

(2012) 01 RAJ CK 0073

In the Rajasthan High Court

Case No : Special Appeal (Writ) No's. 1230 of 2007 in 2776 of 2002, 1237 of 2007 in 2838 of 2002, 1241 of 2007 in 2850 of 2002 and 1242 of 2007 in 2849 of 2002, 1243 of 2007 in 2170 of 2002, 1244/ 2007 in 2170 of 2002, 1245 of 2007 in 5886 of 2001, 1251 of 2007 in

Santara Devi Gupta (Smt.) and Others APPELLANT

Vs

The State of Rajasthan and Another RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Contract Act, 1872 — Section 20
Land Acquisition Act, 1894 — Section 11, 11(1), 11(2), 31(3), 4
Rajasthan Housing Board Act, 1970 — Section 60

Citation : (2012) 2 RLW 1334 : (2012) 3 WLN 72

Hon'ble Judges : Narendra Kumar Jain, J;Arun Mishra, J

Bench : Division Bench

Advocate : A.K. Sharma, assisted by Mr. V.K. Sharma, Mr. R.K. Agarwal, assisted by Mr Alok Chaturvedi, Mr. R.D. Rastogi, Mr. N.S. Chouhan, Mr. R.A. Katta and Mr. Mahendra Goyal Mr. Prashant Joshi, for the Appellant; P.C. Jain with Mr. Rajesh Vashishtha, Advocates, Rajasthan Housing Board, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, C.J.—Heard learned counsel for the parties. In the present set of intra Court appeals, question arises for consideration is whether land, which was reserved for commercial use, as per Master Plan, could have been allotted to the appellants in lieu of compensation by the Land Acquisition Officer vide consent award dt. 23.03.2001 or even Settlement Committee had the right to allot the commercial land in lieu of the land, which was acquired, in terms of the policy of the State Government.

2. Facts of the case in short are that the land belonging to Khatedars, Hanuman, Ramnarayan, Ramswaroop and Ramkishan was acquired by the State Government for the purpose of residential scheme of Rajasthan Housing Board known as "Pratap Nagar Scheme". The acquisition proceedings stood concluded

on 05.05.1994, when the Land Acquisition Officer passed an award and determined the compensation @ 85,000/- per Bigha. The award attained finality. However, in spite of determination of compensation, certain incumbents did not accept the same and prayed for allotment of 12% land in lieu of compensation. It was decided by the Settlement Committee in its meeting dt. 12.08.1999 to give 12% developed land in the same scheme, in which the land was acquired, i.e. "Pratap Nagar Scheme". However, for the reasons best known to the Settlement Committee, matter was again taken up by it and on 16.02.2000 and it was decided that 15% developed land be allotted and case was again referred for passing consent award to the Land Acquisition Officer notwithstanding the fact that he had passed award dt. 05.05.1994. Land Acquisition Officer, thereafter, again passed fresh consent award under Sec. 11(2) of the Land Acquisition Act, 1894(hereinafter referred to as "the Land Acquisition Act") on 23.03.2001. With the consent, it was ordered to allot the commercial land for residential purposes, which was 1.5 Kilometers away and was on National Highway No. 12, i.e. Kota-Jaipur Highway, whereas the land which was acquired situated 1.5 Kilometers inside the National Highway No. 12. Admittedly, the land in question was reserved in the Master Plan for commercial purposes, whereas the land was allotted, as per the consent award, for residential purposes. However, some of the allottees, who were khatedars, nominated some persons for obtaining the allotment of the land and the land was allotted to nominees on 27.03.2001. The fact remains that the Government cancelled the order of allotment of the land vide order dt. 11.12.2001, on the ground that it was not permissible to allot the commercial land and once 15% developed land was allotted, there was no reason to pass fresh award, whereas the land was available in the Scheme itself. The policy only provided for allotment of 15% developed land for residential purpose, whereas 15% commercial land had been allotted. The nominee, Shri H.P. Pareek sold the land in February/March, 2002.

3. Pursuant to order dt. 11.12.2001 passed by State Government canceling the allotment, notices were issued by the Rajasthan Housing Board, directing that no further construction be raised and whatever commercial structures were raised, be dismantled; the land, in fact, was allotted for residential purpose, therefore, it was not to be put to commercial use; the State Government has cancelled the allotments and the said land remains vested in the Rajasthan Housing Board. The action of the respondents was questioned by the appellants by filing various writ applications before the Single Bench, inter-alia on the grounds that respondents were bound by the principles of promissory estoppel; the "audi alteram partem", which is cardinal principle of natural justice has been given a complete go bye, by the respondents; allotments could not have been cancelled, without providing opportunity of hearing to them; no show cause notice was issued by the State Government or by the Rajasthan Housing Board. Thus, the action of the respondents was illegal. The plea of petitioners/ appellants being bona fide purchasers was also raised. The Single Bench has dismissed the writ applications on the ground that it was not permissible under Sec. 11(2) of the Land

Acquisition Act, once award had already been passed in the year 1994 for the Land Acquisition Officer to pass fresh award and it was also not permissible to allot commercial land. It was not necessary to grant opportunity of hearing to the appellants, as that would have been an empty formality.

4. Mr. A.K. Sharma, Senior Counsel assisted by Mr. V.K. Sharma, Mr. R.K. Agarwal, Senior Counsel assisted by Mr. Alok Chaturvedi, Mr. R.D. Rastogi with Mr. N.S. Chouhan, Mr. R.A. Katta and Mr. Mahendra Goyal with Mr. Prashant Joshi, counsel appearing on behalf of the appellants have submitted that land has been allotted for residential purpose, though, no doubt it was reserved for commercial purpose in the Master Plan, as such, it could have been used only for the commercial purpose. Hence, commercial constructions were raised. There was no illegality in the allotment and even if the allotment was illegally made, it could not have been cancelled by the State Government, without affording opportunity of hearing. Thus, the order passed by the State Government on 11.12.2001 is violative of principles of natural justice. It was also submitted that certain nominees of the Khatedars have sold the land in February and March, 2002 and the purchasers, being bonafide purchasers for good consideration, could not have been condemned unheard and the action of respondent-Rajasthan Housing Board, in asking the appellants to dismantle the structures and to hand over the possession, is based on illegal order passed by the State Government and the same is liable to be set aside. The State Government could not have issued such directions in order dt. 11.12.2001 passed under Sec. 60 of the Rajasthan Housing Board Act, 1970 (hereinafter referred to as "the Act of 1970"). The policy framed by the State Government provides for allotment of 15% developed land. Earlier it was 12%, thereafter, it was revised to 15%. Now, percentage of allotment has been further revised. They have placed reliance on decision rendered by the Hon'ble Apex Court in ITC Ltd. Vs. State of Uttar Pradesh and Others, and contended that even less price has been charged for allotment of commercial land, additional amount can be realized from nominees/purchasers on the basis of rates prevailing for commercial land, as some of them have built certain structures and some of the incumbents have not raised any construction so far, however, they are ready to pay additional amount to the Rajasthan Housing Board, as may be determined/directed by this Court. It was also submitted that it was not open to the State Government to pass adverse order and to cancel the allotment orders, which were registered. Only remedy available was to file a civil suit, in case the documents were wrongly registered. It was also not open to the respondents to issue notices to dispossess the appellants from the land and to ask for dismantling of the structures. With respect to violation of principles of natural justice and its effect, reliance has also been placed on various decisions, to be referred later on. It was also submitted that in the Master Plan, land has been reserved for commercial use only, no residence could have been constructed, as such construction of commercial shops was undertaken, which was in accordance with Master Plan. The order to dismantle was thus illegal. It was also submitted that purpose of the policy

framed by the State Government is to make the land acquisition easier; that is why provision of allotment of 15% developed land has been made. It was also submitted that the nominees/allottees could not have acted in objectionable manner, as they were not party to any fraud or impropriety, as such their rights could not have been defeated by the State Government. Counsel appearing on behalf of the appellants have also relied upon the provisions of Section 31(3) of the Land Acquisition Act, which provide for allotment of land in lieu of compensation. Once documents were registered, possession was handed over; certain constructions were raised, even if it was commercial construction, it was not open to the respondents to pass adverse order behind the back of the bona fide purchasers.

5. Dr. P.C. Jain with Mr. Rajesh Vashishtha, counsel appearing on behalf of the respondent-Rajasthan Housing Board, while supporting the orders, contended that the allotments were illegal and void; commercial land could not have been allotted, as per policy framed by the State Government. Principles of natural justice cannot be fitted in a straight-jacket formula. In the instant case, award was already passed by the Land Acquisition Officer way back in the year 1994 which attained finality; amount of award was also deposited by the Rajasthan Housing Board with the Land Acquisition Officer. It was for the claimants/khatedars to collect it. It was not permissible to allot the land thereafter. Land Acquisition Officer had no jurisdiction to pass fresh award, even with the consent under provisions of Section 11(2) of the Land Acquisition Act. Consent could not have conferred jurisdiction. It was a device to cover up fraud. It was also not open to the Settlement Committee to take decision to allot the commercial land and the same was wholly without jurisdiction and not provided under the policy of allotment of land framed by the State Government. Land has been sold by the nominees to certain incumbents, after the order of cancellation of allotment had been passed by the State Government on 11.12.2001. The land has been sold in February and March, 2002; thus, the sale deeds were illegal and void. The nominees had no subsisting right on the date of sale. The purchasers could not be termed as bona fide purchasers at all and they are bound by the order of cancellation of allotment of land passed by the State Government and the land was sold purposefully, so as to create complications and in undue haste, certain commercial constructions were also raised, whereas the allotment was made for the residential purpose. Commercial constructions were raised, which was not even permissible as per order of allotment of the land. It was also not permissible to allot the land in question for residential purpose, which was reserved for commercial purpose in the Master Plan without change of Master Plan. Loss caused to the Rajasthan Housing Board was more than four crores, whereas the land was available in the Scheme itself. As per the policy of State Government, land could not have been allotted at a distant place, much less commercial one. The land was allotted for residential purpose; it could not have been used for commercial purpose. The State Government was empowered to issue the directions under the provisions of Section 60 of the Act of 1970. The

order passed by State Government has not been challenged in writ petitions. Single Bench has rightly dismissed the writ applications. No case for interference in the order is made out.

6. Before dilating upon various submissions, it will be appropriate to note that in the instant case, the land stood acquired and the award, determining compensation of Rs. 85,000/- per Bigha, was passed by the Land Acquisition Officer on 05.05.1994. State Government approved the said award. After deposit of the compensation by the Rajasthan Housing Board with the Land Acquisition Officer, proceedings of acquisition stood concluded. Award dt. 05.05.1994 attained finality, which fact is not in dispute.

7. The policy, which has been framed by the State Government on 01.01.1990 for allotment of the land to those who surrendered land for acquisition before passing of award, was stayed by Circular dt. 20.06.1991. Thereafter, State Government issued fresh Circular on 22.04.1992 for allotment of 12% developed land to the incumbents, who have surrendered their lands in favour of Rajasthan Housing Board, Municipal Council/Municipal Board, Urban Improvement Trust, Jaipur Development Authority etc. with the conditions that surrender should be after issuance of the notification under Sec. 4 of the Land Acquisition Act and secondly, in lieu of surrender of land, at the most 12% equivalent land could be allotted. However, third condition was that value of the land should not exceed the value of the surrendered land. Fourth condition was that land, which is allotted in lieu of surrendered land, could be used only for the purpose of residence. Surrender of the land would be made to the Land Acquisition Officer in favour of the State Government and thereupon, Land Acquisition Officer has to pass an award. Settlement Committee has also been constituted/ consisting of five incumbents. Clarificatory Circular was issued by the Urban Development and Housing Department of the State Government on 14.07.1999 in which it was provided that allotment could also be obtained by a person nominated by Khatedar/ owner. The land allotment was to be made only for residential purpose and in case, there was no alternate, except to allot the commercial land/ such commercial land could be allotted only with the prior permission of the State Government. However, this provision for allotment of commercial land was deleted by another circular issued on 02.03.1995, clarifying that 12% developed residential land has to be allotted in the same Scheme. The provision made in Circular dt. 14.07.1993 with respect to allotment of the commercial land with the prior permission of the State Government was deleted and it was emphasized that, the land to be allotted has to be part of the scheme itself and in any case, it has to be residential land. Another Circular was issued on 22.01.1996, in which it was Clarified that in case after passing of the award compensation has not been paid, 12% developed land could be allotted. Another Circular was issued on 17.11.2001, in which it was clarified that the cases where the awards have been passed and Khatedars have not been paid the compensation, it was decided to give one more opportunity to such Khatedars to obtain developed land in lieu of compensation. Options were to be submitted by 31.03.2002. It was also clarified

in para No. 4 of the said Circular that only residential land could be given in lieu of acquired land, not the commercial one. It was also mentioned in Para 5 of the Circular that generally the land has to be allotted in the same Scheme and the same place where the land had been acquired. In case, it was not possible to allot the land in the same area, land could be allotted elsewhere.

8. It is apparent from the Scheme of the allotment of the land, issued by the State Government/ earlier the provision for allotment of 12% developed land was made and in those cases, where land is surrendered after issuance of notification under Sec. 4 of the Land Acquisition Act, the State Government has decided to extend the policy to the incumbents, who have not been paid the compensation. From Circulars dt. 22.04.1992, 14.07.1993, 02.03.1995, 23.12.1995, 22.01.1996, 17.11.2001, it is apparent that only residential land can be allotted, not the commercial one and land has to be used only for residential purpose. It has to be allotted in the same scheme or area. It is also one of the factors that value of the land to be allotted should not be more than the value of the land acquired. Allotment of commercial land was not permissible at all. The provision, which was made in the Circular dt. 14.07.1993, for allotment of the commercial land with the prior sanction of the State Government, was deleted vide Circular dt. 02.03.1995. Thus, it was not open at all to the Rajasthan Housing Board or Settlement Committee to allot the commercial land. It is an admitted fact that the land, which has been allotted, was reserved for commercial use in the Master Plan and some part of it had been allotted for the purpose of construction of hotels etc. When once the land was reserved for commercial purposes in the Master Plan, it was not open to the Rajasthan Housing Board or Settlement Committee to agree for allotment of the commercial land, as it was clearly in violation of not only the policy but of the Master Plan also. The land was allotted for the purpose of residential use, though it was reserved for commercial use in the Master Plan, without change of Master Plan, the allotment was in contravention of the Master Plan.

9. Apart from that, the land being of commercial use, it was not permissible to allot such land in lieu of the land which had been acquired, as per the prevailing policy of allotment of land, issued by the State Government from time to time. Thus, action was wholly without jurisdiction; impermissible and not provided under the policy. Earlier a decision was taken to allot 12% developed land in the Scheme itself and that decision was taken way back in the year 1999, however, for the reasons best known to the Settlement Committee, it reconsidered the matter and referred the case to the Land Acquisition Officer and Land Acquisition Officer has passed consent award on 23.03.2001 and thereafter, allotment orders were issued in favour of the nominees.

10. The award had already been passed way back in the year 1994 under Sec. 11(1) of the Land Acquisition Act and the award had already been approved by the State Government. Under sub-Section (2) of Section 11 of the Land Acquisition Act, the Land Acquisition Officer could have exercised the jurisdiction

to pass consent award only in the course of proceedings of the award which took place in the year 1994. Once Land Acquisition Officer had passed the award on merits of the case on 05.05.1994 and proceedings were over, there was no jurisdiction left with the Land Acquisition Officer to pass consent award under sub-Section (2) of Section 11 of the Land Acquisition Act dt. 23.03.2001; it was an illegal and void award and was nullity. It was a device adopted to cover up fraud and impermissibility of allotment and to get rid of the previous award, which was passed in the year 1994. The Single Bench has rightly adjudged the subsequent award dt. 23.03.2001 to be ab-initio void, as it was without jurisdiction.

11. In the instant case, it is apparent that compensation, which was determined by the Land Acquisition Officer, has been deposited by the Rajasthan Housing Board with the Land Acquisition Officer and once the compensation has been determined, possession of land was taken and compensation has been deposited for payment, it was for the Khatedars to receive the compensation. It is not a case, where compensation has not been deposited for payment. The Scheme, which has been framed by the State Government, was initially for the surrender of the land after issuance of notification under Sec. 4 of the Land Acquisition Act and later on the same has been extended to the cases, where compensation has not been paid. It was open to the Khatedars to collect the compensation and once compensation has been deposited, liability to make the payment of interest on that amount ceases. Thus, award, having attained finality, compensation deposited, it was not open to the claimants to ask for the allotment, that too of the commercial land and they could not have been obliged either by the Land Acquisition Officer or by the Settlement Committee of the Rajasthan Housing Board.

12. u/s 31(3) of the Land Acquisition Act, which has been pressed into service by learned counsel appearing on behalf of the appellants, no such award could have been passed. Section 31(3) of the Land Acquisition Act reads thus:

31(3) Notwithstanding anything in this Section, the Collector may, with the sanction of [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interest of the parties concerned.

Bare reading of the aforesaid provision makes it clear that the Collector, i.e. Land Acquisition Officer, can allot the land instead of awarding a money compensation in respect of any land, make any arrangement with a person having a "limited interest" in such land, either by the grant of other lands in exchange or land revenue can be remitted on other lands held under the same title or in such other way as may be equitable having regard to the interest of the parties concerned. However, the provisions contained in Section 31(3) of the Land

Acquisition Act are not attracted, as firstly, sanction of the appropriate Government is necessary for the grant of such other land and secondly, such an arrangement is permissible with a person having "limited interest" in such land. The nominees of Khatedars cannot be said to be having limited interest in the said land and in the instant case, money has already been awarded by the Collector, while passing award in the year 1994. Thus, no help can be derived out of the provisions contained in Section 31(3) of the Land Acquisition Act. In fact, concept of nominee to be allotted land, appears to give room to power brokers to obtain land as nominee of Khatedar/ owner of land. Such a provision gives room for exploitation of owner. In fact, land allotment is a compensatory measure, it cannot be said to be available to a stranger, nominee may not be having any right, title or interest in the land. Such a provision is bound to be exploited by unscrupulous persons to their advantage and detriment of actual owner entitled to land and it is due to such device commercial land was allotted to nominees which was not permissible. Nominees appear to have played role in illegal allotment. Such a provision is clearly arbitrary. We direct the Government not to allot land in future to such nominees in any case.

13. Coming to the order passed by the State Government on 11.12.2001, it is relevant to mention that the State Government passed the order invoking Section 60 of the Act of 1970 and has cancelled the allotments and directed to take appropriate disciplinary action against the employees/officials responsible to allot the land. Section 60 of the Act of 1970 empowers the State Government to issue such directions as in its opinion are necessary or expedient for carrying out the purposes of the said Act and it shall be the duty of the Board to comply with such directions. Section 60 of the Act of 1970 is quoted below:

60. Government's power to give directions to the Board:-The State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act and it shall be the duty of the Board to comply with such directions.

The order, which has been passed by the State Government on 11.12.2001, is in consonance with the aforesaid provisions of Section 60 of the Act of 1970. Rajasthan Housing Board entirely mismanaged its affairs and referred the case to its Land Acquisition Officer and for the reasons best known to the employees/officials responsible, it agreed for allotment of the commercial land, in contravention of the Master Plan and in contravention of the Scheme framed by the State Government. Thus, order passed by the State Government on 11.12.2001 was in accordance with law. Even provision of allotment of commercial land with prior approval of the State Government made in 1993 stood deleted way back in the year 1995. Thus, it was not open to allot commercial land. The Apex Court has considered the ambit of the powers of the State Government under Sec. 60 of the Act of 1970 in *Rajasthan Housing Board and Another Vs. G.S. Investments and Another*, which has been relied upon by the Single Bench. The Apex Court has laid down thus:

7. The language of the provision is very clear and it empowers the State Government to give directions to the Housing Board as in its opinion are necessary or expedient for carrying out the purposes of the Act. The Section further enjoins that it shall be the duty of the Board to comply with such directions. The Section is couched in very wide language and the Housing Board has to comply with the directions issued by the State Government. Therefore, the State Government was fully empowered to issue the directions whereby it disapproved the auction held on 20.02.2002 and no exception can be taken to such a course of action. The directions have been issued in the interest of the Housing Board to generate revenue and to augment its finances, it cannot be faulted with on any ground.

14. Coming to the question of observance of principles of natural justice, the case set up by the appellants is that the cancellation of the allotment of the land by Rajasthan Housing Board is in contravention of the principles of natural justice. Order dt. 11.12.2001 passed by the State Government was not questioned. It appears from the return filed by the State Government in S.B. Civil Writ Petition No. 2776/2002, out of which D.B. Civil Special Appeal (Writ) No. 1230/2007 arises that subsequent award passed was illegal and void. It has also been mentioned that after award was passed on 05.05.1994, Land Acquisition Officer took possession on 01.07.1996. Shankar Bhawan Nirman Sahakari Samiti is not made a party to the writ petition. The nominee, Shri H.P. Pareek has not been impleaded as party to the writ applications. The principles of natural justice are not to be fitted in a straight-jacket formula, when the action was ab-initio void. There was no jurisdiction with the Land Acquisition Officer to pass fresh award in the year 2001, once award was passed in the year 1994.

15. In our considered opinion, it would have been an empty formality to grant an opportunity of hearing in the instant case, as allotment of commercial land was not at all permissible. It was in violation of the policy of the State Government and also in violation of the Master Plan. No useful purpose would have been served by grant of opportunity of hearing in the instant case. It is also an startling fact that after the State Government has cancelled the allotment vide order dt. 11.12.2001, the land was sold in February and March, 2002 and even thereafter, purchasers claim themselves to be bona fide purchasers. Serious kind of fraud was, in fact, played. It was the duty of the purchasers to verify whether the transferee had right, title or interest to make alienation. There are newspaper reports on record with respect to the scam, which has taken place. Even a question was raised in Legislative Assembly. Enquiry was ordered and response was called from the Rajasthan Housing Board, which was sent on 20.11.2001, in which it has been mentioned that earlier decision was taken by the Settlement Committee on 12.08.1999 to allot 12% land; later on it has been reviewed in the meeting dt. 16.02.2000 and it was decided to allot 15% of the land and thereafter, in the meeting dt. 27.01.2001 decision was taken with respect to Hanuman S/o. Jagannath, Ramnarayan, Ramswaroop and Ramkishan sons of Kalyan to allot 15% of the developed land, as proposed by the Resident

Engineer. There were various irregularities in the resolution dt. 27.01.2001, which was passed. The land, which was allotted, was commercial one; nature of the land was not changed in Master Plan from commercial to residential one. Thus, land could not have been allotted for the residential purpose. The land was allotted 1.5 Kilometers away from scheme on National Highway, which was not permissible. The land in question could not have been allotted for the residential use. It was also mentioned in letter that earlier one plot, out of the chunk of the commercial land in question, was allotted for the purpose of construction of hotel, thus, there was no basis to allot the precious land. This was the first case, where commercial land was allotted for the residential purpose, which has resulted into financial loss of more than four crores to the Rajasthan Housing Board. In case, the land had been allotted 1.5 Kilometers within the Scheme, the value of the land would have been different; the land of Rs. 10 Lacs in the Scheme was available, thus, the allotment in question was wholly illegal. Detailed report was to be sent later on and the Minutes of the meeting dt. 27.01.2001 of the Allotment Committee were signed only by Director (Law), not by all the incumbents, whose presence was recorded. Effort was also being made to search the file. Even if, the compensation was not received by Hanuman S/o. Jagannath, Ramnarayan, Ramswaroop and Ramkishan sons of Kalyan, there was no right for them to obtain the allotment of commercial land in their own favour or in favour of their nominees and no right accrued on the basis of such illegal and void transaction to further alienate the land, that too after the order of cancellation of the allotment was passed by the State Government on 11.12.2001. The transferee cannot be said to have acted in good faith. Good faith is where it is in fact done honestly. If a person consciously avoids making an enquiry, though he may have a belief in the matter, it would not be a belief in good faith.

16. Reliance has been placed by counsel appearing on behalf of the appellants on the decision of the Apex Court in *Suresh Chandra Nanhoria vs. Rajendra Rajak & Ors.* 2007(1) WLC (SC) Civil 578, in which order was passed by the High Court without hearing opposite party; notice was not issued to the opposite party and the order was set aside on the ground of violation of principles of natural justice observing that ingredients of fairness, reasonableness require grant of opportunity of hearing. Reliance has been placed on Para Nos. 8, 9, 10 and 11 which are quoted below:

8. Natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary.

9. In the celebrated case of *Cooper vs. Wandsworth Board of Works*, 1963 (143) ER 414, the principle was thus stated:

Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam", says God, "where art thou" has thou not eaten of the tree whereof I commanded thee that "thou should not eat".

10. Since then the principle has been chiselled, honed and refined, enriching its content. In *Mullooh V. Aberdeen*, 1971 (2) All E.R. 1278, it was stated: "the right of a man to be heard in his defence is the most elementary protection.

11. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

Reliance has been placed on decision rendered by the Apex Court in *Rajendra Prasad Vs. State of Uttar Pradesh and Others*, in which cancellation of allotment of fair price shops was made without giving an opportunity of hearing. The order was set aside and the case was remitted to the competent authority for passing appropriate orders in accordance with law. Reliance has also been placed on decision rendered by Division Bench of this Court in *Nand Lal and 8 Ors. vs. State of Rajasthan*, D.B. Civil Writ Petitions Nos. 1412 to 1418 and 1364 and 1365 of 1998 decided on 07.10.1988, in which it has been observed that when appointments have been cancelled, services were terminated, it was necessary to afford opportunity of hearing, even if order was illegal and void.

17. However, Supreme Court in *State of Punjab vs. V.K. Khanna and Others*, (2001) 2 SCC 330 has held that determination of fairness in action and observance of principles of natural justice depends upon facts and circumstances of each case. The Apex Court in *Bihar State Electricity Board vs. Pulak Enterprises and Others*, (2009) 5 SCC 641 has laid down that when there is no scope for exercise of any discretion or flexibility, while taking a decision, opportunity of hearing is not required to be extended. In *Mrs. Sarojini Ramaswami Vs. Union of India and others*, the Supreme Court laid down that violation of principles of natural justice depends on facts and circumstances of each case. The Apex Court has also considered when writ can be issued in the case of non-observance of principles of natural justice in *S.L. Kapoor Vs. Jagmohan and Others*, The Apex Court observed that the Courts do not issue futile writs for observance of principles of natural justice. In case the failure to observe natural justice does not at all matter if the observance of natural justice would have made no difference. The Apex Court laid down thus:

17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted on indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because Courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.

18. In *Board of Directors, Himachal Pradesh Transport Corporation and Another vs. K.C. Rahi*, (2008) 11 SCC 502, the Supreme Court laid down that when there

is no prejudice shown, plea of principles of natural justice cannot be put in straight-jacket formula, therefore, application depends on facts and circumstances of each case. To sustain plea of natural justice, it must be established that the aggrieved party has been prejudiced. In *Escorts Farms Ltd., Previously known as Escorts Farms (Ramgarh) Ltd. Vs. The Commissioner, Kumanon Division, Nainital, U.P. and Others*, the Supreme Court laid down that rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing.

19. In the facts and circumstances of the instant case, we are convinced that no prejudice has been caused to the appellants, as the action was entirely impermissible. Reasonable order has been passed by the State Government under Sec. 60 of the Act of 1970. State Government has asked for explanation of the Rajasthan Housing Board before issuing directions under Sec. 60 of the Act of 1970. In the facts of the instant case, it would be an empty formality to grant ritual of hearing again; that would not serve any useful purpose, as the allotment, which is wholly without jurisdiction and impermissible, cannot be permitted to be sustained.

20. It was submitted that some of the appellants have purchased the property and they are bona fide purchasers, thus, they have acquired valid title. In the instant case, before the property was purchased, the State Government had already issued the directions under Sec. 60 of the Act of 1970 cancelling the allotments. It was incumbent upon the purchasers to act with due diligence to find out transferable right, title or interest with the allottees. In the facts and circumstances of the instant case, when the newspaper publications had taken place, report from Rajasthan Housing Board was called; question was also raised in Legislative Assembly, it is presumed that the purchasers were, in fact, having the knowledge of the illegal allotments and the cancellation made thereof, in any case, it was incumbent upon them to find out the facts and to act with due diligence. In case they have not ascertained the title of the vendors, they have to thank themselves. They cannot be said to have acted in good faith to claim themselves to be bona fide purchasers. There was no right, title or interest left with the transferor, after the cancellation order has been passed by the State Government on 11.12.2001 and Shri H.P. Pareek has not come to the Court, alleging violation of his rights by State Government, thus, the date, on which he effected the transfer, he had no subsisting right, title or interest, which he could have alienated. It was, in fact, a serious kind of fraud, which was played in connivance with the responsible officers/employees of the Rajasthan Housing Board and Land Acquisition Officer. It was clearly a collusive act of obtaining the allotments. The allotments were in fact obtained in illegal manner against the public interest in contravention of Master Plan and scheme of State Government.

21. Counsel appearing on behalf of the appellants submitted that once land has been allotted to them and as the land was commercial land, the value of the commercial land may be realized from them, as land is ultimately going to be

allotted to somebody to raise commercial constructions over the land and some part of the land is still lying open. They are ready to settle the equities. They have relied upon the decision rendered by the Apex Court in *ITC Ltd. Vs. State of Uttar Pradesh and Others*, . It was a case where plots, which were earmarked for commercial use, were allotted by Noida Authority at the rates applicable to industrial plots, less value was charged. The allotment was permissible on proper value considering nature of land. The State Government found allotment to be invalid and directed cancellation. The Apex Court has held that running of a hotel or a restaurant is a commercial activity and the land, at the rate fixed for industrial plots, could not have been allotted. The Apex Court has also considered the remedial action to be taken in such a case. In the cases where the transfer is due to mistake of fact or wrong understanding or misreading of any law and such mistake was not caused on account of any fraud, coercion or misrepresentation by the transferee, what is the remedy of the transferor? Their Lordships of the Apex Court have considered Section 20 of the Contract Act and laid down that the position is different in public law. Breach of statutory provisions, procedural irregularities, arbitrariness and mala fides on the part of the Authority (transferor) will furnish grounds to cancel or annul the transfer. But before, a completed transfer is interfered on the ground of violation of the regulations, it will be necessary to consider two questions. The first question is whether the transferee had any role to play (fraud, misrepresentation, undue influence, etc.) in such violation of the regulations, in which event cancellation of the transfer is inevitable. If the transferee had acted bona fide and was blameless, it may be possible to save the transfer, but that again would depend upon the answer to the further question as to whether public interest has suffered or will suffer as a consequence of the violation of the regulations. In case public interest has not suffered on account of the violation, then the transfer may be allowed to stand. On the other hand, if the violation of the regulations leaves or is likely to leave an everlasting adverse effect or impact on public interest and public interest should prevail and the transfer should be rescinded or cancelled. But where the consequence of the violation is merely a short-recovery of the consideration, the transfer may be saved by giving the transferee an opportunity to make good the shortfall in consideration. The Apex Court has laid down thus:

105. If after affecting a transfer, the transferor finds that he had stipulated a lesser consideration (sale price or lease premium) for the transfer, due to a mistake of fact or wrong understanding or misreading of any law (and such mistake was not caused on account of any fraud, coercion or misrepresentation by the transferee) what is the remedy of the transferor? In private law, the transferor may have no remedy, as completed transactions of transfers cannot be reopened or cancelled.

107. The position is, however, different in public law. Breach of statutory provisions, procedural irregularities, arbitrariness and mala fides on the part of the Authority (transferor) will furnish grounds to cancel or annul the transfer. But before a completed transfer is interfered on the ground of violation of the

regulations, it will be necessary to consider two questions. The first question is whether the transferee had an role to play(fraud, misrepresentation, undue influence, etc.) in such violation of the regulations, in which event cancellation of the transfer is inevitable.

107.1. If the transferee had acted bona fide and was blameless, it may be possible to save the transfer but that again would depend upon the answer to the further question as to whether public interest has suffered or will suffer as a consequence of the violation of the regulations:

(i) If public interest has neither suffered, nor is likely to suffer, on account of the violation, then the transfer may be allowed to stand as then the violation will be a mere technical procedural irregularity without adverse effects.

(ii) On the other hand, if the violation of the regulations leaves or is likely to leave an everlasting adverse effect or impact on public interest(as for example when it results in environmental degradation or results in a loss which is not reimbursable), public interest should prevail and the transfer should be rescinded or cancelled.

(iii) But where the consequence of the violation is merely a short-recovery of the consideration, the transfer may be saved by giving the transferee an opportunity to make good the shortfall in consideration.

107.2. The aforesaid exercise may seem to be cumbersome, but is absolutely necessary to protect the sanctity of contracts and transfers. If the Government or its instrumentalities are seen to be frequently resiling from duly concluded solemn transfers, the confidence of the public and international community in the functioning of the Government will be shaken. To save the credibility of the Government and its instrumentalities, an effort should always be made to save the concluded transactions/ transfers wherever possible, provided (i) that it will not prejudice the public interest, or cause loss to public exchequer or lead to public mischief, and (ii) that the transferee is blameless and had no part to play in the violation of the regulation.

107.3. If the concluded transfer cannot be saved and has to be cancelled, the innocent and blameless transferee should be reimbursed all the payments made by him and all expenditure incurred by him in regard to the transfer with appropriate interest. If some other relief can be granted on grounds of equity without harming public interest and public exchequer, grant of such equitable relief should also be considered.

When we apply the dictum of the Supreme Court in the instant case, the conduct of the purchasers, nominees or that of Khatedars could not be said to be bona fide and blameless. They were not entitled for allotment of the commercial land. Violation was not with respect to payment of the less amount. The violation was of the statutory provisions of Master Plan and scheme of allotment framed by Supreme Court. Once Land Acquisition Officer had already passed an award in

the year 1994, he had no jurisdiction to pass an award again even with consent in the year 2001. The allotment was in contravention of the policy of the State Government. Thus, it was not a case, where there was short recovery of the consideration. The allotment was itself impermissible. As such, decision is against the submissions espoused by the learned counsel appearing on behalf of the appellants. As the transaction itself was impermissible; it would not be appropriate to direct the payment of premium at the commercial rate to make good the loss. As the allotment itself was impermissible; such a recourse cannot be adopted. In the instant case, loss of more than four crores has been caused and if public property is permitted to be allotted in violation of the Master Plan, that would be against the spirit of the law and public interest. No such transaction can be validated, which is per se impermissible. Thus, in view of decision in ITC Limited (supra), the submission raised by the counsel appearing on behalf of the appellants is unhesitatingly rejected.

22. It was also submitted that once allotments have been made and documents were registered, it was not open to the State Government to issue directions of cancellation of allotments and only remedy available was to file a civil suit. In the instant case, we have found that there was no jurisdiction with the Settlement Committee to allot the land. There was no jurisdiction with the Land Acquisition Officer to pass fresh award under Sec. 11(2) of the Land Acquisition Act. No such allotment could have been made within the purview of Section 31(3) of the Land Acquisition Act. It was not permissible as per the Government Policy also. Thus, the decision and the award, on the basis of which, allotments were made were nullity and no right had accrued. Thus, State Government has rightly exercised power under Sec. 60 of the Act of 1970 to cancel such allotments. Even if documents have been registered, once they are without jurisdiction, illegal and void, it was not necessary to take recourse to the proceedings of filing of the civil suit by the State Government or by the Housing Board. Reliance has been placed on M/s Anukampa Avas Vikas Pvt. Ltd. & Anr. vs. State of Raj. & Anr, 2008(3) RLR 145, decided by the Single Bench, in which it has been held that a party to the registry of sale deed has no right to cancel the same. Normal course open is to file a civil suit for cancellation. The decision cannot be taken to lay down that the State Government has no power to cancel such transactions under Sec. 60 of the Act of 1970. The question involved in the present appeals is different. Thus, the decision has no application.

23. Reliance has also been placed on decision rendered by the Supreme Court in B.C. Chaturvedi vs. Union of India and Another, AIR 1996 SC 484(1), in which it has been laid down that High Court can substitute the punishment in suitable case. We need not go into the aforesaid aspect, as in our considered opinion, there is no room for making indulgence as per decision in ITC Limited (supra), so as to permit the appellants to make the payment at the commercial rate, as the allotment itself was impermissible and against public interest. It was not a case of mere short charging of consideration.

24. It was also submitted that respondents cannot act in such a manner and could not have issued the notices for dismantling of the structures. In our considered opinion, once allotment is without jurisdiction, illegal and void, it was open to the State Government to pass order dt. 11.12.2001 under Sec. 60 of the Act of 1970 and it was consequently, appropriate for the Rajasthan Housing Board to issue notices for dismantling the structures and to direct not to raise further construction. It is apparent from the notices that though the land was allotted for residential purpose, but commercial construction was raised. The land itself was reserved for commercial purpose as per Master Plan, which was not capable of being used for residential purpose. The land itself could not have been allotted in the instant case, as allotment of residential land is permissible and not commercial land for the residential purpose. However, prayer has been made to give some time to comply with direction of Rajasthan Housing Board. We give one month time as to comply with the notices issued by the Rajasthan Housing Board. We find no ground to interfere in the appeals; they are bereft of the merits and deserve to be dismissed. The appeals are, hereby, dismissed with the cost of Rs. 5,000/- (Rupees Five Thousands) in each appeal.