

PETITIONER:
SACHIDANANDA PANDEY

Vs.

RESPONDENT:
STATE OF WEST BENGAL & ORS.

DATE OF JUDGMENT 11/02/1987

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
KHALID, V. (J)

CITATION:
1987 AIR 1109 1987 SCR (2) 223
1987 SCC (2) 295 JT 1987 (1) 425
1987 SCALE (1) 311
CITATOR INFO :
R 1988 SC 157 (8,12)
F 1989 SC 549 (15)
R 1989 SC 860 (20)
RF 1991 SC 983 (2)

ACT:

Environmental law-Interference by the Supreme Court with the policy decision of government, whenever a problem of ecology is brought before it, extent of-Constitution of India, 1950, Articles 32, 48A, 51A(g)--Whether the Government of West Bengal was not alive to the ecological considerations, particularly the question of the migratory birds and whether has shown such lack of awareness in making an allotment of land to boost tourism by construction of Five Star Hotel to the detriment of Zoological garden.

Cabinet Memoranda dated January 7, 1981 and Sep. 9, 1981 allotting land for the construction of Five Star Hotel to Taj Group of Hotels--Whether should contain every item considered and whether non-mention lead to adverse presumption that a particular point was not considered.

Natural justice, principle-Whether the principle of natural justice is said to be violated on the ground that those who are most interested in the Zoological garden were not heard before the decision was taken.

New plea in the Supreme Court for the first time--Public document, evidentiary value of--Documents received admitted and relied on both by the Single and Division Bench of the High Court--Plea of authenticity of the document and objection to its reception, cannot be allowed in an appeal under Article 136 of the Constitution.

The Bengal Public Parks Act, 1904, Preamble Sections 3 and 4 scope and applicability.

West Bengal Land Management Manual, 1977, Paragraphs 165, 166, 167, applicability of-Whether the procedure prescribed therein not being followed, the transfer of the land to Taj Group of Hotels is bad.

Disposal by Public auction or by inviting tenders--Whether bound to be followed by the State, in pursuing the socio-economic objectives enshrined in the Constitution.

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Public Interest Litigation, parameters delineation need for stressed.

HEADNOTE:

There is in Calcutta, a Zoological garden located in Alipore, now almost the heart of Calcutta, on either side of Belvedere Road, one of Calcutta's main arterial roads, forty-nine acres of land on one side and eight acres on the other. The main zoo is in the forty-nine acres block of land. The said eight acres of land was outside the Zoological garden and separated from it by a 80-100 feet road and is also known as the Begumbari land. The Begumbari land was given to the Zoological garden in '1880. According to a letter written on July 7, 1880 by the Assistant Secretary to the Government of Bengal in the Public works Department to Mr. L. Schwandler, Honorary Secretary Zoological garden conveying the sanction of the Lt. Governor for the transfer of the Begumbari land to the charge of the Committee of the Zoological Garden, on the terms agreed to by the Committee in their letter dated April 23, 1880, the conditions of the transfer were: "(i) that the land is to be used for the purpose of acclimatization only; (ii) that Carnivores are not to be kept on any part of it, on any account; (iii) that the grounds are to be kept clear and neat; (iv) that the land must be restored to the government if hereafter required, the Zoological Garden Committee being reimbursed for any expenditure they may have incurred in building there." In this eight acres of land there are some old buildings and the vacant land was used for fodder cultivation, for raising flower nursery, as a sumping ground for huge garbages and as burial ground for dead animals.

In January, 1979, the Director General of Tourism Government of India addressed a letter to the Chief Secretary Government of West Bengal conveying the Resolution of the Tourism conference which was presided over by the Union Minister of Tourism and attended by several State Ministers and requesting that land in good location may be made available for construction of hotels in a drive to encourage tourism. In May, 1980, the Taj Group of Hotels came forward with a suggestion that they would be able to construct a Five Star Hotel. On September 29, 1980 and November 29, 1980, there were two notes by the Secretary of the Metropolitan Development Department to the effect that the I.T.D.C. was interested in a property known as the Hastings House Property and that the Taj Group of Hotels who considered the Hastings House property unsuitable may be offered four acres out of the eight acres of Begumbari land. On the same day the Taj Group of Hotels wrote to the Government of West Bengal stating that the proposed land could be seriously considered for construction of a hotel. Thereafter,

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the Chief Minister along with the Minister of Tourism and the Minister for Metropolitan Development visited the site accompanied by the Director of the Zoo to apparently know about the proposal right from the start. A note was then prepared by the Secretary, Metropolitan Development Department and put up to the Chief Minister for his approval. The Chief Minister approved the proposal and required it to be placed before the Cabinet. On January 7, 1981 a memorandum was prepared for the consideration of the Cabinet explaining the need for the more Five Star Hotels in Calcutta and the benefits flowing out of the construction and establishment of such Five Star Hotels and suggesting the lease of Hastings House Property to the I.T.D.C. Group and the Begumbari property to the Taj Group of Hotels. In regard to the Begumbari property, it was stated: "From the property of the

Zoological Gardens on the Belvedere Road it is possible to carve out about four acres of land currently used for dumping garbage and also for growing grass for the elephants. It will be necessary and in any case advisable to shift the dumping ground. While adequate space can be made available for growing grass elsewhere in the same area." It was stated that the Finance and Tourism Departments had agreed to the proposal to lease the properties to the I.T.D.C. and the Taj Group respectively. It was stated that though the Forest Department had suggested that Salt Lake was a better place for establishing a Five Star Hotel, there was no demand for a Five Star Hotel in that area and the request for a hotel in Salt Lake was confined to a Three Star Hotel. Cabinet approval was sought for the offers to be made to the I.T.D.C. and to the Taj Group and for the constitution of a suitable Committee to undertake negotiations with the two groups.

On February 12, 1981, the Cabinet took a decision approving the proposal contained in the last paragraph of the Cabinet Memorandum, thus clearing the way for negotiations with the Taj Group.

Meanwhile the Public Undertakings Committee appointed by the West Bengal Legislative Assembly submitted a report on 14.2. 1981 about the Zoo. While suggesting that the government may consider abandoning the proposal to set up a hotel on the eastern side of the zoo, the Committee also referred to a proposal to establish a "Subsidiary Zoo" some slight distance from Calcutta and the request said to have been made for the allotment of 200 acres of land for that purpose.

The Chief Town Planner who visited the site at the request of the Secretary, Metropolitan Development Department and in the presence of the Director of the Zoo, suggested that 2 to 2-1/2 acres of land might be

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made available for the Hotel.

On March 19, 1981 the Taj Group submitted a proposal to the government containing fairly detailed information about the tourism industry and its needs, the situation in Calcutta, the realities of Hotel construction the facts relating to what had been done in other cities, the benefits flowing out of the construction of hotels and their own proposals for constructing a hotel in the four acres of land in Belvedere Road. Two alternative financial arrangements were suggested. The first alternative was the payment of annual rent on the basis of the valuation of the land, the second alternative was based on the concept of nett sales, nett sales being defined as sales after deducting all taxes and levies and service charges. The Metropolitan Development Department expressed a preference for the second alternative and suggested the constitution of a Committee. The Finance Department also approved. The Taj Group was invited to send the financial projection on the basis of the second alternative. Correspondence went on. On June 5, 1981 a Committee of Secretaries was formally constituted. In the meanwhile WEBCON, a West Bengal Government Consultancy Undertaking, was asked to examine the proposals and to advise the Government.

On June 11, 1981, the Managing Committee of the Zoo passed a resolution expressing itself against the proposal to construct a hotel on land belonging to the Zoo. Accepting the note put up by the Secretary Metropolitan Development Department on the said resolution the Chief Minister minuted that "if further facilities are necessary for the zoo, the government will provide for them." On June 25, 1981, the

Managing Committee met again and passed another resolution by which they withdrew their earlier objections dated 11.6.1981.

On June 29, 1981, the Director of the Zoo, who was a party to all the proceedings etc. right from the beginning wrote to the Secretary of Animal Husbandry and Veterinary Services Department stating his objections to the proposal to lease the land for construction of a hotel.

On July 14, 1981, the WEBCON submitted its report and on the request of the Committee of Secretaries a further report was submitted on July 22, 1981. The report of WEBCON is a comprehensive report on various topics connected with the establishment of a Five Star Hotel in Calcutta. Among other things the report also suggested various financial alternatives and recommended the second alternative based on nett sales as the best.

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Meanwhile negotiations with Taj Group proceeded apace. The WEBCON submitted further reports. Taj Group suggested further modifications. On September 9, 1981 a detailed memorandum was prepared for cabinet discussion. Two alternative financial proposals were set out. A reference was made to the Committee of Secretaries who negotiated with the Taj Group of Hotels. Note was taken of the suggestion of the Negotiation Committee that the overall development plan for the environmental beautification, widening of approach roads, landscaping of Tolley's Nullah were responsibilities of the State Government and estimated to cost Rs.2 crores but that it was expected to be of considerable public benefit. Stress was laid on the direct and indirect economic activities which would be generated by the establishment of a five Star Hotel. Reference was also made to the report of WEBCON and it was noted that the projected profitability of the venture to the government was expected to be high. It was also mentioned that the Ministers, incharge of Tourism, Animal Husbandry, Land Revenue and Finance had seen the note and had agreed to it. On September 10, 1981 the Cabinet took the final decision to grant a ninety-nine years lease of the four acres of Begumbari land to the Taj Group of Hotels. On September 29, 1981 the Government of West Bengal officially conveyed its acceptance of the proposal of the Taj Group of Hotels for the construction of a Five Star Hotel. The terms and conditions of the lease were set out. On January 7, 1982, there was a joint meeting of the Establishment and Finance sub-Committees of the Zoo and it was decided to recommend to the Committee of management that the demarcated area of four acres may be relinquished in favour of Animal Husbandry and Veterinary Services Department subject to the requirement that the zoo will continue to get the services and the facilities in the existing structures until they were reconstructed on the adjacent land. On January 11, 1982 the Managing Committee endorsed the view of the sub-committees and this was communicated to the government. On January 15, 1982, the Government of West Bengal wrote to the Land Acquisition Officer, with copies to the Taj Group of Hotels directing the Land Acquisition Officer to give possession of the land to the Taj Group of Hotels subject to their later executing a proper long term lease. It was mentioned in the letter that the construction of the Hotel should not be started till the lease deed was executed and registered. Several other stipulations were also made. Though the stipulation was that the cost of the new construction was to be initially met by Taj Group of Hotels and later to be adjusted against the rent payable by Taj Group, the Taj Group later agreed to waive such reimbursement (in fact a total

sum of Rs.30 lakhs has been spent by Taj Group of Hotels in connections with the reconstruction. Not only this. land in the extent of 288 square

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meters out of the plot given to them was carved out and given back for accommodating part of the reconstructed structures.

Pursuant to the letter dated January 15, 1982 possession was given to Taj Group on January 16, 1982. Thereafter an expert committee was constituted to supervise the construction of alternative facilities.

Five petitioners--a Trade Unionist, two life members of the Zoo, two other bonafide residents of Greater Calcutta, all lovers of wild life--filed a petition in public interest on 26.2.1982. Initially the relief sought was primarily to restrain the Zoo authorities from giving effect to the two Resolutions dated January 7, 1982 and January 17, 1982 to hand over the four acres to the Animal Husbandry Department of the Government. Subsequent to the filing of the writ petition a lease deed was executed by the Taj Group of Hotels in favour of the government. The Writ Petition was therefore amended and a prayer for cancellation was added.

While the writ petition was pending in the High Court, Late Smt. Indira Gandhi wrote a letter to Sri Jyothi Basu, the Chief Minister of West Bengal expressing the hope that he would not allow the Calcutta Zoo to suffer in any manner and would leave it intact. The Chief Minister in his reply letter dated 21.8.82 pointed out that:(i) the four acres of land were agreed to be relinquished by the Committee of management of the Zoological Garden on condition that alternative arrangement were made for shifting the existing structures which were necessary for the Zoo from the plot in question to the adjacent plot; (ii) the plot in question was not a part of the Zoo Garden; (iii) till the existing structures are relocated on the adjacent land, the zoo would continue to get their services and facilities from the existing structures. (iv) the hotel was not the only tall building since there existed many such residential buildings to which none raised an objection and that P&T Department are also constructing one such tall building; and (v) the lessee and their experts on wild life had assured them that in any case adequate precaution would be taken in regard to illumination of the hotel and the layout of the surrounding so that no disturbance would be caused to the flight path of the birds or animals. To similar effect was the letter dated 30.8.1982 from Shri J.R.D. Tata to the Prime Minister on September 1, 1982. Smt. Indira Gandhi wrote to Mr. Tata expressing her happiness that the hotel was not going to upset the Zoo animals and welcoming his offer to help the State Government to improve the Zoo's facilities.

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A learned Single Judge of the High Court dismissed the writ petition holding that the West Bengal Government did not show any lack of awareness of the problem of environment ecology in granting the lease of land. On appeal, a Division Bench confirmed the said judgment. Hence the appeal by Special leave of the Court.

Dismissing the appeal, the Court,

HELD: (Per Chinnappa Reddy J.) 1.1 Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art. 48 A of the Constitution the Directive Principle which enjoins that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country, "and Art. 51A(g) which proclaims it to be the fundamental duty of every citizen of

India "to protect and improve the natural environment including forest, lakes, rivers and wild life, and to have compassion for living creatures." When the Court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is matter for the policy making authority. The least that the court may do is to examine whether appropriate considerations are borne in mind irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The court may always give necessary directions. However the Court will not attempt to nicely balance relevant considerations- When the question involves the nice balancing of relevant considerations, the court may feel justified in resigning itself to acceptance of the decision of the concerned authority. If the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for the court to interfere in the absence of mala fides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. [242B-F]

1.2 Applying the above guidelines to be followed when questions of ecology and environment are raised, it is clear that the facts and circumstances brought out by the appellants do not justify an inference that the construction of the proposed hotel in the Begumbari land would interfere in any manner with the animals in the Zoo and the birds arriving at the zoo or otherwise disturb the ecology. The proposed hotel is a Garden-hotel and there is perhaps every chance of the ecology and environment improving as a result of planting numerous trees all

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around the proposed hotel and the removal of the burial ground and dumping ground for rubbish. [263A-B]

1.3 That the question of obstruction which may be caused to migratory birds did not go unnoticed by the government before the decision to lease the land was taken, is clear from the following: (i) the question of the migratory bird was first raised in the resolution of the Managing Committee dated June 11, 1981. This resolution was forwarded to the Chief Minister and considered by him as evident from the note of the Chief Minister and the subsequent reversal of the Managing Committee's resolution at the instance of the Chief Minister and on his assurance; (ii) that the government was aware of the dissension based on the alleged obstruction likely to be caused by a multi-storeyed building to the flight of the migratory birds appears from the letter of the Chief Minister to the Prime Minister. In this letter, the Chief Minister pointed out that there were already in existence a number of multistoreyed buildings all around the Zoological Garden, but there was no report that they had any adverse effect on the migratory birds or the animals. He also pointed out that all precautions would be taken in the matter of illumination of the hotel and lay out of the surroundings so that no disturbance would be caused to the flight path of the birds or animals; (iii) Shri J.R.D. Tata, on behalf of the Taj Group of Hotels also wrote to the Prime Minister assuring her that the hotel management had discussed the matter at length with a representative of the Wild Life Fund who, after discussion had been satisfied that the proposed hotel would cause no disturbance to the birds. He further assured her that he had himself gone thoroughly

in to the project with the special reference to the possible impact on the birds and the environment and had satisfied himself that project would not cause any disturbance to the birds or their free movement. He pointed out that the four acre plot was not within the main Zoological Garden, but was separated from it by the Belvedere Road which was an important thoroughfare in the city. It was about 700 feet from the main part of the lake. The hotel was proposed to be built away from the frontage of the plot in Belvedere Road and was to be a low-rise structure, the highest point of which would not exceed 75 feet, far below the trajectory of the birds. He mentioned that Dr. Biswas a renowned ornithologist had also been consulted by the Taj Management and he had also confirmed that a 75 feet building would not interfere with the landing or climbing out of the birds from the lake. He further mentioned that the grounds of the Zoo between the lake and the Belvedere Road were covered with tall trees and that the birds negotiating the trees would have to fly at a steeper angle than it would be necessary to negotiate the proposed hotel. The vehicu-

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lar traffic on Belvedere Road which was also heavy did not bother the birds and the slight increase of the vehicular traffic consequent on the construction of the hotel was also not likely to bother them either. It was also pointed out that particular care would be taken in the matter of illumination of the hotel so that bright lights or neon signs emanating from the hotel would not disturb the birds and animals. In the circumstances, the government was alive to the ecological considerations particularly the question of the migratory birds. [260E-H; 261A-E]

2.1 It is wrong to think that every thing not mentioned in the Cabinet Memoranda did not receive consideration by the government. In the instant case the process of choosing and allotting the land to the Taj Group of Hotels nearly took two years during the course of which objections of various kinds were raised from time to time. It was not necessary that everyone of these objections should have been mentioned and considered in each of the Cabinet Memoranda. [260C-E]

2.2 The proposition that a decision must be arrived at after taking into account all relevant considerations, eschewing all irrelevant considerations cannot for a moment be doubted. In the instant case, relevant considerations were not ignored and indeed were taken into consideration by the Government of West Bengal. It is not one of those cases where the evidence is first gathered and a decision is later arrived at one flue morning and the decision is incorporated in a reasoned order. This is a case where discussion had necessarily to stretch over a long period of time. Several factors have to be independently and separately weighed and considered. This is a case where the decision and the reasons for the decision could only be gathered by looking at the entire course of events and circumstances stretching over the period from the initiation of the proposal to the taking of the final decision. The argument that what was not said in either of the Cabinet Memoranda could not later be supplemented by considerations which were never present in the mind of the decision making authority is not correct. [263E-G]

Rohtas Industries Ltd. v. S.D. Agarwal, [1969] 3 SCR 108 and Barium Chemicals v. A.G. Rana, [1972] 2 SCR 752, referred to.

Mohinder Singh Gill v. Central Election Commission, [1978] 2 SCR 273, distinguished.

3. There was no failure to observe the principles of Natural Justice. Such as those as were really interested in the matter like the Managing Committee of the Zoological Garden and the Director of the

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Zoo did have their say in the matter. The Public Undertakings Committee in its report discussed the matter and invited the Government's attention to various factors. The matter was further discussed on the floor of the Legislative Assembly. [264B-D]

4.1 The two letters dated 23.4. 1880 and 7.7. 1880, pertaining to the grant relating to the transfer of land to the east of Belvedere Road, known as Begumbari land in 1880, produced from old official records, are public documents within the meaning of the Evidence Act. No objection either to the authenticity or to the admissibility of the documents was taken either before the Single Judge or before the Division Bench. The Managing Committee of the Zoological Garden never doubted the authenticity of the documents, nor was any question even raised to suggest that the terms of the grant were other than those mentioned in the letters. [265C-E]

4.2 The new plea relating to authenticity or admissibility of evidence cannot be accepted in an appeal under Art. 136 of the Constitution. The land which was undoubtedly government land was given to the Zoological Garden upon the terms set out in the two letters. One of the terms was that the land should be restored to the government whenever required. Another terms was that the Zoological Garden Committee would be suitably compensated for any expenditure incurred by it on the construction of any building on the land. [265E]

5.1 It is true that the Act of the legislature cannot be undone by a mere act of the Executive. This is not a case where the statute vests land in the Committee and the Executive takes it away by its fiat. The Begumbari land was government land transferred to the charge of the Zoological Garden Committee in 1880 in accordance with the conditions and terms agreed to by the Committee in their letter dated 23.4.1880; namely; "(i) that the land is to be used for the purpose of acclimatization only; (ii) that Carnivores are not to be kept on any part of it, on any account; (iii) that the grounds are to be kept clear and neat; (iv) that the land must be restored to the government if hereafter required. The Zoological Garden Committee being reimbursed for any expenditure they may have incurred in building there." Therefore, this is a case of resumption of Government land under the terms of Agreement. [264E-H; 265A-B]

5.2 From the Preamble and the provisions of the Bengal Public Parks Act, 1904, it is clear that the Act is intended to protect the inmates and the property of the park from injury by persons resorting

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to the park from molestations or annoyance by others. The Act is aimed at protecting the park and its visitors from injury and annoyance by despoilers and marauders. The Act has nothing whatever to do with the vesting of any property in the parks. There is in fact no provision which deal with the vesting of property in a park, Section 3 enables the State Government to extend by a notification, the boundaries of a park but that can only be for the purposes of the Act and not for the purpose of vesting or creating any title in a property. If a piece of adjacent land, for example, is taken on lease for a specified number of years by the park and included in the park by a notification under s.3 it does

not mean that the various things, the doing of which is regulated or prohibited by the Act and the rule will not be done or will be regulated on the adjacent land also. The provisions of the Bengal Public Parks Act have no relevance to the question of the power of the government to transfer the Begumbari land to the Taj Group of Hotels. [266C-F]

6.1 Statutes and statutory orders have no doubt to be obeyed. It does not mean that other orders, instructions, etc. may be departed from in an individual case, if applicable to the facts. They are not to be ignored until amended. The government or the Borad may have the power to amend these orders and instructions, but nonetheless they must be obeyed so long as they are in force and are applicable. But, from the perusal of the provisions of paragraphs 165 to 167 of the West Bengal Land Management Manual, it is clear that these provisions of the Land Management Manual do not appear to have anything to do with the transfer and use of the land in the manner proposed, in which the State also have a vital stake apart from the mere raising of revenue for the State. Paragraphs 165, 166 and 167 deal with simple cases of creation of non-agricultural tenancies by way of long term leases. They generally deal with land which is at the disposal of the government as waste or surplus land and are intended to secure the best revenue for the State. They do not deal with cases of transfer of land for a specific socio-economic object, where, the securing of immediate revenue. is not the principal object but other social and economic benefits are sought. [267E-H]

6.2 The following propositions may be taken as well established on a considerations of the earlier decisions of the Supreme Court. 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

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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. [273D-F]

6.3 Applying the above tests, it cannot be held that the government of West Bengal did not act with probity in not inviting tenders or in not holding a public auction but negotiating straight away at arm's length with the Taj Group of Hotels, in its pursuit or socio-economic objective of encouraging tourism and earning more foreign exchange. In the present case no one has come forward alleging that he has been discriminated against and his fundamental right to carry on business had been affected. The very nature of the construction and establishment of a Five Star Hotel is indicative of a requirement of expertise and sound financial position on the part of those who might offer to construct and establish them. The decision taken by the All-India Tourism Council was an open decision well-known to everyone in the hotel business. Yet no one except the I.T.D.C. and the Taj Group of Hotels had come forward with any proposal. The Oberoi Group of Hotels already had a Five Star Hotel in Calcutta while the Welcome Group of Hotels were making their own Private negotiations and arrangements for establishing a

Five Star Hotel. In the circumstances, particularly in the absence of any leading hotliers coming forward, the government of West Bengal was perfectly justified in entering into negotiation with the I.T.D.C. and the Taj Group of Hotels instead of inviting tenders. Negotiations with those who had come forward with proposals to construct Five Star Hotels was without doubt the most reasonable and rational way of proceeding in the matter rather than inviting tenders or holding public auction. There was nothing discriminatory in the procedure adopted since no other leading hotlier had shown any inclination to come forward. Tenders and auction were most impractical in the circumstances. The choice of the Taj Group of Hotels must therefore be held to be beyond suspicion and above reproach. [273F; 268D-F]

Rash Bihari Panda v. State of Orissa, [1969] SCR 374; R.B. Shetry v. International Airport Authority, [1979] 3 SCR 10 14; Kasturi Lal Laxmi Reddy v. State of Jammu & Kashmir, [1980] 3 SCR 1338; State of Haryana v. Jaga Ram, [1983] 4 SCC 56; Ram and Shvam Co. v. State of Haryana, [1985] 3 SCC 267 and Chenchu Rami Redav v. Go/vt. of Andhra Pradesh, [1986] 3 SCC 391, discussed.

7.1 On a consideration of all the facts and circumstances of the case, it is clear, that the government of West Bengal acted perfectly bonafide in granting the lease of Begumbari land to the Taj Group of Hotels for the construction of a Five Star Hotel in Calcutta. The government of West Bengal did not fail to take into account any relevant consideration. Its action was not against the interest of the Zoological Garden or not in the best interests of the animal inmates of the zoo or migrant birds visiting the zoo. The financial interests of the State were in no way sacrificed either by not inviting tenders or holding a public auction or by adopting the "nett sales" method. [274C-E]

7.2 The "nett sales" method appears to be fairly well known method adopted in similar situations. This what was recommended by WEBCON, the consulting agency of the West Bengal Government which submitted a detailed report on the subject. This was also the recommendation of the Committee of Secretaries who went into the matter in depth, even to lay persons who are no financial experts, it appears that the "nett sales" method does and the rent-based-on-market-value method does not take into account the appreciating value of land, the inflationary tendency of the prices and the profit orientation. Even on a prima facie view, there appears to be nothing wrong or objectionable in the "nett sales" method. It is profit oriented and appears to be in the best interests of the Government of West Bengal. [274A-C]

Per Kahlid J. (concurring)

1. Today public spirited litigants rush to courts to file cases in profusion under attractive name Public Interest Litigation. They must inspire confidence in courts and amongst the public. They must be above suspicions. Public Interest Litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guide-lines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. This does not mean

that traditional litigation should stay put. They have to be tackled by other effective methods, like decentralising the judicial system and entrusting majority of traditional litigation to village courts and Lok Adalats without the usual populist stance and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when

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basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the under-dog and the neglected. Extending help when help is required does not mean that the doors of the Supreme Court are always open to anyone to walk in. It is necessary to have some self imposed restraint on public interest litigants, so that this salutary type of litigation does not lose its credibility. [275C; 279A-F]

2. The approach of the Taj Group Hotels in this case has been creditably fair. They have given all the assurances necessary to preserve the Zoo and its inmates. They were willing to afford all the requisite safeguards. In the place of a dilapidated hospital, operation theater and the like, they constructed buildings, a new at a cost of Rs. 30 lakhs which amount they were entitled to be reimbursed under cl. 25 of the lease, which they voluntarily gave up. In addition to this, they surrendered an area of 288 sq. metres. from the land allotted to them to the Zoo. They agreed to build not the usual sky scrapper hotel, but a garden hotel, the height of which would not go beyond 75 feet, despite the fact that there existed in the surroundings area buildings which were very high. This was done to keep free the route of the flight of the birds. They agreed to have subdued light in the hotel, again in the interest of the birds. They also agreed to keep the surroundings of the hotel and the flora well maintained and already 30,000 plants were getting ready to adjourn the area to be occupied by them. [277H; 278A-C]

3.1 Regarding the commercial and financial aspects of the lease also, there is nothing secretive. The method adopted is the nett sales method of calculating the compensation paid, which is a well known method adopted in such situations like the one, here namely lease of land by the Government. [278C-E]

3.2 A deal like the one is given cannot be concluded by public auction as it is not a case of sale of a government property. Being not a sale but a lease of land by the government public auction has necessarily to be ruled out. Only Taj Group of Hotels came forward with an offer to start the hotel. The lease was the culmination after a long, elaborate and open procedure with nothing to hide which therefore cannot justifiably be subject to adverse criticism. [278G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 378 of 1987.

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From the Judgment and Order dated 4.8.1986 of the Calcutta High Court in F.M.A.T. No. 1500 of 1984.

L.M. Singhvi S.K. Jain, I. Makwana, A.M. Singhvi, Sudhanshu Atreya and S .D. Sharma for the Appellants.

N.N. Gooptu, Dipanker Gupta P. Mondal, D.K. Sinha, J.R. Das, T. Ray. R. Pal, B.R. Agarwala and Ms. S. Manchanda for the Respondent.

The following Judgments of the Court were delivered:

CHINNAPPA REDDY, J. We grant special leave and proceed to dispose of the appeal.

A hundred and thirty-two years ago, in 1854, 'the wise Indian Chief of Seattle' replied to the offer of 'the great White Chief in Washington' to buy their land. The reply is profound- It is beautiful. It is timeless. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. It is worth quoting. To abridge it or to quote extracts from it is to destroy its beauty. You cannot scratch a painting and not diminish its beauty. We will quote the whole of it:

* "How can you buy or sell the sky, the warmth of the land? The idea is strange to us.

"If we do not own the freshness of the air and the sparkle of the water, how can you buy them?

"Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people. The Sap which courses through the trees carries the memories of the red man.

"The white man's dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the

*Reproduced verbatim from Pariyavaran Vol. I No. 1, June 1984.

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red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man--all belong to the same family.

"So, when the Great Chief in Washington sends word that he wishes to buy our land, he asks much of us. The Great Chief sends word he will reserve us a place so that we can live comfortably to ourselves. He will be our father and we will be his children. So we will consider your offer to buy our land. But it will not be easy. For this land is sacred to us.

"This shining water moves in the streams and rivers is not just water but the blood of our ancestors. If we sell you land, you must remember that it is sacred, and you must teach your children that it is sacred and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father.

"The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and food our children. If we sell you our land, you must remember, and teach your children, that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother.

"We know that the white man does not understand our ways. One portion of, land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy, and when he has conquered it, he moves on. He leaves his fathers' graves behind, and he does not care.

"He kidnaps the earth from his children. His father's grave and his children's birth-right are forgotten. He treats his mother, the earth, and his brother, the sky, as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

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"I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.

"There is no quite place in the white man's cities. No place to hear the unfurling of leaves in spring or the rustle of an insect's wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there to life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the small of the wind itself, cleansed by a mid-day rain, or scented with the pinon pine.

The air is precious to the red man, for all things share the same breath--the beast, the tree, the man, they all share the same breath. The white man does not seem to notice the air he breathes. Like a man dying for many days, he is numb to the stench. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grandfather his first breath also receives the last sigh. And if we sell you our land, you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadows flowers.

"So we will consider your offer to buy our land. If we decide to accept, I will make one condition. The white man must treat the beasts of this land as his brothers.

"I am a savage and I do not understand any other way. I have seen a thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.

"What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit.

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For whatever happens to the beasts soon happens to man. All things are connected.

"You must teach your children that the ground beneath their feet is the ashes of our grandfathers. So that they will respect the land. Tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth is sun mother. Whatever befalls the earth befalls the sons of the earth. If men spit upon the ground, they spit upon themselves.

"This we know: The earth does not belong to man; man belongs to the earth. This we know: All things are connected-like the blood which unites one family. All things are connected.

"Whatever befalls the earth befalls the sons of the earth. Man did not weave a web of life: he is merely a strand in it. Whatever he does to the web he does to himself.

"Even the white man, whose God walks and talks with him as friend to friend, cannot be exempt from the common destiny. We may be brothers after all. We shall see. One thing we know, which the white man may one day discover--our God is the same God. You may think now that you own Him as you wish to own our land; but you cannot. He is the God of man, and His compassion is equal for the red man and the white. This earth is precious to Him, and to harm the earth is to heap contempt on its Creator. The white too shall pass; perhaps sooner than all other tribes. Contaminate your bed and you will one night suffocate in your own waste.

"But in your perishing you will shine brightly, fired by the strength of the God who brought you to this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us, for we do not understand when the wild buffalo are all slaughtered, the wild horses are tamed, the secret corners of the forest heavy with scent of many man and the view of the ripe hills blotted by talking wires. Where is the thicket?

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Gone. Where is the eagle? Gone. The end of living and the beginning of survival."

Today society's interaction with nature is so extensive that the environmental question has assumed proportions affecting all humanity. Industrialisation, urbanisation, explosion of population, overexploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oases, he

is also leaving behind deserts in the place of cases. In the last century, a great German materialist philosopher warned mankind: "Let us not, however, flatter ourselves overmuch on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different, unforeseen effects which only too often cancel the first." Ecologists are of the opinion that the most important ecological and social problem is the wide-spread disappearance all over the world of certain species of living organisms. Biologists forecast the extinction of animal and plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2,000 years did so after 1900. The International Association for the Protection of Nature and Natural Resources calculates that now, on an average, one species or sub-species is lost every year. It is said that approximately 1,000 bird and animal species are facing extinction at present. So it is that the environmental question has become urgent and it has to be properly understood and squarely met by man. Nature and history, it has been said, are two component parts of the environment in which we live, move and prove ourselves.

In India, as elsewhere in the world, uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problem. The once Imperial City of Calcutta is no exception. The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an

allotment of land for the construction of a Five Star Hotel at the expense of the zoological garden that it warrants interference by this Court? Obviously, if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for this Court to interfere in the absence of mala fides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art. 48A of the Constitution, the Directive Principle which enjoins that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country," and Art. 51A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures." When the Court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate consideration are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may feel justified in resigning itself to acceptance of the

decision of the concerned authority. We may now proceed to examine the facts of the present case.

There is in Calcutta a zoological garden located in Allipore, now almost the heart of Calcutta, on either side of Belvedere Road, one of Calcutta's main arterial roads, fortynine acres on one side and eight acres on the other. The main zoo is in the fortynine acres block of land. There are some old buildings and vacant land in the eight acre plot of land. This eight acre plot of land is known as the Begumbari land. It is out of these eight acres that the land of the extent of four acres has been carved out and given to the Taj Group of Hotels for the construction of a Five Star Hotel. It is this giving away of land, that was challenged before the High Court and is now challenged in this Court in this appeal by two citizens of Calcutta, one of them the Secretary of the Union of workmen of the zoological garden and the other a life

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member of the zoo, both of whom claiming to be lovers of wild life and well-wishers of the zoo.

In January 1979, the Director General of Tourism, Government of India, addressed a letter to the Chief Secretary, Government of West Bengal conveying the resolution of the Tourism Conference which was presided over by the Union Minister of Tourism and attended by several State Ministers and requesting that land in good locations may be made available for construction of hotels in a drive to encourage tourism. In May, 1980 the Taj Group of Hotels came forward with a suggestion that they would be able to construct a Five Star Hotel if any of three properties on Chowringhee, specified by them, was made available to them. The Government found that there was some litigation connected with the Chowringhee properties and, therefore, it would not be possible to convey the Chowringhee properties to the Taj Group of Hotels. On September 29, 1980 and November 29, 1980, there were two notes by the Secretary of the Metropolitan Development Department to the effect that the I.T.D.C. was interested in a property known as the Hastings House Property and that the Taj Group of Hotels who considered the Hastings House property unsuitable may be offered four acres out of the eight acres of Begumbari land. On the same day the Taj Group of Hotels wrote to the Government of West Bengal stating that the proposed land could be seriously considered for construction of a Hotel. Thereafter the Chief Minister along with the Minister of Tourism and the Minister for Metropolitan Development visited the site accompanied by the Director of the Zoo who apparently knew about the proposal right from the start. A note was then prepared by the secretary, Metropolitan Development Department and put up to the Chief Minister for his approval. The note suggested that the Hastings House property may be offered to the I.T.D.C. and the Begumbari property may be offered to the Taj Group and that at a later stage a suitable Committee might be appointed to negotiate with the two groups of hotels. The Chief Minister approved the proposal and required it to be placed before the Cabinet. On January 7, 1981 a memorandum was prepared for the consideration of the Cabinet explaining the need for more Five Star Hotels in Calcutta and the benefits flowing out of the construction and establishment of such Five Star hotels. It was suggested that the Hastings House Property may be leased to the I.T.D.C. Group and the Begumbari property to the Taj Group of Hotels. In regard to the Begumbari property, it was stated: "From the property of the Zoological Gardens on the Belvedere Road it is possible to carve out about four acres

of land currently used for dumping garbage and also for

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growing grass for the elephants. It will be necessary and in any case advisable to shift the dumping ground, while adequate space can be made available for growing grass elsewhere in the same area." It was stated that the Finance and Tourism Department had agreed to the proposal to lease the properties to the I.T.D.C. and the Taj Group respectively. It was stated that though the Forest Department had suggested that Salt Lake was a better place for establishing a Five Star Hotel, there was no demand for a Five Star Hotel in that area and the request for a hotel in Salt Lake was confined to a Three Star Hotel. Cabinet approval was sought for the offers to be made to the I.T.D.C. and to the Taj Group and for the constitution of a suitable Committee to undertake negotiations with the two groups.

On February 12, 1981, the Cabinet took a decision approving the proposal contained in the last paragraph of the Cabinet Memorandum, thus clearing the way for negotiations with the Taj Group.

Meanwhile, it appeared that the Public Undertakings Committee appointed by the West Bengal Legislative Assembly submitted a report on February 14, 1981 about the zoo in which they stated.

"* * * * * Originally this zoo was on the outskirts of the City but the City has grown in such a fashion that the zoo has virtually become the City Centre and there is hardly any scope for its expansion. The zoo is situated on the left bank of the Tolly's Nallah divided with two parts on either side of the Alipore Road. The zoo proper is about 40 acres on the Western side, while the eastern part comprises the Zoo Hospital, audiovisual centre, aquarium, Zoo store and Staff quarters. The Committee was informed that now-a-days migratory birds were coming less in number though previously more foreign birds used to come here and in the opinion of the Managing Committee, the main reason for this was due to air and sound pollution. Breeding potentialities of animals and birds have been retarded due to constant stress and strain on the animals and also due to atmospheric reasons. * * * * * The Committee came to learn that a big hotel was proposed to be constructed on the plot of land where fodder for elephants are being grown to meet at least a portion of the elephants food. Moreover, the staff quarters, hospitals for animals and the morgue are also situated near the said plot of land. If the proposed hotel is set up, all the existing buildings, viz. hospital, morgue etc.

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would have to be shifted to the main Gardens resulting in unhealthy atmosphere for the zoo animals and also hampering the beauty of the zoo Gardens. This would also create problems to the staff quarters and aquarium."

The Committee also referred to a proposal to establish a 'Subsidiary Zoo' some slight distance from Calcutta City and the request said to have been made for the allotment of 200 acres of land for that purpose. It was suggested that the Government may consider abandoning the proposal to set up a hotel on the Eastern side of the Zoo.

The Chief Town Planner also visited the site at the request of the Secretary, Metropolitan Development Department. The inspection was made in the presence of the Director of the zoo. The Chief Town Planner thought that two to 2 1/2 acres of land only might be made available for the hotel. He expressed the apprehension that if four acres of land were to be given for construction of a hotel, then the entire hospital and the dumping ground would have to be removed and the southern boundary of the hotel would come very close to the residential block.

On March 19, the Taj Group submitted a proposal to the Government containing fairly detailed information about the tourism industry and its needs, the situation in Calcutta, the realities of hotel construction, the facts relating to what had been done in other cities, the benefits flowing out of the construction of hotels and their own proposals for constructing a hotel in the four acres of land in Belyedere Road. Two alternative financial arrangements were suggested. The first alternative was the payment of annual rent on the basis of the valuation of the land, the second alternative was based on the concept of nett sales, nett sales being defined as sales after deducting all taxes and levies and service charges. The Metropolitan Development Department expressed a preference for the second alternative and suggested the constitution of a Committee. The Finance Department also approved. The Taj Group was invited to send the financial projection on the basis of the second alternative. Correspondence went on. On June 5, 1981, a Committee of Secretaries was formally constituted.

In the meanwhile, WEBCON, a West Bengal Government Consultancy Undertaking, was asked to examine the proposals and to advise the Government. The WEBCON submitted its report on July 14, 1981 and on the request of the Committee of Secretaries a further report was submitted on July 22, 1981. The report of WEBCON is a

246 comprehensive report on various topics connected with the establishment of a Five Star Hotel in Calcutta. Among other things the report also suggested various financial alternatives and recommended the second alternative based on nett sales as the best. It is to be mentioned here that even by February 21, 1981 the proposal to lease out the Begumbari land to the Taj Group of Hotels had become public knowledge and newspapers carried reports on the same.

On June 9, 1981, the Secretary of the Animal Husbandry and Veterinary Services Department complained to the Secretary of the Metropolitan Development Department that they were not aware of the decision to lease the Begumbari land. The Secretary, Metropolitan Development Department made an endorsement on the letter to the effect that the Minister for Animal Husbandry and Veterinary services had himself visited the site. In fact, as we have seen, the matter had been considered and approved by the Cabinet itself and all Departments must necessarily have been appraised of the proposal.

While so, the Managing Committee of the Zoo, on June 11, 1981, passed a resolution expressing itself against the proposal to construct a hotel on land belonging to the Zoo. The Resolution said,

"The proposal for soil testing of zoo land in the Begumbari Compound for the purpose of construction of Five Star Hotel was discussed in the meeting. The Committee resolved that construction of a multistoried buildings in the near vicinity of the zoo will be highly

detrimental to the animals of the Zoo, its ecological balance and adversely affect the bird migration which is one of the greatest attractions of the zoo. The area proposed to be taken for Hotel construction is already used by the zoo for fodder cultivation, burial ground for dead animals, animal hospital, operation theater, quarantine area, segregation wards, postmortem room and nursery both for zoo animals and horticultural section. These essential services cannot be accommodated within the campus of the main zoo for risk of spreading of infection to other animals of the zoo. Procurement of green fodder for the large number of herbivorous animals of the zoo is already a serious problem for the zoo and any disturbance to fodder cultivation will aggravate the situation. The Calcutta Zoo has the smallest area in comparison to other reputed Zoo. The Committee is of an opinion that no portion of Zoo land can be parted with for any other

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purpose. This being the position soil testing will hardly be of any avail as the zoo cannot spare the land. Shri Ashoka Basu, M.L.A., Shri K.P. Banerjee and Shri A.K. Das abstained from participation in the proceedings."

The Minister for Metropolitan Development submitted a note to the Chief Minister on the resolution of the Managing Committee of the Zoo. He pointed out that even if four acres out of the eight acres of Begumbari land was given to the Taj Group, there would still remain sufficient land for accommodation of the facilities. He added that the Managing Committee's resolution was not binding on the Government and suggested that the Director of the Zoo might be asked to allow the Taj Group to undertake soil testing etc. so that work may proceed according to the time-schedule. The Chief Minister endorsed the following.

"I agree. It is unfortunate that we have not been able to accept the contentions of the Managing Committee. If further facilities are necessary for the Zoo, the Government will provide them."

In June 25, 1981, the Managing Committee of the Zoo met again and passed another Resolution by which they withdrew their earlier objections. The Resolution stated.

"In view of the letter issued to the Zoological Gardens, Alipore and the Cabinet decision regarding the land of Begumbari Compound and in consideration of the assurance conveyed through Shri Ashoka Bose, Chief Whip and Member that the State Government will give to the Garden adjacent lands and matching grants for the purposes of shifting of the Departments of the Zoo within the said compound, the members do not press their objections as contained in the resolution of the Managing Committee held on 11.6.81.

This was passed by the majority of the members present, the President Justice Shri R.K. Banerjee dissenting."

On June 29, 1981, the Director of the Zoo wrote to the Secretary of the Animal Husbandry and Veterinary Services Department stating his objections to the Proposal to lease the land for construction of a hotel. He stated,

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"It appears that a total of four acres of Begumbari land is proposed to be taken for hotel construction. It may be mentioned that this four acres of land proposed to be taken is the only area available there and it is presently covered by structures of hospital buildings, Research Laboratory, Operation Theatre, Segregation Wards, Quarantine areas, post-mortem room, burial ground for dead animals. In addition there are flower nursery, dumping ground and fodder cultivation area. It is not at all possible to carve out from this four acres of land without disturbing these structures and services nor it is true that adequate space can be made available in this site for these essential services.

It may also be stated in this connection that the Zoo cannot be run for a single day without these essential services, i.e. (i) burial ground for dead animals, a number of which die of infectious and communicable diseases, (2) quarantine area for keeping animals coming to the Zoo, at least for 15 days before being shifted to the Zoo proper, (3) isolation wards away from Zoo Hospital and quarantine area for treatment of animals suffering from infectious and contagious diseases. (4) post-mortem room for carrying out p.m. findings, (5) dumping ground for dumping huge garbages coming out of the Zoo daily, (6) fodder cultivation area for growing fodder for the herbivorous animals and (7) pathological laboratory for carrying pathological tests of animals and birds.

"As per clause 11 of the Alipore Zoological Garden (Management) Rules, 1957, the disposal of properties and funds are vested in the Managing Committee of the Garden. The relevant clause of the rule reads as below:

"The Managing Committee shall have custody and disposal of the property and funds of the Gardens and shall be responsible for proper maintenance."

Presumably as a consequence of the letter from the Director of the Zoo there was a note by the Secretary, Animal Husbandry and Veterinary Services Department suggesting the postponement of the implementation of the Cabinet decision till the necessary facilities then available at Begumbari land were shifted to other land of the same extent within a reasonable distance from the Zoological Garden, as

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these facilities were originally linked with the Zoo. He pointed out that the Metropolitan Development Department had not consulted the Animal Husbandry Department before the Cabinet note was prepared and circulated. So the practical problems of the Zoo did not receive detailed consideration earlier. The note also pointed out that immediate transfer of the four acre plot of land would mean discontinuance of existing hospital facilities, research laboratory, operation theatre, segregation wards, quarantine facilities etc. A reference was also made to the report of Public Undertakings Committee.

Meanwhile negotiations with Taj Group proceeded apace. The WEBCON submitted further reports. Taj Group suggested further modifications. On September 9, 1981 a detailed memorandum was prepared for cabinet discussion. Two alternative financial proposals were set out. A reference was made to the Committee of Secretaries who negotiated with the Taj Group of Hotels. Note was taken of the suggestion of the Negotiation Committee that the overall development plan for the environmental beautification, widening of approach roads, landscaping of Tolley's Nullah were responsibilities of the State Government and estimated to cost Rs. 2 crores but that it was expected to be of considerable public benefit. Stress was laid on the direct and indirect economic activities which would be generated by the establishment of a Five Star Hotel. Reference was also made to the report of WEBCON and it was noted that the projected profitability of the venture to the Government was expected to be high. It was also mentioned that the Ministers, Incharge of Tourism, Animal Husbandry, Land Revenue and Finance had seen the note and agreed to it. On September 10, 1981 the Cabinet took the final decision to grant a ninety-nine years lease of the Four acres of Begumbari land to the Taj Group of Hotels. On September 28, 1981 the Government of West Bengal officially conveyed its acceptance of the proposal of the Taj Group of Hotels for the construction of a Five Star Hotel. The terms and conditions of the lease were set out. On January 7, 1982, there was a joint meeting of the Establishment and Finance sub-committees of the Zoo and it was decided to recommend to the Committee of management that the demarcated area of four acres may be relinquished in favour of Animal Husbandry and Veterinary Services Department subject to the requirement that the Zoo will continue to get the services and facilities in the existing structures until they were reconstructed on the adjacent land. On January 11, 1982 the Managing Committee endorsed the view of the sub-committees and this was communicated to the Government. On January 15, 1982, the Government of West Bengal wrote to the Land Acquisition Officer, with

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copies to the Taj Group of Hotels, directing the Land Acquisition Officer to give possession of the land to the Taj Group of Hotels subject to their later executing a proper long term lease. It was mentioned in the letter that the construction of the hotel should not be started till the lease deed was executed and registered. It was further expressly stipulated as follows:-

"The Alipur Zoological Garden will continue to get the services and facilities from the existing essential structures which fall within the demarcated in the annexed sketch map till such time when these essential structures i.e. hospital and operation theatre are reconstructed on the adjacent land occupied by the Zoological Garden. A copy of the sketch map is enclosed for ready reference. The India Hotels Co. Ltd. will find out in consultation with and with the concurrence of the Animal Husbandry and Veterinary Services Department of this Government and the authorities of the Alipore Zoological Garden the period of time required for reconstruction of the essential structures standing on the land proposed to be leased out to the said company. It will also let this department have in consultation with and with the concurrence of the Animal Hus-

bandry and Veterinary Services Department of this Government and the Alipore Zoological Garden a plan and estimate for reconstruction of the aforesaid essential structures on the land adjacent to the land proposed to be leased out, so that all these points are incorporated in the deed of lease between the said company and the State Government in this Department for the said land measuring four acres.

"As agreed by the said company during the various meetings its representatives had with various departments of this Government, the company will either place the necessary fund in the hands of Animal Husbandry and Veterinary Services Department or the Zoo Garden authorities as the case may be, for reconstruction of the aforesaid essential structures or reconstruction the aforesaid essential structures under its own supervision to the satisfaction of the the Zoo Garden authorities or Animal Husbandry and Veterinary Services Department as the case may be, such funds will in either case be advanced or deemed to be advanced by the Company without interest to

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be adjusted against dues of the State Government in accordance with the terms and conditions of the lease."

It is to be noted here that though the stipulation was that the cost of new construction was to be initially met by Taj Group of Hotels and later to be adjusted against the rent payable by Taj Group, the Taj Group later agreed to waive such reimbursement. We are told that a total sum of Rs. 30 lakhs has now been spent by Taj Group of Hotels in connection with the reconstruction. We are also told that an extent of 288 square meters out of the plot given to the Taj Group was carved out and given back for accommodating part of the reconstructed structures. Pursuant to the letter dated January 15, 1982 possession was given to Taj Group on January 16, 1982. Thereafter an expert Committee was constituted to supervise the construction of alternative facilities. At that stage the writ petition out of which the present appeal arises was filed on February 26, 1982. Initially the relief sought was primarily to restrain the Zoo authorities from giving effect to the two resolutions dated January 7, 1982 and January 11, 1982 to hand over the four acres to the Animal Husbandry Department of the Government. Subsequent to the filing of the Writ Petition, a lease deed was executed by the Taj Group of Hotels in favour of the Government. The writ petition was therefore, amended and a prayer for cancellation of the lease deed was added. First a learned Single Judge dismissed the Writ Petition. On appeal, a Division Bench of the High Court confirmed the judgment of the learned Single Judge. The original petitioners are now before us having obtained special leave under Art. 136 of the Constitution.

Before advertng to the submission of the learned counsel, it is necessary, at this juncture, to refer to certain correspondence. On April 23, 1982, Late Smt. Indira Gandhi, Prime Minister of India wrote to Shri Jyothi Basu, Chief Minister of West Bengal expressing the hope that he would not allow the Calcutta Zoo to suffer in any manner and would leave in intact. She drew the Chief Minister's attention to

the fact that 'apart from' reduction in the already inadequate space for the Zoological Garden construction of a Five Star Multystoreyed Building would disturb the inmates and adversely affect birds migration which was a great attraction.' She also mentioned that the expert Committee of the Indian Board for Wild Life also unanimously disapprove the idea. She queried whether the Hotel could not be located elsewhere. For one reason or the other the Prime Minister's letter did not reach the Chief Minister for a considerable time. On August 21, 1982 the Chief Minister sent his reply pointing out that the

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four acres of land were agreed to be relinquished by the Committee of management of the Zoological Garden on condition that alternate arrangements were made for shifting the existing structures which were necessary for the Zoo from the plot in question to the adjacent plot. The Chief Minister also mentioned that there appeared to be some misconception that the plot in question was a part of the Zoo Garden. It was not so. It was outside the Zoological Garden and separated from it by a 80-100 feet road. The Chief Minister assured the Prime Minister that the existing structures would be relocated on the adjacent land and until that was done the Zoo would continue to get their services and facilities from the existing structures. The Chief Minister further drew the attention of the Prime Minister to the fact that the hotel was likely to be a six storeyed one and would not be the only tall building near the Zoo. There were already a large number of high-rise residential buildings around the Zoo. No one had raised any objection when those building were constituted. Another multistoreyed building which was going to be the largest in the locality was under construction near the Zoo for the Post and Telegraph Department. There was no report that the existing multistoreyed buildings had any adverse affect on the migratory birds or the animals. The Chief Minister also pointed out that the lessee and their experts on wild life has assured them that in any case adequate precaution would be taken in regard to illumination of the hotel and the layout of the surroundings so that no disturbance would be caused to the flight path of the birds or animals. On August 30, 1982, Shri J.R.D. Tata wrote to the Prime Minister pointing out that their Hotel management had discussed the matter at length with representatives of the Wild Life fund who were satisfied that the proposed hotel would cause no disturbance to the birds. He had again gone thoroughly into the project with special reference to its possible impact on the birds or environment and had also visited Calcutta in that connection. He was satisfied that the project could not possibly disturb birds using the lake or interfere with their free movement. He gave his reasons as follows:

"The four-acre plot assigned to the Hotel Company by the State Government is not within the boundaries of the area belonging to the Zoological Gardens but on the other side of Belvedere Road, an important thoroughfare parallel to the main boundary of the zoo and some 700 feet from the main part of the lake. It forms part of an area belonging to the State Government which the Zoo authorities have upto now been allowed to use to look after sick animals of the Zoo and as labour quarters. It contains five small structures

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including a cage and a small veterinary labo-

ratory or dispensary. The whole area is in sheckingly unkept condition, most of it covered by a single or spear grass and other wild growth.

"The hotel is planned to be built away from the frontage of that plot of Belvedere Road and to be low rise structure, the Highest point of which will not exceed 75 feet.

"Dr. B. Biswas, a renowned ormithologist, who recently retired as Professor Emeritus of the Zoological Survey of India, whom the Taj Management consulted, confirmed that a 75-feet high building on the location would not worry birds landing on the lake or climbing out of it. In fact, as the grounds of the zoo between the lake and Belvedere Road are covered with high trees, the climbing or descent angle which the birds have to negotiate to get over the trees is already steeper that it will be between the lake and the proposed hotel.

"As regards the objection that arise from the hotel itself from vehicular traffic to and from the hotel would disturb the birds, the hotel will be totally airconditioned so that no noise will emanate from it, while noise from the heavy traffic on Belvedere Road does not seem to have bothered the birds upto now. The occasional additional cars plying into and out of the hotel could therefore hardly trouble birds resting on the lake some 250 yards away.

"Regarding the fear that lights emanating from the hotel or illuminate of signs of the hotel would disorient the birds and possibly cause them to hit the building the Management of the Hotel Company has taken a firm decision that there will be no bright lights or noon signs emanating from the hotel."

Shri Tata further suggested that if necessary the Prime Minister could appoint a small advisory Committee consisting of Shri Pushpa Kumar, Director of the Hyderabad Zoo considered to be the finest zoo in India and one of the best in Asia, Dr. Biswas, Mrs. Anne Wright and the Chairman of the Managing Committee of the Zoological Garden to advise on the subject. On September 1, 1982, Smt. Indira Gandhi

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wrote to Mr. Tata expressing her happiness that the Hotel was not going to upset the Zoo animals and welcoming his offer to help the State Government to improve the Zoo's facilities.

Dr. L.M. Singhvi, learned counsel for the appellants made the following submission before us; The Begumbari land was statutorily vested in the Managing Committee of the Zoological Garden and that the Committee could not be divested by an executive decision without proper procedure being followed. The land could not be leased to the Taj Group of Hotels without inviting tenders from willing persons and without complying with the requirements of paragraphs 166 and 167 of the Land Manual. In taking a decision to take away the land from the Zoo and to lease the same to the Taj Group of Hotels, relevant considerations had been ignored and irrelevant considerations had been taken into

account. The decision was taken without considering the impact on the Zoo and without consulting various interested authorities and institutions. Several authorities and institutions like the Director of the Zoo, the Managing Committee of the Zoo, the Public Undertakings Committee of West Bengal, the Indian Wild Life Board, leading ornithologists of the country, etc. had disapproved the taking away of the land from the Zoo and leasing it to the Taj Group of Hotels. These persons and institutions had made several points, none of which had been taken into account by the Government before it took the decision to lease the land. The attention of the government was not focussed on these questions as evident from the fact that the Cabinet Memorandum hardly refers to any of the objections. The decision of the Government was also wrong as it was apparently based on some assumptions which had been made without inquiry and verification. The Chief Minister appeared to be under the impression that Dr. Biswas and others were not opposed to the proposal. That was not correct. The construction of a Five-Star Hotel was too heavy a cost to pay for the environmental detriment caused by it. The terms on which the lease had been granted were detrimental to the public revenue.

Shri Dipankar Gupta, learned counsel for the Taj Group of Hotels and Shri Gooptu learned counsel for the State of West Bengal argued that the former facilities available in the four-acre plot of land were not displaced but were replaced and preserved by better facilities in the adjacent plot of land. This was not to the disadvantage, but to the advantage of the Zoo and its inmates. If the dumping ground and the burial ground had to be moved elsewhere, it was certainly more hygienic and a matter for gratification rather than for disgruntlement. Nor was there any obstruction to the flight of the visiting birds as the

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hotel was to be constructed at a distance of 700 feet from the lake and was to rise to a maximum height of 75 feet, being a medium rise and not a high rise building. On the other hand there was going to be an environmental improvement of the area as the dumping ground, burial ground and the semi-dilapidated buildings were to be replaced by a hotel surrounded by broad roads and a very large number of trees proposed to be planted by the hotel management. The landscaping was also designed to improve the ecology and not to diminish it. There was no occasion for the Government to invite tenders since the establishment of a Five-Star hotel was not something which could practicably be undertaken by anyone in that fashion. It could only be done by negotiation between the persons coming forward with proposals to establish Five Star Hotels. The terms of the lease were not to the financial disadvantage of the Government. The matter had been considered at great length by the Committees of Secretaries appointed by the Government as well as by WEBCON and they had recommended the acceptance the nett sales arrangement in preference to the arrangement of rent based on land-cost.

We are unable to agree with the submission of Dr. Singhvi, learned counsel for the appellants, that the Government of West Bengal decided to grant the lease of the Begumbari land to the Taj Group of Hotels without applying their mind to very important relevant considerations. Much of the argument on this question was based on the assumption that the decision to lease the Begumbari land to the Taj Group of Hotels was taken on February 12, 1981. The decision taken by the Cabinet on February 12, 1981 was merely to enter into negotiations with the I.T.D.C. and the Taj Group

of Hotels in regard to leasing the Hastings House property and the Begumbari land. Negotiations with the I.T.D.C. did not fructify while negotiations with the Taj Group of Hotels fruited. It was on September 10, 1981 that the Cabinet finally took the decision to lease the Begumbari land to the Taj Group. If there was any decision on February 12, 1981 in regard to leasing the Begumbari land it could at best be characterised as purely tentative and it could not by any stretch of imagination be called an irrevocable or irreversible decision in the sense that the Government was powerless to revoke it or that it had created any rights in anyone so as to entitle that person to question any reversal of the tentative decision. It was not a decision, if it was one, on which any right could be hung. At that stage, the Government of West Bengal appeared to have been on the search for two suitable plots of land which could be offered, one to the I.T.D.C. and the other to the Taj Group of Hotels for the construction of Five-Star Hotels. The record

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shows that these two chain-hoteliere were the only hoteliers--and, they certainly were leading hoteliers of the country--who had come forward to negotiate with the West Bengal Government regarding the construction of Five-Star Hotels. The city of Calcutta was noticeably lacking in the 'Five-Star Hotel amenity' to attract tourist, local and foreign, and the Government of West Bengal was anxious to do its best to promote the tourist industry which it was hoped, would provide direct and indirect employment, earn foreign exchange and confer other economic benefits to the people of the State. It is immaterial whether the move came first from the Government or from the Taj Group. The Government was anxious that more Five-Star Hotels should be established at Calcutta and the Taj Group was willing to establish one. They wanted a suitable plot for its construction. It was the suggestion for the All India Tourism Conference presided over by the Union Minister for Tourism that State Government should make plots in good locations available at concessional rates for construction of hotels in order to promote the Tourist Industry. It was in pursuance of this general all-India policy and, in particular, to fulfill the felt needs of Calcutta that the Government of West Bengal was looking out for a suitable plot in a good location. They were clearly not doing so at the behest of the Taj Group of Hotels. It does not require much imagination to say that location is among the most important factors to be considered when constructing a Five-Star Hotel, particularly if it is to promote tourism. Obviously, one place is not as good as another and the place has to be carefully chosen. After excluding Salt Lake and after considering some properties in Chowringhee, the Government felt that two properties, the Hastings House property and the Begumbari property could be thought of as meeting the requirements. Since the Hastings House property, was not found acceptable by the Taj Group, it was decided to negotiate with them in regard to construction of a Five-Star Hotel on the Begumbari land. We find it difficult to treat this decision to negotiate with the Taj Group in regard to construction of a Five-Star Hotel on the Begumbari land as a final decision to part with the land. The prominent use to which the land was evidently put at the time was as a dumping ground for refuse and rubbish and for growing fodder for elephants. This was noticed and mentioned in the note prepared for the consideration of the Cabinet and it was suggested that separate provision would have to be made for them. Therefore, it is clear that it was not forgotten that if the land was to be allotted to the Taj

Group, separate provision would have to be made for whatever use the land was being put to them. The Government was not unmindful of the interests and requirements of the Zoological Garden though at that stage no detailed investigations had

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apparently been made. The decision of the Government was not one of those mysterious decisions taken in the shrouded secrecy of Ministerial Chambers. It appears to have been taken openly with no attempt at secrecy. The decision, perhaps proposal would be a more appropriate word, was known to the Public Undertakings Committee in less than two days. They expressly refer to it in their report dated February 14, 1981 made two days after the Cabinet decision. By Twenty-first February it was public knowledge and news of the proposal was published in the daily newspapers. We have no evidence or any immediate or subsequent public protest but there were certain objections from some circles. Earlier we have extracted the report of Public Undertakings Committee. The substance of the objection of the Public Undertakings Committee was that the facilities available in the Begumbari land would be left unprovided for if the land was given to the proposed hotel. The available facilities were mentioned as Staff quarters, hospital for animals, burial ground for animals, fodder for elephants etc. It was also said that if the hospital and the burial ground were to be shifted to the main garden it would result in an unhealthy atmosphere for the animals and the zoo and would detract from the beauty of the Zoo Garden. The assumption of the Public Undertakings Committee that the hospital and the burial ground were to be shifted to the main garden was baseless, since, there was never any such proposal. A modern zoo hospital for animals has been constructed in the remaining extent of Begumbari land replacing the old hospital which was housed in a semi-dilapidated building. Surely, there should be no complaint about it. It has also been proposed to shift the burial ground elsewhere. That would be most desirable from any point of view. Fodder for elephants should not again be considered to be problem. It would be stretching credibility to suggest that it is necessary to grow fodder in the Begumbari land to feed the elephants in the zoo. Fodder may be bought and brought from elsewhere. The Chief Town Planner who was deputed to visit the site at the request of the Secretary, Metropolitan Development Department and who visited the Zoo accompanied by the Director of the Zoo reported that 2 to 2 1/2 acres of land might be made available for the hotel. If four acres of land were given, he expressed the apprehension that the hospital and the dumping ground would have to be moved elsewhere. The hospital as we have already mentioned has since been conveniently and comfortably accommodated in a new building and the proposal is to move the dumping ground elsewhere. The Managing Committee of the Zoo also initially expressed its opposition to the proposal to construction hotel on land belonging to the Zoo. The Committee's objections were two-fold: (1) A muliti-storied building in the vicinity of the Zoo will disturb the

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animals and the ecological balance and will affect the bird migration (2) the land was already used for various purposes, that is, fodder cultivation, burial ground for animals, hospital, operation theatre, quarantine area, post-mortom room and nursery. It would be impossible, according to the Committee to accommodate these essential services within the campus of the main Zoo. The objections of the

Managing Committee were first brought to the notice of the Minister for Metropolitan Development who submitted a note to the Chief Minister pointing out that even if four acres of land out of the eight acres of Begumbari land was given to the Taj Group, there would still remain sufficient land for accommodating the existing facilities. The Chief Minister considered the objections and noted that if further facilities were necessary for the Zoo, Government would provide them. Thereafter the Managing Committee reversed its earlier stand and agreed to the proposal on the assurance that adjacent land and matching grants would be given to the Zoo. We have earlier referred to the letter of the Director of the Zoo dated June 29, 1981 addressed to the Secretary, Animal Husbandry Department where he expressed his opposition to the proposal on the ground that the Zoo could not be run for a single day without the essential services which were being provided in the four acres of land proposed to be given for the hotel. This again, we notice, is based on the assumption that there was going to be no provision for those facilities once the hotel was constructed. We have already pointed out that this assumption is wholly incorrect. The letter of the Director of the Zoo was followed by a note by the Secretary of the Animal Husbandry Department suggesting that the practical problems of the Zoo should receive detailed consideration and that the immediate transfer of the land to the hotel would mean discontinuance of the existing facilities. In the face of all this material, we do not see how it can be seriously contended that the interests and the requirements of the Zoo were totally ignored and not kept in mind when the decision was taken to lease the land to the Taj Group of Hotels. The Chief Minister's attention was expressly drawn to the Managing Committee's first Resolution expressing its opposition to the proposal to give the land for the construction of a hotel and detailing the objections and the Chief Minister had expressly noted that all facilities necessary for the Zoo would be provided by the Government. The assurance was also conveyed to the Managing Committee through the amissaries of the Chief Minister. There were inter-departmental notings which we presume must also have been brought to the notice of the Chief Minister. We find it impossible to agree with the stricture that the Chief Minister turned a blind eye and a deaf ear to the interests and the requirements of the Zoo and went about the question

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of allotment of land to the Taj Group of Hotels determined to give the land to them and with a mind closed to everything else. We cannot do so in the face of the assurance of the Chief Minister that facilities would be provided for the Zoo and if, as the saying goes, the proof of the pudding is in the eating, the Chief Minister's assurances are found reflected in the lease executed by the Taj Group of Hotels in favour of the Government of West Bengal. In Clause 25 of the lease deed, it is expressly stipulated that the lessee shall reconstruct the structures now existing on the demised land (as found in the sketch accompanying the deed) on the adjacent plot of land and that the plan, design, lay out, estimates, etc. of the proposed new structures should be supplied by the Alipur Zoological Garden to the lessee. The reconstructed structures were required to be equal to the existing ones in floor area, but it was open to them to increase the floor area by agreement. The amount expended by the lessee towards the reconstruction of the structures was to be adjusted without interest against the dues of the lessee to the Government. The Alipore Zoological Garden

authorities were required to vacate the existing structure within a period of six months which was also the period stipulated for raising the new constructions. We may add here that the Taj Group of Hotels have spent a sum of Rs. 30 lakhs towards the cost of the new constructions, but that they have waived their fight to claim reimbursement from the Government. An affidavit to that effect was also filed before the trial court. Thus we see that the contention of the appellants that the Government of West Bengal had no thought to spare for the facilities which were till then being provided in the Begumbari land is unsustainable. The learned counsel for the appellants urged that the second Cabinet Memorandum dated September 9, 1981 on which date the Government took the final decision to grant the lease made no mention of the needs and interests of the Zoo or the facilities provided in the Begumbari land for the Zoo. It is true that there is no reference to these matters in the second Cabinet Memorandum. But that is for the obvious reason that the matter had already been the subject matter of inter-department discussion and communication. The Managing Committee of the Zoo which had initially opposed the proposal had also come round and had agreed to the proposal. It was, therefore, thought that there was no need to mention the needs and interests of the Zoo which were already well known and had also received consideration.

It was suggested that the Zoo itself required to be expended and there was, therefore, no land which could be spared. The land allotted to the hotel was, as we have seen, not used for the main purpose of the

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zoo and was not in fact part of the main Zoological Garden. The Government had already in mind a proposal to start a subsidiary Zoo in an extent of about 200 acres of land in the outskirts of Calcutta. This has been mentioned in the various notings made from time to time. We have no doubt that the Government was quite alive to the need for expansion of the zoo when they decided to grant four acres of Begumbari land which was not used for the main purpose of the zoo for the construction of a Five-Star hotel.

The next question is whether the Government was alive to the ecological considerations, particularly to the question of the migratory birds when they took the decision of lease the land to the Taj Group of Hotels. Again sustenance to the argument of the learned counsel for the appellants is sought to be drawn from the circumstance that neither of the two Cabinet Memoranda dated January 7, 1981 and September 9, 1981 referred to the migratory birds. It is wrong to think that everything that is not mentioned in the Cabinet Memoranda did not receive consideration by the Government. We must remember that the process of choosing and allotting the land to the Taj Group of Hotels took merely two years, during the course of which objections of various kinds were raised from time to time. It was not necessary that every one of these objections should have been mentioned and considered in each of the Cabinet Memoranda. The question of the migratory birds was first raised in the resolution of the Managing Committee dated June 11, 1981. This resolution was forwarded to the Chief Minister and considered by him as evident from the note of the Chief Minister and the subsequent reversal of the Managing Committee's resolution at the instance of the Chief Minister and on his assurances. The Chief Minister was certainly aware of the question of the migratory birds before it was finally decided to allot the Begumbari land to the Taj Group of Hotels. That the Government was aware of the dissension based on the alleged ob-

struction likely to be caused by a multi-storeyed building to the flight of the migratory birds appears from the letter of the Chief Minister to the Prime Minister. In this letter, the Chief Minister pointed out that there were already in existence a number of multistoreyed buildings all around the Zoological Garden, but there was no report that they had any adverse effect on the migratory birds or the animals. He also pointed out that all precautions would be taken in the matter of illumination of the hotel and lay out of the surroundings so that no disturbance would be caused to the flight path of the birds or animals. Shri J.R.D. Tata, on behalf of the Taj Group of Hotels, also wrote to the Prime Minister assuring her that the hotel management had discussed the matter at length with a representative of the Wild

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Life Fund who, after discussion, had been satisfied that the proposed hotel would cause no disturbance to the birds. He further assured her that he had himself gone thoroughly into the project with special reference to the possible impact on the birds and the environment and had satisfied himself that project would not cause any disturbance to the birds or their free movement. The reasons given by him have already been extracted earlier by us from his letter. He pointed out that the four-acre plot was not within the main Zoological Garden, but was separated from it by the Belvedere Road which was an important thoroughfare in the city. It was about 700 feet from the main part of the lake. The hotel was proposed to be built away from the frontage of the plot in Belvedere Road and was to be a low-rise structure, the highest point of which would not exceed 75 feet. This was mentioned apparently to indicate that the building would not come within the trajectory of the birds. He mentioned that Dr. Biswas, a renowned ornithologist had also been consulted by the Taj Management and he had also confirmed that a 75 feet building would not interfere with the landing or climbing out of the birds from the lake. He further mentioned that the grounds of the Zoo between the lake and the Belvedere Road were covered with tall trees and that the birds negotiating the trees would have to fly at the steeper angle than it would be necessary to negotiate the proposed hotel. The vehicular traffic on Belvedere Road which was also heavy did not bother the birds and the slight increase of the vehicular traffic consequent on the construction of the hotel was also not likely to bother them either. It was also pointed out that particular care would be taken in the matter of illumination of the hotel so that bright lights or neon signs emanating from the hotel would not disturb the birds and animals.

The learned counsel for the appellants drew our attention to a letter written by Dr. Biswas to the Statesman dated August 3, 1982 in which he disowned having made any statement to a press correspondent by name, Bachi J Karkaria that the hotel posed no threat at all to the migratory flight path. He explained that what he meant to say was that migratory birds visiting the Zoo lake choose places to the east and south-east of the lake for nocturnal feeding and that their flight to the nocturnal feeding grounds in the marshes would be affected, if the proposed hotel was a high-rise building. Apart from the fact that he did not mention what he had in mind when he spoke of a high-rise building, the point made by Shri J.R.D. Tata in his letter to the Prime Minister that birds flying in or flying out had to fly at a very steep angle while negotiating the tall trees between the lake and Belvedere Road, an angle much

steeper than the angle at which they would have to fly

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to negotiate a 75 feet tall building, such as, the proposed hotel, remains unanswered. Be it noted that Belvedere Road is to the east of the lake. We may also note here a point made by Dr. Biswas in his letter to the Statesman that there were possible health hazards in the re-location of the Zoo hospital, quarantine area and post-mortem room in the area adjacent to the staff quarters. He is no expert on the subject of public health and no one has complained that there would be any hazard to the health of those living in the staff quarters by the re-location of the hospital, etc. We are satisfied that the question of obstruction which may be caused to migratory birds did not go unnoticed by the Government before the decision to lease the land was taken and we are also satisfied that the building of the proposed hotel is not likely to cause any obstruction to the flight path of the migratory birds.

We may refer here to the resolution of the Wild Life Board to which a reference was made by the Prime Minister in her letter to the Chief Minister. Our attention was drawn by the learned counsel for appellants to the presence of two renowned experts at the meeting of the Wild Life Fund on September 25, 1981. They were Shri Pushp Kumar, Director of the Hyderabad Zoo and Mrs. Anne Wright. The subject which was discussed by the Expert Committee on September 25, 1981 was "Construction of a Five-Star Hotel within the premises of Alipore Zoo in Calcutta." The proceedings of the Committee were recorded as follows:

"Director, Geological Survey of India explained the whole matter and pointed out the utter impropriety of the decision of the Government of West Bengal to construct a FiveStar Hotel within the premises of Alipore Zoo in Calcutta. The Committee agreed fully with this view and desired that this matter should be taken up immediately by the Central Government with the State Government."

This record of the proceedings shows that the Experts Committee of the Wild Life Fund was proceeding on the fundamental wrong assumption that the hotel was proposed to be constructed "within the premises of Alipore Zoo". The resolution was justified on the assumed premises but unfortunately it was rounded on a wrong premises. Later Mrs. Anne Wright appeared to be satisfied with what was finally done as evident from her letter dated November 19, 1983 to Mr. J.R.D. Tata, a copy of which has been placed before us. Bearing in mind the proper approach that we have to make when

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questions of ecology and environment are raised, an approach which we have mentioned at the outset, we are satisfied that the facts and circumstances brought out by the appellants do not justify an inference that the construction of the proposed hotel in the Begumbari land would interfere in any manner with the animals in the Zoo and the birds arriving at the Zoo or otherwise disturb the ecology. The proposed hotel is a Garden-hotel and there is perhaps every chance of the ecology and environment improving as a result of planting numerous trees all around the proposed hotel and the removal of the burial ground and dumping ground for rubbish.

Dr. Singhvi cited before us the well known decisions of this Court in Rohtas Industries Ltd. v. S.D. Agarwal, [1969] SCR 108; Barium Chemicals v. A.G. Rana, [1972] 2 SCR 752 and Mohinder Singh Gill v. Central Election Commission, [1978] 2

SCR 273 to urge that even an administrative decision must be arrived at after taking into account all relevant considerations and eschewing irrelevant considerations and that the reasons for an order must find a place in the order itself and those reasons cannot be supplemented later by fresh reasons in the shape of an affidavit or otherwise. The submission was that neither the Cabinet memorandum of January 7, 1981 nor the Cabinet Memorandum of September 9, 1981 revealed that relevant considerations had been taken into account. What was not said in either of the Cabinet Memoranda, it was said, could not later be supplemented by considerations which were never present to the mind of the decision making authority. We do not agree with the submission of Dr. Singhvi. The proposition that a decision must be arrived at after taking into account all relevant considerations, eschewing all irrelevant considerations cannot for a moment be doubted. We have already pointed out that relevant considerations were not ignored and, indeed, were taken into account by the Government of West Bengal. It is not one of those cases where the evidence is first gathered and a decision is later arrived at one fine morning and the decision is incorporated in a reasoned order. This is a case where discussions have necessarily to stretch over a long period of time. Several factors have to be independently and separately weighed and considered. This is a case where the decision and the reasons for the decisions can only be gathered by looking at the entire course of events and circumstances stretching over the period from the initiation of the proposal to the taking of the final decision. It is important to note that unlike Mohinder Singh Gill's case where that Court was dealing with a Statutory Order made by a statutory functionary who could not therefore, be allowed to supplement the grounds of this order by later explanations, the present is a

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case where neither a statutory functions nor a statutory functionary is involved but the transaction bears a commercial though public character which can only be settled after protracted discussion, clarification and consultation with all interested persons. The principle of Mohinder Singh Gill's case has no application to the factual situation here.

It was said that the principles of Natural Justice had not been observed and that those who are most interested in the Zoological Garden were not heard in the matter before the decision was taken. We do not think that anyone can have a justifiable grievance on this score. The proposal to lease the Begumbari land was public knowledge as we have seen. Such as those as were really interested in the matter like the Managing Committee of the Zoological Garden and the Director of the Zoo did have their say in the matter. The Public Undertakings Committee in its report discussed the matter and invited the Government's attention to various factors. The matter was further discussed on the floor of the Legislative Assembly. It is impossible to agree with the submission that there was any failure to observe principles of Natural Justice.

One of the submissions of Dr. Singhvi, learned counsel for the appellants, was that the Bengal Public Parks Act, 1904 vested the Begumbari land in the Managing Committee of the Zoological Garden and that what had become statutorily vested in the Committee could not be divested by an executive fiat. We agree that an Act of the Legislature cannot be undone by a mere act of the executive. But what is the position here? Did the Act deal with the land at all? The

Begumbari land was given to the Zoological Garden by the Government in 1880. We do not have the original grant before us. The entire file of the Government relating to the Begumbari land was produced before the Trial Court without any attempt at withholding any document. The records were before the High Court and there are now before us two copies of a letter written on July 7, 1880 by the Assistant Secretary to the Government of Bengal in the Public Works Department to Mr. L. Schwandler, Honorary Secretary, Zoological Garden conveying to him the sanction of the Lt. Governor for the transfer of the land to the east of Belvedere Road, known as Begumbari land to the charge of the Committee of the Zoological Garden on the terms agreed to by the Committee in their letter dated April 23rd. The conditions were mentioned as:

"1st. That the land is to be used for the purpose of acclimatization only.

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2nd. That Carnivores are not to be kept on any part of it, on any account.

3rd. That the grounds are to be kept clear and neat.

4th. That the land must be restored to the Government if hereafter required. The Zoological Garden Committee being reimbursed for any expenditure they may have incurred in building there."

Dr. Singhvi questioned the authenticity of the documents and also objected to their reception in evidence on the ground that no foundation had been laid for the reception of secondary evidence. We must straightaway say that no objection was taken either before the single judge or before the Division Bench either to the authenticity or to the admissibility of the documents. We do not for a moment doubt the genuineness of the two documents which have been produced from old official records. What is important is that the Managing Committee of the Zoological Garden never doubted the authenticity of the documents nor was any question ever raised to suggest that the terms of the grant were other than those mentioned in the letters. We are satisfied that for the purposes of the present case, we will be justified in proceeding on the basis that the land which was undoubtedly Government land, to start with, was given to the Zoological Garden upon the terms set out in the two letters. One of the terms was that the land should be restored to the Government whenever required. Another term was that the Zoological Garden Committee would be suitably compensated for any expenditure incurred by it on the construction of any building on the land.

The further submission of Dr. Singhvi was that whatever might have been the terms of the grant in favour of the Zoological Garden, the Bengal Parks Act, 1904, vested the land in favour of the Zoological Garden and there was no way by which the Government could divest the Zoological Garden of the land except by a procedure known to the law such as acquisition or requisition. We are unable to find any substance in the argument. The Bengal Parks Act, 1904 was enacted "to protect public parks and gardens in Bengal from injury and to secure the public from molestation annoyance while resorting to such parks and gardens." The Act was made applicable to the public parks and gardens mentioned in the schedule. The Zoological Garden, Alipore was one such park. Section 3 enables the State Government, by notification in the official Gazette "to declare that any specified land, bridge or pontoon shall, for the purposes of this Act, be deemed to be included

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in any park." Section 4 enables the Government to make rules

for the management, and preservation of any park, and for regulating the use thereof by the public. In particular, the rules may regulate the admission into the park of persons, animals and vehicles, prohibit the causing of any manner of injury to the trees, plants, monuments, furniture etc. in the park, prohibit shooting, bird-testing etc. prohibit or regulate fishing or boating, prohibit bathing, or the pollution of water by any other means, prohibit the grazing of horses or ponies, prohibit the teasing or annoying of animals or birds kept in the park, prohibit the commission of any nuisance, or the molestation or annoyance of any person resorting to the park etc. etc. From the Preamble and the provisions of the Act, it is clear that the Act is intended to protect the inmates and the property of the park from injury by persons resorting to the park and to protect persons resorting to the park from molestation or annoyance by others. The Act is aimed at protecting the park and its visitors from injury and annoyance by despoilers and marauders. The Act has nothing whatever to do with the vesting of any property in the parks. There is infact no provision which deals with the vesting of property in a park. Section 3 enables the State Government to extend by a notification, the boundaries of a park but that can only be for the purposes of the Act and not for the purpose of vesting or creating any title in a property. If a piece of adjacent land, for example, is taken on lease for a specified number of years by the park and included in the park by a notification under sec. 3, it does not mean that the land has become the property of the park; it only means that the various things, the doing of which is regulated or prohibited by the Act and the rules will not be done or will be regulated on the adjacent land also. We do not think that the provisions of the Bengal Public Parks Act have any relevance to the question of the power of the Government to transfer the Begumbari land to the Taj Group of Hotels.

One of the arguments strenuously pressed by Dr. Singhvi was that, even if it was assumed that the Government had the power to transfer the land, the Government did not have the power to deal with the land in any manner that they liked. Certain norms and procedures had to be observed and nothing could be done which would result in loss to the public exchequer. The Bengal Land Manual prescribed the procedure to be followed in the matter of transferring land belonging to the Government. That procedure had to be observed. In any case, it was necessary either to held a public auction or to invite tenders atleast from the limited class of persons interested in utilising the land for the purpose for which the land was proposed to be transferred. The learned

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counsel invited our attention to several decisions of the court: Rash Bihari Panda v. State of Orissa, [1969] 3 SCR 374; R.D. Shetty v. International Airport Authority, [1979] 3 SCR 1014; Kasturi Lal Laxmi Reddy v. State of Jammu & Kashmir, [1980] 3 SCR 1338; State of Haryana v. Jage Ram, [1983] 4 SCC 56; Ram & Shyam Co. v. State of Haryana, [1985] 3 SCC 26 and Chenchu Rami Reddy v. Government of Andhra Pradesh, [1986] 3 SCC 391.

The West Bengal Land Management Manual, 1977 is published under the authority of the Board of Revenue, West Bengal. Like similar volumes going by whatever name, published by the Boards of Revenue of other States, the West Bengal Land Management Manual also is compendium of (1) statutes and rules framed either by the Government or by the Board of Revenue pursuant to a statutory power conferred on them; (2) Orders issued by the Government from time to time;

and (3) Orders, circulars, instructions and memoranda issued by the Board of Revenue from time to time. All these are arranged in such a manner that reference to them by the officials of the Revenue hierarchy is easy. Statutes and statutory orders have, no doubt, to be obeyed. It does not mean that other orders, instructions, etc. may be departed from in an individual case, if applicable to the facts. They are not to be ignored until amended. The Government or the Board may have the power to amend these orders and instructions, but nonetheless they must be obeyed so long as they are in force and are applicable.

The appellants invited our attention to paragraphs 165, 166 and 167 of the Land Management Manual and urged that the rules laid down by the provisions have been ignored by the Government of West Bengal. These provisions of the Land Management Manual do not appear to have anything to do with the transfer and use of the land in the manner proposed, in which the State also has a vital stake apart from the mere raising of revenue for the State. Paragraphs 165, 166 and 167 deal with simple cases of creation of non-agricultural tenancies by way of long term leases. They generally deal with land which is at the disposal of the Government as waste or surplus land and are intended to secure the best revenue for the State. They do not deal with cases of transfer of land for a specific socio-economic object, where, the securing of immediate revenue is not the principal object but other special and economic benefits are sought.

In pursuing the socio-economic objective is the State bound to

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invite tenders or held a public auction? To answer this question, we may refer to the cases cited at the Bar.

In *Rash Bihari Panda v. State of Orissa* (supra) the Government offered the option to purchase kendu leaves to certain old contractors on the same terms as in the previous year. Realising that the scheme of offering to renew contracts with the old licences on the same terms was open to objection, the Government changed its policy and formulated a new scheme by which offers were invited from intending purchasers of Kendu leaves but the invitation was restricted to these individuals who had carried out the contracts in the previous year without default and to the satisfaction of the Government. The Court held that the right to make offers being open to a limited class of persons, it effectively shut out all other persons carrying on trade in Kendu leaves and also new entrants into that business. It was, therefore, ex-facie discriminatory and imposed unreasonable restrictions upon the right of persons other than existing contractors to carry on business. It is to be seen that in the present case no one has come forward alleging that he has been discriminated against and his fundamental right to carry on business had been affected. The very nature of the construction and establishment of a Five Star Hotel is indicative of a requirement of expertise and sound financial position on the part of those who might offer to construct and establish them. The decision taken by the All-India Tourism Council was an open decision well-known to everyone in the hotel business. Yet no one except the I.T.D.C. and the Taj Group of Hotels had come forward with any proposal. We have it in the record that the Oberoi Group of Hotels already had a Five Star Hotel in Calcutta while the Welcome Group of Hotels were making their own Private negotiations and arrangements for establishing a Five Star Hotel. In the circumstances, particularly in the absence of any leading hoteliers coming forward, the Government of West Bengal was

perfectly justified in entering into negotiations with the I.T.D.C. and the Taj Group of Hotels instead of inviting tenders.

In *R.D. Shetty v. International Airport Authority* (supra). Bhagwati, J. speaking for the Court observed that the activities of the Government had a public element and if it entered into any contract, it must do so fairly without discrimination and without unfair procedure. Whenever the Government dealt with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of larges, the Government could not act arbitrarily at its sweet-will but must act in conformity with standards or norms without being arbitrary, irrational or irrelevant. If

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the Government departed from such standard or norm in any particular case or cases its action was liable to be struck down unless it could be shown that the departure was not arbitrary but was based on some valid principle which was not irrational, unreasonable or discriminatory. In the present case as earlier explained by us direct negotiation with these who had come forward with proposals to construct Five Star Hotels was without doubt the most reasonable and rational way of proceeding in the matter rather than inviting tenders or holding public auction. There was nothing discriminatory in the procedure adopted since no other leading hotelier had shown any inclination to come forward. Tenders and Auction were most impractical in the circumstances.

In *Kasturilal Lakshmi Reddy v. State of Jammu and Kashmir* (supra), Bhagwati, J. again, speaking for the Court reiterated what had said earlier in *R.D. Shetty v. International Airport Authority* (supra). He proceeded to say,

"The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a considerations less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced on implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to those considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that is wanting in reasonableness

or is not

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informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action."

With reference to the particular facts of the case, it was stated,

"The argument of the petitioners was that at the auctions held in December, 1978, January 1979 and April 1979, the price of resin realised was as much as Rs. 484, Rs. 520 and Rs. 700 per quintal respectively and when the market price was so high, it was improper and contrary to public interest on the part of the state to sell resin to the second respondents at the rate of Rs. 320 per quintal under the impugned order. This argument, plausible though it may seem is fallacious because it does not take into account the policy of the state not to allow export of resin outside its territories but to allot in only for use in factories set up within the State. It is obvious that, in view of this policy, no resin would be auctioned by the State and there would be no question of sale of resin in the open market and in this situation, it would be totally irrelevant to import the concept of market price with reference to which the adequacy of the price charged by the State to the second respondents could be judged. If the State were simply selling resin, there can be no doubt that the State must endeavour to obtain the highest price subject, of course, to any other over-riding considerations of public interest and in that event, its action in giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. But, where the State has, as a matter of policy, stopped selling resin to outsiders and decided to allot it only to industries set up within the State for the purpose of encouraging industrialisation, there can be no scope for

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complaint that the State is giving resin at a lesser price than that which could be obtained in the open market. The yardstick of price in the open market would be wholly inept, because in view of the State Policy, there would be no question of any resin being sold in the open market. the object of the State in such a case

is not to earn revenue from sale of resin, but to promote the setting up of industries within the State."

And again,

"If the State were giving tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject, of course, to any other relevant overriding considerations of public weal or interest. but in a case like this where the State is allocating resources such as water, power raw materials etc. for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry."

The observations of the Court in the light of the facts therein appear to fully justify the action of the West Bengal Government in the present case not inviting tenders or not holding public auction.

In *State of Haryana v. Jage Ram* (supra), it was held that it was not open to the Excise Authorities to pick and choose a few persons only as the recipients of the notice of re-auction. There was no explanation as to how they came to be chosen and what their status and standing in the trade were to justify the choice. The conduct of the authorities was thought not above suspicion. We have already explained why the choice of the Taj Group of Hotels must be held to be beyond suspicion and above reproach.

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In *Ram & Shyam Company v. State of Haryana* (supra) dealing with the question of disposal of State property Desai, J. speaking for the court said,

"Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property par-

takes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficial activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at the price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demure. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an

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approach serves the larger public purpose of expanding welfare activities primarily for which Constitution envisages the setting up of a welfare State."

In *Chenchu Rami Reddy v. Government of Andhra Pradesh* (supra) it was observed that public officials entrusted with the care of 'public property' were required to show exemplary vigilance. The Court indicated that the best method of disposal of such property was by public auction and not by private negotiation. That was a case where land belonging to a Math was sold by private treaty for Rs. 20 lakhs when there were people ready to purchase the land for Rs. 80 lakhs. The difference between sale of land and other readily saleable commodities and the allotment of land for establishing a modern Five-Star Hotel of International standard is so obvious as to need no more explanation.

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.

Applying these tests, we find it impossible to hold that the Government of West Bengal, did not act with probity in not inviting tenders or in not holding a public auction but negotiating straightaway at arm's length with the Taj Group of Hotels.

The last and final submission of the learned counsel for the appellants relates to the commercial and financial aspects of the lease. According to the learned counsel, the 'nett sales' method of calculating the compensation payable to the Government for the lease of the land had totally sacrificed the State's interests. He submits that if the market value of the land had been fairly determined and the rent had been stipulated at a percentage of that value, the return to the Government would have been much higher. We do not think that there is any

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basis for any genuine criticism. The 'nett sales' method appears to be a fairly well known method adopted in similar situations. This was what was recommended by WEBCON, the consulting agency of the West Bengal Government which submitted a detailed report on the subject. This was also the recommendation of the Committee of Secretaries who went into the matter in depth. Even to lay persons like us who are no financial experts, it appears that the 'nett sales' method does and the rent-based-on-market-value method does not take into account the appreciating value of land, the inflationary tendency of prices and the profit orientation. Even on a prima facie, there appears to be nothing wrong or objectionable in the 'nett sales' method. It is profit oriented and appears to be in the best interests of the Government of West Bengal.

On a consideration of all the facts and circumstances of the case, we are satisfied that the Government of West Bengal acted perfectly bona fide in granting the lease of Begumbari land to the Taj Group of Hotels for the construction of a Five-Star hotel in Calcutta. The Government of West Bengal did not fail to take into account any relevant consideration. Its action was not against the interests of the Zoological Garden or not in the best interests of the animal inmates of the zoo or migrant birds visiting the zoo. The financial interests of the State were in no way sacrificed either by not inviting tenders or holding a public auction or by adopting the 'nett sales' method. In the result, the judgments of the learned single judge and the Division Bench of the Calcutta High Court are affirmed and the appeal is dismissed. In the circumstances of the case, we do not desire to award any costs.

KHALID, J: The tenacity with which this expensive public interest litigation was pursued by the petitioners, before the learned Single Judge and a Division Bench of the Calcutta High Court and before this Court is commendable. But, after hearing the lengthy arguments advanced, I ask myself the question whether this exercise could not have been avoided.

Originally the writ petition was filed by five persons. The supporting affidavit to the writ petition was sworn to by the first petitioner who described himself as a trade unionist. Petitioner No. 2 & 3 are the life members of the Zoo and the remaining two, bona fide residents of Greater

Calcutta and lovers of wild life. The same five persons figured as appellants before the Division Bench. However, before this Court there are only two petitioners, the 1st and the 2nd in the writ petition.

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3rd and 4th petitioners figure here as respondents 6th and 7th. The 5th petitioner does not figure in the array of parties.

My learned brother has considered the facts in detail and the questions of law relevant for the purpose of this appeal. I fully agree with his conclusions. This short tail piece is with a purpose. This case goes by the name "Public Interest Litigation." I wish to delineate the parameters of public interest litigation concisely, against the background of the facts of this case, so that this salutary type of litigation does not lose its credibility. Today public spirited litigants rush to Court to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicion. See the facts of this case and end result.

The concern of the appellants has been to preserve the Zoo, to protect and encourage the migratory birds, to keep their trajectory clear, to preserve their diurnal feed and nocturnal habitat and to protect the Zoo. To serve this purpose they want to prevent a 5-Star Hotel coming up in its vicinity in four acres land belonging to the Zoo and thus to see that this land is not lost to the Zoo. The litigation has been pending from 1982 and in the bargain what has happened is described by the learned Trial Judge as follows, in paragraph 130 of his Judgment:

"130. Prayer for stay of the operation of this order is rejected. Because of the pendency of this matter, valuable time has been lost and if further time is lost, the respondent No. 5 may not have any further interest in the matter. They have suffered sufficient loss and the Govt. will also suffer loss. The public has also suffered. Accordingly, I am not inclined to stay this matter any further. I ought to point out further that as the petitioners obtained the interim order, obviously they were not interested in an early hearing of this matter and until a few months back no step was taken to have this matter heard. If a stay is granted, similar situation will follow."

This public interest litigation takes its birth, perhaps from the righteous indignation of the petitioners, against the State Government at their bartering away of four acres of land belonging to the Zoo to the Taj Group of Hotels. The writ petition is mainly based on the ground that the decision of the Government is arbitrary. The question to be answered is whether this accusation can be justified. On a

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perusal of the records I find that the State Government had made available to the Court all the relevant documents so as to satisfy the Court about the propriety of its action. This is how the trial Judge deals about this aspect of the case:

"4. Before I deal with the contention of the parties before me I ought to point out one thing. In this case, ultimately the hearing was not confined only in respect of the materials specified in the petition and affidavits or annexure to the same, but the submissions were based on the further documents and

files produced before me mainly by the State and also some documents by the private respondent being respondent No. 5.1 ought to point out that this is one of the exceptional cases where the State has made available to this Court all documents in connection with the proposal for lending over a piece of the State Government land to respondent No. 5 to enable them to construct a 5-star hotel in Calcutta. The State Government has produced before me the original files, including those containing the notes and Cabinet Memorandum for my inspection, the facts which I shall set out herein are gathered from these records and files produced before me, though most of them do not find place in the affidavits "

The two portions of Judgment extracted above show that things: one, the petitioners did not take any steps to get the matter heard expeditiously, after they obtained an interim order to get all the work stopped; two, that the State Government made available to the Court all the materials to prove that its decision was taken after mature consideration at all levels.

The appellants failed before the learned Trial Judge on all the points raised by them. After an exhaustive discussion of the various aspects of the case, the learned Trial Judge dismissed the petition. The only ground on which the appellants succeeded before the Trial Judge was on locus standi. This preliminary objection of the Hotel Group was rejected.

The matter was taken in appeal. The Division Bench in an equally reasoned Judgment, advertng to all the factual aspects of the case, upheld the Judgment of the learned Trial Judge and dismissed the appeal.

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One redeeming factor in this case is the total absence of any allegation of malafides against the Government by the petitioners. This is how the Division Bench deals with aspect of the case in its Judgment:

"The appellants before us have impunged the State Government's decision to grant aforesaid four acres of land out of Begumbari Compound to India Hotel Co. Ltd., mainly on the ground that the same was unreasonable and arbitrary. The State Government did not apply its mind to relevant facts before disposing of the said valuable lands in discharge of the public interest. In their writ petition or in course of their submissions before us the appellants did not try to make out a case of personal malice against the State Government or its Ministers and Civil Servants "

The Division Bench held that the decision taken was neither unreasonable nor arbitrary and that taking away of four acres of land from the Zoo was not detrimental to public interest.

One would have thought that the concurrent decisions of the learned Single Judge and the Division Bench, on the facts of the case, would have persuaded the appellants, to rest content with the litigation by accepting the verdicts so given. They could have moved the Government or taken other steps to expedite the starting of an additional Zoo with a larger extent which the Government promised. But the appellants felt that public interest would be served better

by moving this Court for reconsideration of the factual details. When the matter came up before this Court, this Court gave priority to this case despite the huge pendency of cases before it, to see whether public interest was really in peril or not.

During the course of the arguments, we soared high along with the migratory birds into the realms of ecology, environmental protection, public interest, natural justice, arbitrariness, eminent domain and the like and ultimately, from those ethereal regions descended on the terraferma faced with the reality that this case is devoid of any merits and has only to be dismissed. That is why I prefaced this Judgment with the observation that this was an avoidable exercise.

The approach of the Taj Group Hotels in this case has been creditably fair. They have given all the assurances necessary to preserve the Zoo and its inmates. They were willing to afford all the

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requisite safeguards. In the place of a dilapidated hospital, operation theater and the like, they constructed buildings anew at a cost of Rs.30 lakhs which amount they were entitled to be reimbursed under clause 25 of the lease, which they voluntarily gave up. In addition to this, they surrendered an area of 288 sq. mtrs. from the land allotted to them to the Zoo. They agreed to build not the usual skyscraper hotel, but a garden hotel, the height of which would not go beyond 75 feet, despite the fact that there existed in the surrounding area buildings which were very high. This was done to keep free the route of the flight of the birds. They also agreed to have subdued light in the hotel, again in the interest of the birds. They agreed to keep the surroundings of the hotel and the flora well maintained. We were told that already 30000 plants were getting ready to adorn the area to be occupied by them.

Regarding the commercial and financial aspects of the lease also there is nothing secretive though they came in for sharp criticism at the hands of the appellants before us. This criticism again, according to me, is unfounded. The learned counsel for the Taj Group made available to us, the method adopted. The method adopted is the nett sales method of calculating the compensation paid. This is a fairly well known method adopted in such situations. This method was also subject to criticism by the appellants' counsel and he in support of his submission handed over to us a calculation, which according to me, betrays unawareness with the method of calculation to be adopted in similar cases. The calculation given to us so far as its arithmetic is concerned is correct. That is this. An amount of 4 crores, if deposited in bank, at a particular rate of compound interest, for 99 years, would swell to an astronomical figure. This calculation is relevant only when you think of selling the land and investing the sale proceeds in a bank. This calculation conveniently forgets that what is involved here is not the sale of the land but a lease by the Government, as a policy decision to the hotel group to start a Five Star Hotel, which according to the Government was a prime need to the city of Calcutta. The calculation handed over has no bearing to the facts of this case at all.

A deal like this cannot be concluded by public auction. Here, we do not have a case, again, sale of a Government property. Therefore, public auction has necessarily to be ruled out. Only Taj Group of Hotels came forward with an offer to start the hotel. The lease was the culmination after a long, elaborate and open procedure with nothing to

hide which therefore cannot justifiably be subject to adverse criticism.

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My purpose in adding these few lines of my own is to highlight the need for restraint on the part of the public interest litigants when they move Courts. Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guide-lines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

I should not be understood to say that traditional litigation should stay put. They have to be tackled by other effective methods, like, decentralising the judicial system and entrusting majority of traditional litigation to village courts and Lok Adalats without the usual populist stance and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases.

It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the under-dog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self imposed restraint of public interest litigants.

Ultimately, by the dismissal of this appeal, the hotel will be completed and will be commissioned. Six long years have passed by. I do not think that the appellants have achieved anything. The first appellant who is a trade unionist has not espoused any grievance of the mazdoors before us. It was faintly suggested by the Government's counsel that the first petitioner does not represent all the mazdoors. This was refuted by the appellants. For the purpose of this case, we will accept the assertion of the first appellant. Still, we did not have before us any of their grievances ventilated, which, if there were any, we would have willingly considered.

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I conclude this short Judgment, with a lurking doubt in my mind, and with a question "Is there something more than what meets the eye in this case?"

S.R.
missed.

Appeal dis-

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