
(2010) 11 P&H CK 0173

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2272 of 2003 (O and M)

Dalmer Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12

Citation : (2011) 161 PLR 779

Hon'ble Judges : Jasbir Singh, J;Augustine George Masih, J

Bench : Division Bench

Judgement

Jasbir Singh, J.—This judgment will dispose of nine petitions, i.e., Civil Writ Petitions No. 2272 of 2003 (O&M), 472 of 2003, 8968 of 2003, 2912 of 2003, 17866 of 1999, 3364 of 2002, 9179 of 2002, 8671 of 2008 and also CWP No. 13012 of 2006. The Petitioners in all the cases except CWP No. 13012 of 2006 are in unauthorised occupation of rural/urban evacuee/agricultural land/property and they are claiming its allotment to them in terms of the policy decision of the State of Haryana dated November 1, 2001 (P-3). However, in CWP No. 13012 of 2006, the Petitioners belong to a weaker section of the society. Their prayer is to quash the State Government's policy, stated above, on a ground that allotment of land to the unauthorised occupants under the policy would amount to giving premium to them and it will be against the principles of Rule of law and natural justice. It is their further prayer that as per their representation, land be allotted to them for earning their livelihood.

2. Background of the litigation:

At the time of independence of the country in the year 1947, many Muslim land owners migrated from this part of the country to Pakistan and vice versa. The land left by the Muslim owners became part of the evacuee property, which originally was being managed by the custodian. In the year 1954, the evacuee properties were acquired and made part of the compensation pool as envisaged

in Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The properties in the pool were meant for settlement of those, who had migrated from Pakistan to this part of the country. Their claims were verified on the basis of revenue record, which was received from Pakistan. The process continued till the year 1961. The State of Punjab and thereafter the State of Haryana under package deals and administrative and financial arrangements purchased vast track of land, detail of which is given below:

1. Total evacuee land at the time of partition of the Country(1947) =47,35,310 Acres

2. Year of Package Deal/Land/Property Rate Administrative Arrangement transferred

(a) 1961 Rural 80,000 Acres Rs. 450/- per Gair Mumkin 1,11,000 Acres standard Acre (b) 1963 Urban 2800 Acres Rs. 1100/-per Acre to 500/- (c) 1970 Urban Remaining - properties Rs. 1100/- per Acre (d) 1976 Nilokheri 60 Acres Rs. 1.5 lacs per Acre (e) 1981 Faridabad NIT 1329 Acres Rs .1.60 Crore

3. As per admitted facts, the State of Haryana is the owner of the land, which was transferred to it under the Package Deal and other instructions.

4. With a view to give benefit to those, who were in an unauthorised occupation of part of the evacuee property, firstly the State of Punjab and thereafter the State of Haryana started issuing instructions/press notes from time to time for transfer of evacuee properties to its occupants against price to be fixed by the Government. One such policy was issued on July 2, 1963, envisaging allotment of surplus evacuee rural land to the unauthorised occupants on the following terms and conditions:

S. No. Category of Occupants Rate per Standard Acre

Garden Sub Urban Rural For For colonies villages of villages Scs Ors. i) Long term lesses in Rs. 1800/- Ludhiana - 5000/- 450/- They continuous occupation Jullundur 2200 would City & Cantt. Be of unallotted evacuee Amritsar 2200 intimated lands whose leases have Sirsa lateron not been cancelled or Sonapat 2000 resumed for any infringement Muktsar of the condition of the lease. ii)Annual/lesses in continuous Phagwara possession of evacuee land Rohtak since Kharif 1957 Others 1800 iii)Preparation lesses/ tenants in continuous possession from Rabi 1947 iv)Preparation tenants paying no rent beyond land revenue 2) Unauthorised cultivators of -do- -do- 450/- -do- evacuee lands who originally came into possession as regular lesses in Kharif 57 or earlier but who could not continue as such due to non auction of leases in subsequent years. 3) Unauthorised occupants in -do- -do- 450/- -do- continuous possession since the kharif 1960 or earlier first 2 Sas 4) Occupants who came into 450/- For 1000/ possession as regular lessees the in Rabi, 1958 or after as next regular losses but whose leases 3 S As For the Next 5S Asl200/- were not extended due to non-auction For above 10 Std.acre 1500 of leases in subsequent. All the above categories would be entitled to purchase evacuee land at the uniform scale

upto 5 Std. Acres and any one of them already owns some land, he would be allowed to purchase the evacuee land in his possession to the extent to which his original holding falls short of 5 std. Acres.

5. On August 25, 1981, the State of Haryana again issued a policy (R-2) ordering the sale of land to those who were in unauthorised occupation of rural evacuee agricultural land since Kharif 1975 or earlier. Similar instructions were again issued on November 10, 1981 (R-3), February 28, 1984 (R-4), July 11, 1988 (R-5), August 11, 1988 (R-6), July 19, 1989 (R-7) for transfer of urban evacuee land/properties to the unauthorised occupants, who were in possession before January 1, 1982. Terms and conditions of allotment to the unauthorised occupants were further liberalised by issuing instructions on July 11, 1988 (R-9) and thereafter on March 20, 1989 (R-10). Again on April 17, 1997, policy (R-11) was issued regarding disposal of surplus rural evacuee land by transfer on the basis of possession to its unauthorised occupants.

6. Thereafter came the consolidated policy for transfer of rural/urban evacuee land/properties to the unauthorised occupants, which is under scrutiny in this case. It is stated by the Petitioners that they are in possession of evacuee land, which is ownership of the State of Haryana, to the extent of 5 to 12 Acres. Their applications for allotment of that land have not been considered. A prayer was made in this writ petition for issuance of a writ of mandamus directing the Respondents to decide their cases for purchase of unauthorisedly occupied land as per policy dated November 1, 2001.

7. In CWP No. 13012 of 2006, it has been prayed by the Petitioners that the above said policy being contrary to the public interest be quashed and as per their representation, land be allotted to them. How this dispute was ordered to be treated as Public Interest Litigation.

8. When this matter came up for hearing before this Court on February 11, 2003, a Division Bench of this Court passed the following order:

We have heard the learned Counsel for the Petitioner at length and perused the record of the case. The Petitioner has been in unauthorised occupation of the land mentioned in paragraph 2 of the writ petition since 1965. He claims benefit of the policy issued by the State of Haryana on 01.11.2001 with regard to transfer of the rural/urban evacuee lands/properties to the unauthorised occupants. In this policy, the market price has to be determined by the "High Level Price Recommendation Committee" under the Chairmanship of the Divisional Commissioner concerned. The unauthorised occupant who is in continuous cultivating possession of the rural evacuee agricultural land since Kharif 1947 to date, has to pay cost of the land at the rate of 20% of the "Market Price".

Similarly, the unauthorised occupant who has occupied the land after Kharif 1947 and is in continuous cultivating possession since Kharif 1985 to date, has to pay the cost of the land at the rate of 40% of the "Market Price". In the case of

unauthorised occupant who has occupied the land after Kharif 1985 and is in continuous cultivating possession thereof since Kharif 1995 to date, has to pay the cost of the land at the rate of 60% of the "Market Price". The unauthorised occupant includes predecessors-in-interest and successors-in-interest. Since the Petitioner has been in unauthorised occupation since 1965, he claims to be entitled to purchase the land by paying 40% cost of the market price. Although, the Petitioner has submitted a representation to the authorities concerned for the purchase of the land on 04.08.2002, yet the authorities have not taken any decision on the same.

After perusing the averments made in the writ petition, we are of the considered opinion that the Petitioner does not deserve any interim relief.

However, after prima facie examination of the policy, we have not been able to discern the justification for the same. Prima facie, it appears that this policy has legalised illegal and forcible possession of the land belonging to the State. Upon proving that the land has been illegally occupied, the same is permitted to be sold to the unauthorised occupant. In fact, longer the unauthorised occupation, lesser the price to be paid.

We find the policy in question to be wholly unreasonable, arbitrary and against public interest. Prima facie, this policy seems to put a premium on the unauthorised, forcible and illegal occupation of the land held in trust by the State, for the benefit of the general public.

Notice of motion.

On our asking, Ms. Palika Monga, Assistant Advocate General, Haryana, accepts notice of motion on behalf of the Respondents. She prays for a short adjournment to seek instructions and to file the written statement, if necessary.

Adjourned to 17.02.2003.

Let this matter be placed before Hon"ble the Ist Division Bench by treating the present writ petition as a "Public Interest Litigation" on the adjourned date. No further land be sold to the unauthorised occupants in pursuance of this policy till further orders are made by Hon"ble me Ist Division Bench.

9. It was observed by this Court that there was no justification to legalise unauthorised occupation, by allotting land to the unauthorised occupants. It was further observed that the policy appears to be unreasonable, arbitrary and against public interest. It is how this writ petition was ordered to be treated as "Public Interest Litigation".

10. View point of the Government:

After passing of the above said order, reply was filed by Respondent No. 1. An attempt was made to justify the policy under challenge on the following grounds:

(i) to avoid long protracted litigation; and

(ii) to earn revenue rather than to loose it; and

(iii) to avoid harassment to the public due to demolition/eviction of people/public at large.

11. It was further mentioned that to formulate the policy, to achieve the above said object, a high level committee under the Chairmanship of Revenue Minister was constituted on March 27, 2001, and on its recommendation, the policy was drafted. It was further stated that more than 500 cases involving 1268 Acres of land had already been finalised under this policy. To say that the policy was formulated to serve the public purpose, it was detailed as under:

That as per survey conducted by the concerned Sub Divisional Magistrates, Tehsildars/Naib Tehsildars (Revenue) and Tehsildars/Naib Tehsildars (Sales), approximately 9500 Acres rural evacuee agricultural land, 750 Acres of Urban Evacuee Agricultural lands (majority of which has been converted into Gair Mumkin Abadi Deh), 2600 rural evacuee houses/sites and 1300 urban evacuee houses/sites are/were available with the Rehabilitation Department, most of which are under unauthorised occupations. The Deptt. Is facing litigation involving evacuee properties. Many cases are pending before the departmental tribunals i.e. Secretary (Rehabilitation)/Chief Settlement Commissioner/Settlement Officers/Tehsildar (Sales) in the State. At present about 1000 civil suits/appeals claiming certain rights over evacuee properties are also continuing in the civil courts/appellate courts and in many cases Regular Second Appeals & Writ Petitions are pending in this Hon"ble Court and in some of them, the Hon"ble Supreme Court is also ceased with the matter. To speed up the protracted litigation, the Government viewing the matter seriously, decided to review the whole process and procedure with regard to disposal of left out evacuee properties.

Counsel for the parties heard.

12. Shri L.N. Verma, Advocate, and Shri Vinod S. Bhardwaj, State counsel, made an attempt to justify the formulation of the policy. It was stated by them that Respondent No. 1 is owner of the land/property in dispute and it has the power to dispose it of the way it likes. The framing of the policy is in public interest, to avoid pending litigation and displacement of the occupants from the land under their possession. If, to the contrary, proceedings are initiated to eject unauthorised occupants, it will consume huge time and money at the level of the Government, which will now be avoided. To the contrary, by selling this property to the unauthorised occupants, revenue can be generated. Shri Verma stated that most of the land is under occupation of the weaker section of the society and if they are not allowed to purchase it, they will be deprived of their source of livelihood. By stating that the Petitioners in CWP No. 13012 of 2006 have failed to allege any malafide against the Government, it is not open for this Court to interfere in the policy decision taken by Respondent No. 1. The State Government had been issuing such like policies in the past also, which were

considered and approved by this Court in *Bishan Singh and Ors. v. Chief Settlement Commissioner and Ors.* 1973 PLJ 183 and *Soran Singh alias Swaran Singh and Ors. v. Mehta Sita Ram and Anr.* 1984 PLJ 570. To say that the Courts cannot interfere in the formulation of a policy decision by the Government, reliance was placed by Shri Verma upon the following passage in the judgment of the Hon''ble Supreme Court in *State of Orissa and Others Vs. Gopinath Dash and Others*, :

7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the property of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

13. To support his contention, Shri Verma has also placed reliance upon judgment of the Supreme Court in *Ekta Shakti Foundation Vs. Govt. of NCT of Delhi*, and also another judgment of the Supreme Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, . Shri Verma argued with vehemence that as per policy, Petitioners are eligible and directions be issued to the Respondents to allot them the land under their possession.

14. Vide order dated May 8, 2009, passed by a Division Bench of this Court, Shri Punia was requested to assist this Court as *amicus curia* in this case. He has vehemently contended that the policy under challenge is against the public interest. If allowed to stand, it would amount to giving largesse and benefit to those, who are the law breakers and had entered property of the State forcibly without any justification. He further argued that the policy violates the principle of equality before law and equal protection of law as envisaged under Article 14 of the Constitution of India because it gives undue benefit to those who have forcibly occupied the State's land whereas denying opportunity to a common law abiding citizen to purchase the same. By making reference to the documents on record, he argued that the State has failed to give any justification to formulate this policy, merely because at present about 1000 suits/appeals are pending is no ground to allot it to the unauthorised occupants. Legal action, civil as well as criminal, can be initiated against them and after retrieving the land from unauthorised occupants, it be sold in open auction, which will generate much more revenue as compared to the one, which the Government is going to realise by selling the land under this policy. By making reference to the provisions of the policy, he further argued that it will encourage forcible occupation of Government properties in future also, which will be very dangerous trend and should not be allowed to encourage. To say that the Courts can enter upon judicial scrutiny of Government policy/decision, he has placed reliance upon judgment of the Hon''ble Supreme Court in *M/s Kasturi Lal Lakshmi Reddy etc. v. State of J. and*

K. and Anr. AIR 1980 SCC 1992 Indian Charge Chrome Ltd and Anr. v. Union of India and Ors. (2006) 12 SCC 331; Ram Singh Vijay Pal Singh and Others Vs. State of U.P. and Others, , and Netai Bag and Others Vs. The State of West Bengal and Others, . He prayed that the policy under challenge be quashed.

15. The policy under challenge:

Before proceeding to note respective contentions of learned Counsel for the parties, it is imperative to know the salient features of the policy under challenge dated November 1, 2001 (P-3).

16. Market price of the property, to be allotted to the unauthorised occupants is to be determined by high level Price Recommendation Committee and it shall be charged from the unauthorised occupants in the following manner:

(a) The unauthorised occupant who is in continuous cultivating possession of the rural evacuee agricultural land since Kharif 1947 to date shall have to pay the cost of land at the rate of 20% of the "Market price".

(b) The unauthorised occupant who has occupied the land after Kharif, 1947 and is in "Continuous cultivating possession" thereof since Kharif 1985 to date shall have to pay the cost of land at the rate of 40% of the "Market Price."

(c) The unauthorised occupant who has occupied the land after Kharif 1985-and is in "continuous cultivating possession" thereof since Kharif 1995 to date shall have to pay the cost of land at the rate of 60% of the "Market Price".

Note (1) Unauthorised occupant includes his "predecessors-in-interest" or "Successors-in-interest" also as the case may be.

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(iii)"Continuous cultivating possession" shall be determined only on the basis of the entries made in the revenue record.

(iv)"stray entry" regarding dispossession shall be ignored as per practice and procedure prevailing in the Revenue Department.

(v)Only "Cultivable agricultural land" shall be transferred to the unauthorised occupants. However, any piece of land recorded as "Gair Mumkin", Banjar Qadim/ Banjar jaded forming part of the main piece of land and not exceeding 4 Kanals may also be transferred alongwith the main piece of land on the same rates as mentioned above if the said piece of land is under his unauthorised occupation.

(vi)The Gair Mumkin lands like Banjar Qadim, Banjar Jadid, Gair Mumkin Nadi/ Nalah, gair Mumklin" Rait, Gair Mumkin Johar etc. shall not be transferred under this policy to the individuals on the basis of possession.

(vii) Ceiling for Transfer of Land.

The "maximum ceiling" for transfer of land shall be upto the "permissible area"

under the provisions of the Haryana Ceiling on Land Holdings Act, 1972 including the land already owned by the unauthorised occupant. If any occupant is occupying excess land including his own land beyond the "permissible area", then he shall have to vacate the said excess area first and only thereafter his application for transfer of the remaining land shall be considered.

(viii) Use and Occupation Charges.

Use and Occupation charges shall be recovered for a maximum period of 30 years or from the date of occupation whichever is later at the prescribed rates applicable from time to time. The amount of use and occupation charges already paid shall be adjusted against total charges.

17. This policy envisages allotment of rural agricultural house/sites against reserve price to those occupants who are in continuous possession since January 1, 1995. It also talks of allotment of urban evacuee agricultural land to those unauthorised occupants who are in possession w.e.f. January 1, 1995, if they had raised construction before the above said date. Same provision has been made so far as urban evacuee agricultural land is concerned. This policy also provides for transfer of urban evacuee houses/sites to the unauthorised occupants in the following manner:

4. Urban Evacuee Houses/Sites.

Urban evacuee sites/house which is under continuous possession of an unauthorised occupant since 1.1.1995 or before and upon which construction has been raised, may be transferred to him on the same terms and conditions as applicable to urban evacuee agricultural land upon which construction has been raised as mentioned in para No. 3(i) above.

5 Unused Land of Model Towns and Rehabilitation Colonies.

The unutilised land of model towns and Rehabilitation colonies may be transferred to the unauthorised occupants on the same terms and conditions which are applicable to the unauthorised occupants belonging to urban houses and sites.

18. Para No. 9 of the policy envisages concession to the extent of 25 % of the total price in allotment of land/property/sites to the members of the Scheduled caste unauthorised occupants. The payment schedule has been fixed as under:

Payment Schedule of The Cost of Land/Houses/Sites.

i) The unauthorised occupant shall have to deposit 25% of the price within one month from the date of intimation of the approval of transfer by the competent authority.

ii) Rest of the price shall be recovered in 10 half yearly instalments over a period of 5 years. 1st instalment shall fall due from the first harvest following immediately after the expiry of six months from the date of approval of transfer

by the competent authority i.e. 15th of June and 15th of December of the year in question as the case may be.

iii) In case of delay in payment of instalment, penal interest at the rate of 18% per annum shall be charged on the delayed amount of instalment for the delayed period. However, if any unauthorised occupant makes default in payment of four consecutive instalments, amount already deposited may be forfeited and the land/property may be resumed but the defaulter shall have the right to make an appeal.

iv) If an unauthorised occupant opts to make the payment of price in lump sum within 30 days from the date of intimation of approval of transfer by the competent authority, he shall be entitled for a concession of 10% on the total price of land house/site.

19. Now it is to be seen whether this Court has the jurisdiction to interfere in the policy decision taken by Respondent No. 1 or not.

20. To say that this Court has no jurisdiction to do that, reliance was placed upon the ratio of judgment in Gopinath Dash's case (supra), in which it has been said that the Courts should not interfere in the policy decision or exercise of decision by the State Government so long it does not infringe the fundamental rights of others. Similarly in Ekta Shakti Foundation's case (supra), it has been opined that the policy decision must be left to the Government as it alone can decide it. Policy should be adopted after considering all the facts. The Courts can interfere in the policy decision only if it involves infringement of fundamental rights and not otherwise.

21. In the present case, it has vehemently been contended by Shri Punia that the policy negates the principle of rule of law. It amounts to giving premium to those, who were the law breakers. It will bring in sense of insecurity in the minds of the law abiding citizens and in future, they may also like to act in the same manner and may forcibly occupy Government land so that in future they may also get benefit of similar policies, which are being issued since the year 1963. He has further argued that the policy violates the fundamental rights of equality of law as enshrined in Article 14 of the Constitution of India of other law abiding citizens.

22. We are of the view that the argument raised appears to be justified. Their lordships of the Supreme Court in M/s Kasturi Lal Lakshmi Reddy 's case (supra), while analysing grant of allotment of a contract, observed as under:

11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largesse. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his selfinterest or to oblige another in entering into a contract or dealing with his property. But the Government is not

free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by its arbitrarily or capriciously or in an unprincipled manner, it has to be exercised for the public good. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largesse, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largesse may be granted. It is now well settled as a result of the decision of this Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, that the Government is not free, like an ordinary individual, in selecting the recipients for its largesse and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily as its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meet the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article

14. The Court referred to the activist magnitude of Article 14 as evolved in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and observed that it must follow "as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and nondiscrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground". This decision has re-affirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the

core of our entire constitutional scheme and structure.

23. In *Indian Charge Chrome's* case (supra), the Supreme Court opined that the Courts can interfere in a policy matter if it appears to be irrational, unreasonable or patently illegal. Same was the opinion of their Lordships of the Supreme Court in *Ram Singh Vijay Pal Singh's* case (supra).

24. In view of the ratio of the judgments, mentioned above, now it is to be seen whether the policy violates the principle of rule of law, which is the basic structure of our Constitution and also whether it is against the public interest or not.

25. The provisions of the policy have categorised the unauthorised occupants in three classes, viz, (1) those who came in possession from Kharif 1947 ; (2) those who came in possession after Kharif 1947 and are in continuous cultivating possession since Kharif 1985 and (3) those unauthorised occupants, who occupied the land after Kharif 1985 and are in cultivating possession from Kharif 1985. Cost of land at the rate of 20%, 40 % and 60% respectively of the market value shall be charged from them. As per para No. 7 of the instructions under challenge, the unauthorised occupants can get the land allotted upto the permissible area defined under the provisions of Haryana Ceiling on Land Holdings Act, 1972, i.e. 7.25 hectares first quality land. The policy also suggests allotment of land under unauthorised occupation in urban areas and also left out land in the Model Towns and Rehabilitation colonies. Schedule of payment of price is also beneficial to the unauthorised occupants.

26. Apparently, the opinion formulated by the Division Bench in order dated February 11, 2003, appears to be correct and justified. By this policy, unauthorised and forcible occupation of public property is going to be legalised. It would amount to giving premium to those who are the law breakers and it is bound to bring sense of insecurity and disrespect for law in the minds of those who are the law abiding citizens.

27. No benefit of the ratio of the judgments in *Bishan Singh's* case (supra) and *Soran Singh alias Swaran Singh's* case (supra) can be given to the Petitioners and the State because in those cases, the policy of allotment of land to the unauthorised occupants was not challenged. Rather the Petitioners therein were claiming relief under that policy.

28. To say that the policy was formulated in public interest, it has been stated that it will be difficult to get the land released from the unauthorised occupants. By stating as above, Respondent No. 1 has shown total weakness. No regard has been given to the principle of rule of law. If such like attitude is shown, probably in future the fence sitters who may be having fear of law will try to forcibly occupy the public property and then think that on one day or the other they will also become eligible to get it allotted to them under some State policy.

29. Initially, when policy was formulated in the year 1963, except one category

of unauthorised occupants, others were those to whom the allotment of land was envisaged, who had come in possession under some arrangement with Government, which afterward failed. At that time it appears that an attempt was made to rehabilitate those who had migrated from Pakistan and due to non-availability of housing accommodation etc. they entered into vacant houses left vacant by Muslims, who migrated to Pakistan. Thereafter, it became a custom with the Government to legalise unauthorised occupation by issuing successive policies in that regard, which are on record as Annexures R-2 to R-12.

30. In the affidavit filed at the instance of Respondent No. 1, it is only stated that about 9500 rural evacuee agricultural land, 750 Acres of urban evacuee agricultural land, 2600 rural evacuee houses/sites and 1300 urban evacuee houses/sites are in illegal occupation and at present 1000 civil suits/appeals are pending. We are of the opinion that the gravity of the situation is not such that the State should be afraid of taking harsh measures against law breakers and contesting litigation in the Courts. Against unauthorised occupants, summary proceedings for their ejectment under the relevant Public Premises Statutes can be initiated. In those proceedings, they can be forced to pay towards use and occupation charges. Law also permits of taking penal action against the trespassers on the public property. Instead of doing that, in a very meek manner, the State Government is continuously issuing policies to appease the unauthorised occupants. We are of the opinion that the action of the State Government is against the public interest. It only serves interest of the law breakers and is totally irrational and unjustified. In the reply, the State has failed to give any explanation as to why it is difficult for it to contest only 1000 cases as it has battery of public prosecutors at its disposal in every district. If the State starts melting under pressure and is not strong enough to get its property vacated from the encroachers, then what confidence it will instill in the common citizens who treat the State as their guardian.

31. It is true that the Courts are not supposed to act as Court of appeal upon any administrative decision taken by the Government. However, at the same time, when it is found that decision taken is unreasonable and against the public policy and violates the principle of rule of law, it is open to the Courts to negate that action. Even in the case of distribution of largesse, the State's discretion is limited. It is supposed to act fairly. The State's position is altogether different from a private individual. All actions of the Government must be in conformity with laid down norms, should not be arbitrary, irrational and must conform to the concept of principle of law, which runs throughout from page 1 to the last page of the Constitution of India.

32. As per established law, Government can dispose of the property at a lesser price or to a particular section of the society to achieve the goals as set down in part IV of the Constitution of India. However, so far as the policy under challenge is concerned, benefit has been given to the unauthorised occupants, it is only stated that unauthorised occupants of the weaker section of the society shall get

25% rebate in the price of the land under their occupation. This cannot be treated as an attempt to achieve the objects of Directive Principle of the State Policy.

33. Besides as above, the policy has no mandate of the State Legislature. In the writ-ten-statement, it is only stated that the policy will generate revenue for the State. However, no further detail has been given. It is nowhere shown as to how much amount the State will save by not fighting the litigation and how much it will get by selling the land to the unauthorised occupants. The rates fixed are also on the lower side and the unauthorised occupants, who are in possession since the year 1947, will pay only 20% of the market price. The amount to be realised towards use and occupation charges is also very less. The schedule of payment of price of the land is also convenient to the unauthorised occupants.

34. In view of facts, mentioned above, we are of the opinion that the policy dated November 1, 2001, (P-3) is against the public interest and violates the principle of rule of law. Further it also violates equality before law and protection of law as enshrined under Article 14 of the Constitution of India. As such it cannot be sustained.

35. In the written-statement it has been mentioned that many cases were finally decided in terms of this policy. We direct that from those occupants, full amount of market price be realised and no concession be given to them. Their allotment be kept intact. So far as future allotment is concerned, that was stayed by this Court vide order dated February 11, 2003.

36. In view of findings given above, no relief can be given to the Petitioners. Consequently, Civil Writ petitions No. 2272 of 2003, 472 of 2003, 8968 of 2003, 2912 of 2003, 17866 of 1999, 3364 of 2002, 9179 of 2002 and 8671 of 2008 are dismissed.

37. C.W.P. No. 13012 of 2006 is, however, partly allowed. Policy dated November 1, 2001 (P-3) is quashed; however, without giving any further benefit to the Petitioners.

38. The State Government is directed to initiate proceedings against the unauthorised occupants to retrieve the public property and thereafter, if need be, it be sold either in public auction or otherwise as per law.