

(1994) 12 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 126 of 1993

Prontos Ltd.

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 22-12-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 227
Land Acquisition Act, 1894 — Section 4

Citation : (1995) 1 ILR HP 472

Hon'ble Judges : D.P. Sood, J; Bhawani Singh, J

Bench : Division Bench

Advocate : Chhabil Dass and Anand Sharma, in C.W.P. Nos. 126, 331, 332, 382, 386, 490 and 516 of 1993, K.D. Sood, in C.W.P. Nos. 149, 156 and 1272 of 1993, S.S. Mittal, in C.W.P. No. 204 of 1993, Anand Sharma, in C.W.P. Nos. 127, 133 and 134 of 1993, Chhabil Dass, in C.W.P. Nos. 489 and 840 of 1993, M.C. Mandhotra, in C.W.P. No. 142 of 1993 and Bhupender Bhardwaj, in C.W.P. No. 1132 of 1993, for the Appellant; Inder Singh, General for Respondent Nos. 1 and 3 in C.W.P. Nos. 126, 127, 133, 134, 142, 149, 156, 331, 332, 382, 386, 489, 490, 516, 840, 1132 and 1272 of 1993 and for Respondents Nos. 1, 2 and 4 in C.W.P. No. 204 of 1993, Prem Goel and Ajay Goel for Respondent No. 2 in C.W.P. Nos. 126 and 133 of 1993, M.L. Chauhan, in C.W.P. Nos. 331, 332, 382, 840 and 1132 of 1993, Deepak Gupta, in C.W.P. Nos. 134, 156, 386, 489, 490 and 516 of 1993, A.K. Goel, in C.W.P. Nos. 127, 142 and 149 of 1993, J.R. Thakur, in C.W.P. No. 204 of 1993 and K.L. Bali, in C.W.P. No. 1272 of 1993, for the Respondent

Judgement

D.P. Sood, J.—Allottees of industrial plots located at Parwanoo Teh. Kasauli, District Solan, question the decision by way of notice issued to the Petitioners by the second Respondent (Himachal Pradesh Housing Board) relating to the recovery of additional sum(s) towards the premium by way of enhanced compensation pursuant to the award(s) passed by the Courts in reference/appeal in relation to the acquired land out of which industrial plots were carved out.

The Petitioners, through the above said various writ petitions under Articles 226/227 of the Constitution, have sought alternate remedies by praying, firstly,

that such notices pertaining to the demand so made, being un-authorised and discriminatory in character in all the petitions, be quashed, and secondly, that in case said demand is found to be reasonable or otherwise based upon any relevant consideration, then Respondent No. 1 (State of H.P.) be directed to pay the same to Respondent No. 2 by restraining the Respondents from claiming any such additional sum(s) towards the premium from each one of the Petitioners, referred to above. All the petitions raise identical contentions and it was said that Civil Writ Petition No. 125 of 1993 is more comprehensive in character and, therefore, the facts alleged therein, may be taken as representative in character. They may be stated:

All the Petitioners are industrial Entrepreneurs, carrying on their respective industries at Parwanoo. This industrial town was set up somewhere in the late sixties by the first Respondent for the purpose of encouraging and development of the industries throughout the State. In this project, land of private land owners was also acquired for purposes of allotment of industrial plot to the various Entrepreneurs. Such like industrial establishments were also set up in other places like, Mehatpur in Una District, Paonta Sahib in Sirmaur District and Barotiwala and Baddi in Solan District etc. The main function and development of industries was under the charge of Industries Department of H.P., but for the purpose of development of infrastructure of plots and construction etc., the same was entrusted to the second Respondent, which acted as a canalising agency to develop the infrastructure facilities during the period 1970 to 1976. Thus, the development of Parwanoo township was administratively implemented by the second Respondent and it included development of residential/commercial areas, infrastructure work like roads, sewerage, hospitals, schools etc. and industrial plots as well. However, the allotments of industrial plots was sought to be done by the first Respondent on the basis of the recommendation to be made by the Department of Industries, after following the prescribed procedure and resultantly entering into a lease agreement with the respective allottees. The project submitted by the respective entrepreneur used to be examined by the Industries Department in order to categorise the same and register/approve it as small scale industries, medium scale industries and tiny industries etc. There is no dispute regarding the nature, categorisation and registration of Petitioner(s) units located at Parwanoo by the Industrial Department and consequent recommendation for the allotment of the industrial plots in question.

2. Since the Himachal Pradesh was not easily accessible by roads and raw material being not locally available, had to be imported from other States. Thus, in order to attract and encourage various entrepreneurs to set up their industries, the first Respondent as also the Central Government gave wide publicity of those incentives including the allotment of various plots at concessional rates in the year 1977. Circulars/Rules regarding the grant of incentives to new and already set up industrial units in Himachal Pradesh, were issued from time to time. The incentive also included the grant of industrial plots at concessional rates and the grant of subsidy to the extent of 25% in the initial

stage. The incentive rules for industrial units to be set up in Himachal Pradesh were notified for the first time in the year 1976. Subsequently, the first respondeant, vide Circular No. ind. Vi(f)9-3176(IA) dated 21.9.1977 revised the price of land in industrial areas/estates in Himachal Pradesh as per detail given in Annexure PB annexed with CWP 126/1993. Subsequently, revised rules pertaining to this subject were formulated in 1980, 1984 and 1991 which are the latest" rules-presently in force. Prior to the rules of 1980, 1984 and 1991, there was policy decision which was in force. According to the said policy decision and issuance of Circular dated 21.9.1977 (Annexure PB) it appears that the respective Petitioners were allotted industrial plots at the cost calculated as per policy 9 Rs. 10/- to Rs. 40/- per square metre on 95 years lease hold basis which amount the Petitioners paid and all of them have entered into possession and thereafter established their respective industrial unitsthereupon. Petitioners now contend that it was an integral scheme which was jointly executed by the Respondents through their different wings. Further case set up by the Petitioners is that the Respondents made a representation in categorical terms to the Petitioners that as per the policy contained in Annexure PB, the premium and price of the plots would not be enhanced and in case any extra amount is to be paid, the same was to be subsidised by the first Respondent and then paid by it to the second Respondent for the acquired land; that acting on these representations, the Petitioners set up their industrial units by investing huge amounts. Thus, as per them, the Respondents, particularly second Respondent, now cannot lay a demand of additional sum(s) towards the premium by way of enhanced compensation on the principle of promisory estoppel. They further plead that the above said policy was time and again reiterated in the subsequent rules, referred to above and incorporated in the respective lease agreements which clearly revealed that the premium of the allotted land communicated to each one of them, shall remain the same during the pendency of the lease agreement; that the clause of payment of the enhanced premium in accordance with the eventual price paid by the second Respondent on account of enhanced compensation pursuant to the award of the land acquisition proceedings, in the totality of circumstances, was understood to have been subsidised and payable by the first Respondent and not by the Petitioners. It is averred that industrial plots, referred to above, were taken to be a clause by itself to meet the requirement of unemployment due to increased literacy and education and influx from rural areas to urban areas, as per the Directive Policy of the Constitution of India and with this object in view, a High Powered Committee was constituted to determine the price of the industrial plot, treating it as a separate clause which Committee ultimately determined the price after taking into consideration various factors as detailed in Annexure PB. It is then asserted that the demand notices now served upon the Petitioners are un-authorised and contrary to the policy decision. According to them, certain commercial as also residential plots were sold at an extremely high premium and the profits arising therefrom were required to be diversified towards giving incentives to industrial entrepreneurs and setting industrial units on "no profits no loss basis". Petitioners allege that

out of the huge chunk of land, approximately 1400-1500 acres acquired land for setting up this industrial complex at Parwanoo, only 20% land had been allotted to the industrial unit(s) and rest thereof has been sold/allotted to non-industrial purposes., like, residential purposes etc. It is also their case that more than 40% of the industrial plots have been allotted to big 4. entrepreneurs registered as large scale industrial units by the Government of India and they are being treated at par with the entrepreneurs of small scale, medium scale and tiny industrial units in respect of the additional sum, now being demanded from each one of them. They further plead that the allotments of industrial plots to different entrepreneurs were made in the years, 1970, 1973 and 1976 respectively pursuant to acquisition of land vide different Notifications issued u/s 4 of the Land Acquisition Act. It is further pleaded that enhanced compensation also varied from Rs. 4,000/- to Rs. 22,000/- per bigha in respect of the Awards pertaining to the above said Notifications of different periods. Thus, the Petitioners also claim that the additional sum towards the premium should have been calculated on the basis of Notification-wise ultimate enhancement of compensation and resultantly, plot-wise value proportionately. Thus, as per the Petitioners, Respondents have not correctly calculated the additional sum so demanded from them. Even otherwise, the Petitioner claim protection under Clause 2(i) of the Lease Deed which is to the following effect:

The lessee shall pay within such time such additional sum or sums towards the premium as may be decided upon by the lessor on account of compensation award by the Land Acquisition Collector being enhanced on reference or in appeal or both and the decision of the lessor in this behalf, shall be final and binding on the lessee.

Thus, the Respondents while calculating the additional sum, could not have included the interest or solatium over the enhanced compensation for the reason that the interest or solatium is not a part of compensation under the provisions of the Land Acquisition Act.

3. Respondents have contested the case as set up by the Petitioners on the ground of maintainability of the petition, contending that the dispute between the parties arise out of contractual obligations which relate purely to the enforcement of the terms and conditions of the lease deed duly executed between the parties. On merits, the averments pertaining to the establishment of Housing Colony/Parwanoo Township, acquisition of land of private owners for setting up industrial units, use of the land for other purposes, like residential and commercial areas, infrastructure works like, roads, sewerage, hospital, schools etc., have been admitted. The averments with respect to the allotment of industrial plots to the Petitioners on the basis of recommendations made by the Industries Department on the price as per policy decision of the Government, coupled with the terms and conditions of the lease deed executed in between the parties interse and formulation of revised rules regarding grant of incentives at different periods, have also not been controverted. However, it is denied that the

premium was fixed for different grade industrial areas by determining the same after taking into account various factors and consequently detailed in Annexure PB. It is contended that the cost of developed land in case of Parwanoo "A" grade industrial area was determined by Respondent No. 2 at Rs. 80.20 per square metre after taking into account the actual cost of acquisition of land and cost of development at the time of allotment without taking into account other unforeseen costs including the enhancement on account of acquisition award. This cost at the initial stage was subsidised and the government allotted the plots at subsidised rates and difference between Rs. 80.20 per square metre and the premium charged from the allottees, has been and is being paid by the first Respondent through the Department of Industries. Respondent Nos. 1 and 3 contend that the above said grant of subsidy was confined to the allotment of plots at the initial stage and not to the enhancement of compensation thereafter regarding which a condition in the form of Clause (ii) as per the lease deed, was agreed to and consequently entered therein to the knowledge of the allottees. It is stated that the rate of premium for industrial plots in an industrial area was as determined by the Committee. The rates as mentioned in Annexure PB was fixed not only for Parwanoo but for all the industrial areas falling in respective categories and pertaining to the industrial plots located at different places throughout the State. Thus, as per Respondents, Petitioners are bound to pay enhanced amount of premium on account of enhanced compensation as a result of awards made by the Courts. In other words, the specific case of the first and third Respondent is that the former is liable to pay only the difference of costs arrived at by H.P. Housing Board at the time of allotment by taking into account cost of acquisition of land and cost of development and the premium charged from the Petitioners but the unforeseen expenditure like, additional sums on account of compensation awarded by the Courts at later stages is to be borne by the Petitioners in accordance with the lease agreement entered into between the parties to the instant lis.

4. Respondent No. 2 has also adopted the same stand and as per it, the plea of the Petitioners is not tenable. Respondent 2 has annexed detailed analysis of the utilisation of the land and the calculation made for the enhanced claim as per Annexure R-2/1 and R-2/2 which, according to their contention, reveal that no part of the claim made against the Petitioners pertains to land covered under other activities.

5. In rejoinder, the Petitioners have controverted the contentions raised by the Respondents and reiterated the stand taken up by them in the petition.

6. Considering the preliminary objection raised by the Respondents with respect to the maintainability of the petition on the ground that the dispute between the parties arise out of contractual obligation, purely based on the enforcement of the terms and conditions of the lease deed duly executed between them there is no dispute that there exists relationship of lessee and lessor in between the Petitioners and the Respondents. The execution of the lease deed containing the

terms and conditions applicable to the allotment of industrial plots to each one of the Petitioners, also remains un-controverted. Respondent 1 is the State whereas Respondents 2 and 3 are its instrumentalities. Respondent 2 is an autonomous body, being a public authority. Now it is well settled that if the matter between the parties is within the realm of contract, the Respondents being State and public authority Within the definition of Articles 12 and 226 of the Constitution, are not to act arbitrarily, rather, under the law they are to conform to Article 14 of the Constitution. In other words, the State as also its instrumentalities are legally bound to satisfy the requirement of non-arbitrariness, a necessary concomitant of the rule of law. This exposition of law is supported by the view taken by the apex Court in the case of Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries (1). In paras 7 and 8 of the said judgment, it has been held that:

7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is "fairplay in action". Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bonafide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of

law and operates in our legal system in this manner and to this extent.

7. Judging the facts of the instant case in view of the significance of the doctrine with respect to the contractual obligations arising from the contract, coupled with the averments made in the petition, we see no force in the preliminary objection raised by the Respondents. We hold that the writ petitions are maintainable.

8. Now advertent to the submissions made by Shri Chhabil Dass, Advocate, appearing on behalf of the Petitioners in the instant petition which are:

i) That industrial plots were allotted to each one of the Petitioners pursuant to the incentive policy of the 1st Respondent and the price fixed consequent thereto as per Ex. PB. Thus, as per the incentive policy and representation so made, the Respondents are estopped from demanding any additional amount towards compensation on the maxim of promissory estoppel;

ii) That even otherwise, the calculation of Rs. 33.17 paise per square metre at a flat from every industry is arbitrary and without taking into consideration the relevant and germane factor in arriving at a figure to the individual cases; and

iii) That in any case the Respondents can only claim the enhanced compensation and not the interest and solatium paid over the same since the compensation does not include solatium and interest under the provisions of the Land Acquisition Act, 1894.

In respect of the above submissions, it is pointed out that the Petitioners having acted upon the incentives given and the promises made by the 1st Respondent, have invested huge amount in running their industries. Now the 1st Respondent cannot be allowed to blow hot and cold in the same breath regarding the additional demands which are being made by the 2nd Respondent.

9. The stand of the Respondents is that intact the government fixed the premium on land for different industrial areas vide Annexure PB after taking into account the actual cost of acquisition of land and cost of development at the time of fixing the premium and its price came as Rs. 80.20 per square metre. According to their contention, the cost price of the acquired land so arrived at was without taking into account other unforeseen circumstances pertaining to additional cost which was in the form of payment of enhanced amount of compensation pursuant to the various Awards of the Courts made at later stages. It is contended that 1st Respondent is liable to subsidise the difference between the actual cost arrived at per square metre and the premium charged from the allottees and the same has been and is being paid to the 2nd Respondent by the 1st Respondent through the 3rd Respondent. In that view of the matter, as per the stand of the Respondents, the recovery of the additional sum(s) towards the premium paid consequent to the enhancement of compensation including interest and solatium thereupon is the liability to be discharged by the Petitioners in terms of Clause 2(i) of the respective lease deeds entered into by each one of

the entrepreneurs.

10. ...Looking to the respective stand taken up by the parties in the instant case, it is clear that the entrepreneurs were required to pay the price of the allotted land to each one of them as per the premium fixed by the 1st Respondent vide Annexure PB at the time of allotment of the industrial plot. At this stage, it would be appropriate to detail the contents of AnnexUre PB in verbatim:

Copy of letter No. IND.VI(F)9-3/76(IA); dated the 21st September, 1977, from the Deputy Secretary(Industries) to the Government of Himachal Pradesh, addressed to the Director of Industries, H.P., Shimla and copy to others.

Sub: REVISION OF PRICE OF LAND IN INDUSTRIAL AREAS IN HIMACHAL PRADESH APPROVAL REGARDING

1. I am directed to refer to your D.O. letter No. 4-532/76 Ind(Dev),dated 10th August, 1977, regarding revision of price of land in the Industrial Areas in Himachal Pradesh and to say that the Governor, Himachal Pradesh, after due consideration of the proposal, is pleased to revise the price of land in the Industrial Areas/Estates in Himachal Pradesh as under:

S. No.

Classification of the area

Fully plots

Un-developed plots

Rate of interest.

1

2

3

4

5

I

"A" Class Areas

Rs.10/- per Sq. Met

Rs.7/per Sq. Met.

@ 3%

II

B" Class Areas

Rs.7/- per Sq. Met.

Rs.5/per Sq. Met.

@ 4%

III

"C" Class Areas

Rs.5/- per Sq. Met.

Rs.3/per Sq. Met.

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2. The Governor, Himachal Pradesh is also pleased to order that in respect of "A" Class Industrial Area at Parwanoo, Distt. Solan, which is being developed by the H.P. Housing Board, Committee would be constituted to fix the cost of plots. This committee shall include a representative each from the Directorate of Industries, Finance Department, Himachal Pradesh, Himachal Pradesh Mineral and Industrial Development Corporation and the H.P. Public Works Department. The difference, between the cost of plot (Developed/un-developed) and the premium to be charged from the Entrepreneurs, will be subsidised by the Government and not from the Plan Budget of the Department of Industries.

3. The Governor Himachal Pradesh is further pleased to order that the revised prices fixed for plots etc. in industrial areas would not be applicable to those previous allottees who had not taken any action to start their industries in the Pradesh. However, if they take concrete steps to start industries on the plots allotted to them within three months of this decision, to the satisfaction of the Industries Department, the benefit of the revised prices of land would also be available to them. Refunds, if any, would be adjusted towards further instalments.

4. These orders take effect from 24th August, 1977.

5. It is, therefore, requested that these orders may kindly be implemented accordingly and further necessary action taken in the matter.

11. There is no dispute in between the parties, that the industrial plots in question located at Parwanoo fall within "A" class industrial areas and the said plots at the time of allotment to each one of the entrepreneurs were fully developed plots. Thus, as per the price fixed vide Annexure PB by the 1st Respondent, each one of the Petitioners was entitled for the allotment of their respective plots 9 Rs. 10/- per square metre. As a sequel thereto, the 1st respondeant was bound to subsidise the difference between the actual cost of each industrial plot and the premium so fixed as per the representation held by it. Resultantly, in view of the stand taken up by the Respondents, neither the Petitioners nor this Court is concerned with the mode as to how and in what manner, the actual cost of the industrial plots carved out of the acquired land, was arrived at by the Respondents. Both the parties agree that a High Powered

Committee consisting of the Secretaries of Finance, Industries and that of Public Works Departments was formed to determine the said price. The submission of the learned Counsels that the actual price of the land in question should have been based at the value pertaining to the acquired land notification-wise or plot-wise, becomes meaningless for the purpose of decision of this writ petition inasmuch as what is the difference of price to be subsidised by the 1st Respondent and thus paid to the 2nd Respondent, is a matter pertaining to the Respondents interse. It has no connection with the Petitioners in the above said circumstances pointed out above. Thus, this submission of the Petitioners is rejected to this extent.

12. However, we hold that as per the stand of the Respondents, they are bound to allot the industrial plots to the Petitioners at a premium indicated in Annexure PB and the 1st Respondent is bound to subsidise the difference between the cost of plot (developed/un-developed) and the premium to be charged from the entrepreneurs, as per Annexure PB.

13. Now adverting to the other submission that premium shown in Annexure PB, was the result of consideration of the actual compensation paid to the land owners and also to the enhanced compensation pursuant to the Awards made by the Courts including the interest and the solatium, suffice it to state that no material has been brought by the Petitioners on record to show that enhanced compensation as per the Awards made by the Courts was taken into consideration at the time when the actual price of the plots was arrived at for fixing the premium as per Annexure PB. This is clear from the fact that the said letter (Annexure PB) was issued on 28.9.1977 when the petitions for enhancement of compensation were pending final adjudication. The perusal of the Awards in relation to the plots also indicate that they were made subsequent to the issuance of letter Annexure PB. In addition to the said fact, the entrepreneurs have admitted the execution of the lease deed in relation to their respective plots on different dates, which includes Clause 2(i)" pertaining to the recovery of the additional sum(s) towards the premium as a result of enhancement of compensation awarded by the Land Acquisition collector/Courts, from the lessee(s) (Petitioners). Perusal of these agreements does indicate that they have been entered into by the respective Petitioners prior as also subsequent to the issuance of document Annexure PB. Perusal of this clause also indicate that the Petitioners, with open eyes, had undertaken to pay the additional sum(s) towards premium as may be decided upon by the lessor on account of the compensation awarded by the Land Acquisition Collector or enhanced on reference or in appeal by the concerned Courts. Thus, the Petitioners cannot ward off their liability by simply raising a plea that premium as per Annexure PB was arrived at after consideration of the enhanced compensation also. Infact, the Factum of enhanced compensation so awarded to the land owners under the provisions of the Land Acquisition Act was not germane at the relevant time of arriving at the cost of the land in question. Thus, the Petitioners are legally bound to pay the additional sum(s) as per their

undertakings over and above the premium as fixed by Annexure PB. The Respondents are entitled to raise a demand for payment of additional sum(s) towards the premium, which being reasonable, is fully covered by the agreement.

14. Now the next question for determination as per submission of the learned Counsel for the Petitioners is whether the additional sum(s) is only confined to compensation or it also includes interest and solatium. The expression "premium" has not been defined. However, it includes any fine or like sum or any other pecuniary consideration in addition to rent. Each case has to be decided on its own facts and the substance of the transaction must be recorded, not the name given to the payment. Thus, this expression merely means a lump sum paid as a consideration for the acquisition of the lease, so also if the premium or lumpsum is paid by instalment spread over the term of the lease, it still remains of a capital nature. Now the undertaking given by the Petitioners to discharge the liability by making payment of the additional sum(s) towards premium, is on account of compensation awarded by the Courts. Admittedly, interest as also solatium under the provisions of the Land Acquisition Act, 1984 is paid to the land owners in addition to the compensation but consequent to the acquisition of the land belonging to the land owners. Thus, the interest or solatium so paid is a part and parcel of the amount paid on account of compensation. In that view of the matter, this submission that Petitioners are not liable to pay the interest or solatium, is also without substance and is rejected.

15. At this stage, it would be pertinent to detail that in view of the price of the plots charged by the Respondents from the Petitioners coupled with the stand taken up by the respective parties to the instant lis, the submission of the Petitioners that demand has not properly been made by the 2nd Respondent, appears to have substance. In other words, according to the Petitioners, the demand by the 2nd Respondent, is much in excess to what they are entitled to even in accordance with Clause 2(i) of the lease agreement. This submission of the Petitioners is borne out from the perusal of the lease deed pertaining to various entrepreneurs (Petitioners) which reflect that instead of charging the price of the allotted plots from each one of them(r) Rs. 10/- per square metre for "A" class industrial area, Respondents have charged @ Rs. 30/-, 35/- and 40/- per square metre respectively. Only in CWP 386/1993, the price of the land has been charged from the Petitioners M/s. Khanna Watches Pvt. Ltd. 9 Rs. 25/- per square metre, which is also in excess of the premium fixed pursuant to revised price of land in industrial areas as per Annexure PB. Infact, each one of the Petitioners is entitled to the adjustment of the excess payment with interest from the date of payment till 31.12.1992 in relation to his plot towards the additional sum(s) including interest upto 31.12.1992 so claimed by Respondent No. 2. The benefit of interest on the excess amount of the Petitioners has to be given on the same rate as has been claimed by them towards the additional sum(s) now being recovered from them. The perusal of the record does not show that the demand notice has given benefit of adjustment to either of the Petitioners on the said basis. To this extent, the demand notice with respect to the additional sum(s)

claimed from the Petitioners/appears to be neither legal nor alld. The perusal of the demand notice clearly indicates that benefit of excess sum(s) so paid by the Petitioners, has not been taken into consideration as the demand has been based on the total cost of enhancement of land compensation in respect of the industrial plot of each Petitioner 41 Rs. 33.17 per square metre. As regards, the calculation of additional sum of Rs. 33.17 per square metre arrived at by the Respondent's, suffice it to state that the Respondents have supplied sufficient data by showing that calculation pertains to the land allotted to the entrepreneurs after apportioning the enhanced compensation including interest and solatium on other categories of land used for residential and commercial purposes and allotment of the plots to government departments or corporations etc on nominal rates. It is obvious that some of the acquired land has been used for common purposes, like roads, sewerage, hospitals etc. Apart from it, land in chunks have been acquired at different occasions from different contiguous villages and they after the levelling thereof, have been thrown into hotch-potch and plots have been carved out therefrom sector-wise. Thus, for doing so, different wings of the government have undertaken the exercise. The 1st Respondent has employed persons and are incurring expenditures for the payment of their salaries and maintenance of the plots etc. That does not seem to have been included in the calculation of the demand of additional sum(s) made from the Petitioners. Thus, in this view of the matter, it cannot be said that the calculation is, in any way, wrong or based on un-reasonable basis. As earlier observed, entrepreneurs had been given incentive to establish the industrial units as per the incentive policy framed by it. Parties agree that the said policy which was circulated in the year 1976 for the first time continue to apply to all the industrial units, whether established before or after the circulation of the said policy. As per Annexure PB, premium for developed/un-developed plots was fixed at Rs. 10/- and Rs. 7/- per square metre respectively. Thus, though the Respondents are entitled to recover the additional sum(s) from the entrepreneurs (Petitioners) after giving adjustment of the excess amount charged from them with the same interest as they have claimed from the Petitioners from the date of payment thereof by them to Respondent No. 1 till the date upto which the interest is calculated by Respondents on recoverable amount. Therefore, the Petitioners submissions in this behalf, have no merit and are liable to be rejected.

16. As a sequel to the observations made above, we are of the considered opinion that the Petitioners have succeeded to the extent of showing that the demand notice for the recovery of additional sum(s), does not indicate the correct amount recoverable from each one of them. As such, though Respondent No. 2 is entitled to recover the additional sum(s) in accordance with Clause 2(i) of the lease agreement- from the Petitioners, yet, in the facts and circumstances of the instant case, the demand notice(s) being illegal, are liable to be quashed. However, the Respondents are held entitled to recover the additional sum(s) towards the premium after giving due adjustment of the excess amount paid by

each one of the Petitioners, as discussed above. All the petitions are allowed to this extent only and in respect of other reliefs as sought for by the Petitioners, the same are dismissed. The parties are, however, left to bear their own costs. All the petitions are disposed of in the aforesaid terms." Let a copy of this judgment be placed in each one of the petitions.

17. Petitions partly allowed