
(2018) 07 UK CK 0046
In the Uttarakhand High Court
Case No : Special Appeal No. 108 of 2011

Vega Auto Accessories Pvt. Ltd	Vs	APPELLANT
State of Uttarakhand & others		RESPONDENT

Date of Decision : 09-07-2018

Acts Referred:

Indian Contract Act 1872 — Section 23

Citation : (2018) 07 UK CK 0046

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Jitendra Chaudhary, Prabha Naithani, Rakesh Thapliyal

Final Decision : Dismissed

Judgement

K.M. JOSEPH, C.J. (Oral)

SHARAD KUMAR SHARMA, J.

Appellant is the writ petitioner. The writ petition was filed seeking the following reliefs:

i. To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 03.02.2010 and notice dated 30.11.2010 and

notice dated 11.04.2011 (Annexure 1, 2 & 3) so far it relates to demanding of Rs. 1,56,62961.14 as restoration charges of plot in question as against

Rs. 1,67,050.00.

ii. To issue a writ, order or direction in the nature of mandamus commanding the respondents to charge the restoration charges as per policy attached

as (Annexure-15) to the writ petition.

2. Appellant is a private limited company. SIDCUL is a State owned company. It launched scheme in the industrial integrated estate in district Udham

Singh Nagar, inviting entrepreneurs. Appellant was allotted a plot. The said allotment was cancelled by order dated 15.01.2008. For the purpose of restoration, an order was issued on 07.03.2008 stipulating certain conditions. The said order dated 07.03.2008 reads as follows:

Ref. No. 10769/SIDCUL/DGM/2007/08 Dated 07 March 2008

To

M/s Vega Auto Accessories Pvt. Ltd. 543, Vithaldev Lane Shahpur, Belgam.

Sub: Plot no. 22 Section 4 an IIE- Pantnagar Dear Sir,

This is in reference to your letter / representation regarding representation / reconsider the cancellation order of above mentioned plot.

In this matter, it is to inform you that your plot has been cancelled due to reasoned that you were not interested to setting up the unit. Your request can only be processed for restoration as per current restoration policy of SIDCUL, if you submit the following:

1. You shall have to submit time bond program for starting commercial production (maximum time 09 months)
2. You shall have to submit an undertaking (draft of the same is enclosed)
3. You shall have to submit a bank guarantee of Rs. 5.00 lakhs regarding commencement of commercial production within stipulated period (draft of the same is enclosed)

This is for your kind information and necessary action at end please.

Thanking you,

(A.R. Gairola)

DGM (Tech.)

3. It was feeling aggrieved by the orders that the appellant preferred Writ Petition (M/S) No. 387 of 2009. A learned Single Judge of this Court, as his Lordship then was, did not find merit in the challenge to the order cancelling the allotment or to the order stipulating the conditions subject to which the restoration was to be allowed. However, we may notice the following two paragraphs of judgment dated 29.12.2009 for the time being:

This Court does not find any unlawful terms in the impugned order dated 07.03.2008. Learned counsel for the respondents argued that all similarly situated allottees were directed to comply the three conditions after making deposit of restoration charges and many of them who complied with it got

the allotment restored.

9. In the above circumstances, having considered submissions of learned counsel for the parties and after going through the affidavits on record, this

Court is not inclined to interfere with the impugned orders passed by the respondents. Therefore, the writ petition is dismissed with the observation

that the petitioner's plot may be restored if he pay restoration charges and complies with the conditions mentioned in the letter dated 07.03.2008

(copy Annexure-13 to the writ petition) within a period of two months from today.

4. Though a special appeal, being Special Appeal No. 21 of 2010, was filed, it was unsuccessful.

5. It is the case of the appellant that, thereafter, in compliance of the order passed by the learned Single Judge, appellant sent letter dated 21.01.2010

along with the bank guarantee of Rs.5 lacs and an undertaking was given to the respondents. The request of the appellant was accepted vide order

dated 03.02.2010; but the restoration charges were demanded in a sum of Rs.1,56,62,861.14.

6. The writ petition, from which the present appeal arises, was directed against order dated 03.02.2010 and notices dated 30.11.2010 and 11.04.2011,

insofar as the demand for restoration charges was made.

7. Pleadings were exchanged. The learned Single Judge did not find merit in the case of the appellant and dismissed the writ petition.

8. The present appeal was lodged in the year 2011. The respondents, which had not filed counter affidavit in the writ petition, filed a counter affidavit

in the appeal. Thereafter, appellant has filed a rejoinder affidavit, for which the Court granted permission and it was taken on record.

9. We heard Mr. Jitendra Chaudhary, learned counsel for the appellant and Mr. Rakesh Thapliyal, learned counsel appearing on behalf of SIDCUL.

10. Mr. Jitendra Chaudhary, learned counsel for the appellant would complain that the amount demanded by way of restoration charges, in a sum of

Rs.1,56,62,861.14, is unjustified and illegal. He would submit that, in this case, the cancellation took place in the year 2008 and the appellant was

prepared to pay the restoration charges in a sum equal to 7.5 per cent of the base allotment value, which is calculated on the basis of the rent (the

amount comes to less than Rs.2 lacs). He would submit that there can be no

justification, in the facts, to demand a sum of Rs.1,56,62,861.14.

Learned counsel would further submit that there is discrimination. In this regard, he refers to, in the rejoinder affidavit, certain judgments, to which we shall make reference. There is also a case for the appellant that, at any rate, the charges should have been fixed on the basis of the value as in the year 2008, when the cancellation was made.

11. Mr. Jitendra Chaudhary would also submit that, in Pant Nagar industrial unit, there was a policy by which restoration was allowed on more liberal

terms and, therefore, no reference could be made to the general policy, which has been evolved by SIDCUL.

12. Per contra, Mr. Rakesh Thapliyal would justify it with reference to the policy for restoration, which was extant, and, as per which, it is, inter alia,

provided as follows:

Restorations be allowed, where the Managing Director / Joint Managing Director are satisfied beyond doubt that the allottee is interested in

commencing construction immediately and will complete construction within a reasonable time frame, as may be required in the specific industry,

provided:

(a) application for restoration is made within 45-days of the cancellation order laying down the reasons for inability to meet the conditions of allotment,

along with the application fees;

(b) on approval of restoration, the restoration be allowed at the current base price for allotment or 7.5% of the current SIDCUL base rate of

allotment, whichever is higher;

(c) specific time frame for commencing and completing construction is agreed to and an affidavit to the effect obtained;

13. In fact, he would also submit that this is not a case, where, in terms of the policy, a request was made for restoration within a period of 45 days of

the cancellation. As far as the plea of discrimination is concerned, he would submit that it is done in terms of the policy. He would submit that, as per

the policy, the value from out of the value of the plot as calculated or the value of the allotment, whichever is higher, will prevail.

In this case, since Rs.1,56,62,861.14 is much higher than the amount, which is relied on by the appellant, the appellant has been called upon to pay the

said amount.

14. Mr. Rakesh Thapliyal would also submit that this is a case, where the appellant had asked for installment facility to pay the entire amount and, therefore, the appellant will not be justified in contending that the demand for restoration charges is illegal.

15. In this case, we must notice one aspect. The writ petition was dismissed in the year 2011. We requested the learned counsel for the respondents

Mr. Rakesh Thapliyal to ascertain as to whether the plot is still available. Thereupon, on getting instructions, it is submitted and brought to our notice

that the plot is not only very much available, but it continues to be occupied by the appellant, who is doing business there and the Court stood informed

that it is, apparently, on the basis of the pendency of the appeal that this state of affairs came into being.

16. In this regard, we may notice that, even in the writ petition, appellant has made the averments that, on 26.03.2010, it had started commercial

production in the unit and it was intimated to the respondents. It is averred that the respondents, again, demanded restoration charges vide letter dated

30.11.2010. Annexure No. 21 is dated 14.12.2010, which is the reply given by the appellant mentioning that it has already commenced the production

and, as per the restoration policy, the restoration of cancelled plot in Pant Nagar was allowed as per the base price of allotment by imposing 7.5 per

cent extra price of the base rate because the current base price and the allotment price were the same at that time. It is also mentioned in Annexure

No. 21 that the appellant is allotted total area of 3788 sq. meters and the total lease amount was Rs.22,27,344/- and it reiterated the demand for

restoration charges being fixed as Rs.1,67,050/-.

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17. In the first place, we must ascertain as to what is the basis on which the amount of restoration charges has been demanded from the appellant.

The basis is provided in the following averments contained in paragraph 5 of the counter affidavit filed on behalf of respondent Nos. 2 to 5:

â??5. That the instant appeal has been preferred against the Judgment and order passed by the learned Single Judge dated 19/05/2011 passed in Writ

Petition No. 942 (M/S) of 2011, wherein, the present petitioner has challenged the order dated 03/02/2010 passed by the Managing Director, whereby,

the petitioner was asked to deposit an amount of Rs. 1,56,62,861.14/- towards the restoration charges for restoration of the plot which was cancelled

pursuant to an order dated 15/01/2008. The demand of restoration charges from the petitioner for restoration of the plot allotted is infact as per the

restoration policy of the restoration department and it was implemented uniformly. Now first of all the breakup of the calculation of the amount which

pertains to the restoration charges are being given as under:

Current Base Price of Allotment in year 2010
- Rs. 4501.25/- Per Sq Mt

Addl. Charge @ 5% of base price for corner plot
- Rs. 225.62/- Per Sq Mtr

Total
- Rs. 4726.31/- per Sq Mtr

Total Area of land allotted to M/s Vega Auto
- 3788 Sq Mtrs

Total price of land
Rs. 4726.31 x 3788 = Rs. 1,79,03,262.28/-

Less Amount already paid by M/s Vega at time of allotment 22,40,401.14

Total restoration amount payable
1,56,62,861.14/-

18. Next, we must ascertain whether this demand is in strict conformity with the

policy for restoration, as contained in Annexure No. 15 to the writ

petition. For this, we must refer to and reproduce the same as under:

Policy for Restoration of cancelled Plots

The Board of Directors, on 25th May, 2005, in light of the sunset date of 31

March, 2007 directed SIDCUL management to obtain an undertaking

requiring the allottee to take possession and enter into a lease deed within 60

days of allotment and commence construction within 90 days of

allotment.

The lease deed requires the lessee to be commercially operational within 24 months of allotment.

Cancellations have been resorted to in cases where any of the above conditions have not been met. The existing policy allows the Managing Director

to restore the plots to the allottee on payment of a restoration fees of 7.5% of SIDCUL's current base rate of allotment, provided an application is

made within 45 days of cancellation and the management is satisfied that the allottee is indeed interested in setting up the industrial unit within a

reasonable time frame.

However, in cases where 24 months have elapsed, no restoration has been allowed as it has been deemed to be more than sufficient time to set up a

unit and failure to do so clearly shows disinterest and intentions of trading / speculation in land.

In the case of M/s Pragati Telecom, the Honâ??ble High Court of Uttaranchal ordered SIDCUL to restore the plot of the allottee, however,

restoration was to be treated as allotment â??de novoâ?? and was to be made at the current base price of allotment. Subsequent to the decision of the

Honâ??ble High Court, in all restoration cases in Haridwar, the same policy has been adopted.

In Pantnagar, however, due to large scale cancellations and in a large number of cases the current base price and allotment price being the same, the

original policy of imposing 7.5% of base price as restoration fees has been imposed. However, in addition, a Bank Guarantee with specified time

frames for construction has been obtained to ensure timely compliance.

On August, 02,2006, the Government of India, extended the CIP by 3 years. Several requests have been made to the JMD for reconsidering the

current policy of restoration and take a more lenient in light of extension of the CIP. The same was discussed at the Board of Directors meeting of

10th August, 2006 and it was agreed that SIDCUL should continue its stringent stand on cancellations / restorations, as taking a more lenient view

might encourage trading / speculation.

Restorations be allowed, where the Managing Director / Joint Managing Director are satisfied beyond doubt that the allottee is interested in

commencing construction immediately and will complete construction within a reasonable time frame, as may be required in the specific industry,

provided:

(a) application for restoration is made within 45-days of the cancellation order laying down the reasons for inability to meet the conditions of allotment,

along with the application fees;

(b) on approval of restoration, the restoration be allowed at the current base price for allotment or 7.5% of the current SIDCUL base rate of

allotment, whichever is higher;

(c) specific time frame for commencing and completing construction is agreed to and an affidavit to the effect obtained;

Managing Director??

19. The amount, which the appellant prays for being fixed as restoration charges, is Rs.1,67,050/-. Certainly, the amount of Rs.1,56,62,861.14 is much

higher and, being the higher amount, in terms of Annexure No. 15 restoration policy, it could be said that the demand is in consonance with the

restoration policy evolved by the respondents and, therefore, there is no illegality about it.

20. There remain two contentions, which have been raised by the appellant. Primarily, the contention of the appellant is that there is discrimination

done. We must notice the case of discrimination as set-up in the writ petition. This is contained in paragraph 35 of the writ petition, which reads as

follows:

??35. That admittedly in similar footing the respondents have restored the allotment of plot of other allottees who complied the three conditions as

undertaking regarding time bound programme for starting commercial production and submit bank guarantee of Rs. 5.00 Lakhs for commencement of

production and restoration charges of 7.5% extra of the prevail rate. The petitioner has also complied all aforesaid conditions and deposited 7.5%

extra amount of restoration charges of the prevail rate at that point of time.??

21. The writ petition came to be dismissed on the very first day without calling for any counter affidavit. Apparently, a counter affidavit has been filed

in answer to the affidavit filed in support of the appeal. In the affidavit filed in support of the appeal, we notice the following paragraph:

??31. That admittedly in similar footing the respondents have restored the allotment of plot of other allottees who complied the three conditions as

undertaking regarding time bound programme for starting commercial production and submit bank guarantee of Rs. 5.00 Lakhs for commencement of

production and restoration charges of 7.5% extra of the prevail rate. The petitioner has also complied all aforesaid conditions and deposited 7.5%

extra amount of restoration charges of the prevail rate at that point of time.â??

22. This has been answered in the following way in the counter affidavit:

â??44. That the contents of para 31 of the affidavit filed in support of the special appeal need no reply.â??

23. Appellant has filed a rejoinder affidavit, no doubt, answering the allegations in the counter affidavit, which was filed at the appellate stage. In the

rejoinder affidavit, no doubt, appellant is more forthcoming in regard to the plea of discrimination. It is, inter alia, averred as follows:

â??(g) That most of the industrial units in a whose favour industrial plots were allotted could not start production as well as construction of their

respective building structures in accordance with the terms and conditions of the allotment letters as well as lease deeds due to the sole reason in all

cases that physical possession was given too late although allotment was made much earlier therefore the respondent SIDCUL started canceling lease

deeds of various units on the pretext that they had not completed construction activities nor started production within two years of allotment as per the

terms and conditions envisaged in the allotment orders and in doing so, in Pantnagar Industrial Area near about 40-50 allotments were cancelled in one

go. Further lease deed of the appellant was also cancelled on 15-01-2008 on similar grounds.

(h) That other industrial units whose lease deeds as well as allotment orders were also cancelled approached this Honâ??ble Court by filling various

writ petitions in which initially this Honâ??ble Court disposed off some of the writ petitions with observations that six months more time is given to

these industries to start production after installing their units. But against said orders by which this Honâ??ble Court granted six months more time to

the industries, the respondent SIDCUL preferred SLP before Honâ??ble Apex Court where initially stay order was granted in favour of the

SIDCUL but finally all the SLPs were decided with the observations that the industries whose lease deeds had been cancelled they shall move a fresh

representation before the respondent SIDCUL who will take decision upon it

within stipulated period and as such matters were again remanded back before the respondent SIDCUL authority to decide the representations of all aggrieved industrial units by providing opportunity of hearing to them.

Thereafter the respondent SIDCUL in compliance of Honâ??ble Apex Courtâ??s directions provided opportunity of hearing to those aggrieved units and rejected some of the representations and maintained earlier cancellation orders but in some cases restored their plots after charging restoration charges at the rate of 7.5% of base price of their allotment.

(i) That then some of the parties, whose representations were rejected approached this Honâ??ble Court by filling fresh writ petitions again and then at this juncture this Honâ??ble High Court after hearing both side parties gave decisions in case of Haldiram case, Polar industries and Uttaranchal Packaging Industries etc. in favour of those industries opining therein that these industries were also liable to get similar treatment as given to other industries whose plots had been restored after charging restoration charges at the rate of 7.5% of base price of allotment and all these decisions were given by this Honâ??ble High Court in the year 2010 and in those cases the argument of SIDCUL for charging restoration charges at current base price was rejected therefore now in present controversy the respondent SIDCUL cannot charge restoration charges at the rate of current base price because the controversy is also similar and identical in nature. Further when the respondent SIDCUL accepted the decision given in Haldiram case, polar industries case and Uttaranchal packaging case and did not challenge the verdict of learned Single Judge before higher forum then they cannot take a different stand in present case.

(j) That when the respondent SIDCUL took a policy decision and decided to restore all cancelled lease deeds on payment of restoration charges by those industrial units who were ready to pay restoration charges at the rate of 7.5% of base price of allotment of a particular industrial unit in relation to bulk cancellation lease deeds cases then in the present case also on the basis of parity, the respondent SIDCUL ought to have received the restoration charges in similar manner but similar treatment was not given to the appellant which leads to the litigation of second round.

(k) That when on the basis of aforesaid uniform policy decision being taken by the SIDCUL by which the industrial units whose lease deeds were

cancelled on the pretext that they had not commenced production within two years from the date of allotment, lease deeds were restored on payment

of restoration charges at the rate of 7.5% of base price of that particular unit then there was no harm was going to be prejudiced to the SIDCUL to

restore the plot of the petitioner on similar style but same was not done therefore in these circumstances the appellant was forced to litigate through

instant petition due wrong approach of the SIDCUL. Further for example if a particular unit obtained a plot at the base price of Rs. 400 per square

meter then at the time of restoration he has to pay restoration charges at the rate of 7.5% of Rs. 400 per square meter.

(o) That when the appellant vide letter dated 21-01-2010 prayed before the respondents for installments in making payment of restoration charges, the

respondent vide its office order dated 3.2.2010 for the first time replied and directed the appellant to deposit an amount of Rs. 1,56,62,861.14/- towards

restoration charges and further installments were also made but due to raising a huge demand by the respondents the appellant again represented and

asked them to accept restoration charges at the rate of 7.5% of base price of the appellant but said request was not acceded by the respondents then

feeling aggrieved a writ petition no. 942 of 2011 (M/S) was filed which was dismissed at admission stage without inviting counter affidavit and then

present SPA was preferred.

(q) That in aforesaid restoration policy itself it is mentioned that in Pantnagar due to large scale cancellation, restoration fee was charged at the rate of

7.5% of base price therefore in the present matter the respondents cannot demand restoration charges on the basis of current base price for allotment

so that the demand raised by the respondents in the tune of Rs. 1,56,62,861.14/- towards restoration charges is wholly illegal arbitrary as well as

discriminatory in nature because when the respondents had charges restoration charges at the rate of 7.5% of base price from other similar industrial

unit while restoring their plots in Pantnagar Industrial Area then they cannot demand different restoration charges on the basis of impugned policy

decision therefore on the ground of parity, the appellant is liable to pay restoration charges at the rate of 7.5% of base price.â??

24. Appellant also relies on paragraph 18 of the rejoinder affidavit, which reads as follows:

18. That the contents of para nos.36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52 of the counter affidavit are wrong,

misconceived hence denied and a suitable reply has already been extended in the preceding paragraphs. Further most of the industrial units in a whose

favour industrial plots were allotted could not start production as well as construction of their respective building structures in accordance with the

terms and conditions of the allotment letters as well as lease deeds due to the sole reason in all cases that physical possession was given too late

although allotment was made much earlier therefore the respondent SIDCUL started cancelling lease deeds of various units on the pretext that they

had not completed constructions activities nor started production within two years of allotment as per the terms and conditions envisaged in the

allotment orders and in doing so, in Pantnagar Industrial Area near about 40-50 allotments were cancelled in one go. Further lease deed of the

appellant was also cancelled on 15.01.2008 on similar grounds. Further other industrial units whose lease deeds as well as allotment orders were also

cancelled approached this Honâble Court by filing various writ petitions in which initially this Honâble Court disposed off some of the writ

petitions with observations that six months more time is given to these industries to start production after installing their units. But against said orders

by which this Honâble Court granted six months more time to the industries, the respondent SIDCUL preferred SLP before Honâble Apex

Court where initially stay order was granted in favour of the SIDCUL but finally all the SLPs were decided with the observations that the industries

whose lease deeds had been cancelled they shall move a fresh representation before the respondent SIDCUL who will take decision upon it within

stipulated period and as such matters were again remanded back before the respondent SIDCUL authority to decide the representations of all

aggrieved industrial units by providing opportunity of hearing to them. Thereafter the respondent SIDCUL in compliance of Honâble Apex

Court's directions provided opportunity of hearing to those aggrieved units and rejected some of the representations and maintained earlier

cancellation orders but in some cases restored their plots after charging restoration charges at the rate of 7.5% of base price of their allotment.

Further then some of the parties whose representations were rejected approached this Honâble Court by filing fresh writ petitions again and then

at this juncture this Honâ??ble High Court after hearing both side parties gave decisions in case of Haldiram case, Polar industries and Uttaranchal

Packaging Industries etc. in favour of those industries opining therein that these industries were also liable to get similar treatment as given to other

industries whose plots had been restored after charging restoration charges at the rate of 7.5% of base price of allotment and all these decisions were

given by this Honâ??ble High Court in the year 2010 and in those cases the argument of SIDCUL for charging restoration charges at current base

price was rejected therefore now in present controversy, the respondent SIDCUL cannot charge restoration charges at the rate of current base price

because the controversy is also similar and identical in nature. Further when the respondent SIDCUL accepted the decisions given in Haldiram case,

polar industries case and Uttaranchal packaging case and did not challenge the verdict of learned Single Judge before higher forum then they cannot

take a different stand in present case. Further when the respondent SIDCUL took a policy decision and decided to restore all cancelled lease deeds

on payment of restoration charges by those industrial units who were ready to pay restoration charges at the rate of 7.5% of base price of allotment of

a particular industrial unit in relation to bulk cancellation lease deeds cases then in the present case also on the basis of parity, the respondent SIDCUL

ought to have receive the restoration charges in similar manner but similar treatment was not given to the appellant which leads to the litigation of

second round. Further when on the basis of aforesaid uniform policy decision being taken by the SIDCUL by which the industrial units whose lease

deeds were cancelled on the pretext that they had not commence production within two years from the date of allotment, lease deeds were restored

on payment of restoration charges at the rate of 7.5% of base price of that particular unit then there was no harm was going to be prejudiced to the

SIDCUL to restore the plot of the petitioner on similar style but same was not done therefore in these circumstances the appellant was forced to

litigate through instant petition due wrong approach of the SIDCUL. Further for example if a particular unit obtained a plot at the base price of Rs.

400 per square meter then at the time of restoration he has to pay restoration charges at the rate of 7.5% of Rs. 400 per square meter. Further when

the plot of the petitioner/appellant was also cancelled on the similar ground due to not starting production within two years from allotment and said

cancellation order was passed on 15-1-2008 Then the appellant who was aware about restoration charges of 7.5% of base price also made application

for the purpose of restoration of its cancelled plot then on 07.03.2008, the respondent issued a letter mentioning therein request of the appellant can

only be processed for restoration as per current restoration policy of SIDCUL apart from other three mandatory conditions. Further in compliance of

said letter dated 7-3-2008, the appellant submitted bank guarantee of Rs. 5 Lakhs as well as also completed other two formalities but towards

restoration charges, the petitioner being a small business unit made an application for waiver of restoration charges but same was not accepted and on

the other hand a huge demand was raised, feeling aggrieved from said action, the appellant preferred a WPMS No. 387 of 2009 which was dismissed

on 29.12.2009 with the observation that the plot of the petitioner may restore if he pay restoration charges as per letter dated 7-3-2008 within a period

of two months from the date of passing of the order. Further in the present special appeal, the respondent nos. 2 to 5 has filed its counter affidavit and

under para 5 of the counter affidavit, the respondent has tried to justify its stand regarding demand of restoration charges and in doing so, the

respondents has relied upon the office order dated 2-11-2006 annexed as ANNEXURE-11 to the counter affidavit in which policy for restoration of

cancelled plots has been annexed and the categorical stand of the respondents is that they are demanding restoration charges as per current base

price for allotment as prevailing in the year of 2010 when they are going to restore the plot of the appellant and further break up of demanded amount

towards restoration charges has also been given. The aforesaid assertion made by the respondents in the counter affidavit in relation to demand of

restoration charges is at current base price wholly illegal arbitrary and not sustainable in the eye of law due to the reason that when in case of other

similar units, the respondents charged restoration charges at the rate of 7.5% of base price of allotment and further in similar cases this issue has

already been decided finally by this Honâ??ble High Court in Haldiram Case, Polar Case & Uttaranchal Packaging Case then the respondent cannot

demand higher rate from the appellant herein. Further in aforesaid restoration policy itself it is mentioned that in Pantnagar due to large scale

cancellation, restoration fee was charged at the rate of 7.5% of base price therefore in the present matter the respondents cannot demand restoration

charges on the basis of current base price for allotment so that the demand raised by the respondents in the tune of Rs.1,56,62,861.14/- towards

restoration charges is wholly illegal arbitrary as well as discriminatory in nature because when the respondents had charges restoration charges at the

rate of 7.5% of base price from other similar industrial unit while restoring their plots in Pantnagar Industrial Area then they cannot demand different

restoration charges on the basis of impugned policy decision therefore on the ground of parity, the appellant is liable to pay restoration charges at the

rate of 7.5% of base price.â??

25. We must now deal with the argument relating to discrimination. In paragraph 35 of the writ petition, what is alleged is, essentially, without giving

any details, that there has been discrimination and others have been given the benefit of 7.5 per cent of the value of allotment. In the rejoinder

affidavit, no doubt, appellant has produced certain judgments. We must, therefore, deal with the judgments, which are referred to by the appellant, and

ascertain whether the appellant is justified in relying on those judgments.

26. In the decision in M/s Haldiram Snacks Pvt. Ltd. vs. State of Uttarakhand, reported in (2009) 1 UD 355, a learned Single Judge of this Court, as

His Lordship then was, and, in fact, who is none other than the learned Judge who pronounced the judgment in the case of the appellant in the earlier

round, namely, in Writ Petition (M/S) No. 387 of 2009, was dealing with the case of M/s Haldiram Snacks Pvt. Ltd. That was a case, where the

petitioner therein sought to challenge orders dated 07.07.2006 and 02.11.2007, which were, respectively, the orders passed cancelling the allotment

and rejecting the representation of the petitioner. It is relevant to note paragraph 12 of the said judgment, which reads as follows:

â??12. After hearing learned counsel for the parties, this Court is convinced that petitioner has not been given fair opportunity to get his plot restored

in the manner the opportunity was given to others. Apart from this, perusal of the impugned order dated 02.11.2007, shows that before deciding the

representation of the petitioner, no inspection of the plot in question was made by the respondent No. 3 or his nominee, as mentioned in direction No. 4

in order dated 01.08.2007, passed by the Apex Court in civil appeal No. 3402 of 2007. It is pertinent to mention here that quoting said order, Division

Bench of this Court decided writ petition No. 855 of 2006 (M/B), filed by the

petitioner with the direction that respondent No. 3 i.e. Managing Director of SIDCUL shall decide the petitioner's representation by a speaking order after providing opportunity to the petitioner as mentioned in the above quoted order of Apex Court. As such, though the petitioner was not a party in civil appeal No. 3402 of 2007, before the Apex Court, the representation filed by the petitioner was to be disposed of in terms of the direction of the Apex Court, as directed by Division Bench of this Court in the above mentioned writ petition. This Court, thinks it just and proper to mention here that respondent No. 3 while deciding the representation of the petitioner, has completely ignored the fact that the petitioner had already raised construction and spent a huge sum of Rs. 5.5 crores in establishing the factory and still he was not given proper opportunity to get its plot restored as against some other entrepreneurs who had not even raised any construction except the boundary wall in their plots within a period of two years by which they should have started their construction. This fact is evident from annexure-S.A. 1 to the supplementary affidavit dated 08.05.2008, filed by the petitioner, which at its page 10 shows the names of 29 entrepreneurs whose plots were restored, after cancellation. The entrepreneur at serial No. 9 -M/s Real Innerspring Technology Pvt. Ltd, and allottee of plot No. 58 in Sector 6, had only done work up to the plinth level, entrepreneur at serial No. 11-Mohinder Sharma, allottee of plot No. 40, sector 6, had raised boundary wall upto plinth level only, serial No. 14-Mahalaxmi Associates, allottee of plot No. 5 of Sector 7, who had raised boundary wall only, serial No. 20 I.B. Services, allottee of plot No. 57 of Sector 6, had raised only boundary wall, and serial No. 24 "Seth Sham Narain Gupta & Sons, allottee of plot No. 92 in Sector IIDC, had done no construction work and only excavation, were allowed to get their plot restored. Learned counsel for respondent argued that the petitioner had not complied by making formal application with prescribed undertaking, giving bank guarantee of Rs. 5 lakhs and depositing levy at the rate of 7.5 % at the rate prevailing rate, as such, he cannot claim parity with the 29 entrepreneurs, whose plots were restored. However, as discussed above, this Court finds that petitioner was not communicated of scheme of restoration (not even through the court by stating so regarding said fact in the counter affidavit in writ petition No. 855 (M/B) of 2006), it cannot be said that it failed to fulfill the

conditions in getting its plot restored.â??

27. On this basis, the learned Single Judge specifically quashed the orders, which were challenged therein and the writ petition was allowed. The

petitioner therein was allowed to move for restoration of his plot by making an application with the prescribed undertaking, bank guarantee of Rs.5

lacs and depositing levy at the rate of 7.5 per cent at the then prevailing rate (as accepted from the other 29 entrepreneurs) within a period of one

month from the date of the judgment and the restoration was to be considered within a period of two months thereafter, in the manner other 29

entrepreneurs were allowed under the policy dated 10.08.2007.

28. We may, at once, notice certain aspects in that case. The petitioner therein was found to have already raised the construction and spent a huge

sum of ` 5.5 crores in establishing the factory. He was still not given proper opportunity to get the plot restored as against some other entrepreneurs.

In fact, it is noted in paragraph 12 that those other entrepreneurs had not even raised any construction, except the boundary wall, within a period of

two years. Lack of substantive nature of work done by the others (apparently, 29) was taken into consideration in comparison to the work, which was

done by the petitioner therein.

29. Contrast this state of affairs with the findings, which were rendered by the learned Single Judge in the earlier round of litigation launched by the

appellant, namely, Writ Petition (M/S) No. 387 of 2009. Therein, as already noted, appellant had challenged order of cancellation of allotment dated

15.01.2008 and also order dated 07.03.2008 by which the terms, subject to which restoration would be provided, were contemplated. In the said

judgment dated 29.12.2009, the learned Single Judge did not find merit in the argument of the appellant in regard to the order cancelling the allotment.

This is what the learned Single Judge had to say regarding the same: â??7. It is pertinent to mention here that the allotment of plot to various

commercial establishments and companies was made by respondents for speedy industrialization of the new State of Uttarakhand. One of the

conditions on which allotment of plot was made to the allottees was that they had to set up an industry and start production within a period of two

years from the date of allotment. It is also not disputed in the present case that the petitioner could not start production within a period of two years as

required under the terms of allotment. It is alleged by the petitioner that he could not set up an industry within a period of two years because of the fault on the part of the respondents. On the other hand respondents denied any fault on their part as after the allotment of plot, possession of plot was handed over to the petitioner in time. As per the petitioner himself the allotment order was issued on 13.08.2005 and possession of the plot was given to the petitioner on 12.05.2006 after one year the petitioner wrote a letter to the respondents to supply original lease deed, so that the amount of loan may be received from the Bank. From the record, it appears that the reply of said letter was given to the petitioner on 05.12.2007, copy of which is Annexure-8 to the writ petition. Thereafter, petitioner further sought extension of period of construction of his factory on 27.12.2007. The impugned order dated 15.01.2008, shows that on 18.12.2007 when the Regional Manager of SIDCUL inspected the site he found that the petitioner had not even started construction of the factory, what to say of the production to be started. In these circumstances, the lease in favour of the petitioner was cancelled. Having heard learned counsel for the parties and after going through the papers on record, this Court does not find any error of law committed by the respondent No.3 in cancelling the plot as the petitioner failed to start even construction within two years while he should have started production within said period.â??

30. The learned Single Judge also did not find merit in the challenge against order dated 07.03.2008. What is relevant is that the learned Single Judge noted that the appellant had not even started construction of the factory, leave alone production being started, as on 18.12.2007 though the appellant was given possession of the plot on 12.05.2006. We may also notice that, unlike in the judgment in Haldiramâ??s case (supra), where the learned Single Judge specifically directed that restoration charges are to be calculated at the rate of 7.5 per cent of the then prevailing rate, in the earlier round, in paragraph 9 of the judgment, the writ petition came to be dismissed and the observation was, however, made that the plot may be restored to the appellant if it pays the restoration charges and complies with the conditions of the impugned order, namely, order dated 07.03.2008 within a period of two months from the date of the judgment. In the said judgment, the learned Single Judge did not indicate as to what was to be the basis for

calculating the restoration charges. Certainly conspicuous by its absence is the direction to calculate the restoration charges at the rate of 7.5 per cent, as was done in the case of Haldiram (supra), which we have noted. No doubt, it could be said that, in the penultimate paragraph of the judgment, which we have extracted also, the court, after noting that there is nothing unlawful in order dated 07.03.2008, did have in mind, apparently, the argument of the respondents that all similarly situated allottees were directed to comply with the conditions after making the restoration and making deposit of restoration charges and many of them, who had complied with it, got the allotment restored.

31. Be it noted also that the judgment in Haldiram's case (supra) came to be rendered on 18.12.2008; whereas, the judgment in the appellant's

own writ petition, namely, Writ Petition (M/S) No. 387 of 2009 came to be rendered on 29.12.2009, incidentally, by the very same learned Judge.

Though an attempt was made, apparently, by the appellant to take advantage of the judgment, which was rendered in Haldiram's case (supra), the

learned Single Judge was, apparently, not inclined, is what we would think is the result of reading of the judgment.

32. In paragraph 4 of the judgment rendered in Writ Petition (M/S) No.387 of 2009 filed by the appellant, we notice the following case set-up:

4. It is further pleaded that the petitioner only wants that the restoration charges be waived of but such favour cannot be given to the

petitioner, as the policy is applicable to one and all alike. It is pleaded that the petitioner has sought parity with the case of M/s Haldi Ram &

Company, but that case was on a different footing.

33. We also notice that, in paragraph 5 of the judgment, the respondents disputed the claim based on Haldiram's case (supra) on the basis that the

said case was different as the opportunity was not given to the said allottee. The learned Single Judge has, apparently, not thought it fit to extend the

very same benefit, as was given in Haldiram's case (supra), as we have already noticed from the relief, which was granted. Therefore, the case,

which is sought to be built around the decision in Haldiram's case (supra), may not be available in the second round of litigation, which is what we

are dealing with in this appeal.

34. No doubt, we do notice that there is reference, in Haldiram's case, to 29

other entrepreneurs, who were given favourable treatment as is sought for by the appellant, and which carried considerable weight in the Court arriving at the conclusions and granting the relief in Haldiram's case (supra). At this juncture, it is also apposite, therefore, to refer to the case that was sought to be projected in the rejoinder affidavit filed in Writ Petition (M/S) No. 387 of 2009, which, though not on record, was made available by the learned counsel for the respondents. Therein, it appears that the appellant did make an attempt to refer to the case of 29 allottees, who were given, apparently, the treatment, which is favourable to them, as compared with what has been done to the appellant. When the present writ petition was, however, filed, appellant has not sought to introduce pleadings alleging discrimination vis-à-vis the 29 persons. Apparently, the learned Single Judge, in the earlier round of litigation, namely, Writ Petition (M/S) No. 387 of 2009, has also not given relief to the appellant based on the plea of discrimination vis-à-vis the 29 persons. As we have noted, this plea as against the 29 persons is not specifically put forth in the writ petition as such.

35. The next judgment, which is relied on by the appellant, is judgment dated 21.04.2010 passed in M/s Uttaranchal Packaging Pvt. Ltd. vs. State of

Uttarakhand & others, Writ Petition (M/S) No. 443 of 2008. The learned Single Judge therein referred to the facts, which included the litigation in the

Apex Court and the order passed by the Apex Court, which is already referred to by the appellant in the rejoinder affidavit and which we have also

referred to and extracted earlier in our judgment. It is relevant to notice the following paragraphs from the said judgment:

11. The factual aspect mentioned above has not been disputed. According to the respondents, the petitioner had not taken possession within the stipulated period of 60 days and construction was not started within 60 days and production had not commenced.

12. So far as the contention of the respondents that the petitioner ought to have taken possession within a period of 60 days from the date of initial allotment of plot is concerned, it is pertinent to mention that the respondent authority had changed the plot due to change in layout plan, therefore, this contention is not acceptable.

13. The contention of the learned counsel for the respondents-SIDCUL is that in

any case, the production has to be commenced within two years

from the date of allotment. The possession was given after changing the plot from plot no. 6 to plot no. 36 by the respondent authority on 4-3-2006 and

this fact is not disputed by the petitioner.â??

36. Finally, the relief, which was granted by the learned Single Judge, is contained in paragraph 18 of the judgment, which reads as follows:

â??18. The writ petition is allowed with the following directions:-

1.The impugned orders dated 10-10-2007 and the order dated 15-1-2008, rejecting the representation of the petitioner, passed by the respondents are

quashed.

2. The petitioner shall be allowed to move for restoration of his plot by making an application by depositing extra charge @ 7.5% of the amount of

base rate of the year 2004.

3. On depositing the amount, the lease shall continue for the remaining period of lease.

4. The petitioner shall start commercial production of the items mentioned in the lease within a period of nine months from the date of this order.â??

37. Therefore, that was a case, where the learned Single Judge found that the authority has changed the plot due to change in the layout plan; the

possession was found to have been given after changing the plot on 04.03.2006, which was not disputed by the petitioner; and, more importantly, order

dated 10.10.2007, which was, apparently, the order by which restoration charges at current base rate were demanded, and also order dated

15.01.2008 directing that restoration would be allowed on payment of Rs.19,40,000/- were quashed and, specifically, it was directed that the petitioner

therein was to move for restoration by making an application by depositing extra charges at the rate of 7.5 per cent of the amount of base rate of the

year 2004.

38. We have noticed that, in the earlier writ petition filed by the appellant, namely, Writ Petition (M/S) No. 387 of 2009, the writ petition was not

allowed; on the other hand, it was dismissed. We have also noticed the finding that, as on the date which was noticed, the appellant had not even

started the construction. The writ petition was dismissed and the only observation, which was made, no doubt, was that, on payment of restoration

charges and on compliance with order dated 07.03.2008, within a period of two months, the restoration was to be allowed. We would think that the

appellant cannot be permitted to seek support from the judgment in Writ Petition (M/S) No. 443 of 2008 for the reason that, on merits, it is on a

different footing and the relief, which was granted therein, was different. In the present case, we have to take the judgment passed in the earlier writ

petition filed by the appellant, wherein it had called in question the order cancelling the allotment and also the order settling the terms for allotment.

This is not a case, where the appellant was not aware of the restoration policy. It, in fact, was the case in *Haldiram* (supra).

39. The next judgment relied on by the appellant is judgment dated 28.07.2010 passed in *M/s Polar Industries Ltd. vs. State of Uttarakhand & others*,

Writ Petition (M/S) No. 735 of 2008. Therein, a perusal of the judgment would show that the learned Single Judge, after setting out the pleadings and

referring to the orders passed by the Apex Court and the order rejecting the representation and after elaborate consideration of the matter, has given

six reasons, in the light of which, he felt persuaded to grant relief to the petitioner therein. Firstly, it was noted that the lease deed could not be

executed as the circle rates could not be finalized. It is noted that, as a consequence of the efforts of the petitioner, he has made an investment of

more than Rs.2.5 crores, including the cost of the land, up to 30.04.2007. Thereafter, the other grounds have been enumerated. The impugned order,

by which the plea for restoration stood rejected, was found unsustainable. It was, no doubt, noted in paragraph 35 as follows:

“35. As mentioned above, the SIDCUL had adopted a policy for restoring the allotment orders of some other entrepreneurs by charging restoration

levy at the rate of 7.5% of the then prevailing rate, therefore, to do complete justice to the parties, it would be in the fitness of things that the petitioner

should be directed to deposit extra charge at the rate of 7.5% of the base rate of the year 2004.”

40. Finally, the relief, which was actually granted, is seen in paragraph 36, which reads as follows:

“The writ petition is allowed with the following directions:-

1. The impugned order dated 10-10-2007 rejecting the representation of the petitioner, passed by the respondents (Annexure-1 to the writ petition) is

quashed.

2. The petitioner shall be allowed to move for restoration of his plot by making an application by depositing extra charge @ 7.5% of the amount of

base rate of the year 2004 within a period of two months from today.

3. On depositing the amount, the lease shall continue for the remaining period of lease.

4. The petitioner shall start commercial production of the items mentioned in the lease within a period of six months from the date of this order.â??

41. Therefore, this was also a case, where the petitioner therein was found to have made out a good case in regard to his conduct regarding setting-up

of industry and complying with the conditions. On the said basis, it was that the petitioner was directed to move for restoration of his plot by making an

application by depositing extra charges at the rate of 7.5 per cent of the amount of base rate of the year 2004 within a period of two months.

42. Yet another judgment, which is, no doubt, relied on by the appellant is the judgment dated 23.03.2010 passed in M/s Falcon Contracts Pvt. Ltd. vs.

State of Uttarakhand & others, Writ Petition (M/S) No. 1008 of 2008. Therein, the learned Single Judge noted that the petitioner was only seeking

quashing of the order by which his representation, made pursuant to the directions of the Apex Court, was rejected and the petitioner is not seeking to

quash the cancellation of the allotment. Therefore, this could also be taken to be a case, where the cancellation as such was accepted by the petitioner

therein. However, apparently, the reasons given in justification for cancelling the plot did not appeal to the court at all. We may refer to the following

finding in the said judgment:

â??With regard to the findings of the authority justifying their stand for cancelling the plot and lease deed, the Court is of the opinion that the action of

the respondents was wholly arbitrary. Reliance on Clause (2) and (3) of the undertaking was perverse and could not be taken into consideration. The

reason is not far to see. In my opinion, Clause (2) and (3) could not be acted upon by the petitioner. For ready reference, Clause (2) and (3) of the

undertaking is quoted hereunder:-

â??2. That I/ We shall take the possession of the plot within 60 days of allotment after executing the lease deed and fulfilling the other requirements.

3. That I/We shall start construction on the plot within 90 days of the allotment

and comply with the pre-requisites rules and regulations for such construction.â??

The undertaking was given on 01/10/2005 and under Clause (3), construction was to start within 90 days from the date of the allotment order. This clause could never be enforced, in as much as, the period of 90 days had long expired on or before the date of the undertaking. Such clause, in my opinion, is a void clause and could not be enforced. Similarly, Clause (2) required the petitioner to take possession of the plot within 60 days. The petitioner was not at fault. No doubt, initially, the petitioner did not deposit the requisite amount and, consequently, could not take possession nor execute the lease deed. The respondents took action and cancelled the plot. But subsequently, it was restored on payment of certain charges.

Thereafter, notice dated 1st April, 2006 was issued directing the petitioner to execute the lease deed within a week and based on that notice, the lease deed was executed on 7th April, 2006. At this stage, the delay, if any, in the execution of the lease deed stood condoned and obliterated and such delay prior to 7th April, 2006 could no longer be considered by the respondents as a ground for cancellation of the allotment as well as of the lease deed.

In the light of the aforesaid, the Court is of the opinion that Clause (2) and (3) of the undertaking could no longer be invoked. The undertaking was only operative till the date of the execution of the lease deed which had been executed subsequently. The undertaking comes to an end and the terms of the lease deed comes into play, which alone could be invoked. Even otherwise, the Court is of the opinion that the petitioner had no choice and was made to sign on the dotted line giving the undertaking which was given to the petitioner on a prescribed format on the dictation of the respondents at the time when the plot was being restored. In my view, such undertaking being demanded by the respondents is opposed to public policy as defined u/S 23 of the Contract Act. The Supreme Court in a case of Central Inland Water Transport Corporation Ltd. and another Vs. Brojo Nath Ganguly and another, AIR 1986 SC 1571 has held that a weaker party who has no choice in the matter and is made to give his assent and is made to sign on the dotted line in the prescribed standard form or to accept a set of rules as part of the contract, howsoever unfair, or unreasonable and

unconscionable a Clause in that contract or form or rules may be, such type of contracts are unfair and unreasonable which shocks the conscience of

the Court and since it is opposed to public policy, such, terms are to be adjudged void. In the light of the aforesaid, this Court is of the opinion that the

reliance on the undertaking given by the petitioner could not be invoked or relied upon which in any case had come to an end upon the execution of the

lease deed.â??

43. Thereafter, the learned Single Judge referred to various clauses and, finally, found that the action of the respondents cancelling the plot was wholly

arbitrary. It was also found that the petitioner therein had spent a sum of ` 35 lacs for making the construction. The court drew support from the

judgment in Haldiramâ??s case (supra) finding that, in similar circumstances, the plots of 29 entrepreneurs were cancelled on similar grounds which

had been restored, but, in the case of the petitioner, the plot was not restored and was cancelled for reasons best known to the respondents. It was

found that the cancellation was perverse. The finding that the petitioner therein had violated the terms and conditions of the undertaking, was found to

be patently erroneous. The finding that the petitioner failed to utilise the plot as per the allotment order, was also found to be patently erroneous.

Thereafter, the Court moulded the relief as follows:

â??In the light of the aforesaid, this court has no hesitation in holding that the impugned order rejecting the representation of the petitioner cannot be

sustained and is quashed. The writ petition is allowed. A writ of mandamus issued to the respondents to re-consider the representation of the petitioner

and restore the plot and issue a time bound programme for the completion of the construction and for the start of the commercial production. Such

order shall be passed by the respondents within six weeks from the date of the production of a certified copy of the order. In the facts and

circumstances of the case, the parties shall bear their own cost.â??

44. It is, in this regard, that Mr. Jitendra Chaudhary would submit that, in this case, the Court may take notice that the learned Single Judge did not

direct that restoration charges are to be fixed on the basis of 7.5 per cent and, yet, even in the case of the said petitioner, benefit of 7.5 per cent of the

allotment value was accorded.

45. It may not be a fair reading of the judgment and we may not be also doing

justice to the respondents, if we read the last portion of the judgment in isolation and also the conduct of the respondents in giving benefit of 7.5 per cent without considering the backdrop in which the direction was given.

We have already noticed the said backdrop, namely, that the court found that the order of cancellation was patently erroneous; whereas, contrast this

with the finding rendered by the learned Single Judge in the earlier round of litigation, namely, in Writ Petition (M/S) No.387 of 2009 vis-à-vis the

appellant; we have noticed the findings and we need say only that the learned Single Judge was not impressed with the case set-up against the order

cancelling the allotment and also the order dated 07.03.2008. The writ petition filed by the appellant, as we have already noted, was dismissed.

46. Therefore, we cannot allow the appellant, in other words, to succeed in this appeal on the basis of the judgments, which have been specifically

cited before us, as the facts are different.

47. It is true that others may have been given the benefit of lesser rate, which is mentioned in the policy; but, in regard to the appellant before us, we

have noticed the specific background of the facts and the result of the earlier litigation and the consideration of relief to be granted cannot be divorced

from the same.

48. Another plea raised by Mr. Jitendra Chaudhary, learned counsel for the appellant is that, going by the counter affidavit, the amount of restoration

charges has been arrived at on the basis of the value in the year 2010. According to him, the amount should have been calculated with reference to

the date on which the cancellation of the allotment took place, namely, the year 2008. This is a case, where the appellant challenged the order by

which his allotment was cancelled in the year 2008. The challenge against the same was unsuccessful, as we have noted. In the same writ petition,

undoubtedly, he also challenged the terms of the allotment dated 07.03.2008, which also we have noted. The conditions attached to the said order

were not found to be unreasonable by the learned Single Judge in the earlier round, namely, Writ Petition (M/S) No. 387 of 2009 and, finally, the result

was that the writ petition was dismissed on 29.12.2009. Appellant carried the matter in appeal, which was unsuccessful. Acting on the strength of the

judgment passed by the learned Single Judge, appellant also moved the respondents in January, 2010. There is, in fact, a case for the respondents that,

under the restoration policy, restoration is to be granted if it is sought within 45 days of the cancellation; but the appellant was permitted to move for

restoration on conditions that he pays the restoration charges and complies with the conditions within two months. Though it is true that the learned

Single Judge has made reference to the stand of the respondents that all similarly situated allottees were also to comply with the conditions and deposit

the restoration charges in order to get the allotment restored, the plea of discrimination and as to what would be the restoration charges as such, is not

expressly decided. Apparently, the learned Single Judge was also not persuaded to grant the benefit of restoration at the same rates, as was done in

Haldiram's case (supra), of which, he was the author. In fact, Annexure No. 15 appears to be formulated sometime in the year 2006. It

contemplates that, on approval of restoration, the amount has to be paid in the manner provided in clause (b), which we have extracted. Therefore, in

such circumstances, we cannot say that the restoration charges are to be calculated with reference to the value in the year 2008. It is not a case,

where the appellant was not made aware of the restoration policy. The terms of the restoration policy were made known to the appellant in 2008; but,

the appellant chose, instead of accepting it, to challenge it. Had it been accepted in the year 2008, certainly, the rates in 2008 would have been

applicable; but, in this case, instead of accepting it, appellant chose to litigate over the matter. The litigation came to an end in December, 2009 and,

finally, the benefit of restoration was made available in the year 2010. If that be so, calculation of the amount in terms of the policy in the year 2010

cannot be faulted.

49. There is a third contention taken by the appellant, namely, that, in Pant Nagar Industrial Estate, there is a different policy in place. The following is

the paragraph in Annexure No. 15 to the writ petition, which is emphasized upon by the appellant and which we have already referred to:

“In Pantnagar, however, due to large scale cancellations and in a large number of cases the current base price and allotment price being the same,

the original policy of imposing 7.5% of base price as restoration fees has been imposed. However, in addition, a Bank Guarantee with specified time

frames for construction has been obtained to ensure timely compliance.”

50. There are two different aspects to this. It is true that, in Pant Nagar, there is

mention of the large scale cancellations and the current base price and the allotment price being the same, the original policy of imposing 7.5 per cent of the base price as restoration fees being imposed. The actual words are "has been imposed". Therefore, this could be understood as meaning that, referring to a situation, where, in the wake of large scale cancellations and the current base price and the allotment price also being the same, the original policy of imposing 7.5 per cent of the base price as restoration fees was allowed. In the present case, when the restoration was actually finally sought for in terms of the judgment passed by the learned Single Judge in Writ Petition (M/S) No. 387 of 2009, namely, in the year 2010, it is quite clear that the base price and the allotment price were not the same. There is a huge escalation in price in terms of price of land. We may also notice that, in fact, the cancellation of the appellant's allotment took place in the year 2008 and not in the year 2006 or before, which could have been subject matter of the paragraph, which we have noticed.

Secondly, it is also possible to interpret the aforesaid paragraph with reference to what is stated subsequently in clause (b), namely, that it is decided that restoration would be allowed on the basis of the current base price for allotment or 7.5 per cent of the current SIDCUL base rate of allotment, whichever is higher. In other words, it is this, which is finally decided. In this state of affairs, we may not be justified in accepting the case of the appellant on the said basis also. In fact, in this regard, we may also draw support from the second relief, which is that the charges must be paid as per the policy (Annexure No. 15) and we cannot, possibly, hold that the charges, which have been demanded, are not in terms of Annexure No. 15 policy.

51. We cannot entirely overlook the fact that, upon being served the demand, appellant had sought benefit of installment facility to pay-off the amount. No doubt, it is subsequently that the appellant has filed the present writ petition. In fact, the respondents accepted the request and demanded a certain amount by way of installment to be paid within 15 days. No doubt, where the case of violation of fundamental rights is established, there can be no waiver.

52. In such circumstances, finding no merit in the appeal, we dismiss the appeal. No order as to costs.