REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 253 OF 2017

NEERA YADAV **…Appellant**

Versus

CENTRAL BUREAU OF INVESTIGATON **...Respondent**

J U D G M E N T

R. BANUMATHI, J.

This appeal arises out of the judgment dated 24.02.2016 passed by High Court of Judicature at Allahabad in Criminal Appeal No.4837 of 2012, affirming the conviction of appellant-Neera Yadav, the then Chairperson and Chief Executive Officer (CCEO) of NOIDA (New Okhla Industrial Development Authority) under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (for short 'P.C. Act') and sentencing her to undergo rigorous imprisonment for a period of three years and fine of Rs.1,00,000/- and in case of default in

payment of fine with simple imprisonment for an additional period of four months.

2. It is a harsh reality that corruption has become all-pervasive in the present system of bureaucracy. It is a fact that rich and powerful try to stall the trial and conviction. However, fortunately, the present case has risen as an exception.

3. It is a well known fact that New Okhla Industrial Development Authority (N.O.I.D.A.) U.P. (hereinafter referred to as "NOIDA") was established in the year 1976 with the responsibility of developing and managing Asia's largest Integrated Industrial Township for the industrial growth of the area, under the Uttar Pradesh Industrial Area Development Act, 1976 in the National Capital Region. Administration of NOIDA was entrusted to high level public officials so as to develop a planned, integrated, modern Industrial City, well connected to Delhi through a network of roads, national highways and the ultra - modern DND flyover, offering inter - road linkages to all parts of the country. Spread over 20,316 hectares, with many sectors fully developed, NOIDA offers a pollution free, high standard of living and is highly supportive of industrial environment with its unique infrastructure providing numerous, matchless facilities. However, the project got

marred by land allotment scams worth several crores of rupees, owing to abuse of position and power by the officials entrusted with the management and control of NOIDA itself. In this connection, several complaints surfaced alleging irregularities in allotments and conversions of land in 'NOIDA'. Explanation was sought in this regard by the then Principal Secretary (Heavy Industries) of the Government of U.P. from Appellant Neera Yadav, the then Chairperson-cum-Chief Executive Officer (CCEO) of NOIDA. But, a final decision was taken not to initiate any departmental inquiry in the matter against the officials concerned.

4. One 'NOIDA Entrepreneurs Association' sought inquiry by the Central Bureau of Investigation (CBI) in the matter and this Court *vide* order dated 20.01.1998 directed that the matter be investigated by the CBI. Consequently, the CBI registered an F.I.R. Crime No. RC/3(A)/98-ACU-VII dated 26.02.1998 against Smt. Neera Yadav who was serving as Chairperson and Chief Executive Officer (CCEO) of NOIDA, during the relevant period viz. 10.01.1994 to 08.11.1995, and some other high officials of NOIDA. The FIR contained allegations to the effect that Ms. Neera Yadav in conspiracy with other officials

abused her position while committing grave irregularities in the matters of allotments and conversions of land in NOIDA.

5. In ***NOIDA Entrepreneurs Association v. NOIDA and Others*** (2007) 10 SCC 395, this Court has appointed Mr. K.T. Thomas, retired Judge of this Court as the sole member of the Commission to inquire into alleged irregularities in the matter of allotments and conversion of the plots. Subsequently, in ***NOIDA Entrepreneurs Association v. NOIDA and Others*** (2011) 6 SCC 526, ***NOIDA Entrepreneurs Association (Registered) v. New Okhla Industrial Development Authority and Others*** (2011) 6 SCC 527 and ***NOIDA Entrepreneurs Association v. NOIDA and Others*** (2011) 6 SCC 508, this Court has issued various directions. The reference is made to these decisions only to show that the registration of FIR by CBI was pursuant to the direction of this Court.

6. Appellant-Neera Yadav held the post of Chairman-cum-Chief Executive Officer (CCEO) of NOIDA for the period from 10.01.1994 to 08.11.1995. During her tenure, residential scheme No. 1994(I) was announced and the date of submission of application was extended up to 15.03.1994. The prosecution alleges a case of complete abuse of power in the matter of allotment of land; out of turn allotments; their

illegal conversions thereof; and unwarranted changes in layout plan of most developed Sector of NOIDA, so as to satisfy to the whims of the appellant and thus abused her position.

7. Briefly stated the case of the prosecution is as follows:- Smt. Neera Yadav, while working as CCEO, NOIDA, abused her official position in the matter of allotment of plot No.B-002 in Sector-32 measuring 300 sq.ms. in the draw of lottery. Within one week, of the allotment, the appellant made request for allotment of another plot in any developed Sector, through conversion. Based on her request, plot No.B-002 in Sector-32 was converted to plot No.26 in Sector-14A of Noida, comprising an area of 450 sq.ms. Further case of prosecution is that at the direction of Smt. Neera Yadav, CCEO NOIDA, the then Chief Architect Planner (CAP) Mr. S.P. Gautam of NOIDA put up a note dated 28.05.1994 for revising the layout of the plot nos. 26, 27 and 28 by increasing the sizes of the said plots from 450 to 562.50 sq.ms., 525 sq.ms. and 487.50 sq.ms. respectively. Thereby the area of plot No.26 was increased by 112.50 sq.ms. and the same was approved by the appellant Smt. Neera Yadav on 31.05.1994, benefitting the appellant herself. By a further change in the plot, a

7.50 ms. wide road was carved to the east of plot No.26 which again resulted in benefitting the appellant.

8. Further, the appellant abused her position in getting two plots in the name of her two daughters Ms. Sanskriti and Ms. Suruchi. Shop No.9 in Sector-28 of NOIDA was allotted in the name of the eldest unmarried daughter of Neera Yadav, Ms. Sanskriti who was studying abroad since 1991 and who had received possession of her shop through her younger sister Ms. Suruchi. She requested for issuance of the functional certificate and the same was issued immediately on the same date viz. 06.06.1994. On the strength of the ownership of shop No.9 in Sector-28, Ms. Sanskriti had applied for allotment of a residential plot under the scheme of 1994 (ii) of NOIDA. Consequently, plot No.B-73 in Sector-44, Noida was allotted in the name of Ms. Sanskriti which she later on got converted to plot No.A-33 in Sector-44. Likewise, Ms. Suruchi, another daughter of Neera Yadav, was also allotted a shop viz. shop No.74 in Sector-15 of Noida and after obtaining possession of the same, the shop was declared to be functional on 28.05.1994. On the strength of ownership of the said shop, Ms. Suruchi also applied for allotment of a residential plot under the scheme of 1994(iii). Consequently, plot No.B-88 in Sector-51,

comprising of an area of 450 sq.ms., was allotted in the name of Ms. Suruchi, which she subsequently got converted to plot no.A-32 adjoining to plot No.A-33 (allotted to her sister) in Sector-44 Noida.

9. As noted earlier, in furtherance of direction issued by the Supreme Court (20.01.1998), FIR was registered by CBI on 26.02.1998 in Crime Case No.RCNo.3(A)/98-ACU-VII *inter alia* against the appellant Neera Yadav alleging that she abused her position in the matter of allotment of plots, conversion of plots in her name and in the name of her daughters. Sanction was obtained under Section 19(1) of the P.C. Act, 1988 and after completion of investigation, chargesheet was filed against the appellant.

10. To substantiate the charges against the appellant, the prosecution, apart from producing a number of documentary evidences, examined as many as thirty nine witnesses. The appellant was questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstance and the appellant denied all of them. Upon consideration of evidence, the Special Judge CBI, Ghaziabad, *vide* judgment and order dated 20.11.2012 in Special Trial No.19 of 2002, held that the prosecution has proved the guilt of the appellant beyond reasonable doubt and convicted the appellant under

Section 13(2) read with Section 13(1)(d) of P.C. Act and sentenced her to undergo rigorous imprisonment of three years and fine of Rs.1,00,000/, with default clause. *Vide* impugned order and judgment, the High Court confirmed the conviction of the appellant and also the sentence of imprisonment and fine imposed on the appellant.

11. Mr. K.V. Vishwanathan, learned senior counsel urged that as an officer of NOIDA, the appellant was eligible to apply for a residential plot and the appellant made her application along with the cheque of Rs.40,000/- as registration money and that plot No.B-002, Sector-32, was lawfully allotted to the appellant. It was further submitted that conversion of plot in Sector-32 into plot No.26, Sector-14A was in compliance with relevant rules and due procedure and was not a case of illegality.

12. Further contention of the appellant is that she never directed S.P. Gautam, the then Chief Architect Planner, NOIDA, to increase the size of her plot, or to carve out a 7.5 m. wide road between her plot and plot No.25. The said increase arose out of necessity of providing privacy and security to the Chairman, Greater Noida and thus there was no abuse of position by the appellant. It was contended that the daughters of the appellant had applied for allotment of the shops and shops were

allotted to them in the normal course and declared functional as per the rules of NOIDA. It was further submitted that at the time of preferring application for shops and plots, the appellant's daughters were not dependent upon the appellant and they were major and income tax assessees, having independent source of income and were thus eligible for allotment of concerned shops and plots. It was urged that neither there was any violation of rules of NOIDA, nor any loss was caused to NOIDA due to allotment/conversion of shops and plots in favour of the appellant or in favour of her daughters.

13. The learned Solicitor General Mr. Ranjit Kumar submitted that with *mala fide* intention, appellant abused her position and managed to get plot No.B-002 in Sector-32 after the closure of the Scheme 1994(i) *vide* her incomplete application. The learned Solicitor General further urged that by abusing her position as Chief Executive Officer, the appellant managed to get the above plot converted to a bigger plot i.e. plot No.A-26, from 450 sq.ms. to 562.50 sq.ms. in a developed Sector-14A, by altering the site plan which was approved by the appellant herself on 31.05.1994. Drawing our attention to the allotments made in favour of appellant's daughters, the learned Solicitor General further submitted that by abusing her position as

CCEO, the appellant managed to get the shops allotted in the name of her daughters, fraudulently obtaining the functional certificate thereafter based on which allotment of residential plots were made. The learned Solicitor General urged that upon consideration of the evidence and materials on record, the trial court and the High Court rightly convicted the appellant and that the concurrent findings warrant no interference.

14. We have considered the rival contentions and have also perused the impugned judgment and also the materials on record.

15. Section 13 of the P.C. Act in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage, he would be guilty of 'criminal misconduct'. Sub-section (2) of Section 13 speaks of the punishment for such misconduct. Section 13(1)(d) read with Section 13(2) of the P.C. Act lays down the essentials and punishment respectively for the offence of 'criminal misconduct' by a public servant. Section 13(1)(d) reads as under:

> "13. Criminal misconduct by a public servant.—
>
> (1) A public servant is said to commit the offence of criminal misconduct,

> (d) if he,—
>
> (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or"

A perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of '*criminal misconduct*' under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive. Thus, under Section 13(1)(d)(i) obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal misconduct. On the same reasoning "*obtaining a valuable thing or pecuniary advantage*" by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct.

Illegality in Allotment of Plot No.B-002 Sector 32 and subsequent conversion to Plot No.26, Sector-14A

16. Case of prosecution is that the appellant Neera Yadav sought allotment of a residential plot in her name *vide* an undated application, allegedly moved after closure of the concerned scheme, with undated

cheque. Appellant preferred an undated application (Ext. Ka-37) for allotment of a residential Plot under Category-VI (Regular Employees of NOIDA or regular Government/Public Sector Undertaking Employees on deputation to NOIDA) under the Scheme 1994(i), which was issued inviting applications for allotment of residential plots in Sectors 23, 32, 33, 34, 35, 49 and 53 as per the brochure. The scheme offered five categories of plots, based on size. The concerned application No.648 (Ext. Ka-37) was preferred by the appellant for Plot code 05 i.e. plot of 350 sq.ms.

17. As per the brochure, in order to seek registration, the applicant had to submit a duly filled application form for allotment of plot in the prescribed form alongwith all the enclosures; and 30% of the premium amount at the rate of Rs.1200/- per sq.m. for regular plot and Rs.1215/- per sq.m. for a corner or park facing plot, ought to be paid. The appellant is alleged to have paid Rs.40,000/- as registration amount for allotment of plot measuring 350 sq.ms. by an undated cheque dated 15.03.1994.

18. Case of the prosecution is that allotment of the plot under the concerned scheme in favour of the appellant is marred by grave infirmities which is in complete violation of the norms of the scheme as

stated in the brochure. Firstly, the prosecution alleged that the application (Ex. Ka-37) was completely defective as it was neither completely filled, nor requisite Annexures were appended to it. Secondly, the prosecution alleged that neither the mode of payment of the registration amount was as per the norms, nor the actual requisite amount due was paid by the appellant. The application No.648 (Ex.Ka-37), when tested on the anvil of the norms stated in the brochure of the scheme, it was found defective on following counts:-

> (i) The application was undated. The date on which the application was made was not mentioned;
>
> (ii) The application did not bear duly attested passport size photograph of the applicant;
>
> (iii) The column of husband/father name was left blank;
>
> (iv) The Disclosure to the effect that no other person of her family being her spouse, or daughters, own or, have obtained plots or, shops in any sector of Noida was not made;
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> (v) Signatures of applicants were not attested by a gazetted officer.
>
> (vi) The required certificate from personal department of Noida, certifying that she was an employee of Noida, was not enclosed.
>
> (vii) The required notarized affidavit in prescribed form was not enclosed.
>
> (viii) The application which was mandatorily required to be accompanied with a/c payee crossed 'demand draft' or 'pay order' of registration amount did not accompany with any demand draft or pay order rather was accompanied by an antedated cheque.

19. Clause 3 of the brochure provides that incomplete application without enclosures shall not be registered. Relevant portion of Clause 3 of the brochure is as under:

> "……Incomplete application and applications without enclosures as mentioned above for allotment of specific plot shall not be registered. Therefore, the applicants are requested to submit complete application form in all respect alongwith the required enclosures and requisite amount of registration money for registration."

As per the brochure of the concerned scheme, the documents as indicated thereon must be attached to the application form in order to establish the eligibility of the applicant for obtaining plot in NOIDA. Legally, no allotment of plot could have been made on such a defective application presented after cut-off date. Since the appellant was the CCEO of NOIDA, she abused her position in ensuring that her application, though incomplete, is processed.

20. As per the brochure, the application must be accompanied with account payee Demand Draft/Pay Order. From the records, it is seen that the appellant had not given the demand draft/pay order; on the other hand, she only gave cheque dated 15.03.1994, (Ex.Ka-8). Though the said cheque is dated 15.03.1994, there is ample evidence to show that the cheque was ante dated. As per the clearing register, the said Cheque No.395207 dated 15.03.1994 was cleared by the Bank only on 28.03.1994. That apart, Ex. Ka-14 to Ex. Ka-24 contains the names, draft numbers and amount paid by each of the applicants. As seen from Ex.Ka-44, Log Book, total amount of all the demand

drafts was only Rs.65,20,200/-. By perusal of Ex.Ka-84, it is seen that Sl. No.163 was cut off and Sl. No.164 Cheque of Neera Yadav was included and consequently altering the total amount as Rs.65,60,200/-. As seen from Ex.Ka-85, the Bank Statement, as on 21.03.1994, only Rs.65,20,200/- alone was received by the bank from NOIDA. This clearly shows that the Cheque (Ex. Ka-8), though dated 15.03.1994 was not presented on 15.03.1994 or on 18.03.1994 and that is why the same was neither included in the Clearing register of instruments sent for clearing on 18.03.1994 nor in the Bank Statement as on 21.03.1994.

21. An appreciation of the evidence on record shows that the list of applications and cheques received by the bank on the cut-off date, did not contain details of the application and cheque given by the Appellant. Thus, it is clear that the defective application and the accompanying cheque were issued beyond cut-off date and records of NOIDA were manipulated with dishonest intention to bring in the application of the appellant within the cut-off date. Various circumstances pointed out by the prosecution, viz. non-mentioning of date on the application; making payment through cheque instead of through A/c payee Demand Draft/Pay Order; and the amount of the

cheque being collected only on 28.03.1994 leads to an inference that the application of the appellant, who was the then CCEO of the NOIDA, was not given before the cut-off date i.e. 15.03.1994. The only possible inference which can be drawn in such circumstances is that though, the appellant had conveniently submitted an ante-dated application after the closure of the scheme, ante-dated 'demand draft' or 'pay order' could not have been obtained, and hence, she submitted Ex. Ka-8 cheque by mentioning a back date. The fact that appellant's cheque (Ex.Ka-8) was sent for collection on 28.03.1994, after seven days of collection of amount of demand drafts in respect of other applications clearly leads to an irresistible conclusion that appellant's application was only subsequently included in the register. The trial court and the High Court rightly held that the appellant abused her position in ensuring that her incomplete application with ante-dated cheque was processed.

22. Plot No.B-002 in Sector-32 was allotted to the appellant on 08.04.1994 *vide* allotment letter Ex. A-78. The appellant submitted Ex.Ka-39 application on 15.04.1994 seeking conversion of her plot to a plot measuring 450 sq.ms. in a developed sector. As is seen from Ex.Ka-90, the proposal for conversion was put up by G.C. Tiwari on

02.05.1994 and PW-35 Stuti Kacker, Officer on Special Duty of NOIDA, allowed the conversion of the plot on 06.05.1994. As per the conversion policy any conversion of plot is required to be done by CEO, NOIDA. Case of prosecution is that since CEO herself was the applicant for conversion of the plot, the matter ought to have been placed before the Board; rather than before a subordinate officer like PW-35 Stuti Kacker. Allowing of conversion of appellant's plot to plot No.27, Sector-14A by a subordinate officer is in clear violation of the conversion policy.

23. As per the policy of the allotment and also as per the terms of the brochure, the successful applicant has to deposit 30% of the total premium for allotment of Plot No.26 in Sector-14A measuring 450 sq.ms. The total premium payable works out to Rs.5,40,000/-, 30% of which comes to Rs.1,62,000/-. By the communication dated 04.05.1994 it is seen that the appellant was asked to deposit only an amount of Rs.1,08,000/-, which again is in violation of the terms of the allotment and conversion.

24. The very fact that the application was 'undated' and that the cheque was issued instead of demand draft and the same was cleared only on 28.03.1994, clearly prove that by abusing the position, the

appellant obtained undue advantage for herself. This is further strengthened by the subsequent conversion of the plot, allotment of additional area in her favour and reduction of the size of the unnumbered plot available in Sector-14A, Noida. The High Court and the trial court rightly recorded concurrent findings of fact that the application of the appellant suffered from material defects which were sufficient to discard the application; but by illegal means, the application was processed by the appellant.

Unjustified change in layout plan of Sector-14A : Resultant loss to NOIDA and advantage to the appellant:-

25. Lease deed of plot No.26 (Ext. A-45) was executed on 19.05.1994 in favour of the appellant. On 28.05.1994 S.P. Gautam, Chief Architect Planner proposed *vide* proposal dated 28.05.1994 Ext. A-64 a plan for making provision of a 7.5 m. wide road between the official residence of CCEO of Greater Noida and plot No.26 of the appellant. The Chief Architect Planner also proposed enhancement of area of plot No.26 by 112.50 sq.ms. with further proposal for re-organization of plots in view of loss of area of 225 sq.ms. in the proposed road. Without any questioning, the said proposal was approved by the appellant herself on 31.05.1994 and size of plot

No.26 was thus enhanced to 562.50 sq.ms. No cogent reason has been furnished by the appellant for approving the above plan of site re-arrangement, which directly benefits the appellant herself and causes loss to NOIDA. The said 7.5 ms. wide road carved to the East of plot No.26 and enhancement of area of plot No.26 only resulted in benefitting the appellant by increasing her plot size and by making her plot as corner plot. The maps depicting site plan of Sector-14A of NOIDA were prepared by the Chief Architect and the Chief Architect Planner as per the direction of Dy. SP and these maps were marked as Exs. A18 to A23 in Rajiv Kumar's case [Spl. Case No. 19 of 2002] and certified copies of the same were produced in this case as *Talvitha*.

26. The following table as given by the High Court in its judgment in Criminal Appeal No. 4717 of 2007 pertaining to Rajiv Kumar (which we have also extracted in C.A. No.251-252/2017) will depict the frequent changes made and the loss of land caused to NOIDA at the behest of the appellants.

Sl. No.	Plot No.	Map No.1 Ext. A-18 July 1984	Map No.2 Ext.A-19 11.2.94	Map No.3 Ext.A-20 11.2.94 (wrongly showing Road in East)	Map No.4 Ext.A-21 28.5.94 Before Cuttings	Map No.5 Ext.A-22 28.5.94 After cuttings	Map No.6 Ext.A-23 Latest 31.10.99 w.e.f. 6.11.95	Area of appurtenant Green Belt in North	Total area of plot with appurtenant Green Belt
1	26	630.00	450.00	450.00	562.50	562.50	562.50	783.86	1346.36
2	27	482.50	450.00	450.00	525.00	300.00	405.00	535.15	940.75
3	28	371.25	450.00	450.00	487.50	487.50	487.50	593.4	1080.71
4	Unnumbered plot towards West	NIL	529.35	304.35	90.00	304.35	Trapezium of (3.16+9.57)/2 ×30=231.45	49.8	240.75
5	Green Belt Area towards West	Rectangle of (7.93×30) =237.90	Rectangle of (7.93×30= 237.90	Rectangle of 7.93×30= 237.90	Trapezium (7.23+7.93)/ 2×30=227.4	Rectangle of 7.93×30= 237.90	Trapezium of (7.93+7.50)2 ×30=231.45	-	231.45
6	Total Area	2311.65	2706.29	2481.89	2493.89	2445.89	2469.74	-	3840.02

Note: As seen from the endorsement in the above maps, the maps have been prepared by the architect and the Chief Architect Planner (30.10.1999) with reference to the letter No. Dy.SP.ACU VII/1999/0603 dated 08.09.1999 and direction given by the SP ACU VII CBI and in the meeting held on 25.10.1999 and 28.10.1999.

27. A perusal of the above table of the exhibited maps shows that from 1984 to 1993, for about a decade, there was no alteration in the area and position of the plot nos. 26, 27 and 28 in Sector-14A. However, from 10.01.1994 to 08.11.1995 the area and position of plots were changed at least five times. Initially in Sector-14A, apart from plots 26, 27 and 28 there was an unnumbered plot with area of 529.35 sq.ms. as shown in Map No.2 dated 11.02.1994. However, after effecting several changes, the same was reduced to 90 sq.ms. On 28.05.94, as depicted in Map No.4 and as per Map No.6, it was brought to a shape of small trapezium with area just measuring 190.95 sq.ms., thereby causing substantial loss of land to Noida.

28. It is noteworthy that the unnumbered plot measuring 529.35 sq.ms. completely disappeared, as is clear from Map No.5 and the left over area was of no use to NOIDA as the same being trapezium in shape and resultantly left unsuitable for allotment. The provision of 7.50 ms. wide road to the right of plot No.26 is completely devoid of any justification. As also available on record, appellant Neera Yadav and one Mr. Rajiv Kumar got allotted plots adjacent to each other viz. plot No.26 and 27, followed by about 8 ms. or 26 feet wide green belt and Delhi Border in West about 10 meters or 33 feet very wide green belt in North and 40 feet wide road in South making the plots bigger in size with appurtenant green belt area.

29. The above mentioned change in the site plan of Sector-14A, apart from resulting in direct loss of land to NOIDA, is also contrary to the Rules of NOIDA. Clause 11 of the brochure of the scheme provides that the area of a plot allotted or handed over may vary from the size of the plots advertised in the scheme and applied for, and a marginal increase or decrease in area upto a maximum of 20% on either side may be allowed. Clause 11 of the brochure reads as follows:-

“11. AREA OF PLOT:

> Area of plot allotted or handed over may vary from the size of the plots advertized in the scheme and applied for. If the area of the plot indicated in the allotment letter issued by the Authority or actually handed over to the allottee is found to be in excess or less than the area applied for, a proportionate change in the amount of premium would be made. No dispute would be allowed to be raised by the allottee on the ground of variation in the size of the plot. He would also have no right to change of plot or refund of earnest money deposited by him on this account. If the variation between the plot and area applied for and the area allotted is more than 20% and the allottee is unwilling to accept the enhanced or reduced area, registration money deposited by the allottee will be refunded without interest if he applies for refund within 30 days from the date of issue of allotment letter."

The High Court has made an apt observation in this regard that the purpose of clause 11 is to avoid any kind of dispute in case of any marginal increase or decrease of area and to restrict the enhancement or decrease in the area of the plot beyond 20%. However, if we consider the case of the appellant, it emerges that firstly by conversion of her plot, the appellant first sought enhancement of area of her plot by 50% (300 sq.m. to 450 sq.m.) and secondly by further reorganisation, the appellant sought further enhancement of area of her plot by 37.5% (450 sq.m. to 562.50 sq.ms.). Also, by approving the intervening road between the two plots, the appellant not only converted her plot into a corner plot having two side opening on very wide roads and very wide green belt on the other side, but also shifted her plot towards West by 7.5 ms. and further extended it towards West

by another 3.75 sq.ms. by enhancing area of her plot by 112.50 sq.ms., and thereby causing loss of the area of 225 sq.ms. plus 112.50 sq.ms. total 337.50 sq.ms. and getting undue advantage to herself.

30. That apart, as discussed by the High Court, in Map No.3 dated 11.02.1994, the road in east of plot No.26 has been wrongly shown since as seen from the evidence of PW-19 S.P. Gautam, Chief Architect Planner the road was introduced for the first time *vide* proposal dated 28.05.1994 and the same was approved by appellant Neera Yadav on 31.05.1994 *vide* Map No.6. Be it noted that even in the lease deed dated 19.05.1994, the eastern boundary of the plot was shown as 'road' which in fact did not actually exist on 19.05.1994. Proposal for road was put up by PW-19 S.P. Gautam only on 28.05.1994. Map No.3 wrongly shows the road on the eastern side only to make good the boundaries in the lease deed in respect of plot No.26 allotted to/executed in favour of appellant Neera Yadav on 19.05.1994. This again shows the dishonest intention of the appellant in making provision for road, to gain an undue advantage for herself.

Allotment of shops and plots in favour of daughters of the Appellant-Illegalities thereof

31. The appellant Neera Yadav has three daughters, out of which two daughters viz. Ms. Sanskriti and Ms. Suruchi, who were major, but unmarried at the relevant point of time, had applied for allotment of shops in NOIDA. Ms. Sanskriti had applied for allotment of a shop *vide* undated application (Paper no. 14Ka/67). On 16.05.1994, shop No.9 in Sector-28 of NOIDA was allotted in the name of Ms. Sanskriti *vide* allotment letter (Ext. Ka-11). As Ms. Sanskriti was studying abroad since 1991, for the purpose of issuance of functional certificate, she had to obtain possession through her younger sister Ms. Suruchi. The functional certificate was issued immediately thereafter on 06.06.1994. On the strength of the ownership of shop No.9 in Sector-28, she had applied for allotment of a residential plot under the Housing Scheme (II) of 1994, which was launched from 24.05.1994 to 08.06.1994. Consequently, plot No.B-73 in Sector-44 of Noida, measuring 450 sq.m. was allotted in the name of Ms. Sanskriti *vide* allotment letter dated 01.08.1994 (Ext. Ka-55, paper no. 15Ka/54-15Ka/56) and on 12.10.1994, she got it converted to plot No.A-33 in Sector-44.

32. Another daughter of Neera Yadav, Ms. Suruchi had preferred application dated 28.02.1994 and was allotted shop No.74 in Sector-15 *vide* allotment letter (Ext. Ka-15). After obtaining possession

of the same, the shop was declared functional on 28.05.1994. On the strength of ownership of the said shop, she was allotted plot No.B-88 in Sector-51, measuring 450 sq.ms., under Residential Scheme (III) of 1994 *vide* allotment order dated 23.09.1994 (Ext. Ka-50, paper no. 17Ka/68- 17Ka/70), which she subsequently got converted to plot No.A-32 adjoining to plot No.A-33 (allotted to her sister) in Sector-44 Noida on 10.10.1994. The lease deed of both the plots were executed on 26.12.1994 (Ext. Ka-58, paper No. 15Ka/36-15Ka/45; and Ext. Ka-53, paper no.17Ka/42- 17Ka/52). One year lease rent of both these plots was paid only from the joint account of the appellant and her husband. As rightly observed by the trial court that the various applications preferred by the daughters of the appellant seeking allotment of shops, residential plot and functional certificate were defective and incomplete.

33. It is the case of the prosecution that the allotment of shops and residential plots in favour of daughters of the appellant were in complete violation of terms and conditions of the allotment Scheme 1994 (II) and (III), which provides that no person or his family member can get allotment of more than one plot in NOIDA. The prosecution has stressed on the point that the daughters of the appellant were

dependant on the appellant and her husband for their studies and livelihood and that the major payments for the above mentioned shops and plots allotted in the name of the two daughters were made from the joint accounts of the appellant and her husband, Mr. M.S. Yadav. The prosecution also drew our attention to the fact that after allotment of plot No.A-33 Sector-44, the shop allotted to Ms. Sanskriti was sold to one Ms. Meenakshi Vijayan on 19/20.10.1995 (Paper no. 14/Ka-4) and while selling the shop it was mentioned by Ms. Sanskriti that she has already availed the benefit of seeking allotment of a residential plot against the shop, meaning thereby that the shop was acquired by her only with the *mala fide* intention of getting a residential plot.

34. On the contrary the appellants have maintained that at the time of applying for shops and plots, appellant's daughters were major, income tax payees and had independent source of income and were thus eligible for allotment of plots. It is further maintained that there is no provision in the rules of NOIDA which prohibits transfer of shop after availing the benefit of taking a residential plot against the shop.

35. As already noted above, the application (Paper No.14 Ka/67) moved in the name of Ms. Sanskriti was undated. The column of Father's name was left blank and required passport size photograph of

the applicant was also not pasted. Paper No. 14 Ka/75 to 14 Ka/78 do not bear signature of Ms. Sanskriti, as was required. Similarly, the application moved for issuance of Functional Certificate (Paper No.14 Ka-51) is undated. Similarly, Ext. Ka-3 lacks essentials like date and age of the applicant. Also, the Father's name on this application is written as 'Mahendra Singh'. Paper No.16 Ka/32 to 16 Ka/36 do not bear signature of Ms. Suruchi, as required. Similarly, the application moved by her for issuance of Functional Certificate (Paper No.16 Ka-10) is also ante-dated. Taking note of the above mentioned irregularities and infirmities in the paper work with regard to allotment and functionality of the shops allotted in favour of the daughters of the appellant, the courts below have rightly concluded that no allotment of shops should have been made in their favour.

36. It is an admitted fact that the education and living expenses of the two daughters of the appellant was borne by the appellant and her husband. Ms. Sanskriti was living and studying in U.K., while Ms. Suruchi was studying in India itself. It was neither alleged nor any document, in this behalf was produced to contend that the daughters of the appellant had independent sources of income and that they were bearing their education and living expenses on their own. It is

also available on record that the appellant and her husband maintained several joint accounts with their daughters as also in the name of HUF, and the registration money for allotment of shops was paid from this joint account only.

37. The two shops allotted in favour of the daughters of the appellant were declared functional, thereby making them eligible for allotment of residential plots under Scheme (II) and (III) of 1994, without noticing that the applications moved by Ms. Sanskriti and Ms. Suruchi were defective and that they never carried business in those shops. The appellant failed to adduce any evidence to show that her daughters ran any kind of business in those shops. In fact the prosecution has been able to prove that the appellant had sought allotment of the concerned shops in favour of her daughters only to make them eligible for seeking allotment of residential plots. It is proved that the shop allotted to Ms. Sanskriti was sold to one Mrs. Meenakshi Vijay on 19.10.1995 (Paper No.14/Ka-4) and while selling the shop it was mentioned by Ms. Sanskriti that she has already availed the benefit of seeking allotment of a residential plot against the shop.

38. The appellant's contention that merely by showing that the concerned shops had supply of electricity; were registered under 'The

Shops Act' for doing the business of 'Decorators and Florescent' etc., it has been successfully proved that the shops were fit to be declared functional, does not hold good, especially when the evidences are available on record to show that appellant had *mala fide* intention of obtaining residential plots in the guise of seeking allotment of shops. The shop so allotted in the name of Ms. Sanskriti, was sold by her to Meenakshi Vijay on 19.10.1995 *vide* paper No.14/A-4 for valuable consideration, disclosing to her that she has already obtained advantage of securing allotment of a residential plot.

39. The appellant has contended that her daughter Ms. Sanskriti and Ms. Suruchi were income tax assesses, as they were filing income tax returns. As per the appellant, her husband and her daughters together form a Hindu Undivided Family and that they together hold a bank account in such capacity. It was contended that the payments were made from the said account. However, the appellant did not produce any evidence to substantiate her claim. More so, it is noteworthy that before 09.09.2005 when Amending Act No.39 of 2005 of Hindu Succession Act came into force (w.e.f. 05.09.2005), daughters were not coparceners of Hindu Undivided Family. Hence, the daughters of the appellant could not have been coparceners of HUF in the relevant

period of 1994-95, in the absence of any direct evidence in this regard. Also, it is noteworthy that the daughters of the appellant were never examined before the Court, nor any documents produced to substantiate their claim.

40. It was also contended that the daughters had inherited certain properties worth around Rs.3.00 lacs and some gold from their grandmother '*Nani*', which sufficed in payment of registration money for the shops and plots allotted in their favour. However, nothing was proved on record to substantiate the said contention. Neither the appellant produced certified copies of the alleged income tax returns, nor she filed any other document supporting her contention that registration amount was paid out of the independent income of her daughters. In fact evidence to the contrary have been proved on record. The appellant has brought on record photocopies of income tax returns of their daughters, which is not a certified copy. However, even if we consider the same, it emerges that the concerned income tax returns were filed by the daughters after they received some assets/valuable securities under the Will of their *Nani* and that the daughters earned a very meagre or nominal annual income between Rs.25,000/- to Rs.40,000/- including income from interest on FDRs &

securities. Considering the documents produced by the appellant, the approximate value of total assets of the daughters of the appellant comes to around Rs.4.00 lakhs to Rs.5.00 lakhs each. However, value of the shops allotted in favour of the daughters was around Rs.4.00 lakhs to Rs.5.00 lakhs and the value of the residential plots allotted to Ms. Sanskriti and Ms. Suruchi was Rs.7,31,875/- and Rs.8,89,333/- respectively totalling to Rs.16,21,208/-. The appellant has not produced any document to show that some of the alleged assets or F.D.R. etc. were disposed of to realise the amount of registration fee of the shops and plots allotted in their favour. In such circumstances, by no stretch of imagination it can be proved that the concerned properties worth Rs.10.00 lakhs each were purchased by the daughters of appellant, out of their independent incomes. Even if the plea of the appellant is accepted to be true that her daughters had inherited valuable properties through 'Will' executed by their *Nani* (maternal grandmother), it cannot be proved that the concerned plots were purchased from the said income.

41. The appellant has further contended that both the daughters of the appellant had borrowed Rs.4.00 lakhs each from M/s. N.P. Mutual Benefits Ltd., Bareilly on 09.06.1995 so as to pay for the plots allotted

in their favour. In this context, testimony of PW-20, Navin Khandelwal, Managing Director, M/s. N.P. Mutual Benefits Ltd. is relevant. PW-20 has deposed that he had simply lent the money in the name of the daughters of the appellant on receiving a telephonic call made by Shri M.S. Yadav, husband of the appellant-Neera Yadav. PW-20 had never met the daughters of the appellant and had disbursed the loan amount solely on account of faith in their father. PW-20 was not even cross-examined on behalf of the appellant on this aspect. Both the loans were liquidated on 05.10.1996. The above facts show that subsequent transaction of loan was only a sham transaction to support the fake case of the appellant.

42. Considering the depositions of material witnesses, it is hard to believe that the requisite amount for seeking allotment of shops and residential plots were made out of independent income of the daughters of the appellant. So far as the payment for seeking allotment of shop is concerned, deposition of PW-9, Harish Chandra is important who was working as Deputy Manager, Syndicate Bank Branch Sector-18, Noida at the relevant point of time. On behalf of Ms. Sanskriti pay-orders of Rs. 49,000/- and Rs. 5,500/- were paid towards the allotment of shop and on behalf of Ms. Suruchi demand

drafts of Rs. 20,500/- and Rs. 67,950/- were submitted.PW9 has deposed that he received in cash Rs. 49,000/- plus Rs. 25/- in lieu of bank commission with an application for purchase of pay-order (Paper No. 20 Ka/3) in favour of NOIDA, to be made on behalf of Ms. Sanskriti. He further deposed that the cash officer had endorsed on this application in his handwriting 'reference Chairman Noida Authority'. He had also received another application (Paper no. 20 Ka/2) for purchase of pay order of Rs. 5,500/-. He deposed that he prepared the demand drafts and handed it over to the concerned person who had come with the cash amounts. Similarly, as per deposition of PW-13 Rajiv Jain Assistant General Manager, SBI, Chandni Chowk, Delhi, applications for purchase of demand drafts of Rs. 20,500/- (Paper no. 29 ka/9) and Rs. 67,950/- (dated 19.12.1994) were accompanied with cash amounts and not with bank account details from which the requisite amounts could have been deducted. As the daughters of the appellant were studying at that time and since no source of income, or certified copies of income tax returns have been filed on behalf of the appellant, the only presumption that can be drawn is the fact of payments being made at the behest of the appellant and her husband. The said presumption is further supported

from testimony of PW-14 Subhash Badhawan Retired Deputy Manager, State Bank of India who has deposed that from the Account No. 43504 of Mahendra Singh Yadav and Neera Yadav, Rs. 35, 000/- on 22.02.1994; Rs. 40,000/- and Rs. 2,500/- on 01.03.1994; Rs. 29,000/- and Rs. 6,000/- were debited.

43. It has further come on record that Ms. Sanskriti had issued cheque dated 08.08.1994 (Paper no. 26 ka/2) in favour of herself, accompanied with an application for purchase of pay order of Rs. One lakhs eighteen thousand seven hundred fifty, in favour of NOIDA towards payment of purchase amount for residential plot. The said cheque was drawn on account No. 9180, Oriental Bank of Commerce, Paharganj, New Delhi. PW-32 Rajiv Luthra, Senior Manager, Oriental Bank of Commerce, Paharganj, New Delhi has deposed that account No. 9180 was opened in the name of Ms. Sanskriti, Ms. Neera Yadav and Mr. Mahendra Singh Yadav. The said account was opened on the basis of identity card of Mr. Mahendra Singh Yadav and was accessible only by the appellant and her husband, as Ms. Sanskriti's occupation was mentioned as student and she being minor was not allowed to operate the account. PW-32 has deposed that he was unaware as to how cheque signed by Ms. Sanskriti was processed.

Similarly, Ms. Suruchi had issued cheque dated 08.08.1994 (Paper no. 26 ka/3) in favour of herself, accompanied with an application for purchase of pay order of Rs.50,000/-, in favour of NOIDA, drawn on account No. 9181 in the same bank. PW-32 has further deposed that the bank accounts were opened on the ground that the appellant and Ms. Suruchi held a joint account (account No. 1205) in the Oriental Bank of Commerce, Hazratganj, Lucknow since 01.03.1993. He further deposed that by virtue of transfer payment order amounting to Rs. 474287.82 of Oriental Bank of Commerce, Hazratganj, Lucknow was received in the account No. 9181 and whatever money came from Lucknow, account No. 9180 was opened from that money itself. In such a factual scenario, the argument of the Appellant that her daughters were major and that they had purchased concerned shops and residential plots from their independent source of income, is not tenable.

44. The prosecution case stands proved with regard to the payment of registration money or value of shops and residential plots in the name of daughters of the appellant being made by the appellant herself, as the daughters of the appellant were not capable of making such payments. Both the courts below have rightly held so in the light

of proper appreciation of evidence proved on record. The applications moved by the daughters of the appellant, be it for seeking allotment of shops or for issuance of functional certificate, were defective on various counts and no allotment could have been made by acting on them, as held by the courts below by recording concurrent findings, which we completely endorse. The appellant had sought allotment of shops in favour of her daughters only to seek allotment of residential plots in their name, by falsely portraying them to be independent income tax assesses, which was otherwise not possible in the light of provisions of the Scheme of 1994, which mandates that no person or his family member can get allotment of more than one plot in NOIDA. The appellant not only gained pecuniary advantage for herself by manipulating the Rules of NOIDA but, also caused grave loss to NOIDA.

Valuable thing obtained by the appellant by abusing her official position

45. The prosecution has successfully proved that the appellant Neera Yadav abused her position as a public servant to benefit herself and her kith and kin. She not only made a mockery of rules and regulations of NOIDA, but also misused her position by completely neglecting her duties. Being a Chairman-cum-CEO of NOIDA she was

expected to ensure that the allotment of plots in NOIDA are effected in strict compliance with the Rules and Regulations of NOIDA. However, the appellant herself bypassed the Rules and Regulations of NOIDA by submitting ante dated, half-filled applications for seeking allotment of plots and by not paying the total amount payable in lieu of the allotment. There is no justification as to why the defective application of the appellant seeking allotment of a residential plot was acted upon and plot No.B-002 in Sector-32 was allotted to her, especially when the appellant had not even adhered to the requisite mode of payment through a demand draft/Pay order and had instead made deficient payment through cheque. Also there is no justification as to how deficient lease rent paid by the appellant in lieu of her allotment was accepted against the full payment requisite in the Rules.

46. The prosecution has clearly proved that the application of the appellant was not included in the list of applications which were sent to the Bank along with the demand drafts after the cut-off date. In fact it is proved that her cheque was sent for collection after seven days on 28.03.1994. These facts point at the sole inference that the ante-dated application of the appellant was filed only after the closure of the

scheme, thereby indicating that the appellant put herself above the Rules and Regulations of NOIDA.

47. It is also proved by the prosecution that the appellant effortlessly got her smaller plot in Sector-32, measuring 300 sq.m. converted to a bigger plot in Sector-14A, measuring 450 sq.m. and thereafter, enhanced the area of the plot by 37% by illegal means and by abusing her position leading to a total area of 562.50 sq.m. Although the appellant has maintained that she had no role to play in the enhancement of area of plot No. 26 in Sector 14-A and further revision of layout plan of Sector-14A, evidence available on record show otherwise. Evidence on record shows that revision of layout plan of Sector-14A was carried under the direction of the appellant and that too without following the norms of consulting the Engineering Department of NOIDA, which was mandatory as per the rules. The said change in the layout plan not only benefitted the appellant in manifold ways but also caused huge financial loss to NOIDA, as an unnumbered plot was considerably reduced in size and deformed in shape, thereby rendering it completely useless for NOIDA.

48. Apart from the above mentioned instances of abuse of position, the appellant also secured allotment of two shops for her two

daughters and then obtained residential plots in the name of her two major, dependent daughters, by completely defying the rules and regulations. The appellant managed to seek allotment of shops in the favour of her daughters by herself preferring defective applications on their behalf and making payments in lieu of the same, with the sole objective of securing a residential plot in lieu of the shops, under Scheme (II) and (III) of 1994. The prosecution was successful in proving that the daughters of the appellant were dependant on the appellant and that they had purchased the shops and residential plots only out of the money contributed by the appellant and her husband. This amounts to grave violation of Rules of NOIDA and being a CCEO of NOIDA, the appellant is guilty of obtaining valuable thing for herself and her daughters by abusing her position as a public servant. The daughters of the appellant were not even engaged in filing their applications as their signatures are missing from applications made on their behalf, seeking allotment, conversion etc.

49. The appellant acted in breach of rules and regulations of NOIDA, causing financial losses to NOIDA and valuable things were obtained by the appellant and her daughters. The fact that the appellant acted in flagrant violation of the rules, by giving a complete go-by to the public

interest to promote her individual interest, shows that she abused her position to gain undue advantage to herself and to cause loss to NOIDA. An attitude to abuse the official position to gain advantage to herself and this misuse of position erodes collective faith of the people in the system. Corruption paralyses the functioning of the key areas of the State administration.

50. A particular kind of corruption that has become more rampant of late is nepotism to promote the interests of those near and dear to them. Nepotism is in a sense a greater evil since it involves dispersal of favours by patrons amongst their arm coterie, depriving others of a career or office they deserve more. The practice of promoting the interest of few individuals to the detriment of many others is wholly reprehensible and deserves to be condemned.

51. A Constitution Bench of this Court in ***Manoj Narula v. Union of India*** (2014) 9 SCC 1, held that corruption erodes the fundamental tenets of the rule of law and quoted with approval its judgment in ***Niranjan Hemchandra Sashittal & Anr. v. State of Maharashtra*** (2013) 4 SCC 642, it was held as under:-

> "**26**. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved

> ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance."

52. In ***Subramanian Swamy v. Manmohan Singh and Another*** (2012) 3 SCC 64, it was held as under:-

> "**68.** Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption…."

53. In ***K.C. Sareen v. C.B.I., Chandigarh*** (2001) 6 SCC 584, it was observed:-

> **"12.** Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity…."

54. While approving the judgment of ***Subramanian Swamy v. Director, Central Bureau of Investigation and Anr.*** (2014) 8 SCC 682, rendered by another Constitution Bench in ***Manoj Narula's case***,

a Constitution Bench of this Court dealing with rampant corruption, observed as under:-

> "**17.** Recently, in *Subramanian Swamy* v. *CBI* (2014) 8 SCC 682, the Constitution Bench, speaking through R.M. Lodha, C.J., while declaring Section 6-A of the Delhi Special Police Establishment Act, 1946, which was inserted by Act 45 of 2003, as unconstitutional, has opined that: (SCC pp. 725-26, para 59)
>
> > "*59*. It seems to us that classification which is made in Section 6-A on the basis of status in the government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988."
>
> And thereafter, the larger Bench further said: (SCC p. 726, para 60)
>
> > "*60*. Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences."
> >
> > And again: (SCC pp. 730-31, paras 71-72)
> >
> > "*71*. Office of public power cannot be the workshop of personal gain. The probity in public life is of great importance. How can two public servants against whom there are allegations of corruption of graft or bribe-taking or criminal misconduct under the PC Act, 1988 can be made to be treated differently because one happens to be a junior officer and the other, a senior decision maker.

> *72*. Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigation."
>
> **18.** From the aforesaid authorities, it is clear as noonday that corruption has the potentiality to destroy many a progressive aspect and it has acted as the formidable enemy of the nation."

55. Every country feels a constant longing for good governance, righteous use of power and transparency in administration. Corruption is no longer a moral issue as it is linked with the search of wholesome governance and the society's need for re-assurance that the system functions fairly, free from corruption and nepotism. Corruption has spread its tentacles almost on all the key areas of the State and it is an impediment to the growth of investment and development of the country. If the conduct of administrative authorities is righteous and duties are performed in good faith with the vigilance and awareness that they are public trustees of people's rights, the issue of lack of accountability would themselves fade into insignificance.

56. To state the ubiquity of corruption, we may refer to the oft-quoted words of Kautilya, which reads as under:-

> "*Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves).*
>
> *It is possible to mark the movements of birds flying high up in the sky; but not so is it possible to ascertain the movement of government servants of hidden purpose.*"

[Ref: Kautilya's Arthasastra by R. Shamasastry, Second Edition, Page 77]

As pointed out by **Paul H. Douglas** in his book on "**Ethics of Government**", "corruption was rife in British public life till a hundred years ago and in USA till the beginning of this century. Nor can it be claimed that it has been altogether eliminated anywhere." (Ref: Santhanam Committee Report, 1962: Para 2.3).

57. Tackling corruption is going to be a priority task for the Government. The Government has been making constant efforts to deal with the problem of corruption. However, the constant legislative reforms and strict judicial actions have still not been able to completely uproot the deeply rooted evil of corruption. This is the area where the Government needs to be seen taking unrelenting, stern and uncompromising steps. Leaders should think of introducing good and effective leadership at the helm of affairs; only then benefits of liberalization and various programmes, welfare schemes and

programmes would reach the masses. Lack of awareness and supine attitude of the public has all along been found to be to the advantage of the corrupt. Due to the uncontrolled spread of consumerism and fall in moral values, corruption has taken deep roots in the society. What is needed is a re-awakening and recommitment to the basic values of tradition rooted in ancient and external wisdom. Unless people rise against bribery and corruption, society can never be rid of this disease. The people can collectively put off this evil by resisting corruption by any person, howsoever high he or she may be.

58. Upon consideration of the evidence on record, we are of the view that the concurrent findings recorded by the trial court as well as by the High Court are based upon proper appraisal of facts and evidence and the concurrent findings do not suffer from any error warranting interference.

59. In Special Case No.28 of 2002 for the conviction of the appellant Neera Yadav under Section 13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988, the appellant was sentenced to undergo rigorous imprisonment for a period of three years with a fine of Rs.1,00,000/- with default clause. In Special Trial No.19 of 2002 for conviction under Section 120-B IPC and Section 13 (2) read with

Section 13 (1) (d) of P.C. Act, appellant Neera Yadav was sentenced to undergo rigorous imprisonment for a period of three years with a fine of Rs.50,000/- and similar imprisonment for conviction under Section 120-B IPC.

60. Mr. Vishwanathan, the learned Senior Counsel also submitted that even though the conviction of the appellant is in two different cases, involving two different transactions, in exercise of power of discretion, the sentence of imprisonment imposed upon the appellant Neera Yadav in the above two cases may be ordered to run concurrently. It was submitted that the direction to order sentences to run concurrently can be passed by the appellate court. In support of his contention, the learned Senior Counsel placed reliance upon ***Nagaraja Rao v. Central Bureau of Investigation*** (2015) 4 SCC 302 and ***V.K. Bansal v. State of Haryana*** (2013) 7 SCC 211.

61. On behalf of CBI, learned Solicitor General Mr. Ranjit Kumar submitted that the conviction of the appellant relates to two different transactions - one abusing appellant's official position to get the plots allotted to herself and her two daughters and one conspiring with Rajiv Kumar to get him allotment of a plot and the irregularities committed

thereon and therefore the sentences imposed upon the appellant cannot be ordered to run concurrently.

62. Section 31 of Cr. P.C. relates to the quantum of punishment that the Court has jurisdiction to pass where the accused is convicted of two or more offences at *one trial* (Joinder of charges at *one trial vide* Sections 218-223 Cr.P.C.). Where accused is convicted and sentenced for several offences at *one trial,* the Court may direct that the sentences shall run concurrently. In the absence of such direction by the Court, sentences shall run consecutively. It is not obligatory for the trial court to direct in all cases that the sentences shall run concurrently.

63. This Court considered the scope of Section 31 Cr.P.C. and concurrent or consecutive running of sentence in ***O.M. Cherian alias Thankachan v. State of Kerala and Others*** (2015) 2 SCC 501. The appellant thereon was convicted for the offences under Section 498-A and Section 306 IPC. The trial court ordered substantive sentences imposed on the appellant thereon to run consecutively and the same was affirmed by the High Court. Considering the scope of Section 31 Cr.P.C. and the discretion of the Court in directing concurrent running

of sentences, this Court directed sentences to run concurrently. It was held as under:-

> **"10.** Section 31 CrPC relates to the quantum of punishment which may be legally passed when there is (*a*) one trial, and (*b*) the accused is convicted of "two or more offences". Section 31 CrPC says that subject to the provisions of Section 71 IPC, the court may pass separate sentences for two or more offences of which the accused is found guilty, but the aggregate punishment must not exceed the limit fixed in provisos (*a*) and (*b*) of sub-section (2) of Section 31 CrPC. In Section 31(1) CrPC, since the word "may" is used, in our considered view, when a person is convicted for two or more offences at one trial, the court may exercise its discretion in directing that the sentence for each offence may either run consecutively or concurrently subject to the provisions of Section 71 IPC. But the aggregate must not exceed the limit fixed in provisos (*a*) and (*b*) of sub-section (2) of Section 31 CrPC, that is; (*i*) it should not exceed 14 years; and (*ii*) it cannot exceed twice the maximum imprisonment awardable by the sentencing court for a single offence.
>
> ….
>
> **12.** The words in Section 31 CrPC
>
> > "… sentence him for such offences, to the several punishments prescribed therefor which such court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct"
>
> indicate that in case the court directs sentences to run one after the other, the court has to specify the order in which the sentences are to run. If the court directs running of sentences concurrently, order of running of sentences is not required to be mentioned. Discretion to order running of sentences concurrently or consecutively is judicial discretion of the court which is to be exercised as per the established law of sentencing. The court before exercising its discretion under Section 31 CrPC is required to consider the totality of the facts and circumstances of those offences against the accused while deciding whether sentences are to run consecutively or concurrently.
>
> …..
>
> **20.** Under Section 31 CrPC it is left to the full discretion of the court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and

> exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically." (Underlining added)

64. Section 31 Cr.P.C deals with quantum of punishment which may be legally passed when there is :- (*a*) one trial; and (*b*) the accused is convicted of two or more offences. The ambit of Section 31 is wide, covering not only a single transaction constituting two or more offences but also offences arising out of two or more transactions provided that those transactions/charges were framed together at one trial.

65. Section 31 relates to the quantum of the punishment that the court has jurisdiction to pass that the accused is convicted of two or more offences at ***one trial***. Section 427 Cr.P.C. deals with sentence passed on an offender who is already sentenced for another offence. The power conferred on the Court under Section 427 to order concurrent sentence is discretionary. The salutary principle adopted by the Court is the totality of the sentences. The maximum sentence awarded in one case against the same accused is relevant consideration while giving concurrent sentence in another case. The

policy of the legislature is that normally the sentencing should be done consecutively. Only in appropriate cases, considering the facts of the case, the Court can make the sentence concurrently with an earlier sentence imposed. A person sentenced to imprisonment must, for the purpose of Section 427 Cr.P.C., be deemed to be undergoing that sentence from the very moment the sentence is passed. The accused may be on bail or in custody in the earlier case at the time of passing of the subsequent sentence.

66. The sentencing Court has the discretion to direct concurrency. The investiture of such discretion, presupposes that it will be exercised on sound principles and not on whims. In the Criminal Procedure Code, there are no guidelines or specific provisions to suggest under what circumstances the various sentences of imprisonment shall be directed to run concurrently or consecutively. There is no strait jacket formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1) Cr.P.C. Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed. In para (69) in ***K. Prabhakaran v. P. Jayarajan*** (2005) 1 SCC 754, contains a discussion on the topic. To quote:-

> "**69.** In the case of the respondent, the Magistrate ordered that the sentence on various counts shall run consecutively. That does not mean that the respondent had been convicted of any offence, for which the sentence of imprisonment is two years or more. The direction for the sentence to run concurrently or consecutively is a direction as to the mode in which the sentence is to be executed. That does not affect the nature of the sentence. It is also important to note that in the Code of Criminal Procedure, there are no guidelines or specific provisions to suggest under what circumstances the various sentences of imprisonment shall be directed to run concurrently or consecutively. There are no judicial decisions, to my knowledge, by superior courts laying down the guidelines as to what should be the criteria for directing the convict to undergo imprisonment on various counts concurrently or consecutively. In certain cases, if the person convicted is a habitual offender and he had been found guilty of offences on various counts and it is suspected that he would be a menace if he is let loose on the society, then the court would direct that such person shall undergo the imprisonment consecutively……"

67. It is well settled that where there are different transactions, different crime numbers and cases have been decided by different judgments, concurrent sentences cannot be awarded under Section 427 Cr.P.C. In ***Mohd. Akhtar Hussain v. Asst. Collector, Customs*** (1988) 4 SCC 183, it was held as under:-

> "**10.** The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.
>
> **……**
>
> **12.** The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the two offences for which the appellant was prosecuted are quite distinct and different. The case under the Customs Act may, to some extent, overlap the case under the Gold (Control) Act, but it is evidently on

> different transactions. The complaint under the Gold (Control) Act relates to possession of 7000 tolas of primary gold prohibited under Section 8 of the said Act. The complaint under the Customs Act is with regard to smuggling of gold worth Rs 12.5 crores and export of silver worth Rs 11.5 crores. On these facts, the courts are not unjustified in directing that the sentences should be consecutive and not concurrent."

68. The above general rule that there cannot be concurrency of sentence if conviction relates to two different transactions, can be changed by an order of the Court. There is no strait jacket formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1) Cr.P.C. Depending on the special and peculiar facts and circumstances of the case, it is for the court to make the sentence of imprisonment in the subsequent trial run concurrently with the sentence in the previous one. In ***Benson v. State of Kerala*** (2016) 10 SCC 307, this Court directed the substantive sentences imposed on the appellant to run concurrently. In ***V.K. Bansal v. State of Haryana*** (2013) 7 SCC 211, some sentences were to run concurrently and some consecutively. In paras (14) and (16) in ***V.K. Bansal's case***, it was held as under:-

> **"14.** We may at this stage refer to the decision of this Court in *Mohd. Akhtar Hussain* v. *Collector of Customs* (1988) 4 SCC 183 in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. The following passage is in this regard apposite: (SCC p. 187, para 10)

> "*10.* The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."
>
> **16.** In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor."

69. This instant case is one covered under Section 427 Cr.P.C. As noted earlier appellant Neera Yadav has been convicted in two different cases, one of abusing the official position in getting the plots allotted to herself and her daughters and other irregularities in making changes in the site plan and another one in abusing her position as CEO, Noida conspired with Rajiv Kumar in allotting plot to him. Having regard to the facts and circumstances of the case and considering the nature of allegations, in our view, it is not justifiable to direct concurrency of sentence. Any unprincipled exercise of judicial discretion and casual direction made regarding concurrency would go against the express provisions of the Prevention of Corruption Act, 1988 and the Criminal Procedure Code.

70. Insofar as the sentence is concerned, the occurrence was of the year 1994. The appellant Neera Yadav is undergoing sentence from 14.03.2016. With her conviction, the service and getting retiral benefits are in jeopardy. Further, husband of appellant Neera Yadav has filed an affidavit stating that the appellant surrendered plot No.26 in Sector-14A along with building constructed in December, 2013 and surrendered lease deed has been executed on 20.12.2013, in pursuance of the order dated 20.05.2013 of the Chief Executive Officer, NOIDA. It is also stated that the said plot along with building constructed has been physically handed over to NOIDA authority on 24.12.2013. The appellant's husband has also withdrawn the protest affidavit dated 14.07.2014 filed before this Court in Writ Petition No.150 of 1997 titled as ***NOIDA Entrepreneur Association v. NOIDA and Others***. It is also submitted that she will not make any claim for refund. In the above facts and circumstances of the present case, sentence of imprisonment of three years imposed on the appellant is reduced to two years.

71. In the result, the conviction of the appellant Neera Yadav is confirmed. The sentence of imprisonment of three years imposed on the appellant is reduced to two years and the appeal is partly allowed.

Prayer for concurrent running of sentences of imprisonment is rejected.

.....J.
[KURIAN JOSEPH]

.....J.
[R. BANUMATHI]

New Delhi;
August 02, 2017

ITEM NO.1501 COURT NO.6 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 253/2017

NEERA YADAV **Appellant(s)**

VERSUS

CENTRAL BUREAU OF INVESTIGATION **Respondent(s)**

Date : 02-08-2017 **This appeal was called on for pronouncement of judgment.**

For Appellant(s) **Mr. K.V. Vishwanathan,Sr.Adv.**
Mr. P.V. Dinesh, AOR
Ms. Arushi Singh,Adv.
Mr. Bineesh K.,Adv.
Mr. Rajendra Beniwal,Adv.
Mr. Abhishek Thakur,Adv.

For Respondent(s) **Mr. Mukesh Kumar Maroria, AOR**

Hon'ble Mrs. Justice R. Banumathi pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Kurian Joseph and Her Lordship.

The appeal is partly allowed in terms of the signed judgment.

Pending application(s), if any, shall stand disposed of.

(NARENDRA PRASAD) **(RENU DIWAN)**
COURT MASTER (SH) **ASST. REGISTRAR**

(Signed "Reportable" Judgment is placed on the file)