54 provides for lease or disposal of property at a value not below the market value of the property. It reads, *“If any property belonging to the Authority is let out or disposed under Rules 52 and 53, it shall not be at a value below the letting value or the market value of the property, as the case may be, such value being fixed by the Authority.”*

A true copy of the relevant portion (Management and Disposal of Lands and Properties) of Orissa Development Authorities Rules, 1983 is annexed herewith as **Annexure P/1**

8. That the Bhubaneswar Development Authority – Respondent No.2 herein (hereinafter referred to as BDA) and the Cuttack Development Authority – Respondent No.3 herein (hereinafter referred to as CDA) were established by the Government of Orissa in the year 1983 under the Orissa Development Authorities Act, 1982, w.e.f. 01.09.1983.

9. That despite there being no legal provision either under the Orissa Development Authority Act, 1982 or under the Rules of 1983, made there under, it appears from the various RTI replies supplied to the Petitioner no. 2 that the BDA and CDA had been allotting plots of land under the discretionary quota of the Chairman of BDA and CDA till 2011. The Chairman of these Development Authorities had been the Minister of Urban Development, Government of Odisha. The RTI replies also reveal that no public notice

or advertisement regarding allotment under the Discretionary quota (D/Q) of the BDA and CDA was ever issued. Moreover, there was no procedure or guidelines for allocation of plots under the D/Q (Discretionary Quota).

True copies of the RTI application of the Petitioner no. 2 dated 09.11.2011 seeking a copy of the guidelines followed in allotments under the Minister's Quota and the eligibility criteria for allotment under D/Q, and the reply of BDA dated 25.11.2011 stating that no such guidelines were available, are annexed herewith as **Annexure P/2 (series)**

10. That the Orissa State Housing Board office order dated 20.12.2007 stated that the Govt. had approved enhancement of discretionary quota of Chairman, Orissa State Housing Board from 5% to 10%, which was at par with Chairman, BDA. This information was supplied to Petitioner No.2 in response to her RTI application dated 17.01.2012. A copy of Orissa State Housing Board office order dated 20.12.2007 is annexed herewith as **Annexure P/3**

A true copy of RTI reply of BDA dated 13.02.2012, wherein it has been stated that allotment under D/Q was being considered as per terms and condition of brochure and there was no provision to publish any press note/advertisement for public awareness regarding the allotment under D/Q of the Authority, is annexed herewith as **Annexure P/4**

A true copy of RTI reply of CDA dated 30.3.2012, giving a list of 38 persons (including Judges, IAS and IPS officers) who were allotted plots in Bidanasi Project Area during 1990 to 2011 by CDA, is annexed herewith as **Annexure P5** . The reply also states that there is no guideline or eligibility norm for allotment of plots under D.Q. of the Chairman, CDA.

True copies of RTI reply dated 21.03.2012 of Odisha State Housing Board in response to RTI application of Petitioner No. 2 dated 16.01.2012, RTI reply dated 18.04.2012 and Reply dated 05.05.2012 stating that no press note/ advertisement has been published for applicants under the discretionary quota by Govt., are annexed herewith as **Annexure P/6 (series)**

True copy along with true typed copy of RTI reply of BDA dated 05.06.2012 wherein a list of IAS, IPS, Judges/ Judicial Officers, MLAs/ MPs (23 plus 5 persons) who were allotted plots in Baramunda Housing Scheme, Kalinga Nagar Plotted Development Scheme (HIG category), Kalinga Vihar Housing Scheme and in Prachi Enclave Plotted Development Scheme from the discretionary quota by BDA is annexed herewith as **Annexure P/7**

11. That the Petitioners submit that while IAS and IPS officers were readily allotted plots under the so called discretionary quota of the Minister, the Respondent No.1 - Government found it difficult to allot land or provide houses to the next of kin of the police personnel who died while discharging their duties in anti-Naxalite operations. A

letter dated 25.02.2012 of AIG Police (Provisioning), Odisha Police State Headquarter Cuttack, states that 108 Police Personnel had died in these operations from 2001 to 2012. The letter further states that the provision of homestead land was a time-consuming process and that action was under process for provision of the same to the next of kin of the martyrs as early as possible. A copy of the letter dated 25.02.2012 of AIG Police, Odisha Police Head Quarters is annexed herewith as **Annexure P/8** . A copy of the letter dated 24.03.2012 written to the Petitioner by Deputy Secretary to Government of Odisha, wherein it is stated that there was no 'Discretionary Quota' for allotment of Govt. land to landless Jawans, Ex- Servicemen and Defense Personnel and to the next of kin of the State Police personnel killed in anti-naxalite operations, is annexed herewith as **Annexure P/9**.

12. That through information received under RTI, it has come to light that several IAS, IPS officers including Hon'ble Judges of this Hon'ble Court had requested the Cuttack Development Authority (CDA)/ Minister, Urban Development, Odisha, on their letter heads for allotment of plots of land under the discretionary quota. Most of these letters bear official notings for allotment. True copies of request letters written to Chairman, CDA by high ranking officials including Hon'ble Judges are annexed herewith as **Annexure P/10** (series).

True copy of RTI reply of BDA dated 02.08.2012, annexing request letters of several IAS, IPS officials which became basis for allotment of plots, are annexed herewith as **Annexure P/11** (series).

13. That documents disclose that one of the Ministers got a plot allotted to himself in 2009 in Pokharipur (Ananta Vihar) Housing Scheme on his request dated 04.08.2009, although his wife had already been allotted a similar plot in 2007 in Subudhipur (Kalinga Vihar) Housing Scheme. A copy of letter dated 24.08.2009 written by the then Minister is annexed herewith as **Annexure P/12**.

14. That the Petitioners submit that the above list of request letters for allotment of land written by Judges, IAS/ IPS officers, MLA, Ministers etc., is not exhaustive. Several other requests were made by high ranking public servants and politicians seeking allotment of plots under D/Q. True copies of letter dated 16.09.2000 by wife of a BJD Minister and letter dated 27.06.2000 by Chief of News Bureau of Indian Expresss, are annexed as **Annexure P/13 (Series)**.

True copies of request letters of allotment of 3 persons hailing from different areas and bearing the same date of 24.07.2000 are annexed herewith as **Annexure P/14 Colly** . These letters lead to the inference that middlemen, who were aware of the availability of vacant land, had drafted the request letters for all the three applicants

True copy of a request letter dated nil with file noting dated 31.01.08 submitted by a fresh law graduate, who was allotted land, is annexed herewith as **Annexure P/15** .

15. That the Petitioners further submit that in most of the request letters the applicants state that they are in the knowledge of allocation of land by BDA and CDA through discretionary quota, although no advertisement/public notice was ever published to bring this fact to the notice of the general public. The Petitioners submit that such an exercise of untrammled discretion is fraught with the possibility of corruption. It is further submitted that Shri Kanak Vardhan Singh Deo, who had been Minister of Urban Development for most of the period under reference, is facing criminal cases under various sections of IPC such as GR case No. 758 of 2007, Balangir PS case No. 288 of 2007 u/s 147/148/323/294/506/341/149 of IPC. True copy of affidavit dated 28.03.2009 filed by Shri Kanak Vardhan Singh Deo along with his nomination paper before the Returning Officer for election to the Legislative Assembly of Orissa are annexed herewith as **Annexure P/16**.

16. That the proceedings of the Allotment Committee Meeting held on 09.10.2006 by CDA indicate that prices of the allotted plots were fixed in an arbitrary manner and that they were much below the market value. A true copy of RTI reply of CDA dated 21.08.2013, enclosing a list of 35 IAS/IPS officers and Judges, who were allotted land under discretionary quota during 1990-2011 and the proceedings of allotment committee meeting held on 09.10.2006, is annexed herewith as **Annexure P/17 (series)**.

17. That the Petitioners are given to understand that an advocate had filed Writ Petition (C) No. 26393 of 2011 before this Hon'ble Court seeking CBI enquiry as to i) whether the

eligibility of the beneficiaries was verified before making allotments under the Discretionary Quota, ii) whether individual statements of beneficiaries were recorded to substantiate the need for an allotment from the Chairman's Discretionary Quota, and iii) whether the allottees of the plots in question were required to be exempted from the rules applicable to the general public. This Hon'ble Court by its judgment dated 24.11.2011 dismissed the writ petition, *inter alia*, on the ground, that there was no *bona fide* intention on the part of the Petitioner to espouse the public cause in the purported PIL.

A copy of recent RTI reply dated 15.10.2013 provided by CDA enclosing request letters dated 26.09.2007 and 08.01.08 is annexed herewith as **Annexure P/18**. The information was supplied in response to the RTI application of the Petitioner dated 04.09.2013.

18. That the Report of Comptroller and Accountant General on General and Social Sector- Vol-2 (Report No. 4- Government of Odisha- Report for the year ending 31st March 2012) gives details of arbitrariness and discrimination in land allotment by Government of Odisha. Chapter 2 of the said report contains the findings of Performance Audit on Allotment of Government land by General Administration (GA) department in Bhubaneswar city for various purposes. Para 2.1.10 of the Report, which deals with the policy and procedure governing the allotment of land, states as under;

"During 2000-12, GA department allotted 464.479 acres of land. Despite such a huge volume of land being allotted during the period, there was no policy or

procedure framed by the Government for allotment of Government land in Bhubaneswar.”

“In absence of any rules framed under the Government Grants Act, 1895 (GG Act) and lack of stated criteria to guide the discretion of the State, the process of allotment of land was prone to arbitrariness and lack of transparency.”

The Report observes in Para 2.1.10.2, *“... Basic data such as allotment of land through alienation/ lease indicating serial numbers of application, date of application, name and address of lessee, area leased, purpose, terms and conditions of allotment, amount of premium charged and paid and land use status, as necessary under Orissa OGLS (Government Land Settlement Act, 1962) Rules 1983 (Rule 5) were not available in the GA department.”* The Report states in Para 2.1.10.3 that plots in urban area were to be divided into five categories under rule 3 of OGLS Rules, 1983 ; i) land reserved for poor people; ii) land reserved for middle class people; iii) land required for future requirement for Government and other public purposes; iv) land to be settled by public auction, and v) land to be reserved for setting up small and medium scale industries. The Report further states, *“ As the department did not categorize the Government land available at different locations under Bhubaneswar Municipal Corporation (BMC), no land was reserved for the urban poor, thereby, depriving them of the opportunity to settle in the capital city though their presence was essential for the general interest of the public and business, trade or profession or any other legitimate reasons directly connected with their livelihood. In absence of earmarked area for urban poor, the possibilities of encroachment of Government land and development of slum in capital*

cannot be ruled out. The BMC identified (August 2009) 377 slums developed under BMC area with a population of 3.07 lakh.”

The CAG found that in respect of 154.473 acres of land out of the 424.200 acres allotted, allotments were made on *suo motu* applications. As the applicants did not belong to any of the categories i), ii), iii) and v) mentioned above, these lands should have been put to auction (category iv), which was not done.

Audit scrutiny revealed that although the premium was to be revised every three years, the GA department had not revised the rate of lease premium of Government land under BMC area for a period of 11 years from May 1998 to December 2009.

A true copy of relevant chapter 2 of CAG Report 4 of 2013 (Government of Odisha) is annexed herewith as **Annexure P/19**

19. The Petitioner no. 2 made several representations to various authorities, including State and Central Governments, regarding the rampant corruption in the allotment of plots under the discretionary quota. The Department of Personnel and Training forwarded the grievance petition dated 25.05.2012 to the CBI for appropriate action. A copy of the letter dated 27.11.2012 addressed by Under Secretary, Department of Personnel and Training, to the Director, CBI is annexed herewith as **Annexure P/20**. The Petitioner no. 2 made representations dated 28.03.2012 and dated 30.03.2012 to the Chief Minister of Odisha, requesting for an inquiry into the allotment of land to IAS/IPS officers and Judges under the Minister's discretionary quota between 1990-2011 without following

any guidelines, as revealed by RTI replies of CDA and BDA and for appropriate step to preserve the independence of the judiciary. A copy of the representations dated 28.03.2012 and 30.03.2012 is annexed herewith as **Annexure P/21 series** . A copy of representation of the Petitioner no. 2 dated 07.05.12 to Chief Minister Odisha and to the Prime Minister complaining against the DQ allotment to S.P. Vigilance, Lokayukta Judge etc. is annexed herewith as **Annexure P/22**. A copy of complaint of the Petitioner no. 2 dated 27.09.2012 to the Prime Minister of India and to the Vice President of India, complaining against the DQ allotment to DGP of Odisha Police, whose name was proposed for the post of Director, CBI, is annexed herewith as **Annexure P/23** . The Vice President's office forwarded the representation of the Petitioner to the DOPT for necessary action by letter dated 05.10.2012 which is annexed herewith as **Annexure P/24**. The Petitioner no. 2 made several other representations to the Vice President of India complaining against the discretionary allotment of plots of land to IAS and IPS officers and the corruption involved in such allotment; all these representations were forwarded to the Chief Secretary, Government of Odisha. True copies of letters dated 28.06.2012, 17.07.2012, 01.08.2012, 13.08.2012 and 14.08.2012 are annexed herewith as **Annexure P/25 (series)** . True copies of a letter forwarded from the office of Governor, Odisha to the Commissioner- cum Secretary to Government, Department of Housing & UD annexing a representation of the Petitioner no. 2 is annexed herewith as **Annexure P/26** . True copies of letters dated 25.06.2012 and 27.06.2012 from the Prime Minister's office to the Chief Secretary, Govt of Orissa forwarding complaints of the Petitioner is annexed as **Annexure P/27** .

20. That the Petitioners submit that the Petitioner no. 2 in particular has been diligently making representations to various authorities since she started receiving reliable information through RTI, for action against the arbitrary and discriminatory allocation of plots of land. However, no action was taken on the aforesaid representations made by the Petitioner no. 2 against misuse of official position by IAS, IPS officials and loss caused to the public exchequer through the discretionary allotment of plots of land. It is further submitted that the BDA has recently amended its procedure for allotment of assets in 2012. Chapter 8 of the Procedure book states, *"Allotment under discretionary quota of the Authority has been abolished vide Government's Housing and UD department letter dated 20.12.2011. Henceforth, there will be no provision for allotment of assets under discretionary quota of assets."*
21. That on 11.12.2013, in view of illegalities in allotments to high ranking officials of land in both the states of Gujarat and in the Respondent No.1 State, the Petitioners filed a PIL before the Hon'ble Supreme Court of India challenging the said illegal allotments and sought a CBI probe into the same.
22. That on 21.2.2014, the Hon'ble Supreme Court declined to interfere at that stage and gave liberty to the Petitioners to approach this Hon'ble Court. True copy of order dtd. 21.2.2014 is annexed as **Annexure P/28** .

23. That the Petitioners submit that arbitrary and discriminatory allocation of government land to persons in authority and their relatives is a common phenomenon in other States as well. Such non transparent and discriminatory alienation of a finite and scarce national resource in almost every State in favour of the members of the executive, the judiciary and the legislatures is a flagrant violation of public trust. Some of the governments also allot land to appease influential media persons. Thus, all the four pillars of democracy are being compromised by bestowing State largesse in the form of plots of land in premium urban localities, putting in jeopardy the larger public good and the rule of law.

24 **GROUNDS**

i) That the allotment of land through Discretionary Quota in the absence of statutory regulations or guidelines based on the doctrine of equality is an unconstitutional, illegal, and arbitrary exercise of discretionary power by the Respondent No.1 - State Government of Odisha and/ or the Chairman of BDA and CDA. Such allotments are liable to be quashed as they are violative of Article 14 of Constitution. .

In **Common Cause, A Registered Society v. Union of India** (1996) 6 SCC 530, a two Judge Bench of the Hon'ble Supreme Court of India 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:

“ 22. 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.”

“24. ... 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.”

ii) 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 And K** (1980) 4 SCC 1, Bhagwati J. speaking for the Hon'ble Supreme Court observed:

"12 ... 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 set forth the 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.

14. 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.

(1987)2SCC295, the Hon'ble Supreme Court has held,

“40. 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.”

- iii) 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 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 **Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Ors.** (2011)5 SCC 29 the Hon'ble Supreme Court has held,

“31. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a nondiscriminatory or non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit license etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

32. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies,

organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organizations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

33. This, however, does not mean that the State can never allot land to the institutions/organizations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organizations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organizations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.

In **Shrilekha Vidyarthi v. State of U.P.** : (1991) 1 SCC 212, the Hon'ble Supreme Court unequivocally rejected the argument based on the theory of absolute discretion of the administrative authorities and immunity of their action from judicial review and observed:

"It can no longer be doubted at this point of time that Article of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See Ramana Dayaram Shetty v. The International Airport Authority of India (1979) 3 SCR 1014 and Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir (1980) 3 SCR 1338 In Col. A.S. Sangwan v. Union of India (1980 (Supp) SCC 559)"

iv) That every State organ is a repository of public trust. However, the function of judiciary is distinctly different in the sense that its function approaches the divine. The Hon'ble Supreme Court has held, *"Because of the power he wields, a Judge is being judged stricter than others"*. It is submitted that the discriminatory distribution of state largesse in the form of plots of land to Judges creates an adverse public perception about the independence of the judiciary. This is bound to have a serious implication for the rule of law. In **Tarak Singh and Anr.Vs.Jyoti Basu and Ors.** (2005)1SCC201, the Hon'ble Supreme Court has held,

“22. 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 stricter 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.”

- v) That the unreasonable distribution of State largesse to high ranking officials of the executive, the judiciary and the legislatures adversely affects the concepts of rule of law and separation of powers, which concepts are part of the basic structure of our Constitution. All the organs of the State viz., executive, legislatures and judiciary, are repository of public trust. The legislatures and the judiciary are duty bound to check and balance the functions of the executive. When they become the beneficiaries of illegal distribution of state largesse, there is a reasonable apprehension of collusion among the three organs in the public mind. By becoming the beneficiaries of illegal gratification by the executive, they compromise their capacity to check the unlawful action of the executive.
- vi) That the discretionary allocation of plots of land by BDA and CDA to undeserving persons at concessional rate has caused a huge loss to the public exchequer. In several cases, the land allotted is transferred/ sold by the allottees for private gain at the cost of public exchequer. Such allotments also cast an undue economic burden on the original land owners, who are deprived of their livelihood when their lands are acquired in the name of public purpose, but are ultimately distributed to a select group of persons for private gain.

- vii) That the allotment of land through discretionary quota to IAS and IPS officers on the basis of requests made by such officers is in violation of the conduct rules of their services. This also amounts to an abuse of official position punishable under the Prevention of Corruption Act. A thorough Court-monitored inquiry by the CBI or by a Committee appointed by this Hon'ble Court is warranted to establish the wrong doing on the part of the Minister(s) and Govt officials so that those found guilty may be prosecuted for abuse of their official position.
- viii) That the prevailing lack of probity in high public offices seriously impairs the right of the people of this country to live in a corruption free society governed by the rule of law. This is a violation of Article 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society which is free from crime and corruption.
- ix) That the distribution of State largesse in the form of discretionary allocation of plots of land to Judges, MPs, MLAs, IAS and IPS officers suffers from the vice of arbitrariness, because there is no rational nexus between the class differential and the object sought to be achieved through such classification. Any advantage to the class of highly placed public servants, except in terms of their service conditions, has no rational nexus with the object sought to be achieved by such classification. That

the distribution of State largesse in the present matter is being done beyond the scope of the terms and conditions of service of the beneficiary public servants.

x) That a token distribution of State largesse in favour of the weaker or deserving sections of society cannot compensate for the enrichment of highly placed beneficiaries, because the clubbing of deserving persons with the affluent sections would amount to treating unequals as equals.

25. That the Petitioners, except as disclosed above, have not filed any other writ, complaint, suit or claim regarding the matter of dispute in this Hon'ble court or in any other court or tribunal throughout the territory of India.

26. That the Petitioners have no other alternative efficacious remedy available except to approach this Hon'ble Court.

PRAYERS

In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court may in public interest be pleased to: -

a. Appoint a committee functioning under direct supervision of this Hon'ble Court to scrutinize all the cases of discretionary allotments after hearing parties and based upon

this committee's report issue an appropriate writ and/or direction in the nature of mandamus quashing/ cancelling all the allotments of Government lands by State of Odisha and /or BDA and CDA under discretionary quota;

- b. Issue an appropriate writ to direct a thorough investigation by CBI into the abuse of official position by public servants and Minister(s) of State of Odisha in the entire allotment of plots of land through discretionary quota of Minister of Housing & Urban development, Government of Odisha or through the Discretionary quota of Chairman BDA and Chairman CDA; and
- c. Issue appropriate writ and/ or direction directing the State of Odisha to recover the windfall gains that may have accrued through sale/ transfer of plots allotted through discretionary quota in Odisha
- d. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper in the facts of the case and in the interest of probity and rule of law.

PETITIONERS

THROUGH

RAMESH MISRA/ SUNIL J. MATHEWS

(COUNSEL FOR THE PETITIONERS)

IN THE HON'BLE HIGH COURT OF JUDICATURE: ORISSA: CUTTACK

W.P.(PIL) NO. _____ OF 2014

(Extra Ordinary Writ Jurisdiction Case)

Code No. _____

AFFIDAVIT

I, Jayanti Das, aged about 54___ years, wife of the late Kumudbandhu Das, resident of Chintamani Niwas, Mohamadia Bazar, Chandani Chowk, Cuttack -753002 being present at Cuttack, do hereby solemnly affirm and state as follows that:

- i) I am the petitioner no 2 in this writ application and have been authorized by Petitioner no. 1 as well to file this writ application ; and
- ii) the facts stated above are true to the best of my knowledge and belief and the Annexures filed herewith are true copies of their respective originals.

Cuttack

Dated:

Identified by:

DEPONENT

Advocate

CERTIFICATE

Certified that on account of non-availability of cartridge paper, this misc. application has been typed on thick paper.

Advocate

VAKALATNAMA

IN THE HON'BLE HIGH COURT OF ORISSA AT CUTTACK

Between

Common Cause and Anr.....Petitioners

-VERSUS-

State of Orissa & OrsRespondents/Opp. Parties

KNOW ALL MEN BY THESE PRESENT THAT BY THIS VAKALATNAMA

We, the ~~Plaintiff/ Defendant/ Appellant/ Respondent/~~ Petitioners/ ~~Opp-Party~~ in the aforesaid ~~Suit/ Appeal/ Writ Petition/ Case~~ do hereby appoint and retain –

Ramesh Misra and Sunil J. Mathews

, Advocates to appear for us in the above case and to conduct and prosecute (or defend) the same in all legal proceedings that may be taken in respect of any application connected with the same, or order passed therein including all applications for return of documents or receipt of any money that may be payable to me/us in then said case and also in an applications of

review in appeals under the Orissa High Court Order and in applications for leave to Appeal to the Supreme Court. We authorize our Advocate(s) to admit any compromise lawfully entered in the said case.

Dated, May 5, 2014

Received from the executants(s), satisfied and accepted as we hold no brief for the other side.

Accepted as above:



Signature of the

Executant(s)

Address for service of notice:

"Shantikunj", Link Road, Cuttack-753012

Telefax:0671-2311513