

(1987) 07 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 269 of 1980

Anchar Ali and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-07-1987

Acts Referred:

Assam Forest Regulations, 1891 — Rule 14, 2, 4
Constitution of India, 1950 — Article 14, 226
Evidence Act, 1872 — Section 115

Citation : AIR 1989 Guw 12

Hon'ble Judges : J. Sangama, J; B.L. Hansaria, J

Bench : Division Bench

Advocate : B.K. Das and A.K.A. Laskar, for the Appellant; P.K. Goswami, General and S.N. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Hansaria, J.—Forests are part of our national wealth. Their contributions are varied. They not only provide fuel and other inputs for various industrial and commercial activities but serve some other needs of human society also. They contribute in a significant way to preserve the ecological balance whose growing importance is being realised day by day. The contribution of forests and trees in preventing soil erosion and flood is well-known. The flora and fauna of a country are largely dependent upon them. They shelter and protect agriculture and influence local climatic extremes. They ensure clear water supply and prevent pollution. They are essential components of attractive landscapes and are becoming important for urban population of industrial countries as a source of recreational facilities. But when there is a rapid growth of population the forests become easy victim as the growth in population demands more land for settlement. Even so, a balance has to be struck between the different needs of forests. At the national level great importance is being given, of late, to the preservation of forest wealth. It is because of this that while amending the Constitution by 42nd Amendment Act, 1976, a new Article 48A was inserted

stating that the State shall endeavour to protect and improve the environment and safeguard the forest and wildlife of the country. Not only this, while enumerating the fundamental duties in Article 51A of the Constitution, it was stated in Clause (g) that it would be the duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wildlife....." The mere fact that the Directive Principles and Fundamental Duties are not enforceable in a Court of Law is not enough to disregard the same inasmuch as Article 37 of the Constitution states that the Directive Principles are fundamental in the governance of the country and it shall be duty of the State to apply this principle in making laws. In this connection, we may refer to *v*, in para 4 of which it was pointed out that when "the Court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulder and say that priorities are a matter of policy and so it is a matter for the policy-making authority."

2. We may also refer in this connection to *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1987 SC 359, wherein the power of the highest Court of the land was invoked for maintaining environmental and ecological balance. Realising the importance of the subject the Court took suitable steps. It pointed out that natural resources are permanent assets of mankind and are not intended to be exhausted in one generation.

3. Factual Matrix.

In the present application under Article 226 of the Constitution of India, heads of 34 families have approached this Court against an order dt. 13-7-79 (Annexure G to the petition) by which allotment of land made on 3-5-75 in their favour in Bhutupunjee Forest village was cancelled. It is their contention that this could not have been done as in pursuant to the allotment made earlier they had improved the land and had built residential structures. The cancellation has been questioned mainly on two grounds : (i) principle of promissory estoppel would not permit this to be done; and (ii) the cancellation having been ordered without providing any opportunity to show cause is hit by the principle of natural justice.

4. To appreciate these contentions we may note the broad facts of the case which lie in a narrow compass. An approach was made on behalf of the petitioners to the Conservator of Forests on 25-1-74 to allot some plots of land in any forest reserve within the Cachar District as the petitioners were poor cultivators and had no means of maintenance. The Divisional Forest Officer, Cachar Division, informed the petitioners that the Conservator of Forest had approved allotment of land in Bhutupunjee forest village under Singla Forest reserve. This communication is dt. 3rd May, 1975. Thereafter the petitioners settled in the reserved forest and they started paying land revenue. A telegraphic communication was, however, issued by the Government on 11-6-79 asking the concerned Divisional Forest Officer not to give effect to the order of the Chief Conservator of Forests regarding settlement made in favour of the petitioners without obtaining Government approval. The settlement thereafter came to be

cancelled as stated earlier, which has been assailed on the twin grounds mentioned above.

5. Statutory provisions :

Before the submissions advanced by Shri Das are dealt with, we may have a cursory look at the relevant provisions finding place in the Rules made under the Assam Forest Regulation, 1891. Chapter 7 of the rules is relevant for our purpose which has dealt with "Rules for the establishment and control of forest villages". Rule 1 states that forest villages may be established within the limits of any reserved forest on sites the location of which shall be approved by the Conservator of Forests in writing. The purpose behind establishing village has been spelt out in Rule 2, which reads;--

"Forest villages are designed for the purpose of providing a source of the suitable local labour and for forming and maintaining plantations and lounges, and no castes which are not habituated to living and working in forest are eligible for admission. Divisional Forest Officers may admit new entrants to existing forest villages in accordance with the executive orders of the Conservator."

Rule 4 has conferred power on the Divisional Forest Officers to summarily evict some persons. We may read that rule also : --

"The Divisional Forest Officer is authorised to evict summarily from a forest village without payment of compensation to any one who does not comply with the rules or who refused to carry out his orders so far as they are consistent with the rules or whose conduct impairs the harmonious working of the village. An appeal, however, shall lie to the Deputy Commissioner of the district, but in the event of the latter disagreeing with Divisional Forest Officer, the case must be referred to the Conservator whose decision shall be final."

Rule 5 has dealt with the limit of the land which can be allotted. We are not concerned with this rule in the present case. The only other relevant rule is Rule 14 which has stated that the Forest Department may resume occupation of land allotted to a forest villager by giving six months' notice to the occupier.

6. Before the legal submissions advanced by Shri Das are examined we may say that it has been fairly admitted by the learned Advocate General that on the face of Rule 14 (supra), the only way possession of the land in question could have been obtained was by issuing a resumption notice as contemplated by the aforesaid rule.

7. Bar of promissory estoppel:

The first question is whether the doctrine of promissory estoppel can stand in the way of the respondents in resuming the land. Now, it is known that this doctrine has seen many ups and down in this country as well as in the land where it had originated. It is not necessary for us to travel to hoary past to know the origin and development of this doctrine inasmuch as the same has admirably been

done by the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, It would be enough to say that though the origin of this doctrine may be found in *Hughes v. Metropolitan Rly. Co.* (1877) 2 AC 439 and *Birmingham and District Land Co. v. London and North-Western Rly. Co.* (1888) 40 Ch D 268, it was only recently that it was rediscovered by Denning, J., as he then was, in the celebrated judgment in *Central London Property Trust Ltd. v. High Trees House Ltd.* (1956) 1 All ER 256 . After referring to various other decisions -- foreign as well as native, it was held in *Motilal Padampat* that the State is also bound by the doctrine of promissory estoppel and doctrine of executive necessity would not stand in the way. A , different note was, however, struck in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, wherein it was held that the doctrine of promissory estoppel is not available against the exercise of executive functions by the State and the State cannot be prevented in exercising its functions under the law. The view taken in *Jeetram* was, however, not approved in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, wherein the view taken in *Motilal Padampat* was reaffirmed. Some exceptions to this Rule were, however, mentioned in Para 14 of this judgment. It was held that (1) promissory estoppel would not apply against the legislature in the exercise of legislative function; (2) nor can the Government or the public authority be debarred by promissory estoppel from enforcing a statutory prohibition; (3) it is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make; (4) the doctrine of promissory estoppel being an equitable doctrine it must yield when the equity so requires and if it can be shown by the Government or by a public authority having regard to the facts as they transpire that it would be inequitable to hold the Government authority or the public authority to be the promise or representation made by it, the Court would not raise any equity in favour of the person to whom the promise or representation is made. As to the doctrine of executive necessity it was stated in Para 10 that the same had been exploded in *Union of India v. Indo Afghan Agencies* AIR 1968 SC 718.

8. Before advertng to the question whether in the present case the doctrine of promissory estoppel can stand in the way of the respondents in resuming the allotment, it may be pointed out as stated in Para 182 of *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, that no estoppel can legitimate an action which is ultra vires, nor can a principle of estoppel operate at the level of Government policy. It was, however, pointed out in Para 179 by referring to *Union of India v. Indo Afghan Agency Ltd.*, that the Crown cannot escape by stating that estoppel do not bind it. It may also be pointed out in this connection that there can be no estoppel against a statute as pointed out in Para 56 of *Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another*, where it was observed that "(n)or is estoppel against a statute permissible because public policy animating a statutory provision may then become a

casualty". Law, in this regard, has been stated thus in Halsbury's Laws of England, 4th Edition Volume 16, Para 1515 at page 1019:-

"Where a statute, enacted for the benefit of a section of the public, imposes a duty of positive kind, the person charged with the performance of the duty cannot by estoppel be prevented from exercising his statutory powers."

9. Learned Advocate General has contended that promissory estoppel has no room to operate in the present case, inasmuch as it has never been represented to the petitioners that the land in question would not be resumed or that they would not be evicted. It has been rightly urged in this connection that the doctrine of promissory estoppel applies when, inter alia, there is a clear and unequivocal promise relying on which the other side has acted to his prejudice the way he has done. On the facts of the present case it cannot be held that any clear and unequivocal promise was at any stage given to the petitioners that the land would not be resumed. Promissory estoppel cannot therefore come to the rescue of the petitioners.

10. Violation of natural justice.

In so far as the question of violation of natural justice is concerned, it has been rightly conceded by the learned Advocate General that the allotment made earlier in favour of the petitioners could not have been cancelled without affording reasonable opportunity to them to show cause in this regard. It is, however, urged that the provision of Rule 14 of the Rules that 6 months' notice would be given meets the requirement of natural justice which really lies embedded in this rule. It has, however, been contended by the learned Advocate General that reasons for resumption are not to be recorded in the notice; but, where a challenge is made to the resumption, the authorities shall have to satisfy the Court that the power was neither used mala fide nor was it colourable.

11. Recording of reasons whether necessary in resumption notice.

To satisfactorily answer this question it may first be seen whether recording of reason is a part of the principles of natural justice. Learned Advocate General has referred in this connection to *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, ; *Som Datt Datta Vs. Union of India (UOI) and Others*, ; *Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others*, and *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, However, there are some other decisions also of the Apex Court on this subject and it seems it would be useful to have a bird's eye view of what has been stated in this regard by the highest Court of the land.

12. We may start with *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, which is a decision by a Constitution Bench, where it was held that though certain conditions precedent may have to be satisfied before an order can be passed, the recital of the same in the order is not necessary unless a statute so requires, though it is desirable to do so for in that case the

presumption that the conditions were satisfied immediately arises and burden would be thrown on the person challenging the act of satisfaction to show that what is recited is not correct.

13-14. We may next refer to Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, which is also a decision by a Constitution Bench. In that case, the Director of the Company had refused to register some share in the name of transferees. This decision was set aside by the Deputy Secretary to the Government of India who directed the Company to register the transfer but no reason was given. The following observation of Shah, J. as he then was, who delivered the judgment on behalf of four Hon"ble Judges in Para 23 is pertinent :

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"If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to jurisdiction of this Court under Article 136 of the Constitution, we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order."

Another Constitution Bench referred to Sardar Govindrao and Others Vs. State of Madhya Pradesh, and agreed with it. Therein the petitioners as descendants of the Ruling Chief applied under the concerned statute for grant of money or pension as maintenance for themselves. These applications were rejected but no reasons were given in the order. The Court observed that the power vested in the Government must have obviously been exercised in a quasi-judicial manner. The petitioners were not only entitled to know the reasons but must have been also heard, as the matter must be dealt with in a quasi-judicial manner. But as the order of the Government did not fulfil "the elementary requirements of a quasi-judicial process", the same was set aside.

15. Harinagar was pressed into service in Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), which is a rendering by a Division Bench of 3 Hon"ble Judges. In that case an application for grant of lease in mining and manganese ore was rejected by the State Government by giving full reasons. The review application was, however, rejected by the Ceentral Government without giving reasons. A submission was made that the Central Government"s order was bad on this count alone. Bachwat, J., along with Mudholkar, J., observed that as the Central Government had agreed with the reasons given by the State Government, it was not bound to give full reasons. On reliance being sought to be placed on Harinagar. Bachawat, J., distinguished that case and stated that therein the Central Government had reversed the decision appealed from without giving any reasons, nor did the records disclose any apparent ground for reversal, It was observed that there is vital difference between an order of reversal by the appellate authority and order of affirmance.

16. Then came another Constitution Bench decision in Bharat Raja Vs. The Union of India (UOI) and Others, That case also dealt with an order of revision passed

by the Central Government. What had happened there was that Bhagat Raja was one of the several applicants for mining lease, but the State Government granted the lease to somebody else. Bhagat Raja went in revision to the Central Government who rejected the same. Mitter, J. who spoke for the unanimous Court examined this question in Para 9 and stated as follows : --

"The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Article 227 of the Constitution and of appellate powers of this Court under Article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of single word "rejected", or "dismissed". In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with appeal. Ordinarily, in a case like this, if the State Government gives sufficient reasons for accepting an application of one party and rejecting that of others, as it must, and the Central Government adopts the reasons of the State Government, this Court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this Court, in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying those reasons which according to it are sufficient to uphold the order of the State Government, this Court, in appeal, may find it difficult to ascertain which are the grounds which weighed with the Central Government in upholding the order of the State Government. In such circumstances, what is known as a "speaking order" is called for."

Being of this view, the Court examined the reasons given by the State Government and did not find them acceptable. The impugned order was, therefore, set aside and the Central Government was directed to decide the revision application afresh.

17. Then came *Som Datt Datta Vs. Union of India (UOI) and Others*, which was decided by a Constitution Bench but no reference was made to Bhagat Raja and the facts that no reasons had been given by the Chief of Army Staff in affirming the Court Martial proceedings and the Central Government had also given no reasons who dismissed the petitioner's appeal were not regarded to have vitiated the impugned order. In coming to this view it was observed that no such obligation has been imposed by Section 154 or 165 of the Army Act. Apart from statutory obligation in this regard, the Bench observed that there was no general principle or any rule of natural justice that a statutory tribunal should always give reason in every case in support of its decision.

18. Without referring to any previous decisions on this point, it was observed in *The State of Gujarat Vs. Patil Raghav Natha and Others*, that the impugned revisional order of the Commissioner should be quashed as he did not give any reasons for his conclusion:

19. We may now refer to three decisions of Division Benches of two Hon'ble Judges. These are : *Raj Narain Vs. Indira Nehru Gandhi and Another*, ; *Travancore Rayon Ltd. Vs. Union of India (UOI)*, and *The State of Punjab and Others Vs. Bakhtawar Singh and Others*, Mahabir Prasad disclosed a disturbing state of affairs as the licence of the appellant had been cancelled without giving any reason though the licence could have been cancelled only on consideration of the charges and explanation given by assessee. The appeal against that order was also rejected but the reasons of that order were not communicated to the appellant. It was, therefore, observed in para 6:--

"The practice of the executive authority dismissing statutory appeals against orders which prima facie prejudice the rights of the aggrieved party without giving reasons is a negation of rule of law."

The submission of the learned counsel for the State that the reasons were in the files of the Government was not given much importance as the files had not been produced before the High Court.

20. In *Travancore Rayon's* case two grounds were given by the Court for disclosure of reasons: (1) that the aggrieved party in the proceeding before High Court or the Supreme Court would have the opportunity to demonstrate that reasons which persuaded the authority were erroneous; and (2) the obligation to record reasons operate as a deterrent against possible arbitrary action by the executive authority invested with judicial power.

21. *The State of Punjab and Others Vs. Bakhtawar Singh and Others*, dealt with an order removing the incumbent which was not speaking. The Court looked at the record and found that basis of removal was certain observations made by the Minister-in-charge which reasons were not found justifiable. So the order was set aside. That case had examined the matter relating to one Abrol also. After perusing the materials on record it was stated in para 13 : --

"This order cannot be said to be speaking order. It is arbitrary to the core. Such an order cannot be upheld. Hence it is not necessary to go into the other conditions advanced on behalf of Shri Abrol."

22. This question was next gone into in *Rangnath Vs. Daulatrao and Others*, which is a decision by a Bench of three Hon'ble Judges which related to the endeavour of appellant to obtain some land. On merits the appellant was found to have no case. On the point under examination, it was observed in para 7 as follows : --

"As has been, repeatedly pointed out by this Court the State Government ought to have disposed of the statutory appeal by a speaking order. It may not be

possible in all cases to say that a non-speaking order is bad or invalid on that account alone. But when an order is liable to be challenged under Article 226 or 227 of the Constitution of India, Courts do insist that an appeal of the kind filed by the appellant should be and ought to have been disposed of by a speaking order giving reasons in its support."

23. Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others, is a case which has dealt with this aspect in the context of making a reference by the State Government to the Industrial Tribunal. The view taken by a learned single Judge of the High Court was that as the order of the Government did not state any reason it was legally invalid and was fit to be quashed. The Division Bench of the High Court in appeal did not, however, accept this proposition by stating that as the order of the Government was purely administrative, the same could not be vitiated by the absence of reasons, unless there was any provision which required the Government to give reasons for the order. This view was accepted by the Supreme Court.

24. In The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, Bhagwati, J., as his Lordship then was, stated as below in para 6 by way of parting thought:

"The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

25. Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, may be next adverted to. That case had dealt with the dismissal of the appellant. One of the contentions advanced in that case was that as no reasons for passing the impugned order were given, the same was bad in the eye of law. While dealing with this submission in para 19 it was stated : --

"..... we would like to make it clear that while it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its order if it differs from the conclusion arrived at and the recommendations made by the inquiring officer in view of the scheme of the particular enactment or the rules made thereunder, it would be laying a proposition a little too broadly to say that even an order of concurrence must be supported by reasons."

26. We may next refer to Rama Varma Bharathan Thampuram Vs. State of Kerala and Others, where it was stated in para 14 that the Supreme Court had gone to the extent of holding that natural justice required reasons to be recorded for conclusions made.

27. We may conclude this odyssey, by referring to Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, That case had dealt with cancellation of some

licence "without assigning any reason". As to this it was observed in para 22 that the requirement implied that the decision has to be communicated, but reasons for the same have not been stated. The reasons, of course, must exist for the decision since it may only be taken if the authority is satisfied that the grant of licence or allotment of imported goods will not be in public interest. It was then stated that the authority may not give formal reason but skeletal allegation must be mentioned in order to provide an opportunity to the person affected to make a representation -- chapter and verse need not be quoted, the details may not be mentioned, an outline, of the allegations should be sufficient.

28. On the basis of the aforesaid bird's eye view of the Indian law it is difficult to answer the question whether recording of reasons is a part of natural justice in a single word "Yes" or "No". The answer would depend upon many variables; but then it is felt that as increasing importance is being given to non-arbitrariness as a component of the concept of equity enshrined in Article 14, and as "fairness founded on reason" is the essence of guarantee epitomised in Article 14 as stated in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, and if "giving of reason is one of the fundamentals of good administration" as observed by Lord Denning, M. R. in *Breen v. Amalgamated Engineering Union* (1971) 1 All ER 1148, there can be no escape from the conclusion that natural justice will require recording of reason as a part of its own principle because the basic tenet of natural justice is fair play in action and recording of reasons ensures fairness in very many cases.

29. It would be in fitness of things to refer to the position which exists under the English law. A reference to what has been stated in pages 486 and 487 of Wade's *Administrative Law*, 5th Edition, and in page 149 of Professor de Smith's *"Judicial Review of Administrative Act"*, 4th Edition, shows that under English law there is no general rule that reasons must be given for administrative decisions. According to Wade, however, there is a strong case to be made for the giving of reasons as an important element of administrative justice because an administrative authority may be unable to show that it has acted lawfully unless it explains itself. Under the English law duty to supply reasons when requested to do so has been imposed by the *Tribunals and Enquiries Act, 1971*. Requirement to give reasons was emphasised in a series of industrial cases by saying that the tribunals must give satisfactory reasons in order that the losing party might know whether it should exercise his right of appeal on a point of law. This principle of law comes close to recognising a general right to reasoned decisions since the right of appeal on a point of law is very common, and the same logic might be invoked elsewhere, since there is always a right of recourse to the High Court for error on the face of the record.

30. What has been stated in this regard in Prof, de Smith's *"Judicial Review of Administrative Action"* in the 4th Edition, at page 149, is as below : --

"A person prejudicially affected by a decision must be made adequately notified of the case he has to meet in order to exercise any right he may have to make

further representations or effectively to exercise a right of appeal. Thus in one group of cases, tribunals when stating a case on an award of cost have been required to give reasons if their awards depart from normal practice, And in another, licensing justices, empowered to refuse liquor licence on specific ground were held to have failed to hear and determine according to law when they failed to specify the ground for refusal. It would be premature to conclude that these situations exhaust the circumstances in which an implied duty to give reasons may be imposed. Both the pervasive duty to act fairly and the expressed duty to give reasons imposed upon many tribunals may persuade the Courts to develop the existing case law."

In this context reference may usefully be made to what was stated by the British Committee on Ministers Powers (1932). According to it "The observance of principles of natural justice is implicit in the rule of law and the rule of law expressed in the principle of natural justice requires reasoned decisions."

The Committee noted two clearly recognised principles of natural justice. These being : (i) *audi alterem partem*; and (2) *nemo debet esse iudex in propria causa*. It then observed, "There is a third principle of natural justice, namely, that a party is entitled to know the reasons for the decisions."

31. All told, it may be stated that though in the present state of Indian law it cannot be held that giving of reasons is a part of natural Justice, but non-arbitrariness of an action being increasingly recognised as a part of the equity Clause enshrined in the Constitution and as giving of reasons takes care of non-arbitrariness it can definitely be held that even if giving of reasons may not be a part of natural justice, the same does take care of likelihood of violation of Article 14. This apart, requirement of giving reasons would vary from case to case. Where an order is likely to prejudicially affect a person reasons have to be recorded to give meaning and content to his remedy of appeal, review or approach to a writ Court. I would, therefore, say that in the resumption notice which may be issued under Rule 14, it would do well to give reason of resumption which would enable the aggrieved party to show its cause in a better way. It would also assist a Court of law, in Case challenge is made to the resumption, to know if the need for it is based on relevant and germane considerations or is grounded on irrelevant or extraneous considerations.

32. As the learned Advocate General has fairly stated that on challenge being made to the, issuance of resumption notice the authorities shall have to satisfy that the exercise of the power was not *mala fide* or colourable, giving of valid and good reasons would raise a presumption of acting in accordance with law with the result that the burden would be thrown on the affected party challenging the issuance of notice to show that what has been recited is either not correct or is not relevant. Recording of reasons would also take care of substituting the same with other reasons in case of challenge to action.

33. As in the present case, the order of cancellation cannot be taken to be, a

resumption notice, and as no power has been shown to us by the respondents to issue the cancellation order it is held to be ultra vires. The petition is accordingly allowed by setting aside the impugned order. It would, however, be open to the respondents to initiate action as contemplated by Rule 14 (supra) and thereafter to act in accordance with law.

34. Before parting, I have a, small observation to make and the same is relatable to the question whether any alternative site has to be provided to the persons in case the land settled with them is sought to be resumed. Learned counsel of both the sides were asked this question in view of the decision of the Supreme Court in *Olga Tellis*, AIR 1986 SC 180. Both of them stated that no question of providing alternative site arises when a land settled earlier is sought to be resumed in exercise of statutory power conferred by Rule 14(supra).