

(2008) 05 AHC CK 0183
In the Allahabad High Court

ITC Limited

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-05-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 162, 21, 226
Evidence Act, 1872 — Section 115
Specific Relief Act, 1963 — Section 6

Citation : (2008) 05 AHC CK 0183

Hon'ble Judges : B.S. Chauhan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Tandon, J.—This bunch of writ petitions has been filed by incorporated Companies stated to have been allotted plots by New Okhla Industrial Development Authority (for short "NOIDA") for construction of 3/4/5 star hotels in Sector 96, 97 and 98, NOIDA, District Gautambudh Nagar. Petitioners are aggrieved by the order of the Secretary of the Industrial Development Department, U.P. Shasan Lucknow dated 01.08.2007 as also by the order of the Chief Executive Officer of NOIDA dated 03.08.2007, whereby they have been informed that the allotment of land earlier made in favour of the petitioners has been cancelled, they must deliver vacant possession of the plots within 15 days failing which forceful dispossession has been threatened. The State Government has further directed that the officers responsible for the allotment be identified and a report be submitted for appropriate action against such erring officers.

We have heard Mr. Anil Diwan, Mr. A.K. Ganguli, Mr. S.P. Gupta, Sri R.N. Singh, Mr. Kailash Vasudev, Mr. Vinay Bhasin, Mr. Ravi Kant, Mr. Sashi Nandan, Mr. Navin Sinha, Senior Advocates on behalf of the petitioners; Mr. R.N. Trivedi, Senior Advocate assisted by Mr. Amit Singh on behalf of NOIDA, Mr. Zafar Naiyar and Mr. Devendra Kumar Arora, Additional Advocate Generals on behalf of the State, Mr. B.P. Singh, Senior Advocate for intervenor, Mr. Ashutosh Srivastava, intervenor, in

person.

The facts giving rise to these writ petitions are more or less identical except for the size of the plots and the category of hotel to be constructed, thereon.

FACTS:

2. Petitioners are Companies duly incorporated under the Companies Act. They are primarily engaged in hotel business. Noida has been constituted under the provisions of the U.P. Industrial Area Development Act, 1976 (hereinafter referred to as the Act, 1976), for securing planned industrial development of areas allocated for the said purpose. NOIDA has been conferred a power to sell, lease or otherwise transfer the land by way of auction tender or otherwise, on such terms and conditions and subject to such rules that may be made under the Act (reference Section 7 of the Act, 1976). Section 12 of the Act, 1976 makes the provisions of Chapter VII and Sections 30, 32, 40 to 47, 49, 50, 51, 53 & 58 of the U.P. Urban Planning and Development Act 1973 (hereinafter referred to as the Act, 1973) mutatis mutandis applicable to the 1976 Act. Section 14 of Act of 1976 confers a power of forfeiture for breach of condition of transfer etc. Section 14(2) provides for the power of re-entry, Section 17 declares that the Act, 1976 would have an over riding effect over the provisions of 1973, Act. Section 18 confers the power upon the State Government to make rules by notification for the purposes of the Act. (It is admitted on behalf of the parties that with reference to Section 7 read with Section 18, State Government has not framed any rules for regulating the terms and conditions on which the authority can sell, lease or otherwise transfer any land or building). Section 19 of Act, 1976 provides for the framing of Regulations by the NOIDA for the purposes of carrying out the provisions of the Act. Since Section 41 of the 1973 Act has been made applicable by incorporation to Act, 1976, the Development Authorities as well as its Chairman and other officers have to carry out the directions as may be issued by the State Government from time to time. The State Government also has the power on its or on an application made under Sub-section 3 of Section 41 to call for the records and to examine the legality of the order passed by the authority or its Chairman and to issue such directions, as it may deem fit.

3. In order to attract investment in the hotel industry, the State Government vide its decision dated 22.5.2006 came out with a policy conferring the status of "industry" to hotels, for promoting Tourism Industry. Under the policy decision dated 22nd May, 2006, development authorities situate throughout the State of Uttar Pradesh were required to treat the hotels as industrial undertakings and for the said purpose, they were directed to earmark and allot land for hotels in the manner and on the rates, land is allotted to the industries. The land so earmarked for hotel purposes was to remain as such for a period of five years and if no investor opts for the same, the authority was free to change the land user. The policy also provided for grant of other benefits like exemption from entertainment tax etc. to such hotel industry. The conditions to be fulfilled by an applicant before he could apply for allotment of land having regard to the

category of the hotel to be constructed, namely 3/4/5 stars were also specified. With reference to the said Government Order, the Board of Director (NOIDA) passed a resolution in its 135th meeting dated 5th June, 2006 adopting the policy decision of the State Government dated 22th May, 2006 for treating hotels as an Industry and for allotment of land in like manner at the rates applicable to Phase-I of the Industrial Area, NOIDA.

4. In terms of the said decision, NOIDA published advertisements on Internet and in newspaper inviting applications, from eligible applicants for allotment of land for setting up 3/4/5 star hotels in NOIDA. The plots for the said purpose were earmarked in Sectors 96, 97 and 98, NOIDA. In the brochure published for the purpose amongst other things specifically specified, that because of the ensuing Common Wealth Games scheduled to take place in New Delhi in the year 2010, the Hotels had to be constructed and made operational in a time bound manner. Various other stringent conditions were provided for in the brochure which the prospective applicants had to fulfill within the time span specified. Few of the stringent conditions so imposed as per the brochure and relevant for the purpose of these petitions are being quoted herein below:

Eligibility Conditions:

Requirement	Particulars
Minimum years of experience in Ten years hotel Industry	Minimum
Average Turnover of Rs. Hotel business during the last 100,00,00,00/-	three
Accounting years from (Rupees One audited accounts; i.e. 2005-06, Hundred Crores 2004-05; 2003-04 Only)	or calendar
years 2005; 2004 and 2003 as the case may be (Rs. In Cores)	Net Worth
Positive	

H. Construction

1. Allottee shall commence the construction within six months from taking over the physical possession of the plot and inform in writing to the Authority about timely completion of approved project. The allottee shall submit a copy of the plan for execution of the Hotel Project.

2. The allottee shall ensure completion of their project before 2010 (using 50% of permissible FAR) and submit the following documents for declaration the hotel having become functional:

i) Statutory Certificate(s) of State/Central Government applicable for running the Hotel business.

ii) Building Completion Certificate from the Authority; and

iii) no objection certificate from Fire Service Department.

In addition to the above stated documents the following documents as applicable shall be required to be submitted by the allottees claiming the unit to be functional:

i) NOC/Environmental clearance certificate from State/Central Pollution Control Board.

ii) ESI registration certificate.

iii) PF registration certificate.

iv) Affidavit regarding compliance of various provisions of Laws applicable for the Hotel Industry for operating the Hotel. It shall be the responsibility of the allottee to obtain water, sewer, electric connection from the concerned department.

I. Norms of Development:

a. Ground coverage & floor area ratio is as under:

Maximum ground coverage 25% Maximum FAR 2 Maximum Height ft Setbacks
As per building bye-laws

b. Other norms:

i. 5% of the FAR can be used for Commercial space.

ii. Basement below the ground floor to the maximum extent of around coverage shall be allowed and its use for parking and services would not be counted in the FAR. Basement used for parking will be permitted upto the setback line of the plot.

J. Transfer:

The allotted plot shall not be transferred before the allotted premises is declared functional by the Authority. In case the allottee wants to transfer the plot after the hotel is declared functional, the allottee will have to seek prior permission from the Authority. Authority may refuse to allow transfer without giving any reason. However, in case the transfer is permitted, transfer charges shall be payable as per policy of the Authority and all terms and conditions of transfer memorandum shall be binding jointly and severally on the transferee and transferor.

O. Cancellation:

(i) If it is discovered that the allotment of the plot has been obtained by suppression of any fact or mis-statement or misrepresentation or fraud the allotment of the plot shall be cancelled and the entire deposited amount shall be forfeited by the Authority.

(ii) If there is any breach in the terms of the allotment, or if the allottee does not

abide the terms and conditions of the building rules or any rules framed by NOIDA, the allotment may be cancelled by the Authority and the possession of the demised premises shall be taken over by the Authority from the allottee. In such an event, allottee will not be entitled for any compensation whatsoever and refund of any amount credited or is in arrears/overdue as Revenue Receipt(s) if any, may be refunded after forfeiting the amount as per rules. However, total forfeited amount would not exceed the total deposits.

Q. Other Clauses:

(i) The Chief Executive Officer reserves the right to make such additions, alterations or modifications in the terms and conditions of tender/allotment from time to time as he may consider just and expedient.

(ii) In case of any clarification or interpretation regarding these terms and conditions the decision of the Chief Executive Officer of the Authority shall be final and binding on the Applicant/Allottee.

(iii) If due to any "FORCE MAJEURE" or circumstances, beyond Authority's control the Authority is unable to make allotment or deliver possession of allotted plot, entire registration money or the deposits depending on state of allotment will be refunded.

(iv) The allottee will be governed by the provisions of U.P. Industrial Area Development Act, 1976, and the Rules/Regulations framed; directions issued thereunder.

(v) The allottee shall be responsible for obtaining the necessary clearances from the Government Departments/Respective Departments as stipulated under relevant statutory provisions.

5. In response to the advertisement so published, petitioners after purchase of brochure applied for allotment of land for establishing a hotel in the respective category. The applications were processed by NOIDA and vide allotment letter dated 12th January, 2007 as modified under letter dated 5th April, 2007, land was allotted to the petitioners @ Rs. 7400 sq. mtr. along with other charges. Petitioners deposited the entire amount of the total premium so demanded along with other charges within the time specified. After the money was deposited, NOIDA authorities executed a lease deed in respect of the plots transferred in favour of the petitioners. The lease deeds contain all the stipulations as were provided for under the brochure. Actual physical possession of the land was also delivered to the lease holders. In some cases lease deeds have also been registered. Petitioners are stated to have started mobilizing the funds, plant machinery for raising constructions, as the project had to be made operational within the time specified.

6. Two public interest litigation petitions (for short PIL) being Civil Misc. Writ Petition No. 24917 of 2007; R.K. Yadav v. State of U.P. and Ors., and Civil Misc. Writ Petition No. 29592 of 2007; Ashutosh Srivastava v. State of U.P. and Ors.,

were filed before this Court. This Court while entertaining the said PIL petitions, by means of the interim order 25th May, 2007, required the State-respondents to file a counter affidavit and in the meantime provided that it shall be open to the State Government to examine on its own as to whether in the facts of the case any orders were required to be passed u/s 41(3) of Act, 1973. For ready reference, part of the order of the High Court read as follows:

14. In the present case it is submitted that as against 1,69,000/- the plots are being allotted at Rs. 7,400/- which is on the basis of allotment after examining the qualifications and giving of marks and not on the basis of any tender being issued. This is in view of these facts that we have directed the counter affidavits to be filed by the respondents.

15. The State of Uttar Pradesh though will file a counter affidavit may as well examine in the meanwhile as to whether the decision under challenge should be re-looked in view of the powers of the State Government, u/s 41(3) of the Act. However, it is for the State Government to take its own decision.

16. In the meanwhile the only interim observation, we are making, is that as far as the allottees are concerned they will be informed further action whatever they make as well as whatever the action be taken by the respondents will be subject to the order to be passed in this case.

7. In alleged obedience to the interim order of this Court referred to above, the State, by means of the order dated 1st August, 2007, in purported exercise of powers u/s 41(1) of the 1973, Act, issued directions to NOIDA, for appropriate action being taken in the matter in view of the fact that the allotment of land in favour of petitioners was not in accordance with law/conditions applicable qua settlement of plots marked for commercial use for the reasons recorded in the orders, with a further direction, that responsible officer be identified and report be submitted so that action can be taken against them. The NOIDA, by means of its order dated 3rd August, 2007 in turn decided to cancel the allotment made in favour of petitioners and further called upon the petitioners to surrender the possession of land failing which appropriate action in accordance with law, was proposed to be taken.

In view of these orders of the State Government and NOIDA the PIL petitions have been dismissed as withdrawn with liberty to the allottees to challenge the orders, if so advised.

Petitioners have, therefore, approached this Court by means of the present writ petitions against the order of the State Government dated 1st August, 2007 and that of the NOIDA dated 3rd August, 2007.

SUBMISSIONS:

8. Learned counsel for the petitioners have submitted that there has been no irregularity or illegality in the allotment of land in favour of the petitioners, which could justify the extreme action taken. Even if there had been some minor

irregularity or illegality in the allotment because of amendments in the Regulations/Policies having not been made, the same is not so fatal, as to justify the cancellation of the allotment itself as a whole. It is stated that the order passed by the State Government as well as that by the NOIDA do not disclose sufficient grounds which can be said to be reasonable for justifying the extreme measure i.e. cancellation and resumption as directed under the impugned orders.

9. The NOIDA, having due regard to the policy decision of the Government of Uttar Pradesh dated 22nd May, 2006 providing for hotel to be treated as an industry for the development of tourism, resolved in its 135th Meeting held on 5th June, 2006 to adopt the policy in toto. Under the policy guidelines, hotels were directed to be given the status of an industry and allotment of land for the purpose was directed to be made at par with industries and on same rates. Therefore, benefits available to hotel as an industry in respect of allotment of plots became applicable automatically.

10. The NOIDA, after demarcating, decided to allot the plots for establishing 3/4/5 categories of hotels in Sectors 96, 97 and 98, as is apparent from the brochure published by the NOIDA. The NOIDA had specifically resolved that the rates for allotment of plots for establishing the hotels would be the rates applicable to plots in its Industrial area, Phase-I. At the relevant time the maximum rate applicable in respect of Phase-I of Industrial Area was Rs. 7,400/- per square metre and it is at this rate that the plots had been allotted in favour of petitioners. Petitioners verily believed that the NOIDA in compliance of the directions of the State Government as contained in the policy decision dated 22nd May, 2006 in consultation with the authorities concerned earmarked the sites for the hotels for appropriate use and thereafter proceeded to make allotment strictly in accordance with fair and just procedure.

11. The fairness of the procedure adopted is apparent from the publication of advertisement as well as by notice being uplinked to the Website for inviting applications and that allotments infact being made at the highest rates applicable qua an industrial area of NOIDA at the relevant time. That there is nothing so inherently wrong in the allotment of the respective plots in favour of petitioners which could have been interfered with by the State Government/NOIDA in alleged exercise of powers u/s 41 of Act of 1973.

Even otherwise it has been stated that the impugned orders have been passed by the State Government without notice and opportunity of hearing to the petitioners. The orders visit the petitioners with civil consequences and therefore, compliance of principles of natural justice was a must. In absence whereof the orders are rendered unsustainable.

Further impugned order has been passed by the NOIDA at the behest of the State Government, immediately after change of the party in power. The State is a continuing body, thus such a course was not warranted.

12. In addition thereto, it is pointed out that under proviso to Section 41 of

1973, Act no order adverse to a person can be passed by the State Government without notice and opportunity of hearing. Admittedly statutory requirement of Section 41 (proviso) has not been complied with before passing of the impugned order by the State.

On merits of the impugned order, it is submitted that NOIDA has exclusive discretion to transfer the land either by sale or lease or otherwise by way of auction, tender or other methods u/s 7 of the Act, 1976. The wide statutory power so conferred upon the NOIDA cannot be curtailed by suggesting that transfer of land should take place by way of auction/tender only, as has been held by the State Government in its order dated 1st August, 2007.

13. It has vehemently been contended before us by the learned counsel appearing on behalf of the allottees that the price fetched in respect of the plots, so transferred represents a fair and just value, if judged in background of the stringent stipulation, as provided by NOIDA in its brochure. The entire package when examined as a whole, would establish that it contained certain beneficial provisions as well as certain stringent conditions, the purpose being to bring investment as well as to establish necessary infrastructure qua availability of hotel rooms for visitors, who were to reach New Delhi for the ensuing Common Wealth Games, scheduled to take place in the year 2010. The stringent conditions, which had been imposed in respect of the transaction at hand, are stated to be as follows:

- (i) Hotel to be erected and completed by December, 2009 [Clause IV (4)]
- (ii) Hotel to be fully functional by June 2010 failing which lease liable to revoked and possession taken over and entire premium and advance lease rent to be forfeited. [Clause IV (4)]
- (iii) No transfer without the previous consent of Lessor permissible before Hotel was made functional. (Clause 12)
- (iv) On transfer being permitted unearned increase i.e. a percentage of difference between premium and market value of the premises to be paid as may be claimed by Lessor. (Clause 12)
- (v) Prohibition on Lessee making any change in its shareholding or capital structure till Hotel became functional. (Clause 18(1))
- (vi) Lessee to employ 5% from local labour force. (Clause 19).

Money fetched in respect of the entire package as such cannot be termed to be a pittance or unreasonable in any manner.

14. Petitioners submit that lease deed having been executed in their favour of petitioners (and in some cases even registered), actual physical possession over the plots having been delivered in pursuance thereto, the rights of the allottees stood crystallized. Such rights of title/possession cannot be divested except by following a procedure known to law. Any action contrary to law would be hit by

Article 300-A of the Constitution of India.

It is also contended that the petitioners have accepted the package so offered and in furtherance thereto, they have not only made payment of huge money towards premium, registration of lease deeds but other financial commitments have also been made, in practically all the cases. Petitioners have altered their position to their detriment on the assurance held out by the NOIDA and therefore, on the principle of promissory estoppel, the impugned orders are liable to be quashed. The State/NOIDA are estopped from cancelling the allotment made in favour of petitioners.

15. It is further contended that as the two PILs had been filed and this Court passed an interim order asking the State Government to examine the case and ultimately the petitions were dismissed as withdrawn, the State Government could not have taken any decision in pursuance of the orders passed by this Court for the reason that the interim order merged into final order. More so, placing reliance upon the judgment of the Hon'ble Supreme Court in S.P. Anand Vs. H.D. Deve Gowda and others, it has been contended that the PIL cannot be permitted to be withdrawn without recording the finding about the bona fides of the petitioners as in most of the cases, such petitions are filed to achieve an ulterior purpose. Thus, the process of the Court cannot be permitted to be abused.

16. Lastly it is contended that even if it is held that allotment made in favour of petitioners could be cancelled or that the State/NOIDA has the power to cancel the same, yet the possession of the petitioners being authorised at its inception being based on the lease deed, resumption of the possession forcefully with the help of police power by State/NOIDA would be per se arbitrary. The respondents have to adopt due procedure prescribed by law, which in the facts of the case would be none other than by way of civil suit proceedings.

17. The reasons assigned in the impugned orders for cancellation of allotment are flimsy and misconceived. The reasons recorded in the impugned orders cannot be supplemented by fresh reasons by way of affidavits filed before this Court. Thus, the petitions deserve to be allowed.

18. Sri R.N. Trivedi, learned Senior Counsel, in reply on behalf of NOIDA, has contended that the State in exercise of powers u/s 41 of 1973, Act has ample jurisdiction to act suo moto or otherwise. The State, having regard to the order of this Court dated 25th May, 2007, examined the matter qua allotment of plots to the petitioners and after noticing material illegalities, came to the conclusion that the same were fatal and vitiated the entire allotment. The State Government has ample jurisdiction u/s 41 of 1973, Act to issue directions to the NOIDA to revoke its early illegal actions. NOIDA has accordingly rightly cancelled the earlier allotment. It is submitted that the order of the State Government dated 1st August, 2007 as well as the order of the NOIDA dated 3rd August, 2007 are within their jurisdiction.

19. At the very outset, learned counsel for the NOIDA stated that if the Court comes to the conclusion that in the facts of the present case opportunity of hearing by the State Government was a condition precedent before any adverse order could be passed against the petitioners, the Court may remit the matter to the State Government without entering into the merits of the issues raised on behalf of petitioners.

20. However, since various factual and legal issues had been raised by learned counsel for the petitioners, the same were exhaustively replied by the learned counsel for the NOIDA, as follows:

Sectors 96, 97 and 98 were earmarked for commercial use under the Master Plan prepared and notified by the NOIDA u/s 6 of Act, 1976. Hotels are included in the definition of "commercial use" as per the definition under Regulation 2(d) of New Okhla Industrial Development Area (Preparation and Finalization of Plan) Regulations, 1991 (hereinafter referred to as the "Regulations, 1991"), as applicable at the relevant date. These regulations have been framed with the approval of the State Government in exercise of statutory powers under Sections 6 and 8 read with Section 19 of Act, 1976 and therefore, have statutory force.

When read in the background of the Regulation, 1991, the policy decision of the State Government dated 26th May, 2006 required that the status of industry be conferred upon the hotels for the purpose of development of tourism industry, for giving effect to the said policy decision, necessary amendments were required to be made in the Master Plan and Regulations applicable.

21. With regard to Section 6(b) of Act, 1976, it is submitted that it is a statutory requirement that in the plan to be prepared by the NOIDA, it must necessarily provide as to, for what particular purpose, any area/site is to be used namely, industrial, commercial or residential. Section 6(c) enables the NOIDA to regulate the constructions of the building having regard to the nature for which site/plot had been earmarked i.e. industrial, commercial, or residential. Section 8 of the Act restrains the use of any site for the purpose other than for which it is provided for in the master plan. Section 9 prohibits the erection of any building in contravention of regulations. Section 14 provides for cancellation of allotment and re-entry, where the allotment had been made in contravention to the rules and regulations.

22. With reference to provisions of Regulations, 1991, it is contended that the words "commercial use", "industrial use", "institutional use", "land use" and "residential use", have specifically been defined under Clauses 2(d), 2(e), 2(f), 2(g) and 2(k) of Regulations, 1991 and all have been given a distinct, meaning having regard to the use to which a particular plot/area could be put. Under the plan prepared by the NOIDA, the sectors where the plots for hotel industry have been allotted, were earmarked, for commercial use. As per the policy of the NOIDA, land for commercial use can be transferred by way of auction/tender only. It is stated that the policy of the State Government dated 22nd May, 2006

and the resolution passed by the NOIDA dated 5th June, 2006 were not self-executory. For the purpose of giving effect to the said decisions it was necessary for the NOIDA to make amendments in the master plan and to amend the Regulations of 1991, so as to exclude the Hotels from the definition of commercial use and for other relevant purposes. Since the NOIDA did not make necessary amendments in the master plan or in the regulations of 1991, the policy decision dated 22nd May, 2006 for conferring the status of industry upon Hotels could not have been given effect to. The settlement of commercial plots for industrial use on the basis of fixed price was patently illegal being in violation of Statutory provisions. Section 14 was attracted in the facts of the case. Allotments have rightly been cancelled and re-entry directed.

23. Even otherwise, it is stated that under the resolution passed in 135th meeting dated 5th June, 2006, it was resolved by NOIDA that the rates applicable in respect of industrial area, Phase-I of NOIDA would be applied for grant of plots for hotel industry. It is submitted that under the Industrial policy of NOIDA of 2006, Rs. 7,400/- was only the reserve price and not the fixed price for Phase-I, at any point of time. No decision had ever been taken by the Board of Directors of NOIDA fixing Rs. 7,400/- as the fixed price for the purpose of allotment of plots in the area concerned.

To be precise it is stated that there is a distinction between reserve price and fixed price. Reference is made to the resolution of NOIDA dated 20th March, 2006 (133rd Meeting) and Industrial Property Management as notified in April, 2006, wherein qua Phase-1, Rs. 7,400/- has been shown as reserve price with a stipulation that plots in Phase-I shall be sold by adopting the tender system only, while in respect of phases II and III, a fixed price of Rs. 2100/- and Rs. 4,000/- respectively, had been notified with a stipulation that the land shall be allotted on applications.

24. Judgements of the Hon"ble Supreme Court in the case of State of Uttar Pradesh Vs. Shiv Charan Sharma and Others, , R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu Charities and Others, and Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, have been referred to explain the difference between the reserve price and fixed price.

The policy decision of the State Government dated 22nd May, 2006 has been read in extenso before us and it is submitted that paragraph-1 provides procedure to be applied for demarcation of plots for hotel industry and on analysis of the same in detail, it would mean as follows:

- (a) if a master plan for an area of land was not in existence, plots may be identified for hotels and offered for allotment as such,
- (b) where master plan is in-force, vacant land may be allotted for hotel purposes,
- (c) where master plan has not been given final shape, the land for hotels may be identified and reserved for the purpose.

25. A further stipulation has been made that as and when any master plan is revised, site for hotels, treating it to be an industry, be identified and allotted accordingly. It is, therefore, contended that since the master plan for the area in question had already been finalised and notified by the NOIDA earmarking respective plots for the purpose of land use i.e. industrial, commercial (which included hotels) and residential activities, in view of Clause 1 of the policy dated 22nd May, 2006, only other vacant land available with the NOIDA for which no master plan had been notified, alone could be used for the purpose. There had been complete non-application of mind to aforesaid aspect of the matter while allotting the land to the petitioners.

Clause 2 of the policy decision dated 22nd May, 2006 further clarified that for the purpose of allotment of plots for hotels treating them at par with industry, if necessary amendments are required to be made in the rules and regulations, the same may be carried out and if approval of the State Government is necessary, the same may be obtained. Neither condition of Clause 1 nor of Clause 2 of Government Policy had been carried out and therefore, the allotments made in favour of petitioners were not in conformity with the said policy decision.

26. It is emphasised that unless and until necessary amendments were made in Regulations 2(d) and 2(e) of Regulations, 1991, an area identified under the master plan for commercial use could not have been allotted in terms of the Government Order dated 22nd May, 2006 for establishing a hotel at industrial rates.

At no point of time the NOIDA had taken a decision to allot the plots on fixed rates of Rs. 7,400/- and therefore, the invitation to offer as notified in the brochure that the plots are to be granted on fixed rates of Rs. 7,400 was illegal and was not based on any resolution/approval of the Board.

27. Public authorities like NOIDA are created for public interest and are trustees of public property. Any allotment made by the Board in violation of statutory regulation/contrary to its own policy would be unlawful and it is always open to the authority to correct the mistakes committed, specifically when there had been a breach of Statutory provisions. The State has ample jurisdiction to issue directions to the NOIDA to act in accordance with law.

Reference is made to the judgements of the Hon'ble Supreme Court of India in the case of Hira Tikkoo Vs. Union Territory, Chandigarh and Others, wherein it was held that a mistake can be pleaded as a defence to annul the allotment order. According to the respondents, rectification of a mistake is permissible.

Inadequacy of consideration received by NOIDA in the facts of the case is writ large on record. The price fetched by NOIDA in respect of commercial area under Sectors 96,97 and 98 was nearly Rs. 1,67,000/- per square metre, while the plots in the same area have been allotted to the petitioners at the rates of Rs. 7,400/- per sq. mtr. which is a pittance.

28. Even if the policy guidelines, regulating the settlement of Industrial and Commercial areas as framed by the NOIDA for transfer of commercial plots are not statutory, NOIDA was bound by the same and it was not open to the NOIDA to act contrary thereto. Every authority is bound to act in conformity with the conditions, which have been framed by the authority to regulate its own conduct. Every action of the Executive/Government must be informed with reason and should be free from arbitrariness, the action has to be tested on the principles, which the executive frames for regulating its own conduct, and any substantial deviation from such policy vitiates the action of the authority concerned. It is submitted that the concept of arbitrariness has to be extended, and the principles of Article 14 of the Constitution have to be applied even in contractual matters.

29. So far as the principle of promissory estoppel is concerned, it is submitted that the principle has no application, in cases where there is violation of law. Nor the principal of estoppel can override the supervening public interest.

The contract in hand lies within public law domain. The NOIDA being the custodian of public property, unlike private parties must act in public interest only.

30. In reply to the plea of violation of Article 300-A of the Constitution of India, it is contended that Article 300-A only ensures that no person should be deprived of his property save by authority of law. Law for the purposes of Article 300A would mean an act of Parliament or of a State Legislature, a rule, a regulation or a statutory order for the purpose. The power of cancellation and re-entry as contained in Section 14 of Act, 1976 is a complete answer to the said plea.

Contentions so raised on behalf of respondents have been answered by learned counsel for the petitioners in rejoinder and it has vehemently been argued that the policy of 2004 framed by the NOIDA to regulate transfer of commercial plots and the policy of 2006 for transfer of industrial areas and its management are not statutory in nature, any conscious deviation from the policy would not be per se illegal so as to render the contract null and void. At the Best, it would be an irregularity, which can be cured, by necessary changes in the policy being affected by the NOIDA itself, which is competent to do so.

31. With reference to various resolutions passed in the meeting of NOIDA specifically 135th meeting dated 5th June, 2006, it is contended that the NOIDA had approved the rates on which commercial plots in question were to be settled with the applicants for the hotel industry, having due regard to the various stringent conditions as well as the purpose for which the land was being allotted. Change in the State Government or the officers of NOIDA, will not justify the reversal of the decisions which were earlier taken by the NOIDA only because of changed opinion. Petitioners had not played any fraud in getting the allotments, rather acted bonafidely. There may be misrepresentation on behalf of the NOIDA. The Authorities cannot be permitted to take advantage of their own mistake. It is submitted that Section 11 of 1973, Act has not been made applicable to the

1976, Act and therefore, for amendments in the master plan, no approval of the State Government is required and the decision of the NOIDA is itself sufficient. It is submitted that mistake of fact/mistake of law will not render the contract void. Reference in that regard is made to provisions of the Contract Act.

32. Having heard learned counsel for the parties at length, it would be appropriate that the legal principles which have been settled under various judgements of the Hon"ble Supreme Court and would be the guiding factor for just and fair decision of the dispute may be stated first.

1. Doctrine of Trust and duty to Act fairly and reasonably.

State or public authority which holds the property for the public or which has been assigned the duty of grant of largesse etc., acts as a trustee and, therefore, has to act fairly and reasonably.

In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, the Hon"ble Supreme Court held as under:

Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Welfare State requiring the State to discharge its wide-ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the touchstone of Article 14.

In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , the Hon"ble Supreme Court held as under:

Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and

relevance.

In M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, a similar view has been reiterated by the Supreme Court observing that Public Trust Doctrine is a part of the law of the land. This doctrine has grown from Article 21 of the Constitution. While deciding the said case, reliance was placed on its earlier judgment in M.C. Mehta Vs. Kamal Nath and Others,

Thus, in view of the above, it is evident that every State action should be free from bias, prejudice, arbitrariness and should be taken in public interest in accordance with law.

2. Estoppel (promissory)

A Constitution Bench of the Hon'ble Supreme Court in Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, has categorically held that question of estoppel does not arise against Statute, and the Court placed reliance upon paragraph 427 of Volume XV, 3rd Edition of the Halsbury's Law of England, wherein it has been observed as under:

A party cannot, by representation, any more than by other means, raise against himself an estoppel so as to create a state of things which he is legally disabled from creating. Thus, a corporate or statutory body cannot be estopped from denying that it has entered into a contract which it was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do....

The Apex Court in the said case observed as under:

In this connection, it is also convenient here to notice the argument that the Committee is estopped by its conduct from challenging the enforceability of the contract. The answer to the argument is that where a Statute makes a specific provision that a body corporate has to act in a particular manner and no other, that provision of law being mandatory and not directory, has to be strictly followed.

Similar view has been reiterated by the Apex Court in Bengal Iron Corporation and another Vs. Commercial Tax Officer and others, ; S. Saktivel (dead) by Lrs. Vs. M. Venugopal Pillai and Others, Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, ; and I.T.C. Ltd. Vs. The Person Incharge Agricultural Market Committee, Kakinada and Others,

It is settled proposition of law that estoppel does not lie against the Statute. Thus, where an act of the Authority is not in conformity with the statutory provision and has not been carried out following the manner prescribed by law, the doctrine would have no application. Vide Delhi Development Authority Vs. Mr. Ravindra Mohan Aggarwal and Another, and M.I. Builders Pvt. Ltd. (Supra), Nor the Court has a power to issue any direction asking the authority to act in contravention of law. Vide State of Punjab and others Vs. Renuka Singla and

others, Union of India and Another Vs. Kirloskar Pneumatic Company Limited, State of U. P. and others Vs. Harish Chandra and others, Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others, ; Shish Ram and Ors. v. State of Haryana and Ors. AIR 2000 SC 2148; and Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others,

We may also notice the following judgments which had been specifically referred to by the learned Counsel for the parties.

In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , this issue was decided observing:

It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Ayodeji Ajayi v. Briscoe (1964) 3 All ER 556.

In M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, , the Hon'ble Supreme Court held that it is sufficient to say that if an executive authority of the State in exercise of its legally permissible powers has made any promise to a party, who in fact, relying on the same, has changed its position not necessarily to its detriment and if this promise does not offend any provision of law or does not fetter any legislative or quasi-legislative power inhering in the promisor then on the principle of promissory estoppel, the promisor can be pinned down to the promise offered by it by way of representation containing such promise for the benefit of the promisee.

In State of Orissa and Others Vs. Mangalam Timber Products Ltd., , the Hon'ble Supreme Court held that the statutory authority making a promise cannot be permitted to take the benefit of its own mistake and back out from the promise made by it if the other side has acted upon it.

The scope of the principle was explained by the Apex Court in *The Union of India and Ors. v. Anglo Afghan Agencies etc.* AIR 1968 SC 718, observing:

Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an *ex parte* appraisal of the circumstances in which the obligation has arisen.

In *Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others*, , the Court noticed facts of the case that in 1865, the Government of Bombay had passed a resolution authorising the grant of an area to the Municipality rent-free for the purpose of setting up a market. Although possession of the site was handed over to the then Municipal Commissioner, no formal grant was in fact executed as required by law, applicable. Acting on the resolution, the Corporation spent considerable money in building and improving the market and had been in possession for 70 years during which period no revenue had been paid to or claimed by the Government. At a much belated stage, a demand was raised for rent under the Bombay City Land Revenue Act, 1876. The Corporation impugned the demand by filing a suit. The suit was dismissed. An appeal was preferred before the High Court. The High Court reversed the decision of the trial court and held that the Corporation was entitled to hold the land forever without payment of any rent and the Government had no right to assess the premises. The Collector preferred an appeal before the Supreme Court. There was no dispute that by reason of non-compliance with the statutory formalities, the government resolution of 1865 was not a actual grant passing title in the land to the Corporation. There was also no dispute that there was no enforceable contract between the State Government and the Municipal Corporation. Hon. Das, J. held that the possession of the Corporation not being referable to any legal title was adverse to the legal title of the Government and the right acquired by the Corporation to hold the land in perpetuity included an immunity from payment of rent Patanjali Sastri, J. differed. Chandrasekhara Aiyar, J. concurred with the conclusion of Das, J. but based his reasoning on the fact that by the resolution, representations had been made to the Corporation by the Government and the incident that the grant was invalid did not wipe out the existence of the representation nor the fact that it was acted upon by the Corporation. What has since been recognised as exposition of the principles of promissory estoppel. The validity of the grant does not lead to the obliteration of the representation. Can the Government be now allowed to go back on the representation, and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a court of equity must prevent being committed. If the resolution can be read as meaning that the grant was of rent-free land, the case would come strictly within the doctrine of estoppel enunciated in Section 115 of the Evidence Act. But even otherwise, that is, if there was merely the holding out of a promise that no rent

will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfil it. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power.

Unless the Court comes to the conclusion that the assurance given by the State was incompetent or illegal or a fraud on the statutory or constitutional powers or a breach of faith of the people, the assurance given by the State is required to be adhered to. Vide *Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another*,

In *State of Punjab Vs. Nestle India Ltd. and Another*, , the Hon''ble Supreme Court considered a large number of its earlier judgments and came to the conclusion that promissory estoppel long recognised as a legitimate defence in equity was held to found a cause of action against the Government, even when, and this needs to be emphasised, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute. In the said case, as the petitioner therein has invested a huge amount on the assurance given by the State of Punjab to grant exemption from purchase tax on milk though there was no such exemption but there was enabling provision in the statutory rules to bring such notification, the Court held that State Government could have come with a notification exempting the purchase tax on milk.

In *U.P. Power Corporation Ltd. and Another Vs. Sant Steels and Alloys (P) Ltd. and Others*, , the Hon''ble Supreme Court considered the scope of promissory estoppel and held as under:

When the State Government makes a representation and invites the entrepreneurs by showing various benefits for encouraging to make investment by way of industrial development of the backward areas or the hill areas, and thereafter the entrepreneurs on the representations so made bona fide make investment and thereafter if the State Government resile from such benefits, then it certainly is an act of unfairness and arbitrariness. Consideration of public interest and the fact that there cannot any estoppel against a Statute are exceptions.... We fail to understand why the appellant-Corporation which made a representation and allowed the other party to act upon such representation could resile and leave the citizens in a lurch. In such a situation the principle of promissory estoppel which has been evolved by the Courts which is based on public morality cannot permit the State to act in such a arbitrary fashion....

Similar view has been reiterated in *Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others*, ; and *Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others*,

It may be pertinent to make reference to Section 41 of the Transfer of Property Act, 1872 which provides that where a person purchases the property from its ostensible owner for consideration, the transfer may not be voidable on the ground that the transferor was not authorised to make the sale provided the

transferee has taken reasonable care to ascertain that the transferor had power to make the transfer and had acted in good faith. In fact, the provisions provide for statutory application of law synonymous to estoppel as provided u/s 115 of the Evidence Act. The principle of this Section applies and carves out an exception to the rule that a person cannot transfer a better title than he has. Vide Controller of Estate Duty, Lucknow Vs. Aloke Mitra, .

While considering waiver of legal procedures provided in the context of promissory estoppel, in Shri Lachoo Mal Vs. Shri Radhey Shyam, the Hon''ble Supreme Court held that every one has a right to waive and to agree to waive the advantage of law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public policy. However, with reference to such waiver of legal procedures by statutory authorities, the Hon''ble Supreme Court in Paradise Printers and Others Vs. Union Territory of Chandigarh and Others, , held as under:

12. In the first place, we do not know under what provision the authorities asked the appellants to pay 25 per cent of the premium payable in respect of the sites even before allotment. Apparently that procedure appears to be irregular with no statutory sanction. Secondly, we do not find any specific assurance or representation made by the authorities promising to allot the sites applied for. Thirdly even if there was any such assurance, we do not think that it would give rise to the doctrine of promissory estoppel in the instant case. The authorities cannot given assurance contrary to the statutory rules. The sites are required to be disposed of by auction, allotment or sale as per the procedure prescribed. The authorities who are bound by the rules of procedure cannot make any representation or promise to allot particular sites to the applicants. Even if they make such promise or assurance, the doctrine of promissory estoppel cannot be invoked to compel them to carry out the promise or assurance which is contrary to law.

(Emphasis added)

The issue with regard to resiling from the promise held out by the Government because of supervening public equity was examined in Shrijee Sales Corporation and Another Vs. Union of India (UOI), , the Hon''ble Supreme Court held as under:

Suffice it to say that the principle of promissory is applicable against the Government but in case there is a supervening public equity, the the Government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. However, The Court must satisfy itself that such a public interest exists.

Thus, from the above discussion, it becomes crystal clear that estoppel does not operate against the statutory provision. In case the Executive made a

representation, which has been acted upon by the other party and the promise is not in contravention of a statutory provision or public interest, equity demands its compliance and fulfillment by the executive.

3. Reserve price means

In *State of Uttar Pradesh Vs. Shiv Charan Sharma and Others*, , the Hon"ble Supreme Court explained the meaning of the said phrase "reserve price" to mean the price at which the public auction starts i.e. the amount below which the auction bidders are not permitted to start the bid amount at auction. The distinction between reserve price and Fixed Price needs no further elucidation.

4. Rule of law

In *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, , the Supreme Court observed that where a Government activity involves public element, the "citizen has a right to claim equal treatment", and when "the State acts to the prejudice of a person, it has to be supported by legality." Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination".

Similarly, in *Ramana Dayaram Shetty (Supra)*, the Apex Court observed that the activities of the government had a public element and if it entered into any contract, it must do so fairly without discrimination and without unfair procedure. Whenever the government dealt with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largesse, the government could not act arbitrarily at its sweet will but must act in conformity with standards or norms, without being arbitrary, irrational or irrelevant. If the government departed from such standard or norm in any particular case or cases its action was liable to be struck down unless it could be shown that the departure was not arbitrary but was based on some valid principle which was not irrational, unreasonable or discriminatory. The Court further held as under:

Every action of the executive Government must be in form of reason and should be free from arbitrariness. That is the very essence of rules of law and its bare minimum requirement.

Thus, a decision taken in an arbitrary manner contradicts the principle of legitimate expectation and the plea of legitimate expectation relates to procedural fairness in decision making and forms a part of the rule of non-arbitrariness, as denial of administrative fairness is Constitutional anethama. The basic requirement of Article 14 is fairness in action by the State. Vide *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, ; *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, ; *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*,

Kumari Shrilekha Vidyarthi (Supra); and Ghaziabad Development Authority and State of U.P. Vs. Delhi Auto and General Finance Pvt. Ltd. and Maha Maya General Finance Co. Ltd. and another, .

The rule of law prohibits arbitrary action and command the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism. Vide Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, .

In the State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others, , the Constitution Bench of the Apex Court observed as under:

official arbitrariness is more subversive of doctrine of equality than the statutory discrimination. In spite of statutory discrimination, one knows where he stands but the wand of official arbitrariness can be waved in all directions indiscriminately.

Similarly, in S.G. Jaisinghani Vs. Union of India (UOI) and Others, the Constitution Bench of the Apex Court observed as under:

In the context it is important to emphasize that absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional System is based. In a system governed by rule of law, discretion, when conferred upon Executive Authorities, must be confined within the clearly defined limits. Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and in general such decision should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

In a case where as a result of a decision taken by the Government the other party is likely to be adversely affected, the State authorities have to exercise their powers bonafidely and not arbitrarily. Vide Amarnath Ashram Trust Society and Anr. v. Governor of Uttar Pradesh and Ors. AIR 1998 SC 477.

There is no manner of doubt that the public authorities and the Government are bound to act reasonably and fairly and each action of such authorities must pass the test of reasonableness and whenever action taken is found to be lacking bonafide and made in colourable exercise of the power, the Court should not hesitate to strike down such unfair and unjust proceedings. Vide Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and Hansraj H. Jain Vs. State of Maharashtra and Others,

In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. The Rule of Law is the foundation of a democratic society.

Courts being custodians of law have a solemn duty to uphold the rule of law under all circumstances by directing the authorities concerned to act in accordance with law. If the rule of law is not enforced, it will surely become a casualty in the process, a costly consequence to be zealously averted by all, and at any rate, by the Court. Vide *Salkia Businessmen's Association and Others Vs. Howrah, Municipal Corporation and Others*,

Wherever arbitrariness or unreasonableness is found, there is a denial of Rule of Law. The Rule of Law means absolute supremacy or predominance of rule of law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, in prerogative or even of wide discretionary authority on the part of the State or its instrumentality. Vide *State of Madhya Pradesh and Anr. v. Thakur Bharat Singh* AIR 1967 SC 1170 . A decision taken by the authority under the Statute has to be made by the application of principles of rules, and, in general, such decision should be predictable and the citizen should know where he stands. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis to a decision taken under the rule of law. The term Rule of Law connotes the undisputed supremacy of law and envisage a state of things in which every one respects the law and where law has to be followed by everyone collectively and individually by the citizens as well as by the State. The Rule of Law permeates the entire fabric of the Constitution and indeed forms one of its basic features. Vide *Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others*,

In *I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others*, the Apex Court held as under:

The State is to deny no one equality before the law.... Economic growth and social equity are the two pillars of our Constitution which are linked to the right of an individual (right to equal opportunity), rather than in the abstract.... Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review.

Thus, the law on the issue emerges is that even discretion is to be exercised by the Executive strictly in accordance with law. The action is to be free from arbitrariness and unreasonableness.

5. Guidelines or policy decisions have no statutory force

Guidelines or policy decisions do not have statutory force, and therefore, not being statutory in character, cannot be enforced through the Courts. Such directions/decisions cannot be termed to be the "laws" for the simple reason that if they had been the "laws", no such declaration or policy decision was required. More so, they do not require publication as is mandatory to make the "law" enforceable. The Government, if so desires, may inform the authorities by a secret communication. The source of power does not affect the character of

things done in exercise of that power. Whether it is a law or an administrative direction depends upon the character or nature of the orders or directions authorised to be issued in exercise of powers conferred. Vide *Raman and Raman Ltd. Vs. The State of Madras and Others*, ; *R. Abdulla Rowther v. The State Transport Appellate Tribunal, Madras and Ors.* AIR 1959 SC 896 ; *K.M. Shanmugam Vs. The S.R.V.S. (P) Ltd. and Others*, and *G.J. Fernandez Vs. State of Mysore and Others*,

In *Andhra Industrial Works Vs. Chief Controller of Imports and Others*, , the Hon"ble Supreme Court held that no person can, merely on the basis of a policy statement, claim a right to the grant of import licence enforceable by law. Such a policy can be changed, rescinded or altered by mere administrative orders or executive instructions issued at any time.

In *Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam Vs. Union of India and others*, the Hon"ble Supreme Court placing reliance upon the large number of earlier judgements, came to the conclusion that a statement of policy is not a prescription of binding criteria. In case the guidelines are not statutory in character, they cannot be judicially enforced. The Competent Authority might depart from these guidelines where the proper exercise of his discretion so warrants.

Similar view has been reiterated by the Apex Court in *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, , *Bank of India Vs. Jagjit Singh Mehta*, and *Union of India and Others Vs. S.L. Abbas*,

In *The Chief Commercial Manager, South Central Railway, Secunderabad and Others Vs. G. Ratnam and Others*, , the Hon"ble Supreme Court held that most of the administrative instructions are meant for guidance to the officers of the department and do not have statutory force and, therefore, such instructions are not justiciable in Courts. "In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Governments by some Statute or under some provision of the Constitution provided there for. Therefore, even if there has been any breach of such executive instructions, that does not confer any right on any member of the public to ask for a writ against the Government by a petition under Article 226 of the Constitution of India.

Breach of the executive instruction, having no statutory force, do not confer any legal right on any member of the society to ask for a writ against Government under Article 226 of the Constitution of India. Vide *G.J. Fernandez Vs. State of Mysore and Others*,

Thus, the guidelines/policy decisions do not have statutory force.

6. Stringent condition for allotment have the effect of reducing the fair price, which can be fetched.

There may be a case where the State or its instrumentality takes a policy

decision to float a particular scheme for development of an area. It may be for the purpose of commercial, residential or industrial. It may also provide for developing the multi-storied complex for either of the purposes. The State or its instrumentality is at liberty to change the terms of allotment and in case some stringent conditions are imposed in a particular kind of contract, the valuation of land may vary according to the term so imposed though the purpose may be the same. In *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, , the issue of depreciation of value of immovable property in such circumstances was considered by the Supreme Court elaborately. The issue involved has been regarding the imposition of property tax after assessing its market value. The question arose as to whether a condition imposed on the owner of the plot that he would sell the plot of land on which premises are constructed only to the members of the Cooperative House Building Society and only with the prior consent of the Government, such a condition may diminish the value of the land. The Court held as under:

When we have to determine what would be the market price of the plot of land on the date of commencement of construction of the premises, we must proceed on the hypothesis that the prior consent of the Government has been given and the plot of land is available for sale, transfer or assignment and on that footing, ascertain what price it would fetch on such sale, transfer or assignment. Of course, when the class of potential buyers, transferees or assignees is restricted, the market price would tend to be depressed. But even so, it can be ascertained and it would not be correct to say that it is incapable of determination. There is also one other factor which would go to depress the market price and that stems from the clause in the sub-lease which provides that on sale, transfer or assignment of the plot of land, the Government shall be entitled to claim 50 per cent of the unearned increment in the value of the plot of land and the Government shall also be entitled to purchase the plot of land at the price realisable in the market after deducting therefrom 50 percent of the unearned increment. Since the leasehold interest of the sub-lease in the plot of land is cut down by this burden or restriction, the market price of the plot of land cannot be determined as if the leasehold interest were free from this burden or restriction. This burden or limitation attaching to the leasehold interest must be taken into account in arriving at the market price of the plot of land, because any member of the Cooperative House Building Society who takes the plot of land by way of sale, transfer or assignment would be bound by this burden or restriction which runs with the land and that would necessarily have the effect of depressing the market price which he would be inclined to pay for the plot of land. We must, therefore, discount the value of this burden or restriction in order to arrive at a proper determination of the market price of the plot of land and the only way in which this can be done is by taking the market price of the plot of land as if it were unaffected by this burden or restriction and deducting from it, 50 percent of the unearned increase in the value of the plot of land on the basis of the hypothetical sale, as representing value of the plot of land on the basis of the

hypothetical sale, as representing the value of such burden or restriction.

The said judgment and order was reconsidered and approved by the Hon''ble Supreme Court in New Delhi Municipal Committee Vs. Gymkhana Club Ltd. and Others, , wherein the Court held that while fixing the annual value of the premises, the authority concerned must keep in mind the restrictive clause of each of the lease deeds and the notional market value shall have to be discounted appropriately as the restriction subject to which leases were granted, would undoubtedly depress the same.

Thus, it is evident from the above discussion that where the allotment of a property is subject to some stringent conditions, its value is required to be assessed at a proportionately discounted rate for the reason that transferee does not have a free hand to deal with the property. Any deviation/violation of any of the stringent conditions may be fatal.

7. Order not to be judged on affidavits

An order passed by the authority cannot be supported by filing affidavit at a later stage, and the order itself should be self-explanatory. A Constitution Bench of the Hon''ble Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In case it so allowed, the order bad in its inception, by the time it comes to Court on being challenged by the party, gets validated by additional grounds which are brought on record subsequently.

While deciding the said case, a very heavy reliance has been placed by the Supreme Court on its earlier judgment in Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

Similar view has been reiterated in State Government, Houseless Harijan Employees" v. State of Karnataka and Ors. (2001) 1 SCC 610 ; Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, and Chandra Singh Vs. State of Rajasthan and Another,

In Union of India (UOI) and Another Vs. G.T.C. Industries Limited., Bombay, , the Apex Court held that validity of a quasi-judicial order is to be tested on the basis of the reasoning contained therein and not on the basis of plea of the person seeking to sustain the order.

8. Inviting tenders/auction is not the only mode for transfer for public State owned or public owned property

In pursuing the socio-economic objective is the State bound to invite tenders or hold a public auction always for transfer of State owned or public owned property?

In Rashbihari Panda etc. Vs. State of Orissa, , the government offered the option

to purchase kendu leaves to certain old contractors on the same terms as in the previous year. Realising that the scheme of offering new contracts to the old licenses on the earlier terms was open to objection, the government changed its policy and formulated a new scheme by which offers were invited from intending purchasers of kendu leaves but the invitation was restricted to those individuals who had carried out the contracts in the previous year without default and to the satisfaction of the government. The court held that the restrictions of the right to make offer being limited to a class of persons, it infact effectively shut out all other persons carrying on the trade in kendu leaves and also new entrants into that business. It was, therefore, ex facie discriminatory and imposed unreasonable restrictions upon the right of persons other than existing contractors to carry on business.

In *State of Haryana and Others Vs. Jage Ram and Others*, , State action of not allowing all persons to participate in auction for liquor contract was found bad as it was not open to the Excise Authorities to pick and choose a few persons only as the recipients of the notice of re-auction. There was no explanation as to how few came to be chosen and what was their status and standing in the trade, so to justify the choice. The conduct of the authorities was found not above suspicion.

The Hon''ble Supreme Court in *Ram and Shyam Company Vs. State of Haryana and Others*, and *Chenchu Rami Reddy (Supra)*, held that the public officials entrusted with the care of public property were required to show exemplary vigilance and the property should be disposed of by adopting the best method that may be a public auction and not by private negotiation. The Court concluded the law as under:

State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, the Supreme Court examined a case where the State Government entered into an agreement with a private party to sell resin at the rate of Rs. 320/- per quintal, while the market rate had been varying from Rs. 484 to 700/- per quintal. The Court observed:

The government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for

it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the government in taking a particular action, that the court would have to decide whether the action of the government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The Court cannot lightly assume that the action taken by the government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action.... If the State were simply selling resin, there can be no doubt that the State must endeavour to obtain the highest price subject, of course, to any other overriding considerations of public interest and in that event, its action in giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. But where the State has, as a matter of policy, stopped selling resin to outsiders and decided to allot it only to industries set up within the State for the purpose of encouraging industrialisation, there can be no scope for complaint that the State is giving resin at a lesser price than that which could be obtained in the open market. The yardstick of price in the open market would be wholly inept, because in view of the State policy, there would be no question of any resin being sold in the open market. The object of the State in such a case is not to earn revenue from sale of resin, but to promote the setting up of industries within the State.

(Emphasis added).

Similarly, in *Aggarwal and Modi Enterprises Pvt. Ltd. and Another Vs. New Delhi Municipal Council*, , the Hon'ble Supreme Court after placing reliance upon large number of its earlier judgments including that in *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, ; *Committee of*

Management of Pachaiyappa's Trust Vs. Official Trustee of Madras and Another, Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, ; New India Public School and other etc. Vs. HUDA and others etc., ; State of Kerala and others Vs. M. Bhaskaran Pillai and another, ; and Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , held as under:

The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The courts have accepted public auction as a transparent means of disposal of public property.

However, the aforesaid settled principles may be deviated in an appropriate case where implementation of the policy decision so requires.

In Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, the Apex Court dealt with a case of establishment of a Five Star Hotel in Calcutta wherein the land had been allotted by negotiations rather than inviting tenders or holding the auction. The Apex Court while considering the issue reconsidered its large number of judgements including Rashbihari Panda (supra); R.D. Shetty (supra); and Kasturi Lal Lakshmi Reddy (supra), and came to the conclusion as under:

In the present case as earlier explained by us direct negotiation with those who had come forward with proposals to construct Five Star Hotels was without doubt the most reasonable and rational way of proceeding in the matter rather than inviting tenders or holding public auction. There was nothing discriminatory in the procedure adopted since no other leading hotelier had shown any inclination to come forward. Tenders and auction were most impractical in the circumstances.... The observations of the court in the light of the facts therein appear to fully justify the action of the West Bengal Government in the present case not inviting tenders or not holding public auction.

(Emphasis added).

The Court further observed that no one has come forward alleging that he has been discriminated against or his fundamental right to carry on business had been affected. The very nature of the construction and establishment of a Five Star Hotel is indicative of a requirement of expertise and sound financial position on the part of those who might offer to construct and establish them. The decision taken by the All India Tourism Council was an open decision well known to everyone in the hotel business. Yet no one except the ITDC and the Taj Group of Hotels had come forward with any proposal. We have it in the record that the Oberoi Group of Hotels already had a Five Star Hotel in Calcutta while the Welcome Group of Hotels were making their own private negotiations and

arrangements for establishing a Five Star Hotel. In the circumstances, particularly in the absence of any leading hoteliers coming forward, the Government of West Bengal was perfectly justified in entering into negotiation with the ITDC and the Taj Group of Hotels; instead of inviting tenders.

A similar view has been reiterated by the Apex Court in *Brij Bhushan and Others Vs. State of Jammu and Kashmir and Others*, ; and *M.P. Oil Extraction and Another Vs. State of M.P. and Others*,

In *Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others*, , the Supreme Court explained the scope of judicial review in such matters as under:

Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved, the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time enter into the judicial verdict, the reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. See *The Parbhani Transport Co-operative Society Ltd. Vs. The Regional Transport Authority, Aurangabad and Others*, *LaLa Hari Chand Sarda Vs. Mizo District Council and Another*, *Shree Meenakshi Mills Ltd. Vs. Union of India (UOI)*, *Krishnan Kakkanth Vs. Government of Kerala and others*, and *Union of India (UOI) and Another Vs. International Trading Co. and Another*,

(Emphasis added).

It is also settled legal proposition that under compulsive situation, an instrumentality of State can dispose of the public property to an individual by negotiation instead of auction and it will not necessarily be in contravention of Article 14 of the Constitution of India. But such a course is permissible under compulsion and not just to enter into a compromise. Vide *Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation*, ; *Chairman & Managing Director, SIPCOT (supra)*; and *G.D. Zalani and another etc. Vs. Union of India and others*, .

In *State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others*, , the Supreme Court examined a case where the highest bid in an auction for forest lots was ignored and was given to the forest Corporation at a much cheaper rate. The issue as to whether in such eventuality, the highest bidder had any right to challenge the order of the Government on the ground that the State suffered huge loss, was considered. The Court repelled the contention of the highest

bidder observing that as per the conditions incorporated in the auction notice, the Government was not bound to accept the highest bid and no right had accrued to the bidder merely because his bid happened to be the highest. The Government was competent to refuse to accept the highest bid and there may be variety of good and sufficient reasons, apart from inadequacy of bids, which may impel the Government not to accept the highest bid. The Court further observed as under:

...It is true that the auction held on 1st, 3rd and 4th November fetched bids totalling Rs. 1 crore 92 lakhs which was 71 per cent over the estimated price of the timber. This was far, far above any amount that might be expected to be realised from the Forest Corporation. In our view that would not make the decision of the Government arbitrary. In the first place the bids were fantastically high, and therefore, became suspect. One must wonder how such bids could be offered if the bidders did not propose to indulge in. illicit felling. The State is not merely interested in realising revenue but is equally interested in the preservation and development of forests. It cannot knowingly enter into, contracts with bidders who must have, at the back of their minds the opportunity or the gamble of illicit felling of trees. In the-second place the Corporation is a wholly Government owned, Corporation dedicated to the better preservation and developments of forests and the better exploitation of forest produce. The profits of the Corporation are in truth the profits of the State itself. The circumstance that the Corporation may not be able to pay the same price as forest contractors cannot be a reason for denying the Government the right to give effect to legislative policy....

While inviting applications/tenders etc., the Authority is to prescribe the norms/benchmark etc. in order to provide certainty and such norms/benchmark should be precise and clear. ""Certainty" is an important aspect of the rule of law". Objectivity is to be provided. "As long as the norms are clear and properly understood by the decision maker and stakeholders", uncertainty and thereby breach of rule will not arise. Vide *Reliance Airport Developers Pvt. Ltd. Vs. Airports Authority of India and Others*, ; and *Reliance Energy Limited and Another Vs. Maharashtra State Road Development Corporation Ltd. and Others*,

Thus, the law on the issue can be summarised as that State/Public owned property is to be transferred by inviting tenders or by auction for receiving the highest consideration, in exceptional circumstances, where the policy decision, public interest, economic policy or development of a particular industry etc. so warrant, property may be settled even by negotiation. However, State action should be reasonable, fair and in public interest. The onus to prove otherwise is on the person challenging the State action as whimsical, unreasonable, unfair.

9. Even trespasser has a right not to be thrown out of the possession forcibly

The Apex Court has consistently held that even a trespasser could not be removed without following the procedure prescribed by the law. The ratio of the

judgements in Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, ; Bishamber Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, ; Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, ; and State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others, is that the land cannot be resumed without following the procedure prescribed by law.

Undoubtedly, even the trespasser has a right not to be thrown out of the possession forcibly. Even on the assumption that he has no right to remain in possession, he can be evicted only by recourse to law. Vide Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors. AIR 1968 SC 620 ; Ram Rattan and Others Vs. State of Uttar Pradesh, ; and Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao,

In Nagar Palika, Jind Vs. Jagat Singh, Advocate, , the Hon"ble Supreme Court has observed that "Section 6 of the Specific Relief Act 1963 is based on the principle that even a trespasser is entitled to protect his possession except against the true owner and purports to protect a person in possession from being dispossessed except in due process of law.

However, it cannot be forgotten that any statutory provision, which is based on public policy requires strict adherence for the reason that the same had been enacted to protect the interest of the community as a whole. Vide Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others,

The State authorities also cannot dispossess a person by an executive order. The authorities cannot become the law unto themselves. It would be in violation of the rule of law. Government can resume possession only in a manner known to or recognised by law and not otherwise. Vide Bishan Das and Others Vs. The State of Punjab and Others, State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others, and State of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and Another,

10. Article 300-A of the Constitution

In S.R. Ejaz Vs. The Tamil Nadu Handloom Weavers Co-operative Society Ltd., the Apex Court held that in view of the provisions contained in Article 300-A of the Constitution of India, a citizen has a right to protect the property and he can be deprived of or dispossessed from the same only by resorting to the procedure established by law. It is only dispossession in due course of law can be accorded legitimacy by the Courts. Forcible dispossession, by any means whatsoever, cannot be approved. While deciding the said case, reliance has been placed by the Supreme Court on its earlier judgments Maharaja Dharmendra Prasad Singh (Supra), wherein the Apex Court while dealing with the provisions of the Transfer of Property Act, had observed that a lessor, with the best of title, has no right to resume possession extrajudicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The forcible dispossession is prohibited. There was no question of Government withdrawing or

appropriating to it an extra-judicial right of re-entry and the possession of the property can be resumed by the Government only in a manner known to or recognized by law.

Similar view has been reiterated in *D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others*, . In *Indian Handicrafts Emporium and Others Vs. Union of India (UOI) and Others*, ; and *P.T. Munichikkanna Reddy and Others Vs. Revamma and Others*, , the Apex Court held that in view of the provisions of Article 300-A of the Constitution, right to property is a constitutional and human right though not a fundamental right.

In *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.*, the Apex Court dealt with this issue elaborately and held that a right under Article 300-A is a constitutional right and not a fundamental right. The Court in this context, defined the "property" as under:

Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of thing in every legal way to possess it, to use it and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property.

The Court further observed that a person who is deprived of his property without authority of law is entitled to compensation.

In a recent judgment of the Hon^{ble} Supreme Court in *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others*, the Court held as under:

Property, while seizing to be a fundamental right, however, be given express recognition as a legal right and provisions being made that no person shall be deprived of his property save in accordance with law.

The said judgment has been approved and followed in *Smt. M. Naga Venkata Lakshmi v. Visakhapatnam Municipal Corporation and Anr.* AIR 2007 SCW 5870.

There can be no dispute to the settled legal proposition that State Government can act in exercise of executive power in relation to any matter with respect to which the State Legislature has power to make laws, even if there is no legislation to support such executive action, but such executive action must not infringe the rights of any person. If the executive action taken by the State Government encroaches on any private rights, it would have to be supported by legislative authority, for under the rule of law, every executive action which operates to the prejudice of any person must have the authority of law to support it. Vide *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, *State of Madhya Pradesh and Anr. v. Thakur Bharat Singh (Supra)*; *Naraindas Indurkha Vs. The State of Madhya Pradesh and Others*, and *Indian Aluminium Company Vs. Kerala State Electricity Board*,

In *Bishambhar Dayal Chandra Mohan (Supra)*, while reiterating a similar view, the Apex Court further held that the State Government cannot while taking recourse to the executive power of the State under Article 162 of the Constitution, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162 of the Constitution is subject to other provisions of the Constitution. The Court further held as under:

It is, therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A, must mean an Act of Parliament or of a State legislature, a rule or a statutory order, having the force of law, that is positive or State-made law. The decisions in *Wazir Chand v. State of Himachal Pradesh* AIR 1964 SC 415 ; and *Bishan Das and Others Vs. The State of Punjab and Others*, , are an authority for the proposition that an illegal seizure amounts to deprivation of property without the authority of law.

A similar view has been reiterated by the Hon'ble Apex Court in *Hindustan Times and Others Vs. State of U.P. and Another*, observing that the law within the meaning of Article 300-A would mean a Parliamentary Act or an Act of State legislature or a statutory order having the force of law. Thus, it does not include the executive order.

11. Change of policy with the change of Government-whether permissible:

The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. "The principles of governance has to be tested on the touchstone of justice, equity, fair play and if decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the fact of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade; that decision cannot be allowed to operate. Vide *Onkar Lal Bajaj Vs. Union of India (UOI)* and *Another etc. etc.*,

In *State of Karnataka and Another Vs. All India Manufacturers Organization and Others*, the Hon'ble Supreme Court examined the scope of change of policy with the change of the Government. After considering the scope of judicial review in contractual matters, the Court examined as under what circumstances, the government should revoke the decision taken by the earlier Government. The Court held that an instrumentality of the State cannot have a case to plead contrary from that of the State and the policy in respect of a particular project adopted by the State Government should not be changed with the change of the government. The Court further held as under:

It is trite law that when one of the contracting parties is "State" within the meaning of Article 12 of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is

certainly subject to interference by the Constitutional Courts in this country.... We make it clear that while the State Government and its instrumentalities are entitled to exercise their contractual rights under the FWA, they must do so fairly, reasonably and without mala fides; in the event that they do not do so, the Court will be entitled to interfere with the same.

Taking an overall view of the matter, it appears that there could hardly be a dispute that the Project is a mega project which is in the larger public interest of the State of Karnataka and merely because there was a change in the Government, there was no necessity for reviewing all decisions taken by the previous Government, which is what appears to have happened. That such an action cannot be taken every time there is a change of Government.

While deciding the said case, reliance had been placed by the Court on its earlier judgments in *State of U.P. and Another Vs. Johri Mal*, ; and *State of Haryana v. State of Punjab and Anr.* AIR 2002 SC 685. In the former, the Apex Court held that the panel of District Government Counsel should not be changed only on the ground that the panel had been prepared by the earlier Government. In the later case, while dealing with the river water-sharing dispute between two States, the Court observed thus:

...in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same.

In *M.I. Builders Pvt. Ltd. (Supra)*, while dealing with a similar issue the Supreme Court held that Mahapalika being a continuing body can be estopped from changing its stand in a given case, but where, after holding enquiry, it came to the conclusion that action was not in conformity with law, there cannot be estoppel against the Mahapalika.

Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is contrary to the statutory provision or unreasonable or against public interest, the State should not change its stand merely because the other political party has come into power.

Statutory Provisions-Applicable in the cases:

33. Having noticed the legal principles applicable in the cases before us, we may reproduce the Statutory provisions, policy decisions and other resolutions of the Board of NOIDA referable for the purposes of the present petitions.

Section 6 of the Act of 1976 lays down the functions of the authority, and reads as follows:

6. Functions of the Authority.- (1) The object of the Authority shall be to secure the planned development of the industrial development areas.

(2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions-

- (a) to acquire land in the industrial development area, by agreement or through proceedings under the Land Acquisition Act, 1894 for the purpose of this Act;
- (b) to prepare a plan for the development of the industrial development area;
- (c) to demarcate and develop sites for industrial commercial and residential purposes according to the plan;
- (d) to provide infra-structure for industrial, commercial and residential purposes;
- (e) to provide amenities;
- (f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;
- (g) to regulate the erection of buildings and setting up of industries; and
- (h) to lay down the purpose for which a particular site or plot of land shall be used, namely, for industrial or commercial or residential purpose or any other specified purpose in such area.

Section 7 of the Act confers a power upon the Authority to transfer land and reads as follows:

7. Power to the Authority in respect of transfer of land.- The Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Authority in the industrial development area, on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.

Section 8 of the Act lays down the power to issue directions in respect of erection of building and reads as follows:

8. Power to issue directions in respect of erection of building.- (1) For the purposes of proper planning and development of the industrial development area, the Authority may issue such directions as it may consider necessary, regarding-

- (a) architectural features of the elevation or frontage of any building,
- (b) the alignment of buildings on, any site.
- (c) the restrictions and conditions in regard to open spaces to be maintained in and around buildings and height and character of buildings,
- (d) the number of residential buildings that may be erected on any site,
- (e) regulation of erection of shops, workshops, warehouses, factories or buildings,
- (f) maintenance of height and position of walls, fences, hedges or any other

structure or architecture constructions,

(g) maintenance of amenities,

(h) restriction of use of any site for a purpose other than for which it has been allocated,

(i) the means to be provided for proper-

(i) drainage of waste water,

(ii) disposal of industrial waste, and

(iii) disposal of town refuse.

(2) Every transferee shall comply with the directions issued under Sub-section (1) and shall as expeditiously as possible erect any building or take such other steps as may be necessary to comply with such directions.

Section 9 of the Act imposes a ban on erection of buildings in contravention of regulations and reads as follows:

9. Ban on erection of buildings in contravention of regulations.- (1) No person shall erect or occupy any building in the industrial development area in contravention of any building regulation made under Sub-section (2).

(2) The Authority may by notification and with the prior approval of the State Government, make regulations to regulate the erection of buildings and such regulations may provide for all or any of the following matters, namely,-

(a) the materials to be used for external and partition walls, roofs, floors and other parts of a building and their position or location or the method of construction;

(b) lay out plan of the building whether industrial, commercial or residential;

(c) the height and slope of the roofs and floors of any building which is intended to be used for residential or cooking purposes;

(d) the ventilation in, or the space to be left about any building or part thereof to secure circulation of air or for the prevention of fire;

(e) the number and height of the storeys of any building;

(f) the means to be provided for the ingress and egress to and from any buildings;

(g) the minimum dimensions of rooms intended for use as living rooms or sleeping rooms and the provision of ventilation;

(h) any other matter in furtherance of the proper regulation of erection completion and occupation of buildings; and

(i) the certificates necessary and incidental to the submission of plans, amended plans and completion reports.

Section 12 of the Act makes certain provisions of Act of 1973 applicable to the Act of 1976 and reads as follows:

12. Applications of certain provisions of President's Act XI of 1973.- The provisions of Chapter VII and Sections 30, 32, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 53 and 58 of the Uttar Pradesh Urban Planning and Development Act, 1973, as re-enacted and modified by the Uttar Pradesh President's Act (Re-enactment with Modifications) Act, 1974, shall mutatis mutandis, apply to the Authority with adaptation that-

(a) any reference to the aforesaid Act shall be deemed to be a reference to this Court;

(b) any reference to the Authority constituted under the aforesaid Act shall be deemed to be a reference to the Authority constituted under this Act; and

(c) any reference to the Vice-Chairman of the authority shall be deemed to be a reference to the Chief Executive Officer of the Authority.

It is worthwhile to record that the provisions pertaining to approval of map or master plan by the State Government u/s 10 of the Uttar Pradesh Urban Planning and Development Act, 1973 as well as the date of the commencement of the Plan and the procedures to be followed for the same, have not been made applicable, to the Act of 1976. Similarly Section 13 of Act of 1973, which provides for amendment of the Master Plan also does not apply in respect of Act of 1976.

Section 14 of Act of 1976 confers a power to resume, re-entry and forfeit upon the NOIDA and provides an authority to Collector to take possession with or without use of force, it reads as follows:

14. Forfeiture for breach of conditions of transfer.- (1) In the case of non-payment of consideration money or any instalment thereof on account of the transfer by the Authority of any site or building or in case of any breach of any condition of such transfer or breach of any rules or regulations made under this Act, the Chief Executive Officer may resume the site or building so transferred and may further forfeit the whole or any part of the money, if any paid in respect thereof.

(2) Where the Chief Executive Officer orders resumption of any site or building under Sub-section (1) the Collector may, on his requisition, cause possession thereof to be delivered to him and may for that purpose use or cause to be used, such force as maybe necessary.

Section 15 of the Act of 1976 lays down the penalty for breaching of the Provisions of the Act or rules or regulations made thereunder and reads as follows:

15. Penalty.- Any person who contravenes any provisions of this Act or rules or regulations made thereunder or any directions issued u/s 8 shall, on conviction

be punishable, with fine which may extend to five thousand rupees and in the case of a continuing offence with further fine which may extend to one thousand rupees for every day during which such offence continues after conviction for the first commission of the offence.

Section 17 confers an overriding the power upon the Act of 1976 vis-a-vis Act of 1973 and reads as follows:

17. Overriding effect of the Act.- Upon any area being declared an industrial development area under the provisions of this Act, such area, if included in the master plan or the zonal development plan under the Uttar Pradesh Urban Planning and Development Act, 1973, or any other development plan under any other Uttar Pradesh Act, with effect from the date of such declaration, be deemed to be excluded from any such plan.

Section 18 confers a power upon the State Government to frame and to notify the rules for carrying out the purposes of Act of 1976.

Section 19 confers a power upon the NOIDA to make regulation with the previous approval of the State Government.

34. In exercise of powers u/s 19 read with Section 6 of the Act of 1976, NOIDA has framed regulations known as "New Okhla Industrial Development Area (Preparation and Finalization of Plan) Regulations, 1991 (hereinafter referred to as the "Regulation, 1991".

Regulation 2 (d) defines "Commercial Use", which reads as follows:

"Commercial Use" means the use of any land or building or part thereof for carrying on any trade, business or profession, sale of goods of any type, whatsoever and includes private hospitals, nursing homes, hostels, hotels, restaurants, boarding houses not attached to any educational institution, consultant offices in any field, cottage and service industries.

Regulation 2(e) defines "Industrial Use", which reads as follows:

"Industrial Use" means the use of any land or building or part thereof mainly for location of industries and other uses incidental or industrial use such as offices, eatable establishment etc.

Regulation 2(f) defines "Institutional Use", which reads as follows:

Institutional Use: means the use of any land/building or part thereof for carrying on activities like testing, research, demonstration etc., for the betterment of the society and it includes educational institutions.

Regulation 2 (g) defines "Land Use", which reads as follows:

Land Use" means the use of any land or part thereof in the industrial development area for industrial, residential, institutional, commercial, public, water bodies organised recreational open spaces, streets, transportation, public

and semi-public buildings, agriculture and other like purposes.

Regulation 2(k) defines "Residential Use", which reads as follows:

"Residential Use" means the use of any land or building or part thereof for human habitation and such other uses incidental to residential uses.

Regulation 3 provides for the draft plan and Regulation 4 provides for preparation of final plan. For our purposes, Regulation 4(1) is relevant and is being quoted herein below:

4. (1) The plan may include:

(a) Sector plans showing various sectors into which the industrial development area or part thereof may be divided for the purpose of development.

(b) The plan will show the various existing and proposed land uses indicating the most desirable utilisation of land for-

(i) industrial use by allocating the area of land for various scales or types of industries or both;

(ii) residential use by allocating the area of land for housing for different and defined densities and plotted development for different categories of households;

(iii) commercial use by allocating the area of land for wholesale or retail markets, specialized markets, town level shops, showrooms and commercial offices and such other allied commercial activities;

...

35. The procedures for finalization/approval of the Draft Plan by the authority have been conferred under Regulation 9 of Regulations of 1991, which reads as follows:

9. Finalisation/Approval of the Draft Plan by the Authority.- (a) The Authority may, after considering the report of the Chief Executive Officer and any other matter, issue directions for variations, modifications or amendments of the Draft Plan.

(b) The Authority shall approve the plan with such variations, modifications or amendments as are deemed to be necessary by the Authority.

(c) The Plan approved under Clause (b) shall be effective for a period specified by the Authority but such period shall not be less than 5 years.

36. Power to make amendments in the Plan has been conferred by Regulation 11, which reads as follows:

11. Amendment of the Plan.- (1) The Authority may make such amendments in the plan which do not effect important alteration in the character of the Plan and which do not relate to the extent of land use or standards of population density.

(2) Before making any amendment in the plan under Sub-section (1), the Authority shall publish a notice in at least one newspaper having circulation in the development area inviting objections and suggestions from any affected person with regard to the proposed amendment before such date as may be specified in the notice and shall consider all objections that may be received.

(3) Every amendment made under this Regulation shall be published in any of the manner specified in Regulation 5 and the amendment shall come into operation either on the date of the first publication or on such other date as the Authority may fix.

(4) The Authority shall not make, during the specified period in which the Plan is to remain effective, such amendment(s) in the Plan which affects the important alteration in the character of the Plan and which relates to the extent of the land use or standards of population density.

37. The Court may also refer to the policy decision of the State Government as contained in its letter dated 22nd May, 2006 inasmuch as interpretation of the same is one of the bone of contention between the parties. Relevant clause of said policy decision read as follows:

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lsok esa] egkfun"s"kd] i;ZVu] m0iz0] y[ku? A

i;ZVu vuqHkkx y[ku? fnukad 22 ebZ 2006 fo"k; % i;ZVu m|ksx esa iwath fuos"k dks vf/kd vkdf"kZr djus ds IEcU/k esa A

egksn;] m0iz0 esa i;ZVu dh vikj IEHkkouk,a gS] ijUrq i;ZVu dk fodkl vkisf{kr xfr ls ugh gks ik;k D;ksfd izns"k esa gksVYl tks fd i;ZVu ds fy, vR;Ur vko;"d gS] mUgs fy, dksbZ uhfr ugh gS A ;|fi o"kZ 1997&98 esa i;ZVu dks m|ksx dk ntkZ iznku dj fn;k x;k Fkk fdUrq vkS|ksfxd lqfo/kk,a i;ZVu m|ksx dks ugh izkIr gks Ikk;h Fkh A izns"k esa gksVy m|ksx esa vf/kd iwath fuos"k dks vkdf"kZr djus ds mn~ns"; ls "kklu }kjk IE;d fopkjsijkUr gksVy uhfr fu/kkZfjr dh x;h gS tks fuEuor~ gS%

?1? i;ZVu foHkkx ds lg;ksx ls ekLVj Iyku cukrs le; IEk; IEcfU/kr fodkl izkf/kdj.kks }kjk gksVyks ds fy, Hkwfe fpUgkafdr dj nh tk;s vkSj bl Hkwfe dks gksVyks ds fy, iznku fd;k tk; A tgka ekLVj Iyku dks vafre :i ns fn;k x;k gS ogka ij fjDr Hkwfe ds fo"k; esa ;g dk;Zokgh dh tk;s A ftu izkf/kdj.kksa esa ekLVj Iyku dks vfUre :i ugh fn;k x;k gS ogka i;ZVu foHkkx ds lg;ksx ls i;ZVu LFky ds fudV@i;ZVu laHkkoukvkas gsrq Hkwfe gksVyks ds fy, vkjf{kr djus dh dk;Zokgh dj yh tk, rFkk izkf/kdj.kksa ds ekLVj Iyku tc Hkh iqufjf{kr gks rks ml le; ogka ij Hkh i;ZVu foHkkx ds lg;ksx ls gksVyks ds fy, Hkwfe fpUgkafdr dj nh tk;s A

ekLVj Iyku esa fpfUgr gksVy m|ksx dh Hkwfe dh Ldhe dks izpkfjr djus dh frFFk ls ikap o"kZ rd ;g Hkwfe i;ZVu@gksVy ds fy, lqjf{kr j[kh tk;sxh A ;fn ikap lky esa dksbZ gksVy mn~;eh vkxs ugha vkrk] rks izkf/kdj.k bldk Hkw&mi;ksx ifjofrZr djus ds fy, Lora= gksxk A

?2? izkf/kdj.k dh Hkwfe dk Hkw&mi;ksx ifjorZu ;fn gksVy m|ksx dks fpfUgr Hkw[k.M iznku djus ds fy, vko;"d gks] rks Hkw&ifjorZu dk dk;Z izkf/kdj.k }kjk vius fu;eksa ,oa fu/kkZfjr izfdz;kvks ds vUrZxr] l{ke Lrj ds Hkdsl Vw dsl ds vk/kkj ij fd;k tk;s A

?5? pawfd i;ZVu dks m|ksx dk ntkZ fn;k x;k gS] ftlesa gksVy Hkh "kkfey gS] vr% gksVy ds ekeyss eas Hkh mn~;ksx dh Hkkafr Hkw[k.M fpfUgr djrs gq, vkS] ksfxd njksa ij vkS]ksfxd Hkw[k.M+ dh Hkkafr vkoafVr fd;k tk;sxk A ;g uhr izns"k ds izR;sd tuin esa ykxw dh tk;sxh A

?10? gksVy mn~;fe;ksa dks vkS]ksfxd nj ij Hkwfe lHkh izkf/kdj.kks] buesa vkokl foHkkx ,oa vkS]ksfxd fodkl foHkkx ds vUrZxr vkus okys izkf/kdj.k lfEefyr gS] }kjk miyC/k djok;h tk;sxh A bl izkfo/kku dk ykHk gksVy m|ef;ksa dks izkIr gks lds] bls fy, mDr lHkh izkf/kdj.kks }kjk vius fu;eksa vko;"d O;oLFkk@la"kkks/ku djuk lqfuf"pr fd;k tk;sxk A ftlls gksVy m|eh dks Hkwfe vkS]ksfxd nj ij miyC/k dj;k tkuk lEHko gks lds A

?16? mu izkf/kdj.kksa ftuesa vkS]ksfxd Hkw[k.M dh O;oLFkk gS] muds ;gka orZeku esa viuk;h tk jgh izfdz;k ds vuqlkj vkS]ksfxd Hkw[k.M+ks dk vkoaVu ,d ls vf/kd vkosnd gksus dh fLFkfr esa vkosndks ds e/; mudh mi;qDrrk ds vk/kkj ij fd;k tkrk gS A ;g mi;qDrrk mudh izkstsDV fjiksZV vkfn ds ijh{k.k ds vk/kkj ij vkadh tkrh gS A ;g mi;qDrrk mudh izkstsDV fjiksZV vkfn ds ijh{k.k ds vk/kkj ij vkadh tkrh gS A gksVy Hkw[k.M dks ik= vkosndksa ds e/; vkoaVu muds vuqHko] VuZvksoj ,oa usVoFkZ ds vk/kkj ij fd;k tk;sxk A vkSj ik= vkosndksa dk ewY;kadu vojksgh dze esa j[kdj fdlh ,d "kgj esa miyC/k dj;k;s tk jgs gksVy] Hkw[k.Mksa ds fy, mudks izkFkfedrk ds vk/kkj ij Hkw[k.M vkoafVr fd;k tk ldrk gS A ;g ewY;kadu 5&LVkj o mPpc] 4&LVkj rFkk 3&LVkj JsF.k;ks ds fy, vyx&vyx fd;k tk ldrk gS A vxj nks ds ,d leku vad vkrs gS rks leku vad okyks ds chp ykVjh }kjk vkoaVu gksxk A

Hkwfe ds vkaoVu gsrq ;fn ,d ls vf/kd m|eh@dEifu;ksa vkSj fdlh dEiuh@dulkfVZ;e dk xBu fd;k tkrk gS rks dulkfVZ;e ds yHM esEcj dks ik=rk dh lHkh "krsZ Loa; es iwjh djuh gksxh ,oa tks vad fn;s tk;sxs os yHM esEcj dh ik=rk dh lHkh "krsZ Loa; es iwjh djuh gksxh ,oa tks vad fn;s tk;sxs os yHM esEcj dh ik=rk ds vk/kkj ij gh fn;s tk;sxs A yHM esEcj ogh gksxk ftldh dulkfVZ;e esa flafxy yktsZLV "ks;j gksfYMax gks A ewY;kadu gsrq vad fuEu izdkj iznku fd;s tk;sxs%

38. Reference may also be had to the Policies & Procedures For Commercial Property Management, as notified by the NOIDA in October, 2004 (hereinafter referred to as the "Policy of 2004"). Clause A provides for procedure for allotment, which reads as follows

A. Procedure for Allotment

Commercial properties are allotted on sealed tender basis/auction basis.

Clause C provides for mode of allotment, which reads as follows:

C- Mode of Allotment

- i) The sealed tenders are opened by the constituted committee on the prescribed date and time in the presence of tenderers.
- ii) The Chief Executive Officer or any other officer authorized in this behalf reserves the right to reject any tender including the highest tender without assigning any reason.
- iii) The Chief Executive Officer reserves the right to make such addition, alterations or modification in the terms and conditions of tender/allotment from time to time as he may consider just and expedient.
- iv) In case of any clarification or interpretation regarding the terms and conditions of tender, the decision of the Chief Executive Officer of the Authority will be final and binding on the applicant/allottee.
- v) If due to any "Force Majeure" or circumstances, beyond Authority's control, the Authority is unable to make allotment or deliver possession of allotted plot, entire earnest money and the deposits depending on state of allotment shall be refunded without interest.
- vi) Tenderer is informed about acceptance of tender in writing through allotment letter.
- vii) In case more than one tender of same amount is received against the plot/shop, fresh tenders shall be invited from the tenderer by the Committee.
- viii) Allottees/Lessees/Sub-lessees/Transferee after 15.06.2001, are not eligible for any preferential allotment of residential plot/house under various schemes of the Authority. However, this condition shall not apply in the case of transfer in blood relation.
- ix) The allotment is made on "As is where is Basis". In case of variation in the dimensions shown in the brochure and at the site, allottee will accept the variation and in case of increased/decreased in the plot area, payment shall be adjusted/demanded as proportionate to tender rate.

39. Similarly, reference may also be had to the Policies & Procedure for Industrial Property Management, as notified by the NOIDA in April, 2006 (hereinafter referred to as the "Policy of 2006"), which provides that Industrial Sectors have been divided into three industrial phases as follows:

- 1. Phase-I Sectors from 1 to 11 and 16 ----- 2. Phase-II Includes Phase-II, Phase-II Extension/Hosiery Complex, Sector- 80, 81, 83 and 88 ----- 3. Phase-III Includes

40. The Premium of Plots have been stated as follows:

The current rates of allotment in various industrial phases are as follows:

-----	1. Phase-I Rs. 7400 per	
sq.mt. Reserved Rate -----		2.
Phase-II Rs. 2100 per		sq.mt.
-----	3. Phase-III Rs. 4000 per	
sq. mt. -----		

41. Under the procedure for allotment of land qua Phase-I, it has been provided as follows:

Allotment of industrial plots/sheds in Phase-I shall be made on the basis of Sealed Tenders.

So far as the Phases-II and III are concerned, it is provided that allotment of plots is to be made on the basis of applications made along with project report, requisite registration and processing fee etc.

The aforesaid rates for industrial area were prescribed under resolution of the Board of NOIDA in its 133rd meeting held on 20th March, 2006, i.e. much prior to the policy decision of the State Government dated 22nd May, 2006. The NOIDA in its 135th meeting had resolved to adopt the policy decision dated 22nd May, 2006 in toto and further resolved that the rates which were applicable in respect of industrial area, Phase-I would be applied for grant of such plots for hotels purposes. For ready reference, relevant portion of minutes of 133rd Meeting dated 20th March, 2006 is being quoted herein below:

uohu vks[kyk vkS|ksfxd fodkl izkf/kdj.k cksMZ dh 133 oha cSBd fnukad 20-3-2006 dk dk;Zo`Rr A

vuqiwjd en la[;k 7 o"kZ 2006&07 ds fy, izkf/kdj.k ds fofHkUUk Hkw&mi;ksxksa gsrq Hkw&njksa dk fu/kkZj.k A

lapkyd e.My }kjk mDr izLrko ij xgu fopkj foe"kZ fd;k x;k A fopkjsijkUr izkf/kdj.k dh fofHkUU Hkw&mi;ksxks dh fuEu njsa fnukad 1-4-2006 iqjhf{kr fd;s tkus dh Lohd`fr iznku dh x;h%

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iqujhf{kr vkoaVu@vkjf{kr nj ?: izfr oxZ ehVj?

iwoZ gLrkarj.k "kqYd ?izfr oxZ eh-?

vuqeksfnr iqujhf{kr gLrkarj.k "kqYd ?izfr oxZ ehVj?

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540@&

810@&

620@&

950@&2

2

f}rh; pj.k

2100@& vkoaVu nj

2100@& vkoaVu nj

200@&

270@&

230@&

310@&

3

r`rh; pj.k

3200@& ?vkaoVu nj?

4000@& vkoaVu nj

335@&

440@&

385@&

500@&

42. Relevant portion of 135th meeting dated 5th June, 2006 of Board of NOIDA is being quoted herein below:

uohu vks[kyk vkS|ksfxd fodkl izkf/kdj.k cksMZ+ dh 135 oha cSBd fnukad 5-6-2006 dk dk;Zo`Rr

en la[;k 8 Ik;ZVu m|ksx esa iwath fuos"k dks vf/kd vkdf"kZr djus gsrq gksVy m|ksx fo"k;d uhfr fu/kkZj.k ds IEcU/k esa A lapkyd e.My }kjk mDr izLrko ij fopkj foe"kZ dj "kklu }kjk ?kksf"kr uhfr uks;Mk esa ykxw djus dk fu.kZ; fy;k x;k A vkS|ksfxd {ks= Qsl&1 dh nj gksVy m|ksx ds fy, ykxw djus ds funsZ"k fn;s x;s fd dkeuosYFk xSEl izkjEHk gksus ls iwoZ gksVyks dk fuekZ.k lqfuf"pr fd;k tk;s A

Findings:

43. From the records of the present writ petitions, following undisputed facts emerge:

(a) Plots in Sectors 96,97 and 98, NOIDA, which have been allotted to the petitioners for the purposes of hotel industry, where intact part of sectors earmarked as commercial area under the master plan notified by the NOIDA,

(b) Plots have been allotted to the petitioners at a fixed price of Rs. 7,400 per square metre plus additional charges as per the advertisement/brochure published by the NOIDA,

(c) Price fetched for plots in the same area by auction was nearly Rs. 1,67,000/- per square metre with reference to relevant date,

(d) NOIDA in its meeting dated 20th March, 2006 and in its Policy of 2006 had provided the reserve price for industrial plots situate in Phase-I as Rs. 7,400 per square metre. In its 135th meeting dated 5th June, 2006, the NOIDA authorities resolved to adopt the policy decision of the State of Uttar Pradesh dated 22nd May, 2006 in toto and decided to apply the rate applicable in respect of Phase-I qua allotments of plots in question. There is no resolution of the NOIDA authority providing Rs. 7400/- per sq. mtr. as the fixed rate for the Sectors 96, 97 & 98,

(e) There has been no amendments in notified master plan or in the Regulations of 1991, and Building Regulations of 2006, Policy of 2004 and Policy of 2006, (applicable on the relevant date), so far as the mode and manner of allotment of commercial/industrial plots is concerned, or in respect of land use for hotel being included in the industrial use.

(f) Under the brochure as well as under the lease-deeds, executed in favour of the petitioners, the provisions relating to Floor Area Ratio, Height of Building, Open Space, etc., as applicable to Commercial Area, have been applied.

(g) Petitioners in fact had acted upon the conditions mentioned in the brochure

and submitted their applications for allotment of plots for constructing 3/4/5 Star Hotels.

(h) Against 24 plots, which were available, only 13 plots could be settled and 11 plots still remain available for setting up of the hotels.

(i) After the applications of the petitioners were processed, they were found eligible for allotment of land in question. Accordingly letters offering the respective plots were issued in favour of petitioners.

(j) Petitioners had accepted the offer so made and deposited the entire amount of premium.

(k) Lease deeds have been executed in favour of allottees and out of 13, in 11 cases lease deeds have also been registered.

(l) In all the cases, petitioners have been put in actual possession of plots and some of the petitioners are stated to have constructed the boundary walls.

(m) Orders for cancellation of allotment and for handing over possession have been issued by the NOIDA in pursuance to the directions issued by the State Government as per letter dated 1st August, 2007 in exercise of powers u/s 41 of Act, 1973. The decision whereof is stated to have been taken after the order of the Division Bench of this Court dated 25th May, 2007 passed in Civil Misc. Writ Petition No. 24917 (PIL) of 2007; R.K. Yadav v. State of U.P. and Ors. and Civil Misc. Writ Petition No. 29592 (PIL) of 2007; Ashutosh Srivastava v. State of U.P. and Ors. was brought to its knowledge of the State Government.

In these set of facts we may now record our findings on the issues raised.

44. On bare reading of the policy decision of the State Government dated 22nd May, 2006 quoted above, it is apparent that it granted the status of industry, to the hotel business and provided that the benefits which are available to an industry may be made available to hotels also. Land be allotted for hotel industry in the manner and at the rate applicable for industry. Clause 1 of the policy provides for the action to be taken by the development authorities for demarcation of plots for hotel industry and reads as follows:

(a) While preparing the master plan, plots be earmarked for hotel industry with the help of tourism department and the earmarked plots be allotted for hotel industry,

(b) Where master plan had already been approved/notified, the plots for hotel industry be identified with the help of tourism department qua the vacant land available in like manner and allotted accordingly,

(c) Where the master plan has not been finalized and is under preparation, plots for hotel industry be earmarked with the help of tourism department and reserved for the hotel industry, and

(d) Whenever a notified master plan of an development authority is revised, land

for hotel industry be earmarked with the help of tourism department.

Clause 2 of the same provides that if change of "land use" for the purposes of allotment of identified plots to the hotel industry is necessary, the Development Authority may make necessary amendments in its rules, regulations as well as in its earlier determined policies, on case to case basis.

Clause 5 of the same further clarifies that since hotels have been conferred the status of industry, identification of plots be made in the manner applicable to industries and the identified plots be allotted in the manner and at the rates, industrial plots are allotted.

Clause 10 directs that plots to hoteliers shall be allotted in a manner industrial plots are settled at industrial rates and therefore, all the development, authorities may make necessary provision/amendment in their rules/regulations, so that Hoteliers may be provided land accordingly.

Clause 16 of the policy, provides for mode and manner of selection of applicants for grant of plots for hotel purposes and the essential conditions to be fulfilled by them before allotments could be made in their favour.

Said policy guidelines/directions of the State Government were adopted by the Board of NOIDA in its 135th meeting in toto and it was resolved that the rates applicable qua Phase-I of the Industrial area of NOIDA be applied for the purpose. Neither any amendments in Regulations of 1991, nor in Building Regulations of 2004 or in Building Regulations of 2006 or in the policy; guidelines of the years 2004 and 2006 were made.

45. The NOIDA however published a brochure, where-under applications were invited for allotment of plots in Sectors 96, 97, and 98, for establishing hotels of 3/4/5 category. These plots were earmarked as commercial area in the master plan notified by the NOIDA on a fixed price of Rs. 7,400 - per sq. mtr.

It is admitted on record that at no point of time the NOIDA authorities made any amendments in the master plan nor any amendments were made in the Regulation of 1991, so as to take out the hotels from commercial use and to incorporate them as within industrial use under the Statutory Regulations of 1991. Hotels still continues to be included within the commercial use. Land earmarked for commercial use in the master plan cannot be allotted on the terms and conditions applicable to the land earmarked for industrial use.

46. It will be seen that master plan identifying the area to which the land contained therein can be put, namely, residential, industrial, commercial. It is notified in exercise of statutory powers u/s 6 read with Section-8 or Act, 1976. Similarly the Regulations of 1991 are statutory in nature. Commercial use as defined in Regulation 2(d) of Regulations, 1991 includes within its definition hotels and therefore, it necessarily follows that conditions qua allotment, building construction, FAR, open space, etc. provided for commercial area, apply. Under the policy decision of the State Government dated 22nd May, 2006 hotels have

been conferred the status of an industry and therefore, the mode of allotment, rates and other conditions pertaining to Building construction, FAR, open space etc. had to be applied as are applicable for land earmarked for industrial use in the Regulations, 1991.

47. Reference may also be had to the Regulations framed u/s 9(2) read with Section 19 of the Act, 1976 as notified on 5th December, 2006, known as "New Okhla Industrial Development Area Building Regulation and Directions, 2006" (hereinafter referred to as the Building Regulation, 2006"), which lays down the different standards and restrictions including height Floor Area Ratio (For short "FAR"), open space for different categories of building to be constructed over the land earmarked for different land use. Hotel building has been included in the definition of Mercantile Building under Chapter I, Clause 3.12(g) along with the other relevant provisions applicable for land earmarked for commercial use and reads as follows:

3.12 Building....

(g) "Mercantile Building" refers to a building or part of a building which is used for the purpose of a shop, store, market, display and sale of merchandise either wholesale or retails or office storage or service facilities incidental to the sale or merchandise and includes cinema halls, petrol pumps, hotels and restaurants, nursing homes, lodge cum guest house, weighing bridges etc.

Industrial building has been provided under Clause 3.12 (e), and reads as follows:

(e) "Industrial Building" refers to a building or part of building in which products or materials of all kinds and properties are fabricated, assembled or processed such as assembly plants laboratories, power plants, smoke houses, refineries, gas plants, mills, dairies or factories.

48. Chapters I and III provides for the conditions for construction and reads as follows:

Chapter I

Building Regulations and Directions

...

3.40 "Floor Area Ratio (FAR)" means the quotient obtained by dividing the total covered area (plinth area) on all floors by the area of the plot.

Chapter III

General Requirements

Site Requirements

33.3 Industrial Building/Film Centre

----- S.N Plot

Area	Max.	Max.	Max.	Ground	FAR	in	%	height	(in	Coverage	Mt.)
100			60					120		1.	Upto 15
100			upto					450		2.	Above 15
Same			as				(1)			a.	First 100 above
350	or		part			thereof		60		b.	Next 100
450			upto					2000		3.	Above 15
Same			as				(2)			a.	First 450 above
1550	or		part			thereof		55		b.	Next 80
2000			upto					12000		4.	Above 15
2000		Same			as		(3)			a.	First above
10000	or		part			thereof		55		b.	Next 70
12000			upto					20000		5.	Above 15
12000		Same			as		(4)			a.	First above
8000	or		part			thereof		50		b.	Next 65
20000	15									6.	Above 15
a.	First		20000		Same	as	(5)			a.	First above
20000					50					b.	Above 60
											33.4

Commercial Building

"Hotel building" Commercial building other than commercial Complex and Mandi.

Maximum	FAR	Max.	No.	ground	height	Covered	Sl.	Use
Building	(a)	Below	three	star	30%	1.25	24.0	m. 1. Hotel category
star		category		30%		1.5	No	(b) Three Limit
three	star	25%		2.0	No	Limit		(c) Above category

(2) Other Commercial Activities

...

49. Therefore, for the purpose of State policy it was but necessary for the NOIDA to have taken out the hotels from the commercial use and to have included the same within land meant for industrial use, by necessary amendments in the master plan and the statutory regulations of 1991, and Building Regulations of 2006, which has admittedly not been done.

This legal infirmity is being met by the petitioners on a plea that the hotel continues to be a commercial activity, so far as the NOIDA is concerned and therefore, the allotment of plots for construction of hotels in the commercial area in favour of petitioners does not violate the notified master plan or the Regulations of 1991, or Building Regulations of 2006. Contention so raised although appears to be simple but is legally not correct for following reasons:

Policy dated 22nd May, 2006 repeatedly declares that hotels are being conferred the status of industry and are to be treated like an industry for the purposes of allotment of land. Therefore, all restrictions/conditions along with benefits which apply to an industry would become applicable to the hotels also. Allotment is to be made in accordance with the procedure and rates applicable for industrial area, along with all other condition qua Building construction, Floor Area Ratio, height, open space etc. under the Regulations, 1991 and Building Regulations of 2006, qua industrial use, had to be applied to the hotels accordingly. The policy has to be given effect in its entirety and not only for the purposes of fixation of price of the plots and method of allotment.

50. In the opinion of the Court the Policy has to be read as a whole. The real intent of the policy has to be gathered from a reading of all the clauses of the letter dated 22nd May, 2006 together and not on the reading of a particular clause in isolation. If the policy decision dated 22nd May, 2006 is read as a whole, it would follow that the Hotels are to be treated as an industry and therefore, the allotment of land in their favour has to be made on identical terms and conditions, as are statutorily provided under Regulations, 1991, and Building Regulations, 2006 for land earmarked for industrial use. This would include not only the mode and manner of allotment, rates to be applied but would also include all other conditions which are applicable qua Industrial Buildings. Further necessary changes in the master plan for demarcating the Sectors 96, 97, & 98, as meant for industrial use had also to be made.

The Court fails to see any justification for the submission that although the plots for hotel purposes shall be settled in accordance with the rates applicable for industrial area but allottees shall not be bound to comply with other statutory conditions and restrictions of the Regulations, 1991, and Building Regulations, 2006, in so far as they are applicable to an industrial area, namely, height of building, FAR, open space etc., in view of Section 6(c) and 6(h) of Act of 1976.

51. Master plan notified u/s 6 of Act, 1976 and the Regulations, 1991 as well as Building Regulations, 2006 are statutory in nature. Regulations have been framed in exercise of powers u/s 19 read with Sections 6, 8 and 9 of Act, 1976. Such statutory master plan earmarking the land for specific purpose, the statutory regulations, which lay down different conditions for commercial use of land vis-a-vis the land to be put to industrial use, are mandatory in nature, inasmuch as Section 8(2) and Section 9 of Act, 1976 declares that building shall not be constructed contrary to the provisions of directions/regulations. It, therefore, logically follows that for the allotment of land to the hotel industry, not only the provisions relating to the mode and manner of fixation of premium of the plots at par with the land to be put to industrial use, had to be applied, but also all other statutory provisions, which are applicable in respect of land allotted for industrial use, namely, Regulations of 1991, and Building Regulations of 2006.

Thus, part of the conditions of brochure as well as the lease deeds executed in favour of petitioners are referable to the statutory conditions applicable to industrial use of the land, while other parts are as per the conditions applicable to the commercial use of the land. Such mixing of the provisions was neither contemplated under the Act nor it was the policy decision of the State Government.

52. We may clarify that unless and until necessary amendments in the statutory master plan, statutory Regulations of 1991, and in the Building Regulations of 2006 were made by the NOIDA in accordance with Sections 6, 8 & 9 of Act, 1976 read with Section 19, it was not open to it to allot any land earmarked for commercial use in its Master Plan for the purposes of hotel industry under the policy decision dated 22nd May, 2006 on the terms as has been done in the facts of these petitions.

The Court may now deal with question as to whether the NOIDA had ever decided to allot the commercial plots in favour of petitioners for the purposes of establishing the hotels on a fixed price of Rs. 7400/- per sq. mtr. or not.

53. The aforesaid issue can be classified into two sub-issues, (a) whether the procedure prescribed for allotment of plots in industrial area could have been applied by NOIDA in respect of commercial area (Sectors 96, 97 and 98) without there being corresponding change in its Policy of 2004 and Policy of 2006, (b) was there a decision providing Rs. 7,400/- per sq. mtr. as the fixed price for the plots in question.

(a) It is no doubt true that the Policy of 2004 and Policy of 2006 do not have any statutory force but at the same time this Court cannot lose sight of the law, laid down by the Hon'ble Supreme Court of India in the case of *Ramana Dayaram Shetty v. The International Airport Authority of India* (Supra), which has been repeatedly followed in successive judgements of the Hon'ble Supreme Court of India holding that statutory authorities are bound by the conditions, which they frame for regulating their own conduct and if any action is taken in breach of the

aforesaid conditions, same would be per se illegal. Under the Policy of 2004, NOIDA had decided to allot the land in areas earmarked for commercial use only by tender/auction. This Court therefore, records that NOIDA authorities could not have settled the commercial plots in favour of petitioners without resorting to auction/tenders without reviewing its Policy of 2004.

Even otherwise, this Court may record that so far as the plots meant for industrial use are concerned, a Policy Decision had been taken by the NOIDA on 20th March, 2006 that the same would be divide into phases namely, Phases I, II & III. In respect of land covered by Phase-I reserve price at Rs. 7,400/- per sq. mtr. was determined, while in respect of land covered by Phases-II and III for industrial use, a fixed price of Rs. 2,100 per. sq. mtr. and Rs. 4,000/- per sq. mtr. was decided. Allotment was to be made on the basis of tenders so far as Phase-I is concerned, while in respect of Phase-II and Phase-III, allotment was to be made after inviting application at a fixed price.

In the case in hand, the NOIDA, as a matter of fact, has not adopted the, procedure prescribed for allotment of commercial plots as per the policy decision of 2004 nor it has strictly applied the policy decision of 2006 applicable in respect of land marked for industrial area, Phase-I.

We, therefore, have no hesitation in holding that the settlement of plots in favour of petitioners was not in conformity with the decision of the NOIDA as per resolution passed in its 135th Meeting.

Sub-issue (b) is confined to the dispute as to whether NOIDA at any point of time took a decision to settle the plots in question at a fixed price of Rs. 7400/- per sq. mtr. or not. The decision taken by the NOIDA in respect of rates to be applied qua grant of plots in respect of hotels in its 135th meeting dated 20th March, 2006 has already been quoted above.

It is apparent from bare reading of the aforesaid resolution that the NOIDA had decided to apply the rates which were applicable in respect of Phase-I, Industrial Area of NOIDA. In its decision dated 20th March, 2006 as reproduced above, NOIDA had resolved that Rs. 7400/- per sq. mtr. shall be as the reserve price for Phase-I. Reserve price cannot be equated as fixed price. The distinction in that regard has been explained by the Hon"ble Supreme Court of India in the case of State of U.P. v. Shiv Charan Sharma (Supra).

The distinction between the reserve price and fixed price was also well known to NOIDA, as is apparent from the resolution dated 20th March, 2006 where-under the same resolution, it provided for reserve price for Phase-I and fixed price for Phases-II & III.

54. It may further be noted out that under the Policy of 2006 applicable to "industrial area", plots in Phase-I were required to be settled by invitation of tenders only. Allotment of plots in favour of petitioners has been made without invitation of tenders, treating Rs. 7400/- per sq. mtr. as the fixed price and not

as the reserve price. Absolutely no document could be brought on record by any of the parties before this Court, which could establish that the NOIDA at any point of time had determined Rs. 7400/- per sq. mtr. as the fixed price for the plots to be settled with the petitioners.

The assurance as held out in the brochure published by the Authority with regard to the fixed price of Rs. 7,400/- appears to have proceeded on the assumption as if the Authority had taken a decision to fix the price at the rate of Rs. 7,400/- per sq. meter. As discussed above, the said price was not a fixed price but it was a reserved price. The petitioners may have been misled to act on the price mentioned in the brochure but whether such a mention in the brochure was in conformity with the policy or not, is an issue which also deserves attention of the State Government. At this juncture, it would be relevant to point out that a mistake is something which one apprehends wrongly or takes in a wrong sense, which results in an error in judgment. A mistake is an error not due to negligence but due to misunderstanding; to understand means to perceive and to grasp with the mind; it is the faculty or power or apprehension possessed by human beings by which they think and draw inference in order to arrive at a practical judgment. The consequence of a mistake or a misunderstanding is that it brings about an inconvenience. The question is whether a mistake is intentional or unintentional or deliberate. In our opinion, if an act or omission is proceeded with deliberations after giving full thought and in pursuance of deliberated executive instructions, then it cannot be said to be a mistake on the part of the Government or the Authority. There was no error of fault in the thought or action of the Authority as they knowingly proceeded to accept the said price, make allotments, hand over possession and ultimately even execute the lease deed by way of registration. It was at all these levels that a conscious decision was being taken by the authorities to give effect to the policy without any demur. It is only after the interim order passed in the PIL that the theory of mistake has been developed and the impugned orders have been passed without considering the aforesaid factors. There is yet another important aspect of the matter that the alleged mistake which is sought to be pointed out on behalf of the respondents, is something which is unilateral with no contribution at all on the part of the petitioners. There is no fraud or misrepresentation either alleged, pleaded or established against the petitioners. In the absence of any such participation on the part of the petitioners, without any disadvantage to the scheme being implemented and there being no reason reflected in the impugned orders to that effect, there was no occasion for the respondents to have cancelled the allotments outright. The State Government and the Authority were duty bound to further specify in the impugned orders as to how the Master Plan, Statutory Regulations and Building Regulations had been violated. This having not been done, the State Government was not justified in passing the impugned orders that too even without giving opportunity of hearing to the petitioners.

55. The Court may now deal with the other legal submissions, which have been canvassed on behalf of the petitioners in seriatim.

(i) The State Government had no jurisdiction to pass the order dated 1st August, 2008 and therefore, the said order as well as the consequential order passed by the NOIDA dated 3rd August, 2007 are wholly without jurisdiction.

For examining the aforesaid issue, it is worthwhile to reproduce Section 41 of Act, 1973, which has been applied to Act, 1976 by necessary reference. Section 41 reads as follows:

41. Control by State Government.- The [Authority, the Chairman or the Vice-Chairman] shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the [Authority, the Chairman or the Vice-Chairman] under this Act any dispute arises between the [Authority, the Chairman or the Vice-Chairman] and the State Government, the decision of the State Government on such dispute shall be final.

(3) The State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records or any case disposed of or order passed by the [authority or Chairman] for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

[(4) Every order of the State Government made in exercise of the powers conferred by this Court shall be final and shall not be called in question in any court].

(Emphasis added)

From the aforesaid statutory provision, it will be seen that the State Government has been conferred jurisdiction to issue direction for efficient administration of the Act under Clause (I). To call for the records of any case disposed of or order passed by the Development Authority or its Officers and in case it is found that the order so passed is not in accordance with law, statutory rules or is otherwise illegal, the State can issue appropriate directions either suo motu or on an application being made for the purpose under Sub-clause (3) of Section 41 of Act, 1973.

56. In the facts of the present case, such power has been exercised by the State Government after the order of this Court dated 25th May, 2007, referred to above, was brought to its knowledge. Order dated 1st August, 2007 is, therefore, referable to the power vested in the State Government u/s 41 of Act, 1973. Merely because this Court in its order dated 25th May, 2007 had made observations for the State Government to examine as to whether any orders are required to be passed by it, qua the transactions in question, it would not mean

that this Court has conferred any jurisdiction not vested in the State Government. Power to issue directions has been conferred upon the State Government u/s 41. We, therefore, turn down the objection of the petitioners that the State Government had no jurisdiction to issue the order dated 1st August, 2007. As a logical consequence, the order passed by the NOIDA dated 3rd August, 2007 in compliance to the direction issued by the State Government also cannot be faulted with.

(ii) The petitioners' next contention, that once the lease-deeds have been executed and the petitioners had put in actual possession over the plots, they cannot be dispossessed except in accordance with law i.e. by way of civil suit proceedings, any action to the contrary would be violative of Article 300-A of the Constitution. This issue need not detain the Court for long.

In the opinion of the Court, the power of cancellation and resumption as conferred u/s 14 of Act, 1976, is wide enough to vest the State Government as well as the NOIDA to not only cancel the allotment, if it is found contrary to the statutory regulations etc. but also to resume possession and for the purpose request the Collector on a requisition to ensure delivery of possession u/s 14(2) of Act of 1976.

We have already recorded hereinabove that the allotments made had to be examined in the light of any violation of statutory regulations and in order to proceed to examine this issue, the State Government could exercise the power u/s 41 of the Act 1973. In case the State Government arrives at a conclusion that the cancellation was necessary on account of statutory violations and against the public policy, then the State Government and the Authority would also have the power to take consequential action of cancellation and seek delivery of possession.

Such dispossession of the petitioners would not be in violation of Article 300A of the Constitution as the same is being effected in accordance with law, which includes statutes made by State Legislature i.e. Act of 1976. Reference in that regard may be had to the legal position referred to above.

57. There is another reason for inferring such powers with the Development Authority u/s 14 of Act, 1976 as would be apparent from the example stated below.

In a given case by mistake or otherwise, a Development Authority may make the allotment of land for building purposes, when it was earmarked for green belt. On the error being detected, a power to cancel the allotment and re-enter into the possession over the area marked for green belt has to be inferred u/s 14 of Act, 1976, failing which the remedy available to the NOIDA would be to initiate suit proceedings for dispossession of the allottees of the green belt. Having regard to the time which is taken in the final decision of the regular suit proceedings (that is upto the stage of second appeal) in the present scenario (which may run into decades), would frustrate the very purpose for which the

area was earmarked as green belt. Larger public interest requires that the green belt be restored to its original position at the earliest possible. Individual rights must give way to Larger Public Interest (Reference Shrijee Sales Corporation (Supra). Section 14 of Act, 1976 has to be read in manner so as to provide that if an allotment is made in favour a particular person in violation of the statutory regulation, then the NOIDA will have the power to cancel the same and to re-enter into the possession.

After having reached the aforesaid conclusions, the issue still survives for consideration before this Court is as to whether in every case, where there is violation of statutory provision, the only direction, which should be issued by State Government/NOIDA is to cancel the allotment/lease-deeds or is it within discretion to issue other direction, as may be appropriate and may serve larger public interest as well as do substantial justice. Further as to whether an order adverse to a person could be passed u/s 41 of Act, 1973 or Section 14 of Act, 1976 without notice and opportunity of hearing to the person concerned.

58. We may first deal with the issue qua opportunity of hearing being afforded to the person against whom an adverse order is to be passed by the State Government as well as NOIDA.

There is no dispute to the settled legal proposition that if any administrative order visits the person with evil civil consequences, it must be passed in conformity with the principles of natural justice and not otherwise.

The principles of natural justice have specifically been enshrined under proviso to Section 41(3) of Act, 1973. The statute itself contemplates that before any orders adverse to a person, is passed by the State Government, it shall afford opportunity of hearing to the person concerned. This has admittedly not been so done in the facts of this case.

In view of the aforesaid, we hold that the Sate Government while passing the impugned order dated 1st August, 2007 and NOIDA while passing the order dated 3rd August, 2007 should have afforded opportunity of hearing to the petitioners and in absence thereto the order passed by the State Government as well as the order passed by the NOIDA cannot be legally sustained being in violation of principles of natural justice as well as in teeth of proviso to Section 41(3) of Act, 1973.

59. The Court may now consider as to whether in every case if allotment is found to be in violation of statutory rules or guidelines, the only order which can be passed by the State Government u/s 41 of Act, 1973 is to cancel the allotment or the Act contemplates issuance of other directions also.

A simple reading of Section 41 of Act, 1973 would lead to the inference that the legislature has conferred a discretion upon the State Government to issue such direction as it thinks "fit". What can be "fit" in the eye of a Government, the answer would be that what is just and is in the larger public interest.

It is not necessary that in every case where allotment is made in violation of statutory rules, fairness and public interest will demand cancellation of the allotment. The State Government has to act on a consideration of all relevant facts as they exist and then to apply the rule of fairness and public interest for arriving at a just and reasonable decision.

60. The question as to whether the rates were fixed in the advertisement whereas the same were meant to be only a reserved price, would lead to the conclusion that a minimum price had been fixed and that offers for higher amount could be made but at the same time, it is to be noted that in spite¹ of this price which was indicated in the advertisement, only 14 plots could be settled as against the 25 plots which had been advertised. This clearly indicates that in spite of adequate advertisement having been made, the authority was unable to fetch investors for almost half of the plots. This clearly reflects that the stringent conditions which had been imposed in the advertisement, detracted prospective investors to a great extent. Even before this Court, there is no challenge by any such prospective investor to the said advertisement or the procedure adopted by the authority except for two petitions filed as a PIL which were also ultimately withdrawn by the petitioners therein. Thus, in these circumstances, it cannot be readily inferred that the deal was a mala fide deal or was some sort of underhand dealing merely because plots had been sold at much higher rates in the nearby commercial area. This, in our opinion, would be comparing uncomparables inasmuch as the terms and conditions in the present allotment are far from stringent and curtail much of the rights as against those plots which have been settled by NOIDA at higher rates on different terms and conditions. In the instant case, the authority has come up with the plea that there was a mistake in the implementation of the policy on account of an incorrect interpretation with regard to the industrial rates to be applied at the time of allotment. It is surprising as to how the authority has termed it as a mistake when extensive deliberations had taken place and conscious decisions had been implemented followed by execution of lease deeds and registration thereof.

Admittedly no misrepresentation had been made by petitioners, on the contrary, it is a clear case of misrepresentation by the NOIDA that land would be allotted at fixed price of Rs. 7,400/- per sq. mtr.

61. It is not easy for every person to make an application on the stringent conditions, which have been determined for allotment of the hotel plots in the Brochure. No other interested person except two persons claiming themselves to be the champion of public interest, defenders of faith filed PILs and obtained the orders from the Court. Ultimately, those petitions were dismissed as withdrawn. Thus, the Government could have considered as to whether after withdrawal of the said writ petitions, it should have reconsidered the cases in pursuance of the interim order passed by this Court, which ultimately merged into the final order of withdrawal of the writ petitions.

Not a single person has come forward to offer any higher price for either of the plots. No doubt, statutory rules have been violated but such violations appear to be more technical than contrary to public interest.

62. It is not in dispute that once the NOIDA had adopted the policy decision dated 22nd May, 2006 in toto, regulations could be amended and if same had not been done, the State Government could have asked the NOIDA to make the amendments for giving effect to the policy decision dated 22nd May, 2006.

The question as to whether the rules and regulations require amendment for the purposes of justifying the advertisement, has not at all been considered by the State Government or NOIDA while passing the impugned order. This has vitally affected the rights which accrued in favour of the petitioners on account of the action of the parties in altering their position after the allotment was made. Whether the implementation of the policy without bringing an amendment in the rules and regulations would be fatal, should have been the subject matter of deliberations by the State Government while passing the impugned order inasmuch as we do not find any such reason reflected therein. Even otherwise, if this irregularity did exist, then it was still open to the State Government to have considered the implementation of any such amendment looking to the fact that the hotels were very much urgently required and the work was required to be finished by 2009. It is nobody's case that there was no fair advertisement indicating the terms and conditions on which the allotment was to be made. The policy to invoke the industrial rates for allotment was only to promote the hotel business in view of the forthcoming Commonwealth Games and, in the long run, to promote tourism. It is for the State Government to decide as to whether the rates prescribed were reasonable vis-a-vis the object sought to be achieved. It cannot be lost sight of that there are many allotments made by the Government even free of cost to exclusively charitable institutions or institutions which provide services on "no profit no loss" basis to the public at large. Can it be said that the allotment of such plots have also to be tuned keeping in view the high rate of revenue that can be collected from the land? Thus, the purpose which has to be seen and the object which is sought to be achieved, in our opinion, is in the realm of policy decision to be taken by the State Government founded on a reasonable basis and which has a rational nexus with the object to be achieved. The consideration for fixing appropriate rates may also be one of the factors but the same has to be concluded by taking an appropriate decision. Thus, the decision in this case was required to be taken after giving opportunity of hearing to the petitioners as the petitioners had acquired valuable rights due to intervening events. This is we are saying again keeping in view the undiluted facts that out of 25 plots that were offered, only 14 prospective allottees have applied and were allotted plots.

63. The authority had to keep in view the huge investments which have been made by the petitioners and they had every right to legitimately expect at least an opportunity of hearing before the impugned orders were passed.

In the absence of any kind of allegation of fraud or misrepresentation or impression of bias or favouritism or nepotism or corruption, the decision to cancel the allotment needs a fresh look by the State Government in the back ground of the observations made.

In our opinion the law laid down by the Hon"ble Supreme Court in the case of Shri Sachidanand Pandey and Anr. (Supra) is appropriately applicable in the facts of the present case and should have been noticed by the State Government along with other aspect of the matter before taking a decision in the matter.

64. The State Government has failed to take note of the fact that the price fetched in respect of plots settled with the petitioners was considered again by the Board of NOIDA in its 137th meeting dated 4th September, 2006 and after noticing the settlement made, at a price of Rs. 7,400/- per sq. mtr. with the petitioners. The Board approved the same. Meaning thereby that even if, there may have been some irregularity in the settlement of plots, vis-a-vjs policy guidelines stood condoned by the NOIDA itself. The State Government should have also kept in mind that the petitioners had already been put in actual possession over the land in question, the lease-deeds had already been executed and in 11 cases also registered.

65. The issue so formulated by us need examination by the State Government afresh in the background that public interest must prevail in all circumstances and all statutory provisions and the power conferred upon the State Government u/s 41 of Act, 1973 must have at its heart larger public good.

We may not enter into the other legal issue raised on behalf of the petitioners qua the impugned orders being not supported by sufficient reasons, as we are quashing the impugned order passed by the State Government dated 1st August, 2007 and the order passed by the NOIDA dated 3rd August, 2007 for being in violation of principles of natural justice.

Conclusion:

66. In view of the aforesaid, we arrive at the following conclusions:

That the impugned order passed by the State Government dated 1st August, 2007 and the consequential order passed by the NOIDA being in violation of principles of natural justice, cannot be legally sustained and are hereby quashed. The writ petitions are allowed. The matter is remanded to the State Government for taking a fresh decision in the matter in light of the observations made herein above.

Since the time is of essence in the facts of the present case, inasmuch as lease-deeds contain stipulations, where-under constructions have to be made in a time bound manner, it is further provided that the State Government shall take appropriate decision after affording opportunity of hearing to the petitioners individually, preferably within six weeks from the date a certified copy of this order is filed before the authority concerned. The decision so taken by the State

Government shall record reasons and shall be communicated to the NOIDA which shall take all consequential action thereon.

67. No order as to cost.