

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 Petitioners.

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
petitioners named above;

MOST RESPECTFULLY SHOWETH: -

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 to influential persons by the Respondents, viz. Government of Odisha, Bhubaneswar Development Authority (BDA) and Cuttack Development Authority (CDA)

1. . The plots of land have been allotted to high ranking public servants, Members of Parliament and State Legislatures, and 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 the 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 and the principles of the 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 the Hon'ble High Court of Delhi 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.

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). The Petitioner No. 2 has been authorized to institute this PIL on behalf of the Petitioners.
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 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, with effect from 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.

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 and 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 were no guidelines or eligibility norms 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 had 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 - State of Odisha - 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, 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 and IPS officials, which served as basis of the 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 the Chief of News Bureau, The Indian Express, are annexed as **Annexure P/13 (Series)**.

True copies of request letters of allotment to 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 plots of land for allotment, 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 untrammelled 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 March2012) 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 allotments made against *suo motu* applications accounted for 154.473 acres out of the 424.200 acres of allotments. 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. Copies 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 the Chief Minister of 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 and IPS officials and the 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 of land to high ranking public functionaries in the states of Gujarat and in the Respondent No.1 State of Odisha, the present petitioners together with Centre for Public Interest Litigation 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 dated 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 the 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. The distribution of State largesse in the present matter has been 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 the direct supervision of this Hon'ble Court to scrutinize all the cases of discretionary allotments after hearing the parties concerned 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 ___ 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 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 & Ors

.....Respondents/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:

Dr. Mahanta

Signature of the

Executant(s)

Address for service of notice:

"Shantikunj", Link Road, Cuttack-753012

Telefax:0671-2311513