**(2013) 07 RAJ CK 0163**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No''s. 2740, 5200, 5307, 8369, 8894, 9617, 9725, 9737, 9740 of 2006, 3118, 3747, 3785, 4858 of 2007, 2914, 3692 of 2008, 793, 2913, 3188, 7799, 11851 of 2009, 9423, 13000 of 2011, 3785, 3958, 6032, 7644, 7809, 7850, 8051, 8206, 8218, 8

Sugan Singh and Others APPELLANT

Vs

State of Rajasthan and Another etc. etc. RESPONDENT

**Date of Decision :** 05-07-2013

**Acts Referred:**

Companies Act, 1956 — Section 108
Constitution of India, 1950 — Article 161, 163(3), 166, 166(1), 166(2)
Jaipur Development Authority Act, 1982 — Section 38, 39, 41, 42, 72
Land Acquisition Act, 1894 — Section 16, 31, 31(1), 31(3), 4
Mumbai Municipal Corporation Act, 1888 — Section 354A

**Citation :** (2013) 07 RAJ CK 0163

**Hon'ble Judges :** M.N. Bhandari, J

**Bench :** Single Bench

**Advocate :** R.D. Rastogi, Mr. Sarthak Rastogi, Mr. Ajay Gupta, Mr. A. Kasliwal, Mr. S.C. Gupta, Mr. Ashok Yadav, Mr. Akhil Simlote, Mr. Anurag Sharma, Mr. Yogesh Kumar Sharma, Mr. Surendra Singh, Mr. Vinod Gupta, Mr. Asgar Khan, Mr. R.A. Verma, Dr. Mahesh Sharma, Dr. P.C. Jain, Mr. Sunit Awasthi, Mr. Prahlad Sharma, Mr. R.S. Rathore, Mr. Laxmikant Sharma, Mr. K.C. Sharma, Mr. Shashi Kant Saini, Mr. M.K. Kaushik, Mr. H.V. Nandwana, Mr. Anand Sharma, Ms. Julie Khandelwal, Mr. Vaibhav Kasliwal, Mr. Kailash Tailor, Mr. Mahesh Chand Gupta, Ms. Ashish Joshi, Mr. Anoop Agrawal, Mr. Manoj Kumar Sharma, Mr. Nishant Sharma, Mr. Vijay Singh, Mr. D.S. Dhariwal, Mr. R.B. Sharma, Mr. K.N. Sharma, Mr. S.K. Singodiya and Mr. Mahipal Kharra, for the Appellant; R.N. Mathur and Mr. Punit Singhvi for JDA, for the Respondent

## Judgement

M.N. Bhandari, J.—All these writ petitions pertain to Prithvi Raj Nagar Scheme (for short ''PRN scheme'') of the Jaipur Development Authority, Jaipur (for short ''the JDA''). The land was acquired for the scheme to establish a residential colony. A challenge to the acquisition was made at various stages, however, it finally remained unsuccessful with the verdict of the Hon''ble Apex Court vide its judgment dated 3.10.1997. The JDA, thereupon, launched first phase of PRN scheme in the month of October, 1997. The petitioners applied for allotment of land/ plots in PRN scheme. The lottery of applicants were drawn where petitioners remained successful. Initially, writ petitions were filed in the year 2006 when petitioners were asked to opt for other scheme namely; Kalpana Nagar showing it to be in Jagatpura area but they were not given plots therein also and changed unilaterally to Kalpana Nagar near Kanota at Agra Road. The petitioners thus denied allotment of land in PRN scheme.

Submissions on behalf of learned counsel for petitioners

Learned counsel submit that pursuant to PRN scheme launched by the JDA, petitioners applied for allotment of land/plots. They remained successful in the lottery drawn for allotment of plots. The JDA then issued demand letters in few cases quantifying the amount, which was deposited by the petitioners. In few other cases, petitioners were declared successful in the lottery but JDA failed to proceed further with a deliberate ignorance of the area which resulted in encroachments and illegal constructions. The JDA made no efforts to stop encroachments and illegal constructions, thus to cover up the same, a proposal was given to the petitioners to get allotment of plots in other scheme i.e. Kalpana Nagar, Jagatpura. Many petitioners opted for Kalpana Nagar scheme of the JDA at Jagatpura but, therein also, allotments of plots were not made as the land was taken over by the Rajasthan Housing Board. The applicants/ petitioners were then given further option to take plots in Shree Rampura where also even land with required infrastructure was not available.

2. The State Government then issued an order on 23.9.2002 to de-acquire land of Prithviraj Nagar Scheme. This was sufficient to show intention of the Government to bestow favour to those who had encroached on government land. The constructions were raised on the land so acquired even after holding acquisition to be legal by the Hon''ble Supreme Court.

3. This court took suo motu cognizance in the matter on de-acquisition and issued notices. It was in the writ petition bearing No. 6709/2002 where many directions were issued to stop encroachments and illegal constructions but, due to connivance of the officers of the JDA, neither encroachments were stopped nor illegal constructions. To deprive the petitioners from their rights, the effort of the JDA was to divert them to other scheme. In the month of May, 2003, petitioners were asked to submit their option for Kalpana Nagar, Jagatpura but even after submission of options, plots were not allotted. The options were again sought in the month of September, 2005 for other area. At that stage, few petitions were filed to challenge the action of the respondents. Other petitions were filed from time to time till the year 2013.

4. The respondents, on 24.5.2005, constituted a Sub-Committee for regularisation of encroachments and illegal constructions in PRN Scheme. The committee recommended regularisation of possession on certain charges. The

 

recommendations were also made favourable to the petitioners for allotment of plots in Kalpana Nagar, Shree Rampura, Diggi-Malpura Road. The JDA, in the meanwhile, bestowed favour to some of the influential applicants of PRN scheme who were allotted plots in other schemes namely; Chitrakoot, Govindpura and Karghani excluding the petitioners from similar treatment. The petitioners thereupon served a notice for demand of justice and when no heed was paid to it, the writ petitions were filed at that stage. The petitions were ordered to be listed before the Division Bench where suo motu petition was also pending. The respondent JDA in the meanwhile took unilateral decision to allot plots to the successful applicants in Kalpana Nagar, Dayarampura beyond Kanota at Agra Road. Lottery was accordingly drawn on 14.4.2006. The Division Bench of this court thereupon issued notices in CW No. 2740/2006 (Sugan Singh & ors versus State of Rajasthan & ors) and passed an interim order to maintain status quo for the plots allotted in favour of the petitioners. The Division Bench thereupon decided suo motu petition vide its order dated 29.10.2010 confirming acquisition of land and vesting it in the government. A further direction was also given to carry out planned development of the area strictly in conformity to the provisions of law. A restrain order was also passed against constructions apart from continuing other interim orders passed from time to time in suo motu petition. With the disposal of the suo motu petition by the Division Bench, present writ petitions of the year 2006 apart from other petitions were ordered to be listed before the Single Bench.

5. The respondents, in the meanwhile, took a decision for regularisation of possession in favour of those who made encroachments. The Department of Urban Development and Housing (UDH) issued an order on 21.6.2012 (at annexure-16B in CW 2740/2006, Sugan Singh & ors versus State of Rajasthan & anr.), directing the respondent JDA to allot plots in favour of illegal occupiers of the land after taking certain charges. The aforesaid order has been issued under the signature of the Principal Secretary of the UDH.

6. Learned counsel further submit that no decision can be taken or an order can be passed for regularisation of the encroachments and illegal constructions over the government land. The respondents ignored the aforesaid despite catena of judgments of the Hon''ble Supreme Court deprecating practice of the government to take a decision to regularise encroachments and illegal constructions. This is more so when such a decision is taken at the cost of those who remained successful for allotment of plots pursuant to the scheme launched by the JDA. The Hon''ble Apex Court has taken a serious view in such matters yet an order has been passed by the Principal Secretary, UDH to regularise encroachments and illegal constructions.

7. In the case of Jagpal Singh and Others Vs. State of Punjab and Others, the issue aforesaid was considered and decided. Similar issue was considered by the Apex Court in the case of M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, , Friends Colony Development Committee Vs. State of Orissa and

 

Others, , Municipal Corporation, Jaipur versus Lekhraj Soni & ors, SLP (Civil) No. 16668/2008, order dated 30.8.2011, Mahendra Baburao Mahadik and Others Vs. Subhash Krishna Kanitkar and Others, and Shanti Sports Club versus Shanti Sports Club and Another Vs. Union of India (UOI) and Others, . The same view has been taken in the case of Esha Ekta Apartments Co-operative Housing Society Limited & ors versus Municipal Corporation of Mumbai & ors, Civil Appeal No. 7934/2012, decided on 27.2.2013.

8. In view of the judgments referred to above, respondents are not within their competence to take a decision to regularise encroachments and illegal constructions more so when even compounding thereof on equitable grounds was not allowed by the Hon''ble Supreme Court in the case of Esha Ekta Apartments Co-operative Housing Society Limited & ors (supra). In view of above, the Cabinet decision and subsequent order dated 21.6.2012 deserve to be set aside.

9. The order of the Principal Secretary of the Department of UDH dated 21.6.2012 is otherwise illegal being violative of Article 166 of the Constitution of India. It is due to lack of approval of His/Her Excellency the Governor of Rajasthan. As per mandate of Article 166 of the Constitution, authentication of the decision is required from His/Her Excellency the Governor of the State with expression of the order in his name. The impugned order dated 21.6.2012 does not bear authentication and not expressed in the name of His/Her Excellency the Governor, thus the order is to be treated as nullity. Reliance has been placed on the judgment of the Apex Court in the case of State of Bihar and Others Vs. Kripalu Shankar and Others, apart from the judgment in the case of Jaipur Development Authority and Others Vs. Vijay Kumar Data and Another, . Reliance is placed even on the judgment in the case of Shanti Sports Club (supra).

10. In the case of Vijay Kumar Data (supra) similar order issued by the Department of UDH was held to be in violation of Article 166 of the Constitution of India thus the issue raised herein is covered by the judgment supra.

11. In the instant case, Cabinet decision was taken on 20.6.2012 and the impugned order was passed by the Department of UDH on 21.6.2012 thus there exist no possibility of sending the file to His/ Her Excellency the Governor more so when it was a major policy decision of the State pertaining to Prithvi Raj Nagar Scheme measuring 11600 bighas of land.

12. Learned counsel have further placed reliance on the judgment of the Apex Court in the case of J.P. Bansal Vs. State of Rajasthan and Another, , The State of Punjab Vs. Sodhi Sukhdev Singh, and Bachhittar Singh Vs. The State of Punjab, Article 166 of the Constitution of India requires order to be in the name of the Governor. The Council of Ministers act as advisor but till the advise is accepted by the Governor, it does not get crystallise into action of the State.

13. Learned counsel have further given reference of rule 12 of the Rules of Business, wherein, it is provided that every order or instrument of the

 

Government shall be signed by the Secretary, Special Secretary etc. with proper authentication. Rule 11 mandates that all orders or instruments made or executed by or on behalf of the government shall be expressed to be made or executed in the name of the Governor.

14. It is further stated that even if existing encroachments and illegal constructions are regularised, Prithvi Raj Nagar scheme situated in two parts i.e. North and South side of Ajmer Road would still have 3206 bighas vacant land, though respondents have given divergent pleadings in regard to existing vacant land. At one place, 5018 bighas is said to be vacant, whereas, it is varied from 200 bighas to 240 and thereupon 1444 bighas at other places. In para 19(C) of the reply, it is stated that 156 bighas is Gair Mumkin land in Prithvi Raj Nagar scheme. In para 16 of the reply, 200 bighas of land is shown to be vacant. The divergent pleadings and affidavits need to be given serious view. The respondents regularising encroachments and illegal constructions then why petitioners cannot be accommodated against the vacant land.

15. Learned counsel for petitioners have further raised an issue as to whether wholesale regularisation under the public policy is permissible. Such a policy is nothing but abuse of powers. Reference of the judgment of the Supreme Court in the case of Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, is given apart from the judgment in the case of Jaipur Development Authority Vs. Radhey Shyam and Others, In those cases also, similar action of the respondents was not approved.

16. Learned counsel for petitioners lastly urged that once the petitioners were declared successful in the lottery followed by information, it remains nothing but a concluded contract. In few cases, even allotment letters and demand notices were issued followed by deposition of amount and, in some matters, acceptance of registration charges with the application. Apart from concluded contract, there exist legitimate expectation from the State Government to endorse allotment to the successful allottees. Reliance has been placed on the judgment of the Supreme Court in the case of National Buildings Construction Corporation Vs. S. Raghunathan and Others, Apart from expectations, respondents need to act fairly in contractual matters. To substantiate the argument, judgments in the case of LIC of India and Another Vs. Consumer Education and Research center and Others, and Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, have been referred.

17. It is stated that with submission of applications and deposition of registration fee, respondent-JDA drew a lottery and issued list of successful allottees. They were given intimation about the same with the assurance to send allotment letters in due course. It is nothing but acceptance of offer made by the petitioners thus becomes a concluded contract. The actual payment of entire due amount is not so relevant in view of deposition of registration fee. Reference to the judgment in the case of Smt. Claude-Lila Parulekar Vs. Sakal Papers Pvt. Ltd. and Others, is given apart from the judgment in the case of Har Shankar & ors

 

versus Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, Learned counsel have further given reference of the case of Rochees Hotels Pvt. Ltd. and Another Vs. Jaipur Development Authority, and Ashok Kumar Sharma & ors versus State of Rajasthan & ors (SB Civil Writ Petition No. 12519/2012, decided on 11.10.2012 by Jaipur Bench). For fulfilment of promise by the Public Authority, the Hon''ble Apex Court has taken view in the case of Century Spinning & Manufacturing Company Ltd. & anr. versus Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, In view of the above, action of the respondents in not giving possession of the plots to the petitioners in Prithviraj Nagar scheme becomes illegal more so when it is to bestow favour to the encroachers.

18. Learned counsel have further submitted that even if the rates fixed for regularisation are taken note of, it not only goes contrary to the Urban Improvement Trust Disposal of Urban Land Rules, 1974 but indicates favour to the encroachers. Even a commercial land would be regularised on a meagre amount. The action aforesaid thus goes against the public interest. The respondents cannot take a decision to give 25% land in lieu of compensation for acquisition, however, the impugned order shows decision even to that effect. Looking to the aforesaid, even the policy decision can be interfered being contrary to the provisions of law. Reference to the judgment in the case of Andhra Pradesh Dairy Development Corporation Federation versus A.P. Dairy Development Corporation Federation Vs. B. Narasimha Reddy and Others, is given for the aforesaid purpose. The prayer is accordingly made to allow all the writ petitions with the acceptance of the prayers made therein.

19. Mr. RN Mathur, learned Senior Advocate appearing on behalf of the JDA and the State Government, on the other hand, seriously contested the matter. The facts regarding acquisition of land for PRN scheme and litigation thereupon has not been denied. It is admitted that acquisition was upheld by the Hon''ble Apex Court. A decision was however taken on 23.9.2002 to de-acquire the land. At that stage, suo motu cognizance was taken by the High Court by registering CW 6709/2002. In order to solve the problem, a committee was constituted under the Chairmanship of Mr. Anil Vaish (retired as Chief Secretary to the Government of Rajasthan). A Cabinet Sub-committee was further constituted on 24.5.2005 for the same purpose under the Chairmanship of Mr. Gulab Chand Kataria, the then Home Minister of the State along with two other Cabinet Ministers. The State Government, thereafter, issued a Notification dated 20.2.2008 withdrawing earlier Notification for de-acquisition of the land. The Writ Petition No. 6709/2002 (Suo motu versus State of Rajasthan) was thereafter disposed of with a direction to the State Government to carry out planned development of the area in conformity with the provisions of law. After disposal of the above writ petition, matter was taken up for compliance of the judgment. A decision was taken by the Cabinet in its meeting for development and allotment of land in PRN scheme. The State Government, taking stock of the entire situation and governed by the principle of "Greatest good of greatest number of people" took a decision to

 

make allotment of the land which was divided in three categories; (i) agricultural land, (ii) plot holders and (iii) vacant plots.

20. In the category of ''agricultural land'', a decision was taken to give 25% of the developed land as per the prevalent policy of the government. It was to be in lieu of monetary compensation which was not given or accepted by the land holders indicating it to be highly inadequate. It is even in view of the fact that large number of agriculturists are having their houses thus to save it, 25% developed land in lieu of compensation is offered. The two other categories are also dealt with separately.

21. Mr. Mathur submits that petitioners have erroneously taken it to be a case of regularisation of land in favour of encroachers. In fact, a decision has been taken to make allotment in view of the fact that land stands acquired thus vests in the government. Petitioners have failed to take proper interpretation of the order dated 21.6.2011. The order dated 21.6.2011 makes a reference of allotment of land with reference to Rules of 1974 and rates are fixed for it thus cannot be said to be a decision for regularisation of land in favour of encroachers.

22. According to the petitioners, the land was acquired for development of housing colony and, now, by virtue of the impugned order, the government is going to develop the colony by making allotment of land on different rates for different categories. This, however, does not include development charges etc., which would be charged separately. The order was passed after a decision taken by the Cabinet. A copy of the Cabinet Memo shows that the JDA conducted a survey wherein around 23000 residential constructions were found where around 90,000 to 1,00,000 people are residing. This is apart from 5040 commercial/ Institutional and 1232 semi-commercial constructions. The people residing therein are mostly of low income group or middle income group. In the past, efforts were made to get the land vacated with the help of the police force, but incidence of violence were reported then government took a decision to de-acquire the land taking into consideration over all situation. A detailed discussion in this respect exist in the Cabinet Memo, wherein Mr. Anil Vaish Committee Report so also the Report of Mr. RK Sharma Committee were taken into consideration apart from the judgment of the Apex Court in the case of Bondu Ramaswamy Vs. Bangalore Development Authority and Others, An appropriate decision was thereupon taken by the Cabinet for allotment of land.

23. In view of the above, it is incorrect to say that respondents intend to regularise encroachments. Reference of various judgments of the Supreme Court is thus of no consequence as they apply to the cases where a decision was taken to regularise unauthorised construction of building or to compound it. The Petitioners have failed to take note that for agricultural land, a decision has been taken to give 25% developed land to the land holders. The remaining 75% land would be taken and used by the Government thus it cannot be said to be a case of regularisation of possession. It was also noticed that there exist construction on small plots, thus it needs to be saved as otherwise it goes as a national waste

 

by demolishing the same. The decision of the government is thus in the interest of the public at large. The policy decision cannot be subjected to judicial review in view of the judgment of the Supreme Court in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, apart from the judgments in the case of Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and Another, , Mrs. Asha Sharma Vs. Chandigarh Administration and Others, and Union of India (UOI) & anr. versus Union of India (UOI) and Another Vs. International Trading Co. and Another, . In the aforesaid judgments, policy decision of the government was not allowed for judicial review, more so when there exist no mala fide on the part of the government.

24. So far as the issue in reference to Article 166 of the Constitution of India is concerned, learned Senior Advocate Mr. Mathur first made a reference of Article 163(3) of the Constitution to clarify as to how State should take its decision. Pursuant to the constitutional provision, Rules of Business were framed. The reference of rule 12, 14, and 31 of the Rules is given. Rule 12 of the Rules of Business provides that every order or instrument of the government shall be signed by a Secretary, a Special Secretary, an Additional Secretary, a Joint Secretary, a Dy. Secretary, Legal Remembrancer, Joint Legal Remembrancer, Dy. Legal Remembrancer etc or any other officer as may be specially empowered in this behalf and such signatures would be deemed to be under proper authentication.

25. Rule 14 of the Rules of Business provides that all the cases referred in Second Schedule shall be submitted to the Chief Minister, through the Secretary of Council after consideration by the Minister Incharge with a view to obtain his order for circulation of the case under rule 15 or for bringing it up for consideration at a meeting of Council. As per aforesaid rule, Cabinet Memo was prepared and decided.

26. Rule 31 (ii) of the Rules of Business provides as to which class of matters should also be submitted to the Governor before issuance of the order. A perusal of the said rule does not indicate that a policy decision taken herein needs to be sent to the Governor before issuance of the orders. In fact, the type of matters mentioned therein excludes a policy decision to allot land to different categories of persons. Accordingly, there is no violation of Article 166 of the Constitution. In the case of Vijay Kumar Data (supra), reference of Rules of Business was not given before the Hon''ble Apex Court, whereas, in the instant case, it has been referred with its implications. An order has already been issued expressing it to be in the name of the Governor.

27. Coming to the issue of available vacant land in Prithvi Raj Nagar area, it is stated that Cabinet Memo specifies the aforesaid inasmuch as out of 9770 bighas of land for which award was passed, possession was taken only of 7343 bighas of land. The award for 2427 bighas of land was passed in the year 1996 but possession thereof could not be taken. Thus out of total 11618 bighas of land, the award could not be passed for 1848 bighas as Notification for de-acquisition

 

of land was issued on 23.9.2002. Now, as per the policy under challenge, land in lieu of compensation to the extent of 25% would be given apart from allotment of land in favour of different categories thus plots would not be available for petitioners. It is thus erroneous to say that the respondents have given different figures of vacant land with a view to deprive the petitioners to get allotment of land. This is more so when no right exist in their favour.

28. Mr. Mathur, coming to the facts in reference to the petitioners, submits that after calling for the applications, mere drawing of lottery and information thereupon do not create any right in favour of the petitioners. For a concluded contract, there has to be execution of lease deed which does not exists in the instant case. In few cases, successful applicants were asked to deposit the amount, otherwise, in majority of cases, no amount towards lease has been deposited other than registration fee deposited along with the application. The petitioners have erroneously taken registration fee of the application towards lease amount. Reference to the judgment in the case of Greater Mohali Area Development Authority and Another Vs. Manju Jain and Others, and in the case of Smt. Sudharshana Devi and Others Vs. The State of Rajasthan and Others, has been given. It is held that mere inviting applications and drawing lottery does not create legitimate expectation or contract in favour of an applicant and, for the aforesaid purpose, reference of the judgment in the case of Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others, apart from the judgment in the case of Jasbir Singh Chhabra & ors versus State of Punjab & ors, Civil Appeal No. 2228/2010 (arising out of SLP (C) No. 1969/2006), decided on 9.3.2010 by the Apex Court, Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others, and Hira Tikkoo versus Union Territory, Chandigarh & ors Appeal (Civil) No. 4725/2002 decided by the Supreme Court on 13.4.2004 has been given. A further reference to the judgment in the case of M/s. Nina Garments (Pvt) Ltd. versus M/s. Unitech Ltd., CS (OS) 1368/2009 decided by the Delhi High Court on 24.9.2012 has been given. The issue of legitimate expectation has been dealt with therein elaborately. The doctrine of ''legitimate expectation'', as propounded, does not apply to the facts of these cases. The petitioners would rather be governed by the doctrine of ''waiver'' and ''estoppel''. It is in view of the fact that after drawing the lottery for Prithvi Raj Nagar Scheme and difficulty in further process, options were given for Kalpana Nagar Scheme and petitioners opted for the said scheme thus they cannot claim allotment in Prithvi Raj Nagar Scheme.

29. It is, no doubt, true that even proposed scheme of Kalpana Nagar could not be brought in Jagatpura but then it has been carried out near Kanota at Agra Road where proper development work would be carried out and it has progressed to a large extent. For the aforesaid issue, reference to the judgment of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, has been given apart from the judgment in the case of Jagad Bandhu Chatterjee Vs. Smt. Nilima Rani and Others, . In the light of the aforesaid, petitioners cannot now claim allotment of land in Prithvi Raj Nagar

 

Scheme having waived their right, if any.

30. Coming to other issues, it is submitted that so far as the argument in reference of the Urban Improvement Trust Disposal of Urban Land Rules, 1974 is concerned, it has not been violated while fixing the rates. Learned counsel for petitioners have failed to take note of rule 31 of the Rules of 1974 where liberty lies with the government to make relaxation of Rules in appropriate cases. The cases in hand fall under rule 31 in view of larger public interest. Reference of other provisions of the Rules of 1974, more specifically, rule 3, 8, 9, 15 and 17 apart from sections 38, 39, 41, 42 and 72 of the Jaipur Development Authority Act has been given. Petitioners have failed to take note of the fact that development charges are yet to be fixed and would be charged additionally. The allotment of land would thus under the Statutory provision.

31. In view of aforesaid, it is stated that no case is made out in favour of the petitioners, hence, all the writ petitions so as the stay applications may be dismissed.

32. I have considered the detailed arguments made by learned counsel for the parties and perused the record of the case so also the judgments cited at the Bar.

33. The case in hand has long and chequered history. The respondents came out with a scheme to establish a residential colony thus issued notification for acquisition of land followed by award. The challenge to the acquisition was made before the High Court followed by SLP before the Apex Court. The SLP was decided by the Apex Court vide its judgment dated 3.10.1997 in favour of the official respondents. The Jaipur Development Authority, thereafter, launched PRN scheme for allotment of plots where petitioners made application. The litigation came up before this court at the stage when petitioners were given option for Kalpana Nagar Scheme proposed in Jagatpura, however, respondents remained unsuccessful in making allotment of land to the petitioners therein. Number of other writ petitions were filed subsequently with delay.

34. The case set out by the petitioners is that pursuant to PRN scheme launched by the JDA, they not only applied for a plot of land but remained successful in the lottery drawn for allotment of plots. They petitioners were given demand letters quantifying the amount. Who deposited the amount yet deprived to get plot of land in Prithvi Raj Nagar scheme. The respondents, at the same time, issued impugned order dated 21.6.2012 to make allotment of land in favour of the encroachers.

35. The petitioners have challenged the order of the State Government to make allotment of plots in Prithvi Raj Nagar scheme on many fold grounds. Reference of the judgment of the Division Bench in suo motu writ petition (supra), is also given where respondents were permitted to carry out planned development strictly in accordance with provisions of law.

36. Learned counsel for petitioners submitted that impugned order for allotment

 

of plots in favour of encroachers is nothing but regularisation of possession in ignorance of law as settled by the Hon''ble Supreme Court. Various judgments of the Hon''ble Apex Court have been referred to substantiate the arguments with a prayer to set aside the impugned order dated 21.6.2012 passed under the signatures of the Principal Secretary, UDH.

37. I have considered the judgments cited at the Bar. The first judgment referred is in the case of Jagpal Singh and Others Vs. State of Punjab and Others, . Therein, regularisation of encroachments on common village land/community land of Gram Panchayat, Rohar Jagir was held to be illegal. The Apex Court held that long occupation or huge expenditure in making construction or political connections have no justification for regularisation of possession and construction. It was a case of encroachment on public utility land of the village, more specifically, land of the pond. The Hon''ble Supreme Court took a serious view for regularisation of such encroachments. In the aforesaid case, Gram Panchayat, Rohar Jagir filed an application u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 to evict appellants who had unauthorisedly occupied the land of a pond. The Collector instead of passing order of eviction of unauthorised occupants, directed the Gram Panchayat to recover cost of the land. An appeal preferred to the Commissioner was allowed. It was held that a village pond is to be used for common purpose by villagers thus cannot be allowed to be encroached upon whether by Jagirdar or anyone else. The order of the Commissioner was challenged before the High Court wherein encroachers remained unsuccessful and finally before the Hon''ble Supreme Court. Referring to various judgments, order of the Commissioner was upheld.

38. The other judgment cited is in the case of M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, The controversy was on a decision of Mahapalika to allow construction of under-ground shopping complex in Jhandewala Park situated at Aminabad Market in Lucknow. The High Court set aside and quashed the resolution of the Mahapalika with a direction to restore the park to its original position. It was held that the park is of historic importance thus preservation and maintenance thereof was necessary not only for historical but even for environmental reasons. The Hon''ble Apex Court held that even administrative decisions can be subjected to judicial review in certain cases where powers are not exercised in conformity with the provisions of law or as per mandate of the legislation. The justification of resolution for construction of shopping complex to ease out congestion was not accepted. Para 72 and 73 of the said judgment were specifically referred to show that High Court can cause interference in certain matters where decision is taken by the government agency de hors the mandate of legislation.

39. Another judgment referred is in the case of Friends Colony Development Committee Vs. State of Orissa and Others, . Therein, deviation in construction was found from the sanctioned plan. A decision for regularisation by compounding was an issue before the Apex Court. It was held that deliberate

 

deviation should not be condoned or compounded and otherwise compounding should be bare minimum. Para 20 to 26 have been referred to show that builders had violated sanctioned building plan while raising construction in the city of Cuttack. A serious threat to the ecology and environment was found. It is apart from sufferance to infrastructure. It was held that for developing countries, there should be importance of planned development of cities and, for that purpose, proper watch is required. The compounding of illegal construction should not be allowed to destroy basic planned development. The officers in connivance with the builders allowed unauthorised and illegal constructions. Many fold directions were accordingly given.

40. Learned counsel for petitioners referred interim order passed by the Hon''ble Supreme Court in the case of "Municipal Corporation, Jaipur versus Lekhraj Soni & ors", SLP (Civil) No. 16668/2008, decided on 30.8.2011. Therein, an empowered committee was constituted to look into the issues of encroachments on public land (permanent or temporary) and to make suggestions and issue directions in connection with the subject matter. The restrain order on regularisation has been passed.

41. A further reference of the judgment in the case of Mahendra Baburao Mahadik and Others Vs. Subhash Krishna Kanitkar and Others, has been given. Therein again, issue was regarding unauthorised construction and regularisation thereupon by the Municipal Corporation. A portion of the land of appellant was taken over by the Municipal Corporation for widening road. In lieu thereof, Corporation promised for their cooperation in the matter of compensation. The appellant therein before the Apex Court furnished wrong documents and by making incorrect statement, shown that Corporation had promised to give its full cooperation and concession for raising building in lieu of compensation. A six storey building was raised though the Corporation had permitted construction of two storey. The Apex Court took serious view of mis-statement of fact by the appellant therein. After considering various provisions of law, it was held that the Municipal Corporation should not have regularised unauthorised construction and it was held that demand of development charges for unauthorised construction will not create any legal right in favour of builder.

42. In the case of Shanti Sports Club and Another Vs. Union of India (UOI) and Others, Special Leave to Appeal was filed before the Supreme Court to challenge judgment of the Division Bench which refused to interfere in the decision of the Central Government for exercise of discretion u/s 48(1) of the Land Acquisition Act. Therein, on the issuance of Notification u/s 4(1) of the Land Acquisition Act, writ petitions were filed, however, dismissed by the High Court and appeals by the Supreme Court in the case of Aflatoon and Others Vs. Lt. Governor of Delhi and Others, The further notification was again challenged by the land holders and affected persons, however, writ petition filed by one Ved Prakash was also dismissed by the High Court, however, SLP was entertained by the Apex Court and leave was granted. During pendency of the Civil Appeal before the Apex

 

Court, certain writ petitions were directly entertained by Delhi High Court and matter was ultimately referred to the Full Bench to consider the question as to whether acquisition proceedings should be taken as having been abandoned on account of delay in making award(s) and whether more than one award can be passed in respect of the land covered by the same notification. The Full Bench dismissed all the writ petitions. Many other writ petitions were also preferred thereupon and finally matter went to the Supreme Court. It was mainly on the ground of discrimination and in reference to a decision of the Minister who had directed for de-acquisition of the land though the subsequent Minister decided not to de-acquire it and to take possession of the land.

43. The main argument of the learned counsel was that once a decision is taken by the Minister to de-acquire the land, same could not have been reviewed by another Minister. The Apex Court held that decision of the earlier Minister was not in accordance with section 48 of the Land Acquisition Act and, otherwise, it cannot be said to be an order of the government unless issued in the name of the President of India in the case of Central Government and the Governor in the case of State Government. Article 77(1) and Article 166(1) of the Constitution of India require an order to be expressed in the name of the President or the Governor, as the case may be, so as to reckon it to be an order of the Government. Therein, powers of the President/ Governor to frame Business Rules were also discussed. It was held that merely writing something on the file by the Minister does not amount to an order. For an order, it has to be expressed in the name of the Governor and is to be communicated. The note sheet of the earlier Minister thus could have been reconsidered by his successor. The challenge to the subsequent note sheet of the Minister thus failed on that account. The case was elaborately discussed in reference to various provisions of the Land Acquisition Act also, more specifically in reference to section 48(1) of the Land Acquisition Act for de-acquisition of the land. The appellants therein were claiming that once a decision had been taken for de-acquisition of the land by the Minister, a right was created in their favour to continue with the possession having raised construction thereupon. The Apex Court considered the issue in reference to section 48 of the Act to see as to whether de-acquisition was made by the Government or not. A gazette notification is required for de-acquisition apart from other formalities, which were missing therein. Since de-acquisition was not there as per law, possession on the acquired land does not create a right in favour of the appellants. In para 42 onwards, the Apex Court made concluding observations in regard to those influential persons who make encroachments and raise constructions with subsequent favour by the administration.

44. The last judgment on the issue is in the case of Esha Ekta Apartments Co-operative Housing Society Limited & ors versus Municipal Corporation of Mumbai & ors, Civil Appeal No. 7934/2012, decided on 27.2.2013. Therein, Municipal Corporation, Mumbai leased out a plot for general industrial purposes. An application was later made to change land use from ''general industrial'' to ''residential''. The letter was forwarded to the State Government. It accepted the

 

proposal of the Corporation to change land use in respect of 13049 square meters. It was subject to the condition that development shall be as per Development Control Rules for Greater Mumbai, 1967. After the aforesaid, the lease was created and lessee secured permission from the Chief Minister to take height of the buildings upto to 60 feet. The revised building plan was rejected. However, developer/ builder continued to construct building. The Executive Engineer thereupon issued a ''stop work notice'' u/s 354A of the Mumbai Municipal Corporation Act, 1988. The developer/ builder therein executed agreement with prospective buyers even before commencement of construction. The construction was raised in violation of sanctioned plan. The writ petition was filed by the buyers before the High Court was then transferred to the Hon''ble Supreme Court. It was held that even the buyers cannot claim regularisation of illegal construction. The writ petition was dismissed with a direction to the respondents to proceed with the action without delay.

45. Based on the judgments referred to above, learned counsel for petitioners submit that the order of the Government to regularise illegal constructions is in violation of the settled law of the Apex Court. The respondents cannot bestow favour to those who had raised illegal construction. It is at the cost of the petitioners who had made applications pursuant to the scheme framed by the JDA for allotment of land/plot and remained successful in the lottery thus, if, at all, the allotment of the land is to be made in favour of the occupiers, the petitioners'' rights should have been protected first by making allotment of plots in the scheme. This is more so when large chunk of land is available for allotment.

46. Learned counsel appearing for the State Government so also the JDA, on the other hand, submitted that petitioners have wrongly taken it to be a case of regularisation of illegal encroachments. In fact, allotment of land is under the Rules of 1974. None of the judgments cited by learned counsel for petitioners deny allotment of land by the Government in accordance with the provisions of law. This is more so when it is without affecting development of the area as per plan thus none of the judgments cited by learned counsel for petitioners support the issue or goes against the decision of the government. The judicial review is not permissible in policy decision of the government more so when it is in conformity with provisions of law. The government took notice that large number of houses exist in Prithvi Raj Nagar scheme, thus demolition would not be possible rather it is not going to achieve any object. The acquisition of the land was for the purpose of development of residential colony and, now, keeping in mind the object of the acquisition, allotment of land would be made. The decision has been taken to make allotment. Reference of the judgment in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, has been given, wherein, it was held that the court should not interfere in the policy decision of the government. The issue of judicial review in the policy decision of the government was dealt with by the Apex Court. Therein, it was held that judicial review in the policy decision is permissible only when there is violation of statute

 

or constitutional provisions or it suffers from arbitrariness.

47. Similar view has been taken by the Apex Court in other judgment cited by learned counsel for respondents. It is in the case of Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and Another, .

48. So far as first issue is concerned, both the parties have cited various judgments of the Apex Court which have been referred in the preceding paras. It is to challenge allotment of land pursuant to the impugned order passed by the Principal Secretary, Department of Urban Development & Housing on 21.6.2012. The perusal of the impugned order reveals that after the judgment of the Division Bench in the suo motu writ petition No. 6709/2002, a survey was conducted by the JDA. It was found that apart from residential houses, several colleges, hospitals, marriage gardens and farm houses exist in the scheme area. The matter was discussed in the Cabinet and pursuant to the decision therein, impugned order was issued. The order aforesaid was issued in reference to the Rajasthan Urban Improvement Trust (Disposal of Urban Land) rules, 1974 by giving relaxation under rule 31 of the Rules of 1974. The allotment of the land is broadly divided in three categories, which is described in the impugned order. The perusal of the impugned order does not show regularisation of the land but allotment in favour of different categories described therein at the rates mentioned for that purpose. The general instructions have been given for determination of lease amount as per rules of 1974, apart from different charges towards ''patta'' and development charges. The detailed order makes a mention for possession of 2427 bighas of land. In view of the above, the argument of the learned counsel for petitioners that respondents have issued order for regularisation of possession cannot be accepted. If the impugned order for allotment of land to agriculturist is looked into, it clearly reveals that they would not be allotted entire land but would be restricted to the extent of 25% of developed land in lieu of compensation. The allotment would be made as per amended lay out plan though efforts would be made to allot the land at the same place but aforesaid is not rigid. It also makes a reference about lease amount. Same way, for other category of plot holders, if any one is having land more than 2000 square yards, 75% thereof would be kept by the respondents by allotting 25% developed land. For vacant land also, similar arrangements have been made though it restrict allotment to the extent of 500 square yards. There are many such similar provisions in the impugned order. In the impugned order, allotment of land may be for the entire land if it is to the extent of the permissible limit but if it is in excess, 75% of the land would be taken by the respondents.

49. In the light of the aforesaid, if the judgments cited by learned counsel for the petitioners are looked into, they are by and large in the cases where regularisation was sought by those who had raised illegal constructions against the sanctioned plan or plan was wrongly approved. The challenge was not to a decision of manner exist herein for large number of persons. It may be in lacs.

50. The following judgment are again discussed for the aforesaid purpose. In the

 

case of MI Builders Private Limited (supra), the challenge was to the resolution of the Mahapalika, Lucknow when they resolved to develop underground shopping complex on a land belonging to a park having historic importance apart from to balance ecology. The decision of the Mahapalika was not found to be proper. The facts of that case are altogether different than of the present case. Therein, the resolution of the Mahapalika was in ignorance of the rules and provisions of law apart from the fact that no convincing reason was there to allow underground shopping complex on a land belonging to a park. If the instant case is looked into, elaborate reasons exist for allotment of land.

51. In the case of Jagpal Singh (supra), the order of the Commissioner denying regularisation of construction and possession was under challenge. It was again the land belonging to pond for common purpose of the villagers thus order of the Commissioner was found to be justified.

52. In the case of Shanti Sports Club (supra), the issue was of de-acquisition of the land stood acquired. Therein the legal issue was in reference to two divergent decisions of the Ministers. The matter was accordingly decided holding that a note sheet of the Minister cannot be said to be an order of the government unless it is issued in the name of the Governor/ President, as the case may be. It was also noticed that gazette notification required for de-acquisition as per section 48 of the Land Acquisition Act was not issued apart from other formalities. The claim based on note sheet of the minister for de-acquisition was held to be untenable. The claim based on alleged de-acquisition of land was not accepted in view of the above.

53. The other judgment discussed earlier are based on different facts.

54. In the instant case, large developments has taken place. The demolition of thousand houses may not yield any result more so when the area in dispute is to be developed for residential purpose with other developments required for it. The impugned order makes a reference of demolition of construction and rehabilitation of those persons which otherwise obstruct development of roads etc. Thus, the effort of the State Government is not to compromise with the planned development, rather to maintain it. A balanced decision has been taken by the respondents and judicial review in such matters is very narrow. The interim order of the Apex Court in the case of Municipal Corporation, Jaipur versus Lekhraj Soni & ors (supra) restricts regularisation or construction made in violation of master plan. The allotment by invoking Rules of 1974 is not barred.

55. It is no doubt unfortunate that the matter in reference to Prithvi Raj Nagar scheme remain under litigation for quite long time. The first litigation was to challenge acquisition followed by suo motu petition at the stage of de-acquiring the land in dispute. The ideal situation would have been if the suo motu petition could have been decided at the earliest followed by proper planned development of the area. If any development took place after the interim order of this court, as alleged, the government was expected to take a proper view for them or

 

atleast impose penal charges. The material on record shows that many plot holders did not raise construction thus they are law abiding persons. In view of the above, while concluding the judgment, proper directions would be issued by this court.

56. The situation of the case can be viewed from the angle that if a direction is given to demolish thousands of building with a view to develop residential colony again, the end result would be nothing but wastage of energy and material. However, at the same time, planned development of the area cannot be sacrificed in the hands of encroachers and land grabbers and those who have raised illegal constructions.

57. In view of above, if impugned order is allowed to stand, respondents would be under an obligation to develop the area as per plan and not by compromising in the hands of encroachers or those who have raised illegal constructions. For planned development of roads, facility area etc, if it is having obstruction due to encroachments or constructions, appropriately it should be removed. The government would however be at liberty to rehabilitate those persons. The first argument thus cannot be accepted entirely but in part for which proper directions would be given in the concluding para of the judgment.

58. The second issue is in reference to Article 166 of the constitution of India. It is urged that approval of the decision was required from His/ Her Excellency the Governor of Rajasthan and, thereupon the order needs to be expressed in the name of the Governor as per requirement of Article 166(1) of the Constitution. The impugned order dated 21.6.2012 is not expressed in the name of Governor. The argument is supported by various judgments of the Apex Court. In the case of State of Bihar and Others Vs. Kripalu Shankar and Others, Hon''ble Supreme Court held that noting in the office files cannot be treated as an order. They are mere expressions of views preceding the orders. Para 14 and 15 of the said judgment has been referred wherein provisions of Article 166 of the Constitution was considered. As per Article 166(1) of the Constitution, all executive actions of the State Government would be expressed to be taken in the name of the Governor. It prescribes the mode in which an executive action has to be expressed. It was however clarified that every executive decision need not be as laid down under Article 166(1) but when it takes the form of an order, it has to be in consonance with Article 166(1) of the Constitution. It was further held that as per constitutional provisions noting of the file gets culminated into an order, creating or affecting rights of the parties only when it reaches to the Head of the Department and order is expressed in the name of the Governor, authenticated in the manner provided in Article 166(2).

59. Similar view has been taken by the Apex Court in the case of Jaipur Development Authority and Others Vs. Vijay Kumar Data and Another, wherein, judgment of Division Bench was challenged on many fold grounds. It was held that every executive decision need not be laid before the Governor under Article 166 but when it takes the shape of an order then compliance of Article 166(1)

 

and (2) needs to be made. Therein, the order was not issued in the name of the Governor. It was thus not considered to be an order by the State Government. The other aspect in reference to the judgment of the Supreme Court in the case of Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, and Jaipur Development Authority Vs. Radhey Shyam and Others, was considered. Presently, I am referring the issue as to whether mandate of the Article 166 has been taken note of while issuing impugned order. The issue aforesaid has been raised by learned counsel for the petitioners in reference to other judgments also which are in the case of J.P. Bansal Vs. State of Rajasthan and Another, , The State of Punjab Vs. Sodhi Sukhdev Singh, apart from Bachhittar Singh Vs. The State of Punjab, A reference of the Business Rules has also been given to substantiate the argument.

60. For proper appreciation of the issue, it would be relevant to quote Article 166 of the Constitution of India here as under -

166(1) All executive action of the government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

61. The perusal of the Article quoted above reveals that all the executive actions of the government of the State shall be expressed to be taken in the name of the Governor. Clause (2) thereof provides that any order and other instrument made and executed in the name of the Governor shall be authenticated in such manner as may be specified in the rules to be made by the Governor. The validity of the order and other instrument, which is so authenticated, shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. Clause (3) of Article 166 provides that the Governor shall make rules for more convenient transaction of business of the government and for allocation among Ministers of the said business insofar as it is not business with respect to which the Governor himself is to act as per the Constitution. As per the provision aforesaid, Governor framed Rajasthan Rules of Business. Part II provides allocation and disposal of business, whereas, Part III provides for procedure of the Council of Ministers. Part IV provides for Departmental Disposal of Business. It would be relevant to quote rule 11, 12, 14 and 31 here as under -

11. All orders or instruments made or executed by or on behalf of the Government of Rajasthan shall be expressed to be made or executed in the

 

name of the Governor.

12. (i) Every order or instrument of the Government shall be signed by a Secretary, a Special Secretary, an Addl. Secretary, a Joint Secretary, a Dy. Secretary, Legal Remembrancer, Jt. Legal Remembrancer, Dy. Legal Remembrancer, Asstt. Legal Draftsman, Asstt. Legal Remembrancer, Head Legal Asstt. Under Secretary or an Asstt. Secretary, Officer on Special Duty, Appointments Department, Officer on Special Duty (Budget), Registrar Govt. Sectt., Section Officers of the Secretariat, Vikas Adhikaris of Panchayat Samitis or by such other officers as may be specially empowered in that behalf and such signatures shall be deemed to be the proper authentication of such order or instrument.

(2) The Head of Department shall appoint Officer-in-Charge for cases in which the value of the subject matter does not exceed Rs. 20,000/-(Rupees twenty thousand only) and which are to be conducted in the Courts other than the High Court and the Supreme Court.

14. All cases referred to in the Second Schedule shall be submitted to the Chief Minister, through the Secretary to the Council after consideration by the Minister-in-Charge or the Minister of State-in-Charge, as the case may be, with a view to obtaining his orders for circulation of the case under Rule 15 or for brining it up for consideration at a meeting of the Council or Sub-Committee thereof.

"Provided that where as case falls within the purview of a Sub-Committee of the Cabinet constituted under Cabinet Secretariat order No. F.3 (3) Cab/81, dated 30.09.81. It shall not be necessary to obtain prior orders of the Chief Minister for brining the case for consideration before the Sub-Committee in its meeting or by Circulation.

31. (I) The following classes of cases shall be submitted to the Chief Minister before the issue of orders:-

(i) Proposals for the grant of pardons, reprieves, respites or remission of punishment or for the suspension, remission or commutation of a sentence in pursuance of Article 161 of the Constitution of India.

(ii) Cases raising questions of policy and all cases of administrative importance not already covered by the Second Schedule.

(iii) (a) Proposals for dismissing, removing or compulsory retirement of any officer, where the appointing authority is the Government.

(b) When a review petition is proposed to be rejected and it is against an order issued after submission to the Governor under item (iii)(a) of Rule 31.

(iv) Proposals for appointment, confirmation and posting of the following:-

(a) Secretaries, Special Secretaries, Additional Secretaries to Government:

(b) Heads of Departments,#

 

(c) Officers of A.F.S. & R.A.S. cadres. The views of the Chief Secretary should be on record in cased involving appointment, transfer of confirmation of officers mentioned in this clause. Proposals for appointment, confirmation and costing of these officers will be submitted to the Minster-in-charge &the Chief Minister through the Chief Secretary.

(v) Cases which affect the relations of the State Government with the Government of India, any other State Government, the Supreme Court or the High Court.

(vi) Constitution of an Advisory Board-under Article 22(4) for the detention of persons without trial.

(vii) Cases which affect or are likely to affect the peace & tranquillity of the State & periodical and special report relating to political conditions and law& order including reports on communal disturbances & subversive movements.

(viii) Cases which affect or are likely to affect the interest of any Scheduled Cast, Scheduled Tribe or Backward Class.

(ix) Cases in which it is proposed to pay out of the State revenue any damages or costs incurred by public servants in connections with suits instituted against them in respect of acts purported to have been done by them in their official capacity.

(x) Cases relating to the appointment of Secretary, Deputy Secretary &Assist. Secretary to the legislature.

(xi) Cases relating to petitions for mercy from or on behalf of persons sentences to death.

(xii) Cases raising question of policy.

(xiii) Cases pertaining to the Governor''s personal establishment & the Governor House Matters.

(xiv) Proposals for the appointment of Chairman, Members, Secretary and Deputy Secretary to the State Public Service Commission.

(xv) Advocate General, AAG and Govt. Advocates Addl. G.A. Dy. G.A. Public Prosecutor (including proposals for determining or varying the remuneration payable to them).

(xvi) All cases relating to summoning & prorogation of Legislature, dissolution of the Legislative Assembly, removal of disqualification of voters at elections or the Legislature, fixing of dates of elections to the Legislature and other connected matters.

(xvii) Cases relating to the application of Acts of Parliament or of the State Legislature to the Scheduled areas and the making of regulations for the peace and good Government of those areas.

 

(xviii) Any departure from these rules which comes to the notice of the Chief Secretary or the Secretary of any Department.

(xix) Notwithstanding anything contained in rule 31(I) or elsewhere in these rules, it shall be competent for the Chief Minister to call for the relevant papers/ file(s), report and pass orders in any case involving a question of policy or a matter or urgent public importance, relating to any department when he considers it necessary or expedient so to do, or when the case is referred to him buy by the Minster-in - Charge or the Chief Secretary.

(xx) Cases in which land under acquisition for some public purpose is proposed to be de-notified.

(xxi) Allotment of State Plane & Helicopter.

(xxii) Matters related to the visit of the President and the Prime Minister.

(xxiii) Cases of disposal of Government property having valuation of more than Rupees one crore.

(xxiv) Dissolution of elected bodies including those under Panchayati Raj Local bodies & Cooperative.

(xxv) Matters related to action against elected representatives like Pradhans, Zila Pramukhs, Chariman of Municipal Boards & Corporations, Mayors & Chariman of other Boards, Corporations etc.

(xxvi) All proposals by the Finance Department to make any change of substance in the regulations and rules which it is empowered to make.

(xxvii) All proposed answers to such questions to be asked in the Vidhan Sabha as the Secretary-in-charge of the department considers important:

(xxviii) Determination of Governments policy towards a private Bill at all stage.

(xxix) Determination of Governments policy or any important development in a Bill before the Vidhan Sabha at all its stages:

(xxx) Cases in which the orders are passed by Government under the provisions of any law or rules made thereunder, if a new legal principle is enunciated or if it is proposed to override the opinion of the legal advisor to Government on a point of law.

(xxxi) Cases relating to nominations to consultative committees for department, local bodies or any appointments in any honorary capacity;

(xxxii) All cases relating to requests from the Government of any other state or Union Territory or from any public sector undertaking of any other State or Union Territory or the Union for the loan of services of class-I Officer under the Administrative control of the State Government and the proposals for taking on loan in the State Government services of Class-I Officers from the Government of any other state or Union Territory or from Union or any Public Sector Undertaking of another State Union Territory or Union:

(xxxiii) Cases in which it is proposed to retain gazetted officers in service beyond the age of superannuation.

(xxxiv) Cases relating to naming of Government institutions after individuals;

(xxxv) Cases relating to transfer, alienation or diversion of a park or playground or any part of a park of playground, in each case situated within the limits of a Municipal Corporation, Municipality of a Notified Area;

(xxxvi) Any case or class of cases which the Chief Minister may, direct to be submitted.

31. (II) The following classes of cases shall also be submitted to the Governor before the issue of orders:-

(a) Proposals for the grant of pardons; reprieves, respites or remission of punishment or for the suspension; remission or commutation of a sentence in pursuance of article 161 of the Constitution of India.

(b) (i) Proposals for dismissing, removing or compulsory retirement of any officer where the appointing authority is Government.

(ii) When a review petition is proposed to be rejected and it is against an order issued after submission to the Governor under item (iii) a(a) of Rule 31(I).

*(c)

(d) Cases relating to petitions for mercy from or on behalf or persons sentenced to death.

(e) Cases pertaining to the Governor''s personnel establishment and the Government House matters.

(f) Proposals for the appointment of chairman and Member of the State Public Service Commission.

(g) Advocate General (including proposals for determining of varying the remuneration payable to him).

(h) All cases relating to summoning and prorogation of Legislature, dissolution of the Legislative Assembly, removal of disqualification of voters at elections to the Legislature, fixing of dates of elections to the Legislature and other connected matters.

(i) Cases relating to the application of Acts of Parliament or of the State Legislature to the scheduled areas and the making of regulations for the peace and good Government of those areas.

(j) Any other case of administrative importance as the Chief Secretary or the

 

Chief Minister might consider necessary.

31. (A) Cases relating to removal and recording of findings against Sarpanchas, Up-Sarpanchas, Pradhans and up-Pradhans and Members of the Panchayat Samitis should have the approval of the Minister of State, as the case may be, for Panchayat and Development.

31. (AA) While nominating/Appointing persons on the State Boards/Apex Bodies/ Corporations etc prior approval of the Chief Minister shall be obtained.

62. Rule 11 mandates that all the orders or instruments made or executed by or on behalf of the Government of Rajasthan shall be expressed to be made or executed in the name of the Governor. Rule 12 provides that every order or instrument of the Government shall be signed by the authorities named therein and such signature shall be deemed to be the proper authentication of such order. Rule 31(1) provides as to which matters shall be submitted to the Chief Minister before issue of the orders. Rule 31 (ii) provide which cases should also be submitted to the Governor before issue of orders. Perusal of rule 31(ii) does not reveal that the matter pertaining to allotment of land should be submitted to the Governor before issue of the order. Rule 31(i) provides that all the cases raising question of policy and of administrative importance not covered by II Schedule may also be decided by the Chief Minister i.e. by Council of Ministers through a cabinet decision. Rule 14 provides that all the case mentioned in II Schedule shall be submitted to the Chief Minister through the Secretary of Council.

63. In view of above, first issue is as to whether every policy decision would require to be submitted to the Governor. The perusal of the Business Rules do not reveal the aforesaid, rather same powers are given to the Council of Ministers under Rule 31(1) of Business Rules. The issues for approval of the Governor are given under Rule 31 (ii) of the Rules and subject matter herein is not governed by it. Thus, as per Rule of Business made by the Governor, the subject matter was not required to be submitted to the Governor. Rule 20 of the Rules provides that when a case has been decided by the Council or a Sub-committee, the Secretary concerned shall take action to give effect to the decision aforesaid. Thus, as per the Business Rules, the matter has rightly been dealt with at the level of the Cabinet and the decision therein could be given effect to by the Secretary of the Department in view of rule 20 of the Rajasthan Rules of Business.

64. It is in view of the fact that as per clauses (2) and (3) of Article 166 of the Constitution, an order or instrument executed in the name of the Governor is to be authenticated in the manner as specified in the rules made by the Governor. Since rules made by the Governor does not require that nature of the decision taken herein to be submitted before the Governor but can be decided at the level of the Chief Minister, accordingly, argument of learned counsel for the petitioners that matter was required to be submitted before the Governor before issuance of

 

the impugned order dated 21.6.2012, cannot be accepted. It is more so when as rule 12 of the Rules of Business, signature of the authorities named there would be deemed authentication of the order.

65. The fact, however, remains that the impugned order has been issued by the Principal Secretary, UDH without expressing it to be made or executed in the name of the Governor. In view of above, not only rule 11 of the Rajasthan Rules of Business has been violated but the impugned order cannot be said to be an order by the State Government as it has not been expressed or taken in the name of the Governor as per Article 166(1) of the Constitution of India. Therefore, impugned order does not confirm requirement of Article 166(1) of the Constitution so also rule 11 of the Business Rules. It cannot thus be considered to be a government order. The view aforesaid is supported by the judgment of the Hon''ble Supreme Court in the case of Jaipur Development Authority and Others Vs. Vijay Kumar Data and Another, thus this argument raised by learned counsel for petitioners needs acceptance.

66. The another argument of the learned counsel for petitioners is that even if the allotments of land are held to be valid, 3206 bighas of land is lying vacant where petitioners can be adjusted. It is also stated that divergent pleadings exist regarding vacant land inasmuch at one place, 5018 bighas of land is said to be lying vacant which was then varied in different paras. The prayer is accordingly to take a serious view against divergent pleadings of the respondents. The challenge to the wholesome regularisation of land under the public policy is also criticised in the light of the judgment in the case of Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, apart from the judgment in the case of Jaipur Development Authority Vs. Radhey Shyam and Others, . These judgments were specifically referred even in the case of Vijay Kumar Data (supra). The argument aforesaid is raised to make a comparative case in favour of the petitioners who applied for allotment of the land and now deprived at the instance of those who made constructions on the land so acquired by the JDA. The petitioners have thus prayed for a direction for allotment of land pursuant to the lottery drawn in their favour. This is more so when in few cases, not only allotment orders were issued but amount so demanded was also deposited.

67. In view of the facts aforesaid, it is required to be seen as to whether on submission of application for allotment of plot with registration fee, followed by lottery, will create any right in favour of the petitioner and what would be the position of those who were subsequently given demand letters after notifying the area of the plot and the amount was also deposited?

68. I am first considering judgments of the Supreme Court in the case of Daulat Mal Jain and Radhey Shyam (supra) apart from Vijay Kumar Data (supra) to see as to whether a policy decision can be taken for allotment of land so acquired by the State Government. In the case of Daulat Mal Jain (supra), it was held that after notification u/s 4 of the Land Acquisition Act, declaration made u/s 6 of the

 

Act and possession of the land taken u/s 16, the pre-existing right, title or interest of the owner ceases to exist free from all encumbrances. The allotment of land to the owner apart from compensation was held to be void in the hand of Land Acquisition Officer or the Minister as it is not saved by section 31(3) of the Land Acquisition Act. Subsequent sale of a part of the land to others, described as sub-awardees or awardees was not proper. It was further held that public policy must be for public good and welfare apart from public interest.

69. In the said case, after issuance of notification and taking possession of land, the Land Acquisition Officer/ Minster, apart from awarding compensation to the owners, a direction of allotment of plot ranging from 1000 to 2000 square yards to the owners, sub-awardees or nominees was given. The High Court held that Land Acquisition Officer and the Minister had no authority to issue such orders however allotment was allowed by the High Court as other similarly placed persons were also allotted land.

70. If the case in hand is looked into, a policy decision of the government is not for one or two persons but for thousands of persons as the area so acquired is not of 100 or 200 bighas but of more than 11000 bighas. It is no doubt true that after acquisition the land, it vest in the government but then as per the Urban Improvement Trust Disposal of Urban Land Rules, 1974 the allotment of land can be made by the government. The Rules of 1974 have been invoked for the aforesaid purpose. The Land Acquisition Officer however cannot grant land in lieu of compensation but it could be with the approval of the State Government and, herein, the State Government itself has taken decision for allotment of land in favour of various categories of the persons mentioned in the impugned order. In the case of Radhey Shyam (supra) the issue was in regard to the powers of the Land Acquisition Officer who had given direction to give land in lieu of compensation. It was found to be in violation of section 31(1), (3) and (4) of the Land Acquisition Act. The issue was elaborately discussed as to whether Land Acquisition Officer can award land in lieu of compensation?

71. As per section 31 of Land Acquisition Act, Land Acquisition Officer has no power to do so though sub-section (3) gives power for allotment of land in exchange to the persons having limited interest. In the instant case, allotment of the land is not in the hands of the Land Acquisition Officer but as a policy decision of the respondents.

72. In the case of Vijay Kumar Data (supra), the issue therein was decided in reference to the decision of the Government in favour of individual and while considering the case, reference of Article 166 of the Constitution of India was also given.

73. The case in hand is not for allotment of land in favour of the awardees or sub-awardees as was in the case of Daulat Mal Jain (supra). It cannot even be equated with the judgment in the case of Radhey Shyam (supra) because therein direction for alternative land was given by the Land Acquisition Officer, thus held

 

to be in violation of section 31 of the Land Acquisition Act.

74. In the instant case, it is the respondents who have taken policy decision to make allotment of land to various categories of persons under the provisions of Urban Improvement Trust Disposal of Urban Land Rules, 1974. It is not for the benefit of individual as was the case of Vijay Kumar Data (supra) but for large number of persons which are running in thousands. The judicial review of such decision is not permissible unless hit by provisions of law or suffer from mala fide. The allotment under Statutory rules of 1974 cannot stand on the same footing as was existing in the cases discussed above.

75. In the instant case, it is not the decision of the Land Acquisition Officer or the Minister but is by the Cabinet headed by the Chief Minister. It is not that apart from award of compensation, the land is to be allotted. Thus facts of this case are quite distinguishable.

76. A decision to give land in lieu of compensation is endorsed by the Apex Court in a recent judgment in the case of Bondu Ramaswamy Vs. Bangalore Development Authority and Others, are quoted hereunder-

153.3 Where the acquisition is of the third kind, that is, for urban development (either by formation of housing colonies by Development Authorities or by making bulk allotment to colonisers, developers or housing societies), there is no scope for providing benefits like employment or a share in the equity. But the land-losers can be given a share in the development itself, by making available a reasonable portion of the developed land to the land-loser so that he can either use it personally or dispose of a part and retain a part or put it to other beneficial use. We may give by way of an illustration a model scheme for large-scale acquisitions for planned urban development by forming residential layouts:

Out of the total acquired area, 30% of the land area can be earmarked for roads and footpaths; and 15% to 10% for parks, open spaces and civic amenities. Out of the remaining 55% to 60% area available for forming plots, the Development Authority can auction 10% area as plots, allot 15% area as plots to urban middle class and allot 15% area as plots to economically weaker sections (at cost or subsidised cost), and release the remaining 15% to 20% area in the form of plots to the land-losers whose lands have been acquired, in lieu of compensation. (The percentages mentioned above are merely illustrative and can vary from scheme to scheme depending upon the local conditions, relevant Bye-laws/Rules, value of the acquired land, the estimated cost of development, etc.) Such a model makes the land-loser a stakeholder and direct beneficiary of the acquisition leading to cooperation for the urban development scheme.

154. In the preceding para, we have touched upon matters that may be considered to be in the realm of government policy. We have referred to them as acquisition of lands affect the vital rights of farmers and give rise to considerable litigations and agitations. Our suggestions and observations are intended to draw attention of the government and development Authorities to some probable

 

solutions to the vexed problems associated with land acquisition, existence of which can neither be denied nor disputed, and to alleviate the hardships of the land owners.

155. It may be possible for the government and development authorities to come up with better solutions. There is also a need for the Law Commission and Parliament to revisit the Land Acquisition Act, 1894, which is more than a century old. There is also a need to remind Development Authorities that they exist to serve the people and not vice versa. We have come across Development Authorities which resort to `developmental activities'' by acquiring lands and forming layouts, not with the goal of achieving planned development or provide plots at reasonable costs in well-formed layouts, but to provide work to their employees and generate funds for payment of salaries. Any development scheme should be to benefit the society and improve the city, and not to benefit the Development Authority. Be that as it may.

77. The perusal of the paras quoted above saves decision to allot land in lieu of compensation.

78. Now, coming to the rights of the petitioners for allotment of land.

79. The case set out by the petitioners is that on launch of Prithvi Raj Nagar scheme, applications were invited. Pursuant to the applications, a lottery was drawn wherein they remained successful. At the time of submission of applications, registration fee was deposited. Subsequent to the aforesaid, petitioners were asked to opt for Kalpana Nagar in Jagatpura and finally at Kanota. It is agreed by both the parties that status of all the petitioners is not similar. In few cases, petitioners were given demand letters for the plots and even amount was also deposited. In few cases, applicants had deposited only registration fee. In other cases, applicants had withdrawn the amount so deposited. Thus there exist different types of cases amongst those who made applications for allotment of plots in Prithvi Raj Nagar scheme.

80. A separate statement was submitted by the respondents indicating that for 2777 plots of land, 3374 applicants were initially declared successful, in the lottery, however, they were not given plot numbers. Out of this, 91 applicants sought refund of amount thus out of 3283 applicants, lottery was again drawn and 317 applicants were allotted land. At a later stage, 3083 applicants gave their option for Kalpana Nagar which was initially at Jagatpura and finally at Kanota. In Kalpana Nagar, Kanota, 1200 lease deeds have already been issued. It is also stated that only 317 applicants were given plot number otherwise all others had deposited only the registration fee. Out of 317 such applicants, 75 had withdrawn the amount and 80 other applicants have already been given lease deed in Kanota. With the aforesaid facts and figures, the issue needs to be decided in reference to the status of different petitioners. To determine the aforesaid issue, legal position is required to be discussed.

81. According to the petitioners, once lottery was drawn followed by intimation

 

and issuance of allotment letters, concluded contract exist. Actual payment of the entire due amount is not relevant in view of deposition of registration fee. Reference of the judgment in the case of National Buildings Construction Corporation Vs. S. Raghunathan and Others, has been given.

82. The perusal of the judgment shows it to be on the issue of doctrine of ''legitimate expectation''. It was held that fair play needs in the administrative action, therefore, State cannot unfairly discard its policies. Legitimate expectation was held to be procedural in character but assure fair play in the administrative action. The Hon''ble Supreme Court determined as to when doctrine of ''legitimate expectation'' can be invoked. Para 20 and 21 of the said judgment are quoted hereunder for ready reference -

20. Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (1985) AC 374 laid down that doctrine of "legitimate Expectation" can be invoked if the decision which is challenged in the Court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he had received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.

(Emphasis supplied)

21. The Indian scenario in the field of "Legitimate Expectation" is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms.

83. The perusal of paras quoted above shows that enforcement of legitimate expectation can be if rights and obligations are altered which are otherwise enforceable by private law. It may be when a person is deprived of certain benefits or advantage which he has been permitted by the decision maker to enjoy. It may even in the cases where assurance is given by the decision maker that benefit would not be withdrawn without giving him an opportunity of advancing reason for contending that it should not be withdrawn.

84. The other judgment is in the case of LIC of India and Another Vs. Consumer Education and Research center and Others, It was held therein that action of the public authority having public element must be in public interest. It should not be arbitrary, unjust or unfair. It was even in the sphere of contractual relations with the State or its instrumentality. Para 23 to 27 of the said judgment have been specifically referred by the learned counsel for petitioners. It was decided on the same principle as has been discussed in the case of National Building Construction Corporation (supra). Similar view has been taken in the case of

 

Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, All the aforesaid judgments are in reference to the doctrine of ''legitimate expectation''.

85. Learned counsel for petitioners have given further reference in the case of Smt. Claude-Lila Parulekar Vs. Sakal Papers Pvt. Ltd. and Others, My attention was drawn towards para 48 of the said judgment. It was a case where transfer of 3/4 of 3417 shares was made contrary to the appellant''s right of pre-emption. It was in violation of section 108 of the Companies Act, 1956. The decision therein was given on its facts where terms of contract were altogether different. There nonpayment was for want of determination of sale price. The case in hand is not of similar nature rather not only the facts but legal position in reference to it is quite different.

86. Another judgment is in the case of Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, The case therein was for sale of country and foreign liquor. The offer of bid was made voluntarily in the auction held for licence on the terms and conditions announced before the auction. The bidder participated in the auction without demur and with full knowledge of commitments involved in the bid. The government accepted the bids thus on such acceptance, the contract between the bidder and the government became concluded and binding. This is more so when successful bidder was granted licence. The case in hand is of similar nature.

87. The judgment in the case of Rochees Hotels Pvt. Ltd. and Another Vs. Jaipur Development Authority, has been referred but, therein, transfer of land was under a registered sale deed. The JDA, later on, issued letter of allotment for a land measuring 1849.97 square meters on payment of Rs. 2000/- per square meter. The amount was deposited. The petitioner therein sought approval for construction of hotel but when nothing was done, writ petition was preferred.

88. The other judgment is in the case of "Ashok Kumar Sharma & ors etc versus State of Rajasthan & ors etc" (SB Civil Writ Petition No. 12519/2012, decided on 11.10.2012 by Jaipur Bench). Therein, petitioners served a legal notice for seeking possession of the plots and for issuance of lease deed. It was in view of the fact that petitioners had deposited the amount as demanded by the UIT, that too, after acceptance of offer. In view of the above, inaction to hand over possession of the land was held to be illegal. A perusal of para 2 and 3 of the said judgment shows that after preparing the list of eligible successful applicants, instructions to deposit 50% of the amount was issued. The amount so demanded was deposited by the petitioner. After issuance of offer and deposition of amount, no further steps were taken by the UIT thus it was held to be a case of concluded contract.

89. The last judgment is in the case of Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, . The judgments aforesaid are again akin to the doctrine of ''legitimate

 

expectation'' where public authorities were asked to carry out promises made by them, when the other person has altered its position to its prejudice.

90. Learned counsel for the respondents, on the other hand, referred the judgments in the case of Greater Mohali Area Development Authority and Another Vs. Manju Jain and Others, wherein letter of allotment was sent through registered post, however, letter of acceptance was not sent and even no amount was deposited. A hire purchase agreement was also not executed. It was not held to be a concluded contract. It was a case of allotment of flats through draw of lots. Mere draw of lots and allocation letter does not confer any right of allotment. Para 21 of the said judgment is quoted hereunder for ready reference-

21. Mere draw of lots/ allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It is only a mode, a method, a process to identify the prospective allottee i.e. the process of selection. It is not an allotment by itself. Mere identification of selection of the allottee does not clothe the person selected with a legal right to allotment.

91. From the judgments referred to above and taking into consideration the facts of instant cases, a right is created in favour of those petitioners who were asked to deposit the amount in furtherance to the lottery and thereupon even the amount was also deposited. After deposition of the amount, no justification remains for non-allotment of plots in their favour, though many of them had subsequently withdrawn their application/amount and few others were given allotment in Kalpana Nagar with issuance of lease deed. In view of the judgments referred to above, denial of plots to those petitioners, who had deposited entire amount as per the demand, cannot be said to be justified.

92. Accordingly, I find that right for allotment of plot exist in favour of those petitioners who not only remained successful in the lottery but were given plot numbers followed by demand letters with deposition of money, however, those who had withdrawn the amount or given lease in Kalpana Nagar will have no right as their applications got exhausted with the aforesaid.

93. Those petitioners who had not only submitted option for Kalpana Nagar but have been given lease deed subsequent to it, cannot now claim allotment of land in Prithvi Raj Nagar scheme. In regard to them, a concluded contract exist with the allotment of the plot on issuance of lease deed in Kalpana Nagar. Their application got exhausted with the aforesaid, hence, cannot now claim allotment of land in Prithvi Raj Nagar pursuant to the one and same application on which allotment of land has already been made. The number of such applicants is nearly 1200 as indicated by the respondents. The JDA is, however, under an obligation to develop the area at the earliest.

94. Those petitioners who have taken refund of the amount again cannot seek allotment of land now because their applications stood withdrawn with the refund of the amount.

 

95. Now comes the issue pertaining to those petitioners who made application with deposition of registration amount and have not withdrawn it. A reasonable size of the petitioners exist in the said category. Learned counsel for petitioners have referred certain judgments to show concluded contract with submission of application followed by draw of lots. In my opinion, none of the judgments hold that on draw of lottery and remaining successful therein becomes concluded contract so as to create a right. None of the judgments cited by learned counsel for the petitioners involves similar facts as exist herein. In the case of Rochees Hotel Pvt. Ltd. (supra), the JDA made allotment followed by deposition of entire amount thus facts are not similar. Same is the position in the case of Ashok Kumar Sharma (supra). Therein also, with the allotment and demand, amount was deposited but possession of the plot was not given. Hence cases of those petitioners cannot be kept at par with those who were served with the demand letters followed by deposition of amount. In fact, the documents on record show that with draw of lots, information of their remaining successful was given. Thus, a concluded contract does not exist so as to create right under the law merely for the reason that they were waiting for demand letter for deposition of amount. A perusal of the letter pursuance to the lottery does not indicate plot size, its number and even the rate of the plot. In absence of it, how there can be a concluded contract? A contract has to be definite in all respect. In this case, even consideration for sale is missing. A contract needs definite terms along with consideration.

96. The question now comes about legitimate expectation from the respondents.

97. The government in its policy decision took note of those who are in possession of the land pursuant to the allotment by the co-operative societies and raised constructions. It would have been appropriate, if government had taken care of the petitioners, who were successful in lottery leaving those who have already been allotted plot of land with issue of lease deed in Kalpana Nagar.

98. It may be that no right under the law exists in their favour but legitimate expectation from the government warrant some consideration for them. This is more so when option for Kalpana Nagar were submitted when it was proposed for Jagatpura. It is no doubt true that option forms were submitted by most of the petitioners to seek allotment in Kalpana Nagar, Jagatpura and may be even for Kanota but then it was in a situation when they had no hope of getting allotment of land in Prithvi Raj Nagar scheme. Thus for those petitioners who remained successful in lottery and deposited registration fee should also be considered for allotment of plot in Prithvi Raj Nagar scheme leaving those who have withdrawn the amount or allotted land elsewhere. The government is thus expected to consider their cases sympathetically. It is more so when the government has endorsed benefit to those who had some how raised construction despite acquisition of land and litigation thereupon.

99. The last submission of learned counsel for petitioners is regarding charges fixed for regularisation. It is said to be in violation of the Rules of 1974.

 

100. Learned counsel for respondents has given reference of rule 31 of the Rules of 1974 where government is given power to make certain relaxations. For ready reference, rule 31 of the Rules of 1974 is quoted hereunder -

31. Power to relax rules:- In exceptional cases where the State Government is satisfied that operation of these rules causes hardships in any particular case or where the State Government is of the opinion that it is necessary or expedient in public interest to do so, may relax the provisions of these rules in respect of the price, interest, [penalty, conditions imposed in relation to any allotment and] size of plot/strip of land to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

101. The perusal of the rule quoted above shows that in what circumstances and to what extent government can relax the rules. In the light of the provision aforesaid and as said rules have been invoked while passing the impugned order, the rate fixed for allotment of land cannot be interfered as such in view of the policy decision of the government. Rule 8, 9, 12, 14, 14B, 15, 15A and 17 of the Rules of 1974 provide manner and procedure for allotment of land. Rule 31 of the Rules of 1974 however gives power to government to relax rule for price, size of plot etc. This rule has been invoked looking to various aspects which include size of people to be affected and if a decision for allotment in accordance with the rules and for planned development of the area is not taken, demolition of thousands of houses with reconstruction would be nothing but a national wastage.

102. It is, however, necessary to comment that an area is developed only when government gets sufficient funds hence while fixing the rates for development charges, it should be at the actual cost to be borne by the respondents for development of the area thus development charges should be fixed keeping in view the aforesaid and the area should be developed immediately in the planned manner. For the aforesaid purpose, if constructions are to be removed, then this judgment will not come in the way of the respondents, rather they are directed not to sacrifice planned development to save encroachments and illegal constructions. It should be carried out as per the plan.

103. In view of the detailed discussion on all the issues, the writ petitions are allowed with following directions -

1. The respondents are directed to allot plots to those petitioners who not only remained successful in the draw of lottery but deposited the amount pursuant to the demand letter issued to them. It would obviously leaving those who had withdrawn their amount or opted for other scheme(s) followed by issuance of lease deed.

2. The respondents may further consider cases of another category of petitioners who had deposited registration fee and paid the amount in part pursuant to the draw of lottery and demand letter. It would be expected of the respondents that a proper and sympathetic view would be taken for second category of petitioners

 

at the earliest and, if possible, within a period of three months from the date of receipt of copy of this order. This would exclude those who had opted for other scheme and thereupon given lease deed or withdrawn the amount.

3. So far as the impugned order dated 21.6.2012 at Annexure-16B, passed by the Principal Secretary, Department of Urban Development and Housing (UDH) (in CW 2740/2006 "Sugan Singh & ors versus State of Rajasthan & anr") is concerned, it cannot be given effect to as it has not been expressed in the name of HE the Governor so as to comply the mandate of rule 11 of the Rules of Business so as Article 166(1) of the Constitution of India. The respondents would however be at liberty to pass fresh order in accordance with rule 11 of the Rules of Business so as Article 166(1) of the Constitution, if it has not already been issued.

4. The respondents are further directed to even carry out development work of Kalpana Nagar area where some of the initial applicants not only opted but given lease deed. Such development should be carried out in phased manner and, if possible, within a period of six months.

5. A direction has been given in para (3) above not to give effect to the order dated 21.6.2012 as it has not been expressed in the name of HE the Governor, however, the issue pertaining to it has been raised in the writ petition and discussed. A request is made by both the parties for necessary directions thus further directions are issued. Following directions would apply if fresh order is issued or has already been issued as per liberty given above.

A. The respondents will not sacrifice development of the area rather development would be made as per the plan. If any encroachment or construction is raised creating obstruction for planned development of road, facility area etc, such construction/ encroachment would be removed by the respondents. They would however be at liberty to rehabilitate such persons in accordance with the Rules of 1974 or by a policy decision, if not already framed.

B. The allotment of commercial plots should be in accordance with the Rules of 1974.

C. The allotment of plots for residential purpose would be subject to the directions in para (A) above. The respondents would further make distinction between those who raised construction and those who did not raise construction on the disputed land. The respondents are directed to take proper decision as to whether allotment should be made in favour of those who raised construction after 9.4.2003, the date of stay order passed in Suo Motu Writ Petition No. 6709/2002, which was finally disposed of by this court vide order dated 29.10.2010. If decision comes favourable taking into consideration larger public interest and to avoid demolition of construction resulting in national wastage, then also they are directed to appropriately determine penal amount or higher rate of allotment for those who raised construction after the date mentioned above. The identification of such persons would be made based on the date of electricity connection on the plot. The respondents would further be at liberty to impose lesser penalty on those who are poor and small plot holders i.e. who are having plot size upto 250 square yards.

D. The cases of those applicants who had either opted or granted lease deed elsewhere or withdrawn the amount would not be reviewed and will have no right pursuant to the judgment of this court as on withdrawal or issuance of lease deed elsewhere, their applications got exhausted.

E. The respondents are further directed to determine the development charges after taking note of the amount required for development of road, electricity, sewerage etc. The amount so collected would be used for proper development of the area with required infrastructure.

F. Till the allotment is made in favour of the petitioners or others, respondents are directed not to release electricity connections. This is to avoid possibility of further construction without allotment of plot.

In case of any difficulty in carrying out the directions aforesaid or otherwise, affected parties would be at liberty to make appropriate application before this court for clarification/ modification.