
Before N.K. Sodhi & Jasbir Singh, JJ

VIJAY MAHAJAN,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.P.W. 4238 of 2001

22nd January, 2002

Constitution of India, 1950—Art. 226—Punjab Municipal Act, 1911—Ss.16(1)(e), 16(2) & 22—Unauthorised occupation of shamlat land—Government framing a policy for allotment of land to the occupants at the specified rates—Petitioner as President of the Council certifying some applications by countersigning the same—Allegation against the petitioner of making wrong verification in collusion with the persons who were not entitled to the allotment in terms of the policy—Enquiry Officer finding only the Executive Magistrate responsible for wrongly executing the sale deeds in favour of ineligible persons—Government withdrawing the show cause notice issued to the petitioner and serving another show cause notice on the same charges—Removal from the office of President—High Court quashing the order being illegal while granting liberty to the State Government to pass a fresh order in accordance with law—Government issuing third show cause notice to the petitioner on the basis of a fresh inquiry—On the same set of facts and allegations, Government for the first time holding the petitioner guilty of misusing and abusing his official position and causing loss to the Council—The act of the petitioner of counter-signing the application forms innocuous and nothing wrong done by him—Charges levelled against him are without any basis—Two members of the Council signing the applications as attesting witnesses—Merely because they signed the applications and the sale deeds as attesting witnesses does not mean that they verified the contents thereof—No case for taking action against them u/s 16(1)(e) of the 1911 Act is made out—Writs allowed while quashing the orders removing the petitioners from their elected offices and debarring them from contesting municipal elections for a period of two years.

Held, that the President, Nagar Council had not verified any wrong fact while countersigning the applications of the six applicants to whom the land was allotted and the charges levelled against him are without any basis. Even if it were to be assumed that the President in counter-signing the applications committed some wrong which facilitated the allotment of land to ineligible persons, it was not a continuing wrong that could possibly attract the penal provisions of Section 22 of the Punjab Municipal Act. It is not the case of the respondents that before or after the aforesaid sale deeds were executed on 17th June, 1998, the President repeated this act in any other case or it has become a course of conduct with him in this regard. Such a conduct is not covered by the provisions of Section 22 of the 1911 Act whereunder a single or casual aberration is not enough.

(Para 20)

Further held, that the list prepared in the year 1984 was not exhaustive and there were several persons who were found to be in possession but whose names did not appear in that list and that land was allotted to them. If land was allotted to six applicants on the verification of the President, we find that no illegality or even irregularity had been committed by him because the policy of the Government was to allot land to those who were in its unauthorised occupation particularly when no cut off date had been fixed in the policy framed by the Government.

(Para 22)

Further held, that the show cause notices issued to the members of the council u/s 16(1)(e) were without any basis. The members of the Council were only attesting witnesses of some of the documents and an attesting witness only identifies the executant of a document and cannot be held to have verified the contents thereof. Therefore, no case for taking action against the members u/s 16(1)(e) of the Act is made out.

(Paras 24 & 26)

Ashok Aggarwal, Sr. Advocate with M.S. Bedi, Advocate for
the petitioner.

Charu Tuli, DAG Punjab for respondents No. 1 & 2.

R.C. Dogra, Sr. Advocate with Sheela Dogra, Advocate and
S.P. Jain, Sr. Advocate with Vijay Kumar Chaudhary,
Advocate for the intervenors.

JUDGMENT

N.K. SODHI, J :

(1) This bunch of three writ petitions raises common questions of law and fact and these are being disposed of together.

CWP 4238 of 2001

(2) Challenge in this writ petition is to the order dated 31st January, 2001 passed by Shri N.K. Arora, the then Principal Secretary to Government of Punjab, Department of Local Government removing the petitioner from the office of President, Nagar Council, Dina Nagar (for short the Council) as well as from its membership and further debarring him from contesting municipal elections for a period of two years. Earlier also the same officer by his order dated 14th December, 1999 had removed the petitioner from the office of the President of the Council on the same set of charges said to have been proved against him though he was allowed to continue to function as a member of the Council. The order now impugned has been passed in exercise of the powers under sections 16(1)(e), 16(2) and 22 of the Punjab Municipal Act, 1911 (as amended up to date and hereinafter called the Act). The previous order dated 14th December, 1999 had been successfully challenged by the petitioner in CWP 17960 of 1999 which was allowed on 23rd May, 2000 with liberty to the State Government to pass a fresh order in accordance with law.

(3) Facts giving rise to this petition may first be noticed.

(4) An area measuring 31 acres of shamlat land was transferred to the Council by the State Government on 30th April, 1976 through the Department of Revenue. This land had been illegally encroached upon by about 294 families. The issue of encroachment came up for consideration of the Council and it was decided by resolution No. 411 dated 30th July, 1981 that shamlat land should not be sold and instead the same be let out on rent as that would provide a yearly income for the Council. This resolution was not accepted by the Deputy Commissioner who suspended the same in exercise of his powers under

section 232 of the Act. The matter was again considered by the Council and it was resolved on 20th November, 1981 that the land in question be got vacated from the unauthorised occupants and the same be allotted to the needy persons by inviting applications from all concerned. In order to sort out the problem pertaining to unauthorised occupation of municipal land the State Government instituted an enquiry and Shri B.D. Dhawan the then Joint Director, Local Government was asked to submit a report. Shri Dhawan associated with him the then Regional Deputy Director, Local Government, Amritsar and some others and submitted a report that almost the entire area of 31 acres was under illegal occupation of different persons. On a consideration of this report the State Government took note of the fact that most of the persons illegally occupying the land were from the weaker sections of the society like the scheduled castes and others and, therefore, decided that the land be sold by the Council to the various occupants at the rates specified by the State Government. This decision of the State Government was communicated to the Council as per memo dated 25th June, 1984. In this letter the State Government mentioned that there were 294 illegal occupants of the land though there was no certified list either on the record of the State Government or that of the Council and that there is nothing on the record from which it could be ascertained as to who were the persons who occupied 31 acres of land and to what extent. The matter regarding allotment of land to the unauthorised occupants could not be finalised for almost ten years presumably because the Municipal Committee in the State had been disbanded during the President's Rule in the State of Punjab. The Council then took up the matter in the year 1994 and by its resolution No. 25 dated 18th March, 1994 decided that the rates which were approved by the State Government in the year 1984 were extremely low and that the unauthorised occupants of the land be allotted the land in their possession at the revised rates specified in its resolution. It may be mentioned that the Council revised the rates of the land as under :-

Property for residential use :-

1. 1 to 5 Marlas : Rs. 400 per Marla and in case the area is less than 1 Marla the rate would be Rs.400 per marla only.

2. 6 to 10 Marlas : Rs. 800 per marla.

3. Above 10 Marlas : Rs. 4,000 per marla.

Commercial land :

At the rate of Rs. 7,000 per marla applicable to all.

A copy of the resolution was sent to the State Government for its approval which was accorded. A copy of the approval is Annexure P-13 with the writ petition.

(5) In the general Municipal elections held in the month of January, 1998, the petitioner was elected a Municipal Councillor from Dina Nagar and thereafter in April that year he was elected President of the Council. During his tenure as President, seven persons namely, Sardari Lal, Puran Chand, Rajesh Kumar, Ramesh Kumar, Onkar Nath, Rakesh Kumar and Ashok Kumar applied for the transfer of land in their possession in terms of the aforesaid decision of the State Government and the Council. They filed their applications in the prescribed Form 'B' on 12th June, 1998 seeking purchase of the land. Each application was signed by the applicant, attested by two witnesses and thereafter the same was countersigned by the petitioner as President of the Council. The applications were then put up to the Executive Officer who was competent on behalf of the Council to execute the sale deeds. On receipt of the applications, the Executive Officer directed Patwari, Dina Nagar to prepare a site plan *qua* each of the site and further directed that notice be issued to the applicants for deposit of money at the rates fixed by the Council. In the notice issued to the applicants they had been told that the Council had decided to allot the land in their possession the details of which were mentioned in the notice. As already observed, such applicant was required to deposit the total price of the plot in his occupation. After the deposit of the sale price each applicant entered into an 'agreement to sell' in the prescribed Form 'A' which was signed by the Executive Officer on behalf of the Council. It was thereafter that all the sale deeds were executed on 17th June, 1998 and registered on 18th June, 1998. The Executive Officer signed the sale deeds on behalf of the Council.

(6) A complaint was received from an ex-Municipal Councillor regarding the above mentioned sale deeds alleging that land had been

wrongly transferred to ineligible persons. On receipt of this complaint the Government instituted an enquiry. The Regional Deputy Director, Local Self Government, Amritsar who conducted the enquiry submitted his report on 13th May, 1999 and found only the Executive Officer responsible for wrongly executing the sale deeds causing financial loss to the Council. No role was attributed to the petitioner. However, surprisingly enough in spite of nothing having been said against the petitioner, the Government chose to issue a notice to him under sections 16(1)(e), 16(2) and 22 of the Act to show cause why he should not be removed from the office of the President and his membership of the Council terminated and he be also debarred for five years from contesting municipal elections. On the basis of the enquiry it was alleged in the show cause notice that the Council had wrongly executed seven sale deeds on 17th June, 1998 transferring municipal land to the aforesaid seven persons when their names except that of Sardari Lal did not appear in the list of unauthorised occupants as prepared in the year 1984 and the plots were lying vacant. On receipt of this notice, the petitioner submitted his detailed reply giving the background under which the land had been transferred to the seven persons named in the show cause notice. He also pointed out that there were some other sale deeds as well which had been executed by the Council in favour of persons whose names did not figure in the list of unauthorised occupants as was prepared in the year 1984 and that those sale deeds had not been questioned. In particular, he referred to the names of Manjit Kaur, w/o Harbinder Singh, Kuldip Singh, s/o Harbinder Singh and Jaswant Kaur, w/o Karnail Singh. He admitted having countersigned the applications of the seven persons but denied having played any role in the allotment of plots. The stand taken by him was that the agreements to sell had been executed by the Executive Officer after getting the site plans prepared and it was he who completed all the formalities and transferred the land to those applicants. He also submitted that it was the Executive Officer who was responsible for the transfer of the plots as was found by the Regional Deputy Director in his enquiry report. He described the allegations made against him as baseless and politically motivated and prayed that the show cause notice be set aside and the enquiry proceedings against him be dropped. This reply was sent to the Government on 17th June, 1999.

(7) On a consideration of the reply submitted by the petitioner the show cause notice was withdrawn and a communication to this effect was sent to the petitioner on 22nd September, 1999. However, on the same day he was served with another show cause notice under sections 16(1)(e), 16(2) and 22 of the Act again calling upon him to show cause why he should not be removed from the Presidentship of the Council, his membership terminated and he be further debarred from contesting the municipal elections for the next five years. The charges contained in this show cause notice were the same as contained in the earlier notice dated 27th May, 1999. It was alleged that seven sale deeds had been executed in favour of the persons whose names had been mentioned therein and that he (petitioner) had verified their applications by countersigning them whereas persons other than Sardari Lal were not in occupation of the land and, therefore, in terms of the policy they were not entitled to the allotment. The gravamen of the charge as contained in this notice was that six persons had been successful in getting the sale deeds executed in their favour on the basis of wrong verification made by the petitioner. It was alleged that this was done in collusion with those six persons. On receipt of this show cause notice the petitioner submitted his detailed reply on 21st October, 1999 taking the same stand which he had taken in the reply filed by him to the earlier show cause notice. It was stated by him that it was the Executive Officer who executed the sale deeds after examining the reports from the revenue authorities regarding possession and area of the plot and that the role of the petitioner as President was only symbolic and that the Executive Officer was responsible for transferring the land to the applicants. It was also pleaded by the petitioner that by merely countersigning the applications of the aforementioned six persons no loss had been caused to the Council. He also pointed out in his reply that the Regional Deputy Director in his report had found that it was the Executive Officer who had wrongly executed the sale deeds relating to vacant land which might have resulted in some financial benefit to the applicants and that he (petitioner) was not found responsible for the same. On a consideration of the reply filed by the petitioner and after examining the entire record, Shri N.K. Arora the then Principal Secretary, Department of Local Government found the petitioner guilty of having wrongfully verified the applications of six persons on the basis of

which allotments were made to them and by his order dated 14th December, 1999 removed the petitioner from the office of the President of the Council. The relevant part of the order reads as under :—

“I have gone through the facts of the case and have given due consideration to the points raised in reply to the show cause notice by Shri R.C. Sharma, Law Officer of the Department and also counter points urged on behalf of the State Government. Admittedly, Shri Vijay Kumar as President of Nagar Council, Dina Nagar has verified through counter signatures the applications of S/Shri Sardari Lal, Puran Chand, Rajesh Kumar, Ramesh Kumar, Onkar Nath, Rakesh Kumar and Ashok Kumar for allotment of plots at reserve price. Excepting Shri Sardari Lal, the rest of the applicants were not in physical possession of the plots as per the list drawn in 1984. They were thus not eligible for allotments. As custodian of the Municipality, Shri Vijay Kumar should have exercised the necessary care and caution while certifying the contents of the applications put in by the interested persons. He had wrongly attested particulars given in Form B and has thus helped wrongful allotments. The contention of the noticee that he had put his signatures in routine and it was for the Executive Officer to check up the rest of the things, does not carry any conviction. Of course, the Executive Officer is equally at fault for which independent and separate proceedings are warranted against him also. This would not, however, absolve Shri Vijay Kumar, President, Nagar Council, Dina Nagar of the allegation, which stands established. He is, therefore, hereby removed from the office of the President, Nagar Panchayat, Dina Nagar. He would however, continue to function as the Member of the Nagar Council.”

(8) Feeling aggrieved by this order, the petitioner filed Civil Writ Petition 17960 of 1999 in this Court challenging the same primarily on the ground that the said order was *ultra vires* the provisions of the Act and was arbitrary and violative of principles of natural justice. It was contended that mere countersigning of the applications submitted

by the six applicants could not be treated as misconduct warranting his removal from the office of the President. He referred to the findings recorded by the Regional Deputy Director in his enquiry report holding the Executive Officer responsible for the transfer of the land to the applicants and on that basis it was submitted before this court that the order had been passed without any application of mind. The writ petition was allowed by a Division Bench of this Court on 23rd May, 2000 and the order removing the petitioner from the office of the President of the Council quashed with the following observations :—

“A careful reading of the above reproduced extracts of the notice, the reply and the impugned order shows that the petitioner was charged with the allegation of having misused his office and of causing financial loss to the municipal council, but in the final order he has not been held guilty of having abused his power as President of the Municipal Council or of having caused loss to the municipal funds or property. Rather, the Principal Secretary to the Government, Local Self Government Department, Punjab has held him guilty of lack of care and caution while certifying the contents of the applications submitted by the interest persons and of having wrongly attested the particulars given in form ‘B’. This is clearly borne out from the observation made by him that “As custodian of the municipality, Shri Vijay Kumar should have exercised necessary care and caution while certifying the contents of the applications put in by the interested persons. He had wrongly attested the particulars given in form ‘B’ and has thus helped wrongful allotments.” It is, thus, clear that the petitioner has not been found guilty of having abused his power or of habitual failure to perform his duties and yet he has been removed from the office of President. In our considered view, the Principal Secretary to the Government, Local Self Government Department could not have passed the impugned order simply because the petitioner had not exercised necessary care and caution while certifying the contents of the applications submitted by some persons for allotment of land or on the allegation of wrongly attesting the particulars given in form ‘B’ which facilitated wrongful allotments.

We are further of the view that the impugned order is liable to be quashed on the ground of violation of the principles of natural justice because the points raised by him in the reply were not considered by the Principal Secretary to the Government. In his reply, the petitioner had given the entire background in which the exercise for allotment of land had taken place. He had also referred to the findings recorded in the enquiry report of the Regional Deputy Director in which the officer concerned had observed that the Executive Officer of the Municipal Council was responsible for execution of the sale deeds resulting in financial loss to the Municipal Council but neither of the points raised by him was considered and no reason had been assigned in the impugned order for not entertaining the same. Even in the written statements filed on behalf of the respondents, it has not been explained as to why the unequivocal findings recorded by the Regional Deputy Director suggesting the culpability of the Executive Officer was over-looked by the Principal Secretary to the Government while ordering the petitioner's removal from the office of President.

In the result, the writ petition is allowed. Order Annexure P. 6 is declared illegal and quashed with liberty to the State Government to pass fresh order in accordance with law."

(9) After the writ petition was allowed the State Government by its memo dated 18th October, 2000 ordered the Deputy Director, Urban Local Bodies, Amritsar to conduct a fresh enquiry in regard to the same complaint dated 23rd July, 1998 as made by the Ex-Municipal Commissioner. He conducted the enquiry on 23rd October, 2000 inasmuch as he went to Dina Nagar and recorded the statements of some persons including the petitioner and the complainant. Thereafter he submitted his report on 31st October, 2000 holding that the petitioner after receiving the claims of the applicants in Form 'A' had countersigned the applications on the basis of which the sale deeds were executed. He further concluded that the petitioner misused his powers as President inasmuch as commercial property had been sold as residential thereby causing loss to the Council. He also found that the land was lying vacant and if the Council had sold the same

in open auction it would have fetched lacs of rupees. The enquiry officer recommended that the petitioner be proceeded against under sections 16 and 22 of the Act. A copy of this enquiry report was produced before us during the course of arguments and a perusal thereof would show that the enquiry officer recorded the statements on 23rd October, 2000. He has reproduced the gist of the statements in his report and at the end he has arrived at the aforesaid conclusions without any discussion. This enquiry report, to say the least, is most unsatisfactory and it appears that it was obtained with a view to proceed against the petitioner.

(10) On the basis of the aforesaid enquiry report, the petitioner was served with yet another notice dated 6th December, 2000 i.e. the third notice to show cause why he should not be removed from the office of the President, primary membership of the Council and why he be not debarred from contesting municipal elections for a period of five years. The allegations levelled in this show cause notice were the same which were made in the two earlier show cause notices dated 27th May, 1999 and 22nd September, 1999. It was again alleged that the petitioner had countersigned the seven applications on the basis of which wrongful allotments had been made to the six applicants who were not in possession of the land. A new story was introduced this time in the show cause notice it being alleged for the first time that the plots sold to the seven persons were commercial but had been sold as residential plots and that this was done by the petitioner in connivance with Sudesh Kumar and Renu Bala members of the Council which resulted in financial loss to the Council. The allegation that the plots had been transferred in favour of persons who were not in possession thereof was reiterated and all the details as stated in the earlier two show cause notices were repeated. The petitioner submitted his detailed reply on 28th December, 2000 to this show cause notice taking the same stand which he had taken in reply to the two earlier show cause notices served on him. He reiterated that it was the Executive Officer who was responsible for the transfer of the land and that he as President of the Council had played no role in this regard. He also submitted that no financial loss had been caused to the Council as the allotment had been made to the occupants of land in question as per the rates fixed by the Council by its resolution No. 25, dated 18th March, 1994. It was admitted that he had countersigned the applications but that, according to him, was done in routine. Shri N.K. Agora, the then Principal Secretary to

Government, Department of Local Government, considered the show cause notice and the reply to the petitioner on 30th January, 2001. He also afforded an opportunity of personal hearing to the petitioner on that day. Petitioner appeared before Shri Arora alongwith his counsel who sought an adjournment but the same was declined stating that the counsel had not furnished any cogent reasons for seeking an adjournment. The petitioner then stated that he would himself make his submissions. He too requested for an adjournment on the ground that a copy of the report submitted by the Regional Deputy Director, Amritsar had not been supplied to him which was the basis of the show cause notice issued to him. The Law Officer who was representing the Department intervened and stated that that was not the stage for seeking documents. Shri Arora declined the request of the petitioner and heard arguments in the case. Petitioner submitted before the State Government that on two earlier occasions as well he had been served with a similar show cause notice to which he had submitted a detailed reply and that the same officer had found him guilty of negligence in the performance of his duties and, therefore, ordered his removal as President of the Council. He further brought to the notice of the State Government that the earlier order of removal dated 14th December, 1999 had been quashed by this court in Civil Writ Petition 17960 of 1999 and, therefore, the State Government could not proceed against him on the same set of allegations. He contended that the order of removal had been quashed on merits and there was no occasion for the State Government to proceed again. The proceedings were described as politically motivated. Shri N.K. Arora after hearing the petitioner in person and the Law Officer on behalf of the Department came to the conclusion that the misconduct of the petitioner stood established and that he was guilty of abuse of his official position causing financial loss to the Council though earlier the same officer on the same set of facts had held the petitioner guilty of not taking due care and caution while countersigning the applications. This time he not only ordered removal of the petitioner from the Presidentship of the Council but also removed him from the membership thereof and debarred him from contesting municipal elections for a further period of two years. This order was passed on 31st January, 2001 with the following observations :—

- “8. After hearing the parties and perusal of the case, I find that only Shri Sardari Lal was reflected in possession of whole of the vacant plot measuring 72 Marlas as per

the list drawn in 1984. However, the applications of S/ Shri Sardari Lal, Puran Chand, Rajesh Kumar, Ramesh Kumar, Onkar Nath, Rakesh Kumar and Ashok Kumar have been accepted for allotment of plots at reserve price with intent to cause loss to the Nagar Council Dina Nagar. Shri Vijay Mahajan being the President and custodian of the assets of the Municipality has failed to discharge his obligations and responsibilities. The plot was vacant having no construction and therefore, could not be sold in terms of the policy of the State Government. Still further the plot was commercial and had common approach from Railway roadside. The President countersigned the claim Forms of the above name persons as correct had facilitated the execution of the sale deeds in favour of the above persons by abusing and misusing his powers. It is unbelievable that the President would sign Form B in routine. Having signed Forms, the President has misused and abused his power and caused loss to the Nagar Council Dina Nagar to the extent of Rs. 3.79,000 as well. The misconduct of the President is established. He is guilty of abuse of his official position and causing huge financial loss to the Nagar Council Dina Nagar.

9. In View of the discussions above, Shri Vijay Mahajan is hereby removed from the office of President as well as Membership of Nagar Council Dina Nagar and is further debarred from contesting municipal elections for a period of two years in exercise of powers vested with the undersigned under the respective sections of the act *ibid.* Order is passed accordingly.”

Hence, this writ petition.

(11) We have heard counsel for the parties at length and also Shri S.P. Jain and Shri R.C. Dogra; Senior Advocates for the intervenors.

(12) The impugned order dated 31st January, 2001 as notified on 16th March, 2001 has been challenged before us on the following grounds and from the discussion that follows we find merit in them.

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- (1) That the first show cause notice dated 27th May, 1999 had been withdrawn by the State Government after considering the reply of the petitioner and, therefore, the former had not jurisdiction to issue another show cause notice on the same set of facts and allegations.
 - (2) That the second show cause notice issued on 22nd September, 1999 resulted in the passing of the order removing the petitioner from the office of the President of the Council and the same having been quashed on merits by this court in CWP 17960 of 1999, the State Government could not issue another show cause notice on the same set of facts and allegations without there being any fresh material.
 - (3) That the petitioner had not misused or abused his powers in any way nor had he caused any loss to the Council.
 - (4) That the impugned order has been passed without application of mind and without considering the detailed explanation furnished by the petitioner.
 - (5) That the impugned order is a biased one passed for extraneous reasons because the same officer had earlier come to the conclusion that the petitioner was negligent in the performance of his duties inasmuch as he did not exercise due care and caution while countersigning the applications which, as held by this court, was not a ground to remove him either from the office of the President of the Council or from the membership thereof whereas now on the same facts the same officer finds him guilty of abuse of power so as to bring the order within the purview of the Statute.
 - (6) That the punishment imposed is disproportionate to the alleged misconduct, if any.
 - (7) That the impugned order has been passed in violation of the principles of natural justice inasmuch as the petitioner was not given any proper opportunity to

defend himself and that Shri N.K. Arora had also not an open mind as indicated from the circumstances of the case.

(13) Let us first examine what the petitioner had actually done and how the sale deeds came to be executed. Seven persons, namely, Sardari Lal, Puran Chand, Rajesh Kumar, Ramesh Kumar, Onkar Nath, Rakesh Kumar and Ashok Kumar claiming to be in unauthorised occupation of Shamilat land which stood transferred to the Council applied for its allotment to them in terms of the decision taken by the State Government and the Council. They submitted their applications on 12th June, 1998 in prescribed Form 'B'. Each application was signed by the applicant and the same was attested by two witnesses. The petitioner countersigned all the applications as President of the Council. Rakesh Kumar, one of the applicants, in his application has mentioned his name and his father's name against columns No. 1 and 2. Against column No. 3 he has stated that a copy of his ration card had been attached with the application. Column No. 4 pertains to the total income of the applicant and his family which has been left blank. Column No. 5 has two parts; clause (a) thereof requires the applicant to mention the area under his possession and whether the land was being used for residential or commercial purposes; clause (b) requires the applicant to state whether the building plans had been sanctioned by the Council. Column No. 6 of the application form requires the applicant to draw a rough site plan indicating the boundaries/measurements of the plot under his possession. Against columns No. 5 and 6 this applicant had drawn a rough site plan giving the measurements of the plot in his possession and also referred to the boundaries thereof. He did not state whether the land was residential or commercial. Columns No. 7 and 8 of the application form are not relevant for our purpose and in any case these have been left blank by this applicant. In column No. 9 it is printed that the applicant is aware of the terms and conditions of the allotment and that he has annexed his affidavit to the application. It is further stated therein that the applicant is willing to purchase the property at the fixed rates and that he is in possession of the plot and that there was no dispute pending in regard thereto and that no stay order had been granted by any court regarding the plot in question. It is also printed that

the applicant will be bound by the terms and conditions of the allotment. Rakesh Kumar has signed this prescribed form which has been attested by two witnesses, namely, Renu Bala, Municipal Councillor and one more person with whom we are not concerned. Petitioner as President of the Council has put his signatures under the word 'countersigned' which is printed on the form. Thereafter, the application was put up to the Executive Officer on the same day who directed the Patwari to prepare a site plan. The site plan was prepared after visiting the site and it gave the dimensions and boundaries of the plot. On the site plan submitted by the Patwari which is on a plain piece of paper, the Executive Officer verified that the plot was residential in nature and fixed the price at Rs. 2,000 and thereafter passed an order issuing notice to the applicant. A copy of the notice is also on the record. Notice No. 372, dated 12th June, 1998 was issued to this applicant requiring him to deposit a sum of Rs. 2,000 within 15 days failing which his application would stand rejected. It further stated that in the event of his not depositing the amount steps would be taken to eject him from the land in his possession. It is common case of the parties that on receipt of this notice, the applicant deposited the aforesaid amount and entered into an agreement to sell with the Council. This agreement does not bear any date and has been signed by Rakesh Kumar applicant and by the Executive Officer on behalf of the Council. The agreement has also been attested by the same two witnesses who attested the application Form 'B'. Thereafter the sale deed was executed on 17th June, 1998 which was signed by Rakesh Kumar applicant and the Executive Officer of the Council alongwith two witnesses. Similar is the case the other six applications except that in the case of Sardari Lal the applicant had applied for the allotment of two plots which were in his unauthorised possession and after getting the site plans prepared the Executive Officer verified one of those plots as a residential plot and the other one as commercial and fixed their price accordingly. It is, thus, clear that the petitioner had only countersigned the applications in Form-B and all that was stated in the applications was correct and no part of it has been found to be false. The applicants had stated in those applications that they were in unauthorised possession of the plots and this fact stands established in the enquiry report submitted by the Regional Deputy Director, Local Self Government, Amritsar dated 13th May, 1999 and also in

the subsequent report dated 31st October, 2000 submitted by the Deputy Director, Urban Local Bodies, Amritsar. In the report dated 31st October, 2000 it is stated as under :—

“In the record of Council out of list of 294 persons the persons mentioned at serial No. 2 to 7 are not in the list. As per jamabandi of 1982-83 Shri Sardari Lal was occupant of 5 kanals 10 marlas of this land. He has 17 marlas of land under his possession the detail of which is at serial No. 1. He handed over the rest of the land to other persons out of which the above mentioned persons are included. There is no record or proof in the record of Council when he handed over the possession to the above persons. Nagar Council obtained application forms from the above mentioned persons and the Councillors signed as witnesses and Shri Vijay Kumar Mahajan countersigned the particulars of the application forms. In this form there is a mention of persons who is in possession of land etc. The site was inspected and it was found lying vacant with only some foundation and there was no construction having been done.’

The persons referred at Serial Nos. 2 to 7 are the six applicants whose applications are alleged to have been wrongly verified by the petitioner. In other words, in both the enquiries conducted by the State Government it was found that Sardari Lal who was in possession of 5 kanals 10 marlas of land had retained 17 marlas with him and the remaining 93 marlas were handed over by him to different persons including the six applicants whose applications are in question though it has been found that there is nothing on the record to show as to when that possession was delivered by Sardari Lal to those persons. In any case, possession of those persons over the land in dispute stood established as per the enquiry reports.

(14) Having examined the factual position in the light of the two enquiry reports, we may now deal with the allegations made against the petitioner to determine if there is any substance in them. In the first show cause notice issue on 27th May, 1999 it was alleged that sale deeds were executed pertaining to vacant land and the seven

persons referred to above had been financially benefited and that for his personal gains the petitioner had caused financial loss to the Council. It was, therefore, proposed that action be taken against the petitioner under sections 22, 16(1)(e) and 16(2) of the Act. As already mentioned earlier, a detailed reply to this show cause notice was given by the petitioner and on a consideration thereof Shri N.K. Arora, the then Principal Secretary, Local Government afforded a personal hearing to the petitioner on 7th September, 1999 and reserved his orders. However, on 14th September, 1999 he recorded the following order on the file :—

During the course of personal hearing on 7th September, 1999, Shri Vijay Mahajan, President MC Dinanagar, stated that he in no way connected with the transfer and registration of the properties mentioned in the show cause notice. The transactions were conducted and completed by the Executive Officer. It was also stated by him that he had only forwarded one application for consideration of the Executive Officer. The actual registration was to be done on verification of official record and spot inspection which were required to be done by the Executive Officer.

2. The record is silent. DLG may please have a detailed report in this regard from DDR, Amritsar. It may be particularly examined if Shri Mahajan can actually be held responsible for any irregularity or flaws. It may also be checked up what action has been against the Executive Officer. Also please examine what can be done at this stage to retrieve the properties if they were transferred irregularly ?
3. The file may please be put up after doing the needful in 2 weeks time whereafter the decision would be pronounced.”

We have been the original record which was produced by the learned Deputy Advocate General, Punjab and it is clear therefrom that after the recording of this order, no fresh inquiry was held nor was any fresh report received by the Government. However, one note was put up on 21st September, 1999 in which it was suggested that

in view of the order dated 14th September, 1999 the show cause notice issued to the petitioner be withdrawn and that a fresh show cause notice be issued to him on the basis of a revised report received from Deputy Director, Local Bodies, Amritsar which was stated to be at page 49 of the file. At page 49 of the file is the report dated 14th July, 1999 received from the Regional Deputy Director, Local Government, Amritsar which was already before the State Government when the order dated 14th September, 1999 was passed. The note dated 21st September, 1999 was surprisingly approved by Shri N.K. Arora and thereafter the show cause notice dated 27th May, 1999 was withdrawn and a fresh show cause notice was issued to the petitioner on 22nd September, 1999. In this second show cause notice it was alleged that from a perusal of the record pertaining to the aforesaid seven sale deeds it transpired that the applicants were not in possession of the land and as per Government policy, they were not entitled to the allotment but on account of wrong verification made by the petitioner the applicants were successful in getting the sale deeds executed in their favour and this, according to the State Government, was done in connivance with the petitioner. It is, thus, clear that the gravamen of the charge levelled against the petitioner was that the six applicants other than Sardari Lal had been allotted land when they were not in occupation of the same whereas the Government policy was to allot land only to those persons who were found in unauthorised occupation of the same. By order dated 14th December, 1999, Shri N.K. Arora removed the petitioner from the office of the President of the Council. He was, however, allowed to continue to function as Member of the Council. The relevant part of this order has already been quoted in the earlier part of the judgment. This order was quashed by this Court on 23rd May, 2000 and the State was given liberty to pass a fresh order in accordance with law. Then a third show cause notice was issued to the petitioner on 6th December, 2000 which is the basis of the order now impugned before us in this writ petition. In this show cause notice a new story was introduced in addition to the earlier allegations and facts were twisted in disregard of the material on the record only to rope in the petitioner. It is stated therein that there were 294 unauthorised occupants of the shamilat land which was transferred to the Council and that the names of the six applicants other than Sardari Lal referred to above were not in that list meaning thereby that these six applicants were not in occupation of the land. It was

further stated that as per jamabandi for the year 1982-83 Sardari Lal was in possession of 72 marlas of land which was commercial in nature valuing Rs. 5,04,000 and that the petitioner in collusion with Sudesh Kumar and Renu Bala Members of the Council divided it into seven plots and by treating them as residential executed the sale deeds in favour of the seven applicants whereas the plot was one. It was also alleged that the land was lying vacant and no one was in possession of the same and that the petitioner obtained Form 'B' from the applicants and by countersigning the same verified the claim of the applicants to be correct and got the sale deeds executed showing the land to be residential. According to the State Government, the petitioner thereby misused his powers and caused financial loss to the Council to the tune of Rs. 3,79,000. A detailed reply had been filed by the petitioner taking the same stand which he had taken in reply to the earlier two show cause notices. A perusal of the show cause notice, thus, makes it clear that the gravamen of the charge is that since the names of applicants other than Sardari Lal did not figure in the list of unauthorised occupants prepared in the year 1984, land had been allotted to persons who were not in possession thereof which, according to the respondents, was contrary to the Government policy. The other part of the charge now levelled in this show cause notice is that the petitioner in collusion with Sudesh Kumar and Renu Bala Members of the Council had divided the plot into seven plots and even though the land was commercial, they treated the same as residential and executed the sale deeds in favour of the applicants. It was also alleged that the land was lying vacant and no one was in possession of the same and that by doing all this the petitioner is said to have abused his powers as President of the Council and by his misconduct caused loss to the Council.

(15) Having heard the arguments of the counsel for the parties and the intervenors and also having carefully perused the record including the two enquiry reports submitted to the State Government, we are clearly of the view that the charge(s) levelled against the petitioner is/are without any basis and he has been unnecessarily harassed. The first charge levelled in the impugned show cause notice is that the names of the six applicants other than Sardari Lal did not figure in the list of unauthorised occupants which was prepared in the year 1984 and, therefore, these applicants were not in possession of the land as claimed by them and as per the Government policy the

same could not be allotted to them. According to the State Government, the petitioner misused his powers and got the land allotted to them even though they were not eligible. Here we may mention that the list of unauthorised occupants which was prepared in the year 1984 has no authenticity whatsoever. We put it to the learned Deputy Advocate General as to when and under whose orders was that list prepared and she frankly conceded that there was nothing on the record of the State Government and nor on the record of the Council to show who prepared that list and under whose orders. There is nothing on the record to show as to what kind of enquiry, if any, was conducted at the time when that list was prepared. The learned counsel appearing for the Council produced before us a file with a list which contains the names of 294 persons but that list is unsigned and, therefore, no reliance could be placed on that list. It is pertinent to mention here that in this list the name of Sardari Lal figures at serial No. 120 and the names of none of the six other applicants appear in this list. Sardari Lal is shown to be in possession of only 167 sq. yds. while in the two enquiry reports it has been proved that as per the jamabandi for the year 1982-83 he was in possession of 5 kanals 10 marlas of land. Obviously the list is not correct. Be that as it may, in the two enquiries which were conducted by the State Government, it has been conclusively established that Sardari Lal was in possession of 5 kanals 10 marlas out of which he retained 17 marlas with him and delivered possession of the remaining area to other persons including the six applicants in whose favour the sale deeds in question were executed on 17th June, 1998. Of course, there is no material on the record to show as to when that possession was delivered but the fact remains that those persons including the six applicants were in possession. The findings recorded in one of the enquiry reports has already been reproduced in the earlier part of the judgment. To the same effect is the finding recorded in the other enquiry report. In view of the findings in the enquiry reports, the charge levelled against the petitioner that land had been allotted in favour of persons who were not in possession has no basis. Thus, it cannot be said that the petitioner who countersigned the applicants in Form 'B' had attested any wrong fact. In this view of the matter, the first part of the charge levelled in the impugned show cause notice has to be quashed.

(16) Now we will deal with the second part of the charge levelled against the petitioner. It is alleged that he in connivance with

Sudesh Kumar and Renu Bala, Members of the Council treated the commercial land as residential and got the sale deeds executed in favour of the six applicants. Here again, we cannot resist observing that Shri N.K. Arora while issuing the show cause notice and also while passing the impugned order did not care to apply his mind to the facts of the case and it appears that he was determined to take action against the petitioner notwithstanding that nothing was said against him in the first enquiry report. We have already mentioned above that the petitioner had countersigned the applications in Form 'B' filed by the applicants for the allotment of land which, according to them, was in their unauthorised occupation. Nowhere in any of those applications has any applicant stated the nature of the land, whether it was commercial or residential. The petitioner, too, did not verify this fact. As a matter of fact, when the applications after being countersigned by the petitioner were put up before the Executive Officer, he got the site plans prepared from the Patwari and after those were prepared the Executive Officer verified the nature of the land and in all the applications it is the Executive Officer who verified that the land was residential in nature. If Shri N. K. Arora had only cared to look at the original files once, he would not have issued the show cause notice or would have realised that it was not the petitioner who verified the nature of the land. This clearly goes to show that in the whole process of taking action against the petitioner Shri Arora did not apply his mind and was rather pre-determined to somehow or other take action against the petitioner. As a matter of fact, he had himself in his earlier order of 14th September, 1999 to which reference has already been made in this judgment, expressed doubts as to whether the petitioner was at all responsible for the transfer of land to the applicants and that is why he ordered an enquiry which was never held.

(17) At this stage, we may dispose of another contention advanced by the learned counsel for the parties. It was strenuously urged by Shri Ashok Aggarwal, Senior Advocate on behalf of the petitioner that it was not the duty/function of the President to verify the nature of the land that was being allotted and that duty was cast on the Executive Officer who alone under Punjab Municipal (Executive Officer) Act, 1931 (for short 1931 Act) had the power to execute the contracts on behalf of the Council and execute sale deeds after verifying the facts in each case. Learned Counsel on behalf of the respondents

as also those representing the intervenors, urged that it was the petitioner as President who countersigned the applications thereby facilitating the wrong allotment of land to the applicants. We find merit in the contention of Shri Ashok Aggarwal, Senior Advocate. The executive power of the Council for the purpose of carrying on its administration vests in the Executive Officer and under Section 6 of the 1931 Act, every contract to be entered by the said officer, it is the Executive Officer who is required to verify the facts in each case before executing the sale deed on behalf of the Council and he did so as is borne out from the records of the aforesaid seven sale deeds which are now in question. It is the Executive Officer who has verified in each case that the land was residential and thereafter he fixed the price whereafter notice was issued to the applicants on the basis of which the amount was deposited. The petitioner as President of the Council had no role to play therein. He was, therefore, right in contending before the State Government that his role was only symbolic when he countersigned the applications because by doing that he only verified the facts stated in those applications and nothing more. In the case of Sardari Lal, the applicant had applied for two plots and the Executive Officer verified that one of those plots was residential while the other was commercial and he fixed the price accordingly. It is, **thus**, clear that it was the Executive Officer alone who had to determine the nature of the land in each case after verifying the facts and not the petitioner as President of the Council. The charge levelled against the petitioner in this regard is equally baseless.

(18) We may now deal with the impugned order. In the reply filed by the petitioner to the show cause notice dated 6th December, 2000 he had specifically stated that he had no role to play in the allotment of the land to the applicants and that the power in this regard vested in the Executive Officer. Shri N.K. Arora who exercised the powers of the State Government afforded an opportunity of personal hearing to the petitioner and after perusal of the record (as recited in the impugned order) rejected the contentions advanced by the petitioner. He found that Sardari Lal was reflected in possession of the whole of the vacant plot measuring 72 marlas as per the list drawn in 1984 and that the applications of Sardari Lal and six other referred to above, had been accepted for allotment of plots at reserved price with an intent to cause loss to the Council. He also found that the petitioner being the President and custodian of the assets of the

Council had failed to discharge his obligations and responsibilities. According to the State Government, the plot was vacant having no construction and, therefore, it could not be sold in terms of the Policy of the State Government. Still further, the State Government found that the plot was commercial and that the petitioner as President countersigned the claim forms of the six applicants as correct and facilitated the execution of sale deeds in favour of those applicants by abusing and misusing his powers. He did not accept the plea of the petitioner that he had countersigned Form 'B' in routine. According to the State Government, the Council had suffered loss to the extent of Rs. 3,79,000 and, therefore, it concluded that the misconduct of the President stood established and that he was guilty of abuse of his official position causing financial loss to the Council. He was ordered to be removed from the office of the President as well as membership of the Council and he was further debarred from contesting the municipal elections for a period of two years. By this order the State Government has foisted on the petitioner what has been done or ought to have been done by the Executive Officer. As already observed earlier, the applicants were found in possession of the land which was allotted to them and, therefore, for Shri Arora to say that Sardari Lal was in possession of the whole of the area is contrary to the findings recorded in the two enquiry reports. Moreover, Shri Arora has not given any basis for arriving at this conclusion. Even if one were to assume that Sardari Lal was in possession of the entire land measuring 72 marlas there was no loss caused to the Council because in that event Sardari Lal would have been entitled to allotment of the entire land at the reserved price at which it has been allotted to the other applicants. Shri Arora has also found that the plot was vacant and, therefore, could not be allotted as per the policy of the State Government. This finding is again contrary to the record and without any basis. The Government policy nowhere states that only built up areas could be allotted. According to the policy referred to in the earlier part of the judgment, persons found in unauthorised occupation of the shamilat land were to be allotted the same at the reserved price no matter whether the land was vacant or built up. This fact was conceded by the learned Deputy Advocate General at the time of arguments and she could not support the finding recorded in the impugned order. Again, a finding has been recorded in the impugned order that the petitioner as President countersigned the claim forms of the six persons

as correct and facilitated the execution of sale deeds in favour of the above persons by abusing and misusing his powers. It is true that the petitioner had countersigned the claim applications in Form 'B' and we have already found that every fact stated in those applications was correct and no wrong fact had been verified. We fail to understand how the petitioner abused or misused his powers. The finding in this regard is without application of mind and is totally baseless. If the land was commercial in nature, it was the Executive Officer who alone should be held responsible because it is he who had verified the land to be residential after getting the plots demarcated by the Patwari. The petitioner had no role to play in this regard. In the result, the impugned order dated 31st January, 2001 passed by Shri N.K. Arora removing the petitioner from the office of President as well as membership of the Council and further debarring him from contesting the municipal elections cannot be sustained.

(19) Our finding that the impugned order was passed by Shri N.K. Arora with not an open mind is fortified by the following facts :—

- (i) On receipt of the show cause notice dated 6th December, 2000 the petitioner submitted his detailed reply on 28th December, 2000 and the case was fixed for hearing for the first time before Shri Arora on 16th January, 2001 for which date the parties had been sent a notice copy of which is on the file. Petitioner was to appear in person and he was to be afforded a personal hearing. There is a note dated 18th January, 2001 on the file that the case could not be taken up on 16th January, 2001 and the same was adjourned to 29th January, 2001 for which date fresh notice were issued to the parties. Before 29th January, 2001 Shri Arora had ordered that the case would be heard on 30th January, 2001 at 3.00 P.M. instead of 29th January. On 30th January, 2001, the petitioner appeared before Shri Arora along with his counsel who sought a short adjournment in the case and also requested for the supply of a copy of the enquiry report dated 31st October, 2000 which formed the basis of the show cause notice. The request of the counsel was turned down on the

ground that no cogent reasons had been furnished for seeking the adjournment. When his request was turned down the counsel withdrew from the case as he was not prepared to argue. It appears that Shri Arora insisted that the case must be heard on that very day and the petitioner had to argue the case himself. The petitioner also made a request that he be supplied with a copy of the enquiry report without which he could not argue. The Law Officer intervened to raise an objection that was not the stage to ask for documents. This objection of the Law Officer was upheld and the petitioner was directed to argue. It is, thus, clear that when the case came up for hearing for the first time on 30th January, 2001 even one request for an adjournment was not granted by Shri Arora and he went on to hear the case even though the petitioner had not been supplied with a copy of the enquiry report. It was but just that a short adjournment should have been granted to the petitioner and his counsel to give them a proper opportunity to be heard and in the meantime the petitioner should have been supplied the enquiry report. We are also of the view that there was no grave urgency that the matter had to be decided on the very first date of hearing because CWP 17960 of 1999 filed by the petitioner had been allowed on 23rd May, 2000 and he was continuing as President of the Council. It would not have made any difference if a short adjournment for a week or so had been granted and the petitioner supplied with a copy of the enquiry report.

- (i) In pursuance to the second show cause notice dated 22nd September, 1999 the petitioner had been removed from the office of President of the Council and Shri N.K. Arora who passed that order held that "Shri Vijay Kumar should have exercised the necessary care and caution while certifying the contents of the applications put in by the interested persons. He had wrongly attested the particulars given in Form-B and has, thus, helped wrongful allotment." This order was quashed by this Court in CWP 17960 of 1999 holding that "the petitioner

has not been found guilty of having abused his power or habitual failure to perform his duties and yet he has been removed from the office of President. In our considered view, the Principal Secretary to the Government, Local Self Government Department could not have passed the impugned order simply because the petitioner had not exercised necessary care and caution while certifying the contents of the applications submitted by some persons for allotment of land or on the allegation of wrongfully attesting the particulars given in Form-B which facilitated wrongful allotment." No doubt, this court granted liberty to the State Government to pass a fresh order against the petitioner but that obviously meant that such an order could be passed if there was any fresh or other material against him. This court did not mean that the State Government could re-write the order on the same set of facts and by using the statutory language remove the petitioner not only from the office of President of the Council but also from its membership and further debar him from contesting municipal elections for the next two years. It is true that after the judgment of this court in the aforesaid writ petition the State Government ordered a fresh enquiry by the Deputy Director, Urban Local Bodies, Amritsar but that enquiry was merely an eye wash because all that the enquiry officer did was to record the statements of a few persons including those of the petitioner and the complainant and found the petitioner guilty on the same set of facts and allegations which according to the State Government stood proved in the earlier enquiry. There was nothing new which was found by the enquiry officer in this report and taking shelter under this report Shri Arora re-wrote the order dated 31st January, 2001 which was later notified on 16th March, 2001 using the statutory language of Sections 16 and 22 of the Act. It is amazing that on the same set of facts and allegations Shri Arora had earlier found that the petitioner had not exercised necessary care and caution while certifying the contents

of the applications and when that was not found sufficient to remove the latter from his elected office, he (Shri Arora) later in the impugned order said that the same act of the petitioner amounted to misuse and abuse of his official position which resulted in financial loss to the Council. As already observed, Shri Arora has only tried to bring the impugned order within the four corners of Sections 16 and 22 of the Act by using the statutory language. This was never the intention of this court when liberty was given to the State Government to pass a fresh order. This also shows that the order was passed with a pre-determined and biased mind.

- (iii) As already observed, the first show cause notice was issued to the petitioner on 27th May, 1999. On a consideration of the detailed reply submitted by the petitioner on 17th June, 1999 Shri Arora passed an order on 14th September, 1999 which has already been reproduced and discussed in the earlier part of the judgment. From this order of Shri Arora it is clear that he himself had doubts as to whether the petitioner could be held to be responsible for the allotment of land to the applicants and that is why he required the Director, Local Government to have a detailed report from Deputy Director, Amritsar but this was never done. Shri Arora unmindful of this order, proceeded to take action against the petitioner and there is nothing on the record to show that the doubts which he had in his mind while passing the aforesaid order were ever cleared.
- (iv) That despite there being no finding whatsoever or even an insinuation in the two enquiries got conducted by the Government that there was ever any connivance of the petitioner with the two Municipal Councillors in transferring the land or treating the commercial land as residential, the allegation of connivance was introduced for the first time in the third show cause notice dated 6th December, 2000 after the decision of

this court only to rope in the two Councillors and the petitioner for taking action against them. There was no material to even remotely involve the petitioner and the enquiry report dated 31st October, 2000 is highly vague. There is a bald statement in this report that the sale deeds had been executed in connivance but it is not said as to who connived and with whom. Again, in this enquiry report it is said that the petitioner by executing the sale deeds and by describing the land as residential had misused his powers. It appears that the enquiry officer has also tried to lend support to an attempt to somehow involve the petitioner but without realising that the record was to the contrary.

(20) From the entire discussion we have come to the conclusion that the petitioner had not verified any wrong fact while countersigning the applications of the six applicants to whom the land was allotted and the charges levelled against him are without any basis. Even if it were to be assumed that the petitioner in countersigning the applications committed some wrong which facilitated the allotment of land to ineligible persons, it was not a continuing wrong that could possibly attract the penal provisions of Section 22 of the Act. It is not the case of the respondents that before or after the aforesaid sale deeds were executed on 17th June, 1998 the petitioner repeated this act in any other case or it has become a course of conduct with him in this regard. Such a conduct is not covered by the provisions of Section 22 of the Act whereunder a single or casual aberration is not enough. This provision came up for interpretation before the Apex Court in *Tarlochan Dev Sharma versus State of Punjab (1)*, wherein their Lordships set aside the order of removal of the President of the Municipality of Rajpura on the ground that the act complained of was not a continuing wrong and did not amount to abuse of powers within the meaning of Section 22 of the Act. While interpreting the provisions of Section 22 of the Act, their Lordship observed as under :—

“The expression ‘abuse of powers’ in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a wilful abuse or an intentional

wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person, affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is "abuse of his powers or of habitual failure to perform his duties". The use of plural—Powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase "abuse of powers" must take colour from the next following expression—"or habitual failure to perform duties". A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is "abuse of powers" within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision."

We have already held that the petitioner had done no wrong and his act of countersigning the application forms was innocuous. In our opinion, the case is squarely covered by the aforesaid observations of the Apex Court in *Tarlochan Dev Sharma's case* (supra).

(21) Before concluding, we may also refer to another grievance made by the learned counsel for the petitioner during the course of arguments. It was strenuously urged that in the detailed reply filed to the show cause notice various grounds had been taken in defence but the Principal Secretary, Department of Local Government while passing the impugned order did not deal with all the points raised by the petitioner in his reply and, therefore, the impugned order could not be sustained. It was pointed out that not only in the case of the

six applicants referred to above whose names did not figure in the list of unauthorised occupants that the sale deeds were executed, there were several other persons as well whose names and particulars had been furnished by the petitioner in his reply in whose favour sale deeds had been executed even though their names too did not figure in the list as prepared in 1984 and that no objection was taken to the execution of those sale deeds. We find substance in this contention as well. The petitioner had specifically named Manjit Kaur, wife of Harbinder Singh, Kuldip Singh, son of Harbinder Singh and Jaswant Kaur, wife of Karnail Singh. It was never disputed by the respondents that in the case of these persons sale deeds had not been executed transferring the land to them or that their names did not figure in the list prepared in 1984. No explanation muchless satisfactory could be furnished by the learned counsel for the respondents in this regard. Shri N.K. Arora ignored this contention raised by the petitioner and chose not to deal with the same in the impugned order. It is, thus, clear that the list prepared in the year 1984 was not exhaustive and there were several persons who were found to be in possession but whose names did not appear in that list and that land was allotted to them. If land was allotted to the aforesaid six applicants on the verification of the petitioner, we find that no illegality or even irregularity had been committed by him because the policy of the Government was to allot land to those who were in its unauthorised occupation particularly when no cut off date had been fixed in the policy framed by the Government.

(22) For the reasons recorded above, the impugned order cannot be sustained.

(23) Petitioner in this case was a member of the Council and he was issued a notice on 15th October, 1999 calling upon him to show cause why he should not be removed from the membership of the council under Section 16(1)(e) of the Act. The allegation levelled against him in the notice is that he had signed the applications in Form-B as a witness thereby verifying the possession of the applicants over the land in dispute when they were not in possession as a result whereof wrong allotment of land was made in their favour. A detailed reply was furnished to the show cause notice and thereafter no action was taken against the petitioner. It may be mentioned that a similar notice had been issued to Vijay Kumar Mahajan who was the President

of the Council and he was removed from the office of the President by order dated 14th December, 1999. He challenged that order in Civil Writ Petition No. 17960 of 1999 which was allowed on 23rd May, 2000 and it was thereafter that the petitioner herein was issued a second show cause notice along with the President on 6th December, 2000. The petitioner filed a detailed reply to the notice received by him and after hearing him in person, Shri N.K. Arora by his order dated 20th February, 2001 removed him from the primary membership of the Council and further debarred him from contesting the municipal elections for a period of two years on the ground that he had failed to discharge his obligations and responsibilities as a Member of the Council and that by facilitating wrong allotment of land to the applicants he had abused and misused his powers. This order is now under challenge.

(24) It will be seen that the allegation levelled against the petitioner was that he in connivance with the President treated the commercial area as residential and divided the plot measuring 72 marlas into seven small plots and allotted the same to the applicants who were not in possession of the same and were not entitled to its allotment as per the Government policy. It is further alleged that on receipt of the applications in Form-B the petitioner verified them as correct and got the forms countersigned from the President on the basis of which sale deeds were executed as residential plots and that in this manner the petitioner had not only misused his powers but had also caused financial loss of Rs. 3,79,000 to the Council. It is interesting to note that in the two enquiries conducted in regard to the transfer of the land in dispute, no one except the Executive Officer of the Council was held responsible for the irregular allotment in the enquiry dated 13th May, 1999 whereas in the second enquiry report dated 31st October, 2000 which was got conducted after the decision of this court in Civil Writ Petition No. 17960 of 1999 only the President who had countersigned the applications was held responsible for the irregular allotment and action was recommended only against him. There was no finding given against the petitioner in either of the two enquiry reports. Dealing with the case of Vijay Kumar Mahajan, we have already held that while countersigning the applications in Form-B the President had not verified any wrong fact therein. The petitioner had only signed those forms and the sale deeds as an attesting witness. Admittedly, he had not executed the sale deeds on behalf of the

Council. That was done by the Executive Officer. We have also held that it was the Executive Officer who had described the land as residential and thereafter executed the sale deeds. Merely because the petitioner signed the applications in Form-B and the sale deeds as an attesting witness does not mean that he was verifying the contents thereof. There is no presumption in law that an attesting witness of a document must be assumed to be aware of its contents. An attesting witness only identifies the party executing the document and need not be privy to the contents thereof. Be that as it may, we have already held in the case of Vijay Kumar Mahajan that no wrong fact had been stated in Form-B which was verified by him as President. Same document is alleged to have been witnessed by the petitioner herein. Since this is the only allegation no wrong was committed by him in attesting the same and also by signing the sale deeds as an attesting witness. We are, therefore, satisfied that the show cause notices issued to the petitioner were without any basis and so is the impugned order passed by Shri N.K. Arora. The seven applicants whose sale deeds are in question have been found to be in possession in the two enquiry reports referred to in the case of Vijay Kumar Mahajan and for that reason also the impugned order cannot be sustained as it is based on a wrong hypothesis. It is for this reason that no action was recommended against the petitioner even in the second enquiry report which was submitted on 31st October, 2000. It is also interesting to note that on the basis of the first show cause notice dated 15th October, 1999 issued to the petitioner no action was taken against him after the receipt of his reply. It was only after Vijay Kumar Mahajan's writ petition was allowed and the order of his removal set aside by this court that action was sought to be taken both against Vijay Kumar Mahajan and the petitioner and it was then that a show cause notice was issued to both of them on 6th December, 2000 as referred to above. If Vijay Kumar Mahajan had not challenged his order of removal in this court probably the Department would not have proceeded against the petitioner. We are, therefore, satisfied that no case for taking action against the petitioner under section 16(1)(e) of the Act is made out and consequently the impugned order dated 20th February, 2001 as notified on 16th March, 2001 cannot be sustained.

CWP 7835 of 2001

(25) Petitioner in this case was also a Member of the Council and she too has been removed by order dated 3rd May, 2001 from the primary membership of the Council under section 16(1)(e) of the

Act on the ground that she failed to discharge her obligations and responsibilities. It was also observed by the Principal Secretary to Government of Punjab that she had misused her powers inasmuch as she verified the commercial plots as residential which were allotted to six applicants referred to in the case of Vijay Kumar Mahajan. She has also been debarred from contesting the municipal elections for the next two years. The allegations levelled against her are the same as were levelled against Sudesh Kumar petitioner in Civil Writ Petition No. 5844 of 2001. She too had signed three applications in Form-B and three agreements to sell executed by the applicants and the Council as an attesting witness. She has not signed any of the sale deeds. The Principal Secretary while removing her from the membership of the Council observed as under :—

“I have considered the above submissions and seen the entire record. The brief history of the case is mentioned above. The detailed report of the Deputy Director dated 31st October, 2000 held the President and two Councillors including Smt. Renu Bala as associated in process which caused a loss of Rs. 3.79 lakhs to the Council. It is admitted by Smt. Renu Bala that she attested the documents which finally led to a loss to the Council. It is correct that the Deputy Director did not record evidence of Smt. Renu Bala but her association in the matter which has led to removal of the President and a Member from the Membership of the Council has been duly established. Thus, Show Cause Notice has been properly issued to Smt. Renu Bala. As all the three members had acted in the adverse interest of the Council, the nature of the Show Cause Notice had to be common. Thus, there is no cause to raise the issue that due process of law has been abused. The reply submitted by Smt. Renu Bala does not refer to how she enabled 6 wrong allotments. The reply does not explain how wrong persons were identified and particulars were attested by her. Thus, I find that Smt. Renu Bala has failed to discharge her obligations and responsibilities. It was a misuse of power to verify

commercial plots as residential. Thus, the noticee misused and abused her official position and she is not worthy of holding her elected position.”

(26) This order too for the reasons recorded in CWPs 4238 and 5844 of 2001 proceeds on a wrong hypothesis and cannot be sustained. The petitioner like Sudesh Kumar was only an attesting witness of some of the documents and as already observed in his case, an attesting witness only identifies the executant of a document and cannot be held to have verified the contents thereof.

(27) In the result, all the three writ petitions are allowed and the impugned orders therein removing the petitioners from their elected offices and debaring them from contesting municipal elections for a period of two years quashed. The respondents are directed to reinstate them forthwith to enable them to complete their remaining term. Petitioners will have their costs which are assessed at Rs. 25,000 in CWP 4238 of 2001 and Rs. 10,000 each in the other two cases. The costs will be paid by the officers who passed the impugned orders and the amounts will not be debited to the State Exchequer.

R.N.R.