REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13940 OF 2015
[ARISING OUT OF S.L.P. (C) NO. 28415 OF 2011]

LALARAM & OTHERS .....APPELLANTS

VERSUS

JAIPUR DEVELOPMENT AUTHORITY & ANR. ..RESPONDENTS

WITH

CIVIL APPEAL NO. 13941 OF 2015
[ARISING OUT OF S.L.P. (C) NO. 29515 OF 2011]

CHOTU RAM .....APPELLANT

VERSUS

JAIPUR DEVELOPMENT AUTHORITY & ANR. ..RESPONDENTS

WITH

CIVIL APPEAL NO. 13942 OF 2015
[ARISING OUT OF S.L.P. (C) NO. 36111 OF 2011]

KANA RAM & OTHERS .....APPELLANTS

VERSUS

JAIPUR DEVELOPMENT AUTHORITY & ANR. ..RESPONDENTS

WITH

CIVIL APPEAL NO. 13943 OF 2015
[ARISING OUT OF S.L.P. (C) NO. 36175 OF 2011]

MADAN LAL & OTHERS .....APPELLANTS

VERSUS

JAIPUR DEVELOPMENT AUTHORITY ..RESPONDENT

WITH

CIVIL APPEAL NO. 13944 OF 2015
[ARISING OUT OF S.L.P. (C) NO. 36179 OF 2011]

RUKMANI DEVI & OTHERS .....APPELLANTS

VERSUS

JAIPUR DEVELOPMENT AUTHORITY & ANR. ..RESPONDENTS

J U D G M E N T

AMITAVA ROY,J.

Leave granted.

2. A procrastinated legal tussle spanning over three decades has spiralled up the judicial tiers to this Court seeking a quietus to the issue of adequate reparation of the appellants, consequent upon the compulsory acquisition of their lands for the Indian Army for its "Field Firing Range" in the year 1981.

3. The debate centres around the grant of 15% developed residential land in lieu of compensation which, as perceived by the oustees, had been promised by the Urban Development Department of the State Government by its proclaimed policy dated 13.12.2001. The State of Rajasthan (for short, hereinafter to be referred to as "the State/State Government") and the Jaipur Development Authority (for short, hereinafter to be referred to as "JDA") have taken turf together

to successfully laciniate the appellants' identification of such land, thus impelling them to impeach the impugned judgment and order dated 12.8.2011 rendered by the High Court of Judicature for Rajasthan upholding the refutation. Since the verdict assailed is common in all the appeals, the instant adjudication would suffice for the analogous disposal thereof.

4. We have heard Dr. Rajeev Dhawan and Mr. Dhruv Mehta, learned senior counsel for the appellants in Civil Appeals arising out of S.L.P.(C) Nos. 28415 of 2011 and 29515 of 2011, Ms. Bina. Madhavan, learned counsel for the appellants in Civil Appeals arising out of S.L.P. (C) Nos. 36111 and 36179 of 2011, Mr. Sakal Bhushan, learned counsel for the appellants in Civil Appeal arising out of S.L.P. (C) No. 36175 of 2012, Mr. C.A. Sundaram, learned senior counsel for the respondent No. 1 and Mr. S.S. Shamshery, learned counsel for the respondent No. 2.

5. Filtering out the unnecessary details, the indispensable facts are that the lands of the appellants situated at Village Boytawala, District Jaipur was acquired by the State under the Rajasthan Land Acquisition Act, 1953 (for short, hereinafter to be referred to as "Rajasthan Act") and the Notification under Section 4 thereof to this effect was issued on 8.5.1981. To reiterate, the land was acquired for the purpose of the Army for its "Field Filing Range".

The award under the Rajasthan Act was passed by the Land Acquisition Officer on 26.3.1983 and the possession of the land was taken over on 26.3.1983. Though the compensation was awarded by the Land Acquisition Officer @ Rs. 1500 per bigha, on reference being made under the aforementioned statute, the Reference Court enhanced the same to Rs. 15000/- per bigha by its decision dated 11.4.1994. The determination of market value of the lands made by the Reference Court was unsuccessfully challenged by the Authority and its appeals were dismissed by the High Court on 30.8.2000. The compensation awarded at Rs. 15000/- per bigha, thus attained finality. Compensation, the above notwithstanding, was deposited in the court concerned @ Rs. 1500 per bigha on 11.10.2001. Thus, the amount of compensation deposited was not at the enhanced rate fixed by the Reference Court and affirmed by the High Court.

6. Meanwhile, by circular No. F.6(19)UDH/3/89, Jaipur dated 21.9.1999 issued by the Government of Rajasthan, Urban Development and Housing Department, it was notified by the State Government that it had taken a decision with reference to the earlier circulars, as mentioned therein, that developed land equivalent to 15% of the area required, may be given to the khatedars/land owners in lieu of the land being acquired/held under acquisition/surrendered, as the case may be, in land acquisition

cases for commercial purposes. A meeting, thereafter of a High Powered Body under the chairmanship of the Minister of the Department of Urban Development, Rajasthan was held on 18.10.2001 in which it was discussed that in several cases of land acquisition, though award had been passed, the compensation had not been paid to the land owners. It was decided that, in cases where compensation amount awarded had not been paid, though award had been passed, one more opportunity to the khatedars to opt for developed land ought to be afforded and on the basis of the merit of such claims, 15% developed land be allotted to them. The option was made valid till 31.3.2001 and it was resolved that the allotment of land would be made through the allotment committee of the concerned organization. As the minutes of the said meeting would reveal, it was resolved as well that the developed land in lieu of the acquired land would be usually allotted only in the scheme area and at the place where the land acquired was situated and if it was not possible to develop the scheme within the fixed period of five months or if it was not possible to give the land in the same area, only then the land would be allotted in some other area. It was however underlined, that the concerned committee would as far as possible make an endeavour to allot such land to the land losers near the scheme area.

7. The circular No. F6(19)/UDD/89, Jaipur dated 13.12.2001 occupying the centre stage of the debate was thereafter issued by the Under Secretary to the Department of Urban Development with reference to the circular/notification No. F.6(9)/UDH/89 dated 21.9.1999, adverted to hereinabove. The said circular took note of the pendency of land acquisition matters in which, though award had been passed but compensation could not be paid to the land owners. It noted as well, that said land owners in the past could not submit their options within the time prescribed due to lack of information about the provision of allotment of developed land in lieu of cash compensation. The circular recorded the decision of the State, to the effect that in old cases in which award had been passed but compensation could not be made to the khatedars, one more opportunity ought to be granted to them. As a corollary, thereby the khatedars/land owners were left at liberty to exercise their option till 28.2.2002 to be allotted 15% developed land in the scheme area by the allotment committee of the concerned organization, after the approval from the State. The composition of the Committee in the eventualities as mentioned therein was also delineated. The conditions for allotment required, inter alia, that the land to be allotted was to be developed residential land located "normally in the same scheme area and at the very place from where the land had

been acquired" and not a commercial land.

8. Admittedly, the appellants exercised their options and submitted their applications within the time allowed for being allotted 15% developed land in lieu of the compensation payable to them. They did so in writing on 15.1.2002 whereby in the applications addressed to the concerned authority, they recorded their request for 15% developed land in Vidyadhar Nagar Scheme.

9. While the matter rested at that, the JDA on 17.5.2003 issued an auction notice for sale of Group Housing plots in Vidyadhar Nagar Scheme. This was challenged before the Appellate Tribunal, Jaipur Development Authority Jaipur (for short, hereinafter to be referred to as "the Tribunal") under Section 83(8)(a) of the Jaipur Development Authority Act, 1982 (hereinafter, in short to be referred to as "JDA Act") , inter alia, alleging discrimination on the ground that persons similarly situated like the appellants, had been allotted developed lands in Vidyadhar Nagar Scheme, while they were sought to be deprived by the assailed initiative to auction the land within the said scheme. The Tribunal, by its ruling dated 18.8.2003, annulled the auction notice and held that the JDA would not sell or auction the plots mentioned therein, till the appellants were allotted 15% developed land in the Vidyadhar Nagar Scheme. The Writ Petition filed by the JDA before the High Court impugning the above decision

of the Tribunal was dismissed on 4.1.2005.

10. Subsequent thereto, on 1.7.2005, the Deputy Secretary to the Government of Rajasthan, Nagariye Vibhag, addressed a letter to the Commissioner, JDA, Jaipur offering allotment of land in terms of the Circular dated 13.12.2001 to the concerned khatedars/beneficiaries, at Villages Lalchandpura and Anantpura to be allotted through lottery. Being aggrieved by the said decision and also the follow up process in connection therewith, the appellants approached the Tribunal afresh. By the judgment and order dated 18.10.2005, the Tribunal returned a finding that appellants were entitled to be allotted 15% developed land in Vidyadhar Nagar Scheme, as plots were available thereat. Thereby the respondent J.D.A was directed that the appellants be allotted developed land at Vidyadhar Nagar in lieu of their acquired land and also restrained it from allotting or selling such land to others. In arriving at this conclusion, as the narration in the decision would reveal, the Tribunal took cognizance of the fact that the land of the appellants situated in Village Boytawala was acquired for Field Firing Range, in exchange whereof, the Ministry of Defence had handed over to the JDA, land at Vidyadhar Nagar. It also recorded the fact that the JDA had admitted in its reply that the price of the offered land in Lalchandpura and Anantpura Villages was negligible in comparison

to that of Vidyadhar Nagar. It, thus held the view, that the proposal for allotment of land at Lalchandpura and Anantpura Villages to the appellants, by distinguishing them from others to whom 15% developed land in lieu of compensation had been allotted in Vidyadhar Nagar, was inappropriate.

11. Time rolled by without making any endeavour on the part of the JDA, to comply with the determination of the Tribunal. It was, at this juncture, that the JDA, after two years addressed a letter dated 16.10.2007 to the Deputy Secretary (P), Chief Minister Office, Rajasthan Government reciting summarily the above facts. While admitting that out of the khatedars, alike the appellants, whose land at Boytawala village had been acquired, two namely; S/Sh. Sedu and Nathu had been allotted 15% developed land in the Vidyadhar Nagar Scheme, it disclosed that at that point of time as well, land measuring 1,10,500 sq. meters was available in the Vidyadhar Nagar Scheme.

12. Situated thus and appalled by the inaction on the part of JDA, the appellants approached the High Court with S.B. Civil Writ Petition 9908 of 2008, complaining of non-compliance of the operative directions contained in the judgment and order dated 18.10.2005 of the Tribunal. By order dated 23.10.2008, the learned Single Judge required the JDA to comply with the aforesaid

directions within a period of two months. It was recorded that the JDA had not questioned the verdict dated 18.10.2005 of the Tribunal. Being aggrieved, the JDA filed D. B. Civil Special Appeal No. 1879 of 2008 which also came to be dismissed on 17.11.2008. The JDA, undaunted by the reverses, approached this Court with Special leave Petition (C) No. 2901 of 2009 which was disposed on 20.7.2009, as in the interregnum, the judgment and order dated 18.10.2005 of the Tribunal came to be assailed by the JDA in S. B. (Civil) W.P. No. 539 of 2009 before the High Court. By the order dated 20.7.2009, this Court, however, did observe, without expressing any opinion on the merits of the dispute, that the judgment and order dated 17.11.2008 of Division Bench of the High Court in challenge before it, would be subject to any order, that would be passed in the writ petition.

13. The Writ Petition No. 539 of 2009 was dismissed by the High Court on 11.1.2010 where after the JDA preferred D.B. Civil Special Appeal No. 276 of 2010 against the same. The decision impugned in the present batch of appeals arises from the said verdict.

14. As the judgment under scrutiny herein would demonstrate, whereas the appellants asserted that in terms of circulars, which they perceived to be in the form of state policy, they were entitled to

15% developed land at Vidyadhar Nagar, as the land therein was given by the Army in exchange of the one at Boytawala, acquired for the Field Firing Range, the JDA emphatically countered the said claim pleading that not only land at Vidyadhar Nagar was unavailable for allotment, being reserved for various purposes under the Group Housing Scheme, the Tribunal lacked jurisdiction to entertain such a prayer and in particular in issuing a direction to allot such land at Vidyadhar Nagar to the appellants. In response to the appellants' contention that in lieu of the compensation not paid to them, they were entitled to 15% developed land at Vidyadhar Nagar as an adequate substitute thereof in terms of the Government circular/policy dated 13.12.2001 and that the denial of the benefit of the policy was apparently discriminatory, the JDA, amongst others, sought to substantiate that the land at Vidyadhar Nagar was much more valuable compared to the acquired land at Boytawala and the price of the land at Lalchandpura and Anantpura Villages was adequately commensurate to the land acquired. While alleging that the awarded amount had been deposited in the concerned Court but not withdrawn by the appellants, the JDA, however, admitted that the area of the 15% developed land to be allotted was 6539 sq. meters but maintained that a plot of this extent was not available at Vidyadhar Nagar.

15. The State in turn pleaded, that the policy decision had been taken under the chairmanship of the Minister of Department of Urban Development on 18.10.2001, whereafter consequential notifications had been issued from time to time. It however urged as well, that in compliance of the award passed by the Land Acquisition officer, cheques for the amount of compensation had been issued and deposited in favour of khatedars, which however remained uncollected from this Reference Court in which it is deposited.

16. The Division Bench, in course of the adjudication noticed, that the Reference Court had enhanced the amount of compensation from Rs. 1500 per bigha accorded by the Land Acquisition Officer to Rs. 15000/- per bigha in the year 1994 and that the appeals preferred by the JDA against the same had been dismissed. It also recounted the fact, that the land of the appellants situated in village Boytawala had been acquired for establishing a Field Firing Range for which the land at Vidyadhar Nagar earlier earmarked for the said purpose had been released in favour of JDA for Group Housing Scheme. It recorded as well the fact, that after the enhancement of compensation made by the Reference Court, the State had issued the circular dated 13.12.2001, pursuant to a meeting of a sub-committee under the chairmanship of the Minister of Department of Urban Development on 18.10.2001, resolving to allot 15% developed land in

cases where compensation had not been accepted by the claimants. That in response to the option called for from such willing land losers pursuant to the circular dated 13.12.2001, the same had been submitted in time, was noted as well.

17. The Division Bench, however, on a survey of the Sections 83 and 90 of the JDA Act held, in the prevailing conspectus of facts, that the decision impugned before the Tribunal was beyond the purview of its jurisdiction and that it was not open for it to direct the respondents for allotment of land at Vidyadhar Nagar. This finding of fact rendered by the High Court was premised on a deduction that the circular dated 13.12.2001 had not been issued in the name of the Governor of the State as required under Article 166(1) of the Constitution of India and was not authenticated by the Governor as well as mandated under Article 166(2). It also mentioned that the circular dated 13.12.2001 was bereft of any reference to the JDA Act, and thus the decision contained therein could not be construed to be one under the said statute. Though it did notice that the decision was taken at the level of departmental minister and did relate to the land acquired under the Rajasthan Act, it was of the view that it could not be said to have been taken under any provision of the JDA Act. Therefore, it has held that the circular dated 13.12.2001 did not have any statutory force.

18. Referring to the decision of this Court in particular in ***Jaipur Development Authority and Others vs. Vijay Kumar Data & Another*** (2011) 12 SCC 94 and in ***State of Bihar Vs. Kripalu Shankar*** (1987) 3 SCC 34, the Division Bench entered a finding on the above aspect that the decision contained in the circular dated 13.12.2001 being not in conformity with the precept of Article 166 of the Constitution of India, it was therefore not enforceable in law. It held the view that, even if, it could be construed to be a policy decision enforceable in law, it was not open for the Tribunal to direct allotment of land at Vidyadhar Nagar as the value of the land was highly disproportionate to the one acquired from the appellants. It recorded the finding that apart from the fact that land at Vidyadhar Nagar was not available, the plea of discrimination urged by the appellants on the ground that two of the similarly situated khatedars/beneficiaries had been offered land at Vidyadhar Nagar was untenable. It recorded that the land at Vidyadhar Nagar had been released to the State for Group Housing Scheme of the JDA and that allotment of 15% developed land thereat to the appellants would amount to dissipation of valuable property for unjust enrichment of a chosen few. The appellants were left at liberty to receive the amount of compensation as awarded @ Rs. 15000 per bigha.

19. Before adverting to the rival contentions advanced, it would

be expedient to complete the narration of facts pleaded before this Court and having a significant bearing on the course of adjudication.

20. By order dated 15.01.2013 this Court formulated the following queries requiring the respondent State and the JDA to respond thereto by filing an additional affidavit.

> **"Query No.1.** Did the State Government/Jaipur Development Authority ever formulate any policy providing for allotment of "land in lieu of land" acquired by the State Government/Jaipur Development Authority. If so, when was the policy formulated and by whom?
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> **Query No.2.** If the policy in question was formulated by and under the orders of the Minister In-charge of the Department concerned, Government of Rajasthan, was the matter relating to the formulation of the said policy submitted to the Chief Minister in terms of Rule 31, sub-rule (2) of the Rajasthan Rules of Business? In case, the matter was submitted, what were the orders passed by the Chief Minister on the said matter of the proposed policy?
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> **Query No.3.** Was the land for land policy given effect to in relation to acquisitions made for Boyatwala Field Firing Range. If so, how much land was allotted and in whose favour and under whose orders?
>
> **Query No.4.** Was any application made for allotment by Madan Lal & Others, petitioners in Special Leave Petition No.36175 of 2011, as legal representatives of the deceased Ananda – original Khatedar for allotment of any land, under the policy mentioned above? If so, was the application ever considered and/or any orders on the same passed? Copies of the order dealing with the request for allotment of land be also placed on record.
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> **Query No.5**. Do the appellants before this Court qualify for allotment of land in lieu of acquired land in terms of the policy? If so, is the State Government/Jaipur Development

Authority ready and willing to make suitable allotment of land in accordance with the policy in their favour?

Query No.6. Is the land offered to petitioners in Special Leave Petition No.28415 of 2011 in Anantpura/Lalchandpura on the outskirts of City Jaipur still available for allotment in their favour?

Query No7. Whether land referred to in Circular dated 16.10.2007, found at page 157 of Special Leave Petition No.28415 of 2011, issued by the Jaipur Development Authority is available with the Jaipur Development Authority? In case, it is available, has the area been reserved for any specific purpose?"

21. To be exact in the portrayal, it would be apt to extract ad verbatim the averments in the affidavit filed on 22.01.2013 on behalf of the Urban Development Department of Rajasthan Government. Precise answers to the queries No.1, 2 and 7 have been quoted hereinbelow:

"Response to Query No.1. – It is respectfully submitted that the State of Rajasthan has issued some Policy circulars of giving land in lieu of compensation. The details of such circulars dated 21.09.1999, 31.12.2001, 22.04.1992 and 27.10.2005 are as follows:

(a) Policy Circular dated 22.04.1992: Allotment of 12% developed land in lieu of cash compensation for the acquired land was provided for in this circular. This circular was issued with the approval of Minister-in-Charge of the Department.

(b) Policy Circular dated 21.09.1999: This policy Circular provides for 15% developed land in lieu of cash compensation for the acquired land, provided that the award was not passed earlier and compensation had not been paid till then. This circular was issued with the approval of Minister-in-

Charge of the Department.

(c) Circular dated 13.12.2001: This circular provided for time extension for exercising option to the land holders for 15% developed land in lieu of the acquired land. In this circular, the date of submitting options was fixed as 28.02.2002.

(d) Policy Circular dated 27.10.2005: In this circular provision for 25% developed land, instead of 15% earlier was made. This policy was given effect for the land acquisition cases after this date. This circular was issued with the approval of Hon'ble Chief Minister.

Response to Query No.2

a. It is respectfully submitted that there are Rajasthan Rules of Business under Article 166 of the Constitution of India. All the cases referred to in the second schedule shall be brought before Council of Ministers or a constituted sub-committee in accordance with Part III of the Rules.

b. Rule 31(1)(ii) provides the cases which have to be referred to Chief Minister before issuance of orders and the cases raising question of policy and all the cases of administrative importance not already covered by second schedule.

c. It is also respectfully submitted that each Department is headed by Minister in Charge and all the respective functions are enumerated in allocation of concerned department. For example, the Urban Development Department work is enumerated at item no. XI-D (Urban Development & Housing Department) and which includes acquisition of land for JDA/UIT Scheme and Housing Board.

d. There are also standing orders under Rule 21 which are issued for purposes of governing the concerned Department with the Minister-in-Charge as Head. It would be relevant to mention that the standing orders issued under Rule 21, at Item 106 it was clearly mentioned that the Minister-in-Charge was competent

authority in matters relating to land acquisition and also for releasing the land under acquisition. The competent authority in relation to land acquisition/release of land under acquisition shall be the Minister in Charge. However, by notification dated 08.07.2004, the rules of Business Allocation have been amended and now the land under acquisition/release of land from acquisition has been brought within the ambit of second schedule, and by virtue of Rule 8 read in conjunction with Rule 31, the file has to be approved by Hon'ble Chief Minister.

e. Since the matter of land in lieu of compensation is considered as matter relating to acquisition or for releasing the land under acquisition, it is within the ambit of Rule 21 and therefore the Minister-in-Charge was capable of said decision. It is relevant to mention that as far as the circular dated 27.10.2005 is concerned, it has been duly approved by the Hon'ble Chief Minister and therefore the Circular of 27.10.2005 does not suffer from legal infirmity that the Rules of Business were not followed.

Response to Query No.7

The land mentioned in the letter dated 16.10.2007 is still vacant and there are plots of different categories like individual residential plots, group housing, commercial, institutional and reserved for other uses. Some of the land is simply marked as 'reserved'. The word 'reserved' denotes no specific land use but it could be used for schools, hospital, parks, public amenities etc."

22. In substance, the State Government in its reply affidavit did admit that it had issued the policy circulars alluded to, for providing land in lieu of compensation including the one dated 13.12.2001, which provided for extension of time for the exercise of option by the land holders for 15% developed land in lieu of their acquired land. That prior thereto, provision for allotment of 12%

developed land in lieu of compensation, subsequently enhanced to 15% developed land was made by the policy circulars dated 22.04.1992 and 21.09.1999, issued with the approval of the Minister-in-Charge of the department, was averred as well. The additional affidavit disclosed further that by a later policy circular dated 27.10.2005 issued with the approval of the Hon'ble Chief Minister, the extent of developed land was further enhanced to 25%.

23. Significantly, it was stated in unambiguous terms with reference to Rule 31(2) of the Rules of Business for Rajasthan (for short, hereinafter to be referred to as "the Rules"), framed under Article 166 of the Constitution of India that in terms of the Standing Order framed under Rule 21, the Minister-in-Charge of the Department as per the Business allocation under the Rules was the competent authority in matters relating to land acquisition and release of land therefrom. It was, however, averred that by notification dated 08.07.2004, the Rules of Business allocation had been amended and the subject of land under acquisition/release of land from acquisition had been brought within the ambit of Second Schedule consequent whereupon, by virtue of Rule 8 read with Rule 31 of Rules, any decision with regard thereto was to be approved by the Chief Minister of the State. The affidavit elaborated that as the issue of land in lieu of compensation was one relating to acquisition

and/or release of land under acquisition, it was within the ambit of Rule 21 of Rules and, therefore, the Minister-in-Charge was capable of taking a decision in connection therewith. The pleaded stand of the State on the competence of the Minister-in-Charge of the Urban Development Department, at the relevant point of time to take a final decision with regard to the issue of land in lieu of compensation in the context of the policy circular dated 13.12.2001 thus did not admit of any ambiguity.

24. The affidavit further stated that there was no developed land in Boytawala and Niwaru range and that out of the 54 land owners affected, 45 including the appellants had been allotted land at Lalchandpura/Anantpura. That two out of the affected land owners had been allotted land under such policy circular at Vidyadhar Nagar was admitted.

25. It was disclosed as well that Vidyadhar was located 5 km away from Boytawala range whereas Lalchandpura/Anantpura were situated 35 kms and 14 kms respectively from such range. As would be apparent from the reply to query No.7, the State admitted that the land referred to in letter dated 16.10.2007 issued by the JDA, and located at Vidyadhar Nagar was still vacant. It was, however maintained that the plots therein were identified for residential, group housing, commercial and institutional purposes.

26. In course of the hearing of these appeals, this Court in its order dated 07.05.2015 recorded the submission advanced on behalf of the JDA that although sufficient land was available at Lalchandpura, Boytawala, Anantpura and Mansarampura, those were not fully developed and that it would require another two years to develop the same. The willingness of the JDA to offer developed land in other areas in discharge of its obligation under the policy was recorded. This Court, as prayed for on behalf of the JDA, granted it four weeks' further time to enable it to identify and place on record the particulars of the land representing 15% of the area acquired from the appellants in a developed colony. The JDA was required within the time granted, to file an affidavit indicating the proposed area for allotment to the appellants. It was observed in no uncertain terms, that the area(s) offered ought to be in developed colonies unlike area(s) which had been earlier offered but were not fully developed.

27. The JDA in its additional affidavit dated 16.07.2015 in turn offered land(s) in the following schemes for allotment, as substantial investments had been made to carry out development works thereat.

S.No.	JDA Zone No.	Name of Schemes	Total available land for allotment
1	11	Rohini Nagar – I	50598.22 Sq. mtr.
2.	11	Anupam Vihar	50598.22 Sq.mtr.
3.	13	Pitambara Rajbhawan	50598.22 Sq. mtr.
4.	14	Abhinav Vihar Vistar	50598.22 Sq. mtr.
5.	14	Rohini Nagar – II	50598.22 Sq. mtr.
6.	14	Harit Vihar	50598.22 Sq. mtr.

28. The appellants in their reply affidavit dated 17.08.2015 to the affidavit dated 16.7.2015, rejected the lands so offered emphatically contending that those were not developed land and did not offer even minimum essential facilities of water, electricity, road etc. According to the appellants, these lands were situated in the rural belt and were in fact grazing plots, totally undeveloped and shorn of any attribute of development as contemplated by the policy circular dated 13.12.2001. In addition to the photographs of the plots offered by the JDA, the appellants in a tabular form also depicted the relevant features thereof, excerpts of particulars of which are extracted herein below:

Sr.No.	Name of scheme	Nature of land	Year	Amenities Available
1	Rohini Phase I	Pasture (Charagah/grazing) Totally undeveloped and in rural belt	2005	No Road, water, electricity, drainage, sewerage, etc. Not a single

				house/flat is constructed in the whole scheme 36.80 Km from Central Jaipur
2	Anupam Vihar	Both villages Pasture (Charagah/grazing) Totally undeveloped and in rural belt	2008	No Road, water, electricity, drainage, sewerage, etc. Not a single house/flat is constructed in the whole scheme 25.4 Km from Central Jaipur
3.	Pitambara Scheme	Khasra No.2 (Area 139-01 hectares); Khasra No.3 (Barren land; Area 93-06 hectares) Khasra No.5 (barren land; Area 2-01 hectares); Khasra No.39- Area 3-16 hectares	2006	No Road, water, electricity, drainage, sewerage, etc. Not a single house/flat is constructed in the whole scheme 35.00 Km from Central Jaipur
	Rajbhawan Yojana	Pasture (Charagah/grazing) Totally undeveloped and	2006	No Road, water, electricity, drainage,

		in rural belt		sewerage, etc. Not a single house/flat is constructed in the whole scheme 35.00 Km from Central Jaipur
4.	Rohini Phase II	Pasture (Charagah/grazing) Totally undeveloped and in rural belt	2006	Same as above – 36.80 Km from Central Jaipur
5.	Abhinav Vihar Vistar	Pasture (Charagah/grazing) Totally undeveloped and in rural belt	2014	No Road, water, electricity, drainage, sewerage, etc. Not a single house/flat is constructed in the whole scheme 31.70 Km from Central Jaipur
6.	Harit Vihar	Pasture (Charagah/grazing) Totally undeveloped and in rural belt	2010	No Road, water, electricity, drainage, sewerage, etc. Not a single house/flat is constructed in the whole

				scheme 31.70 Km from Central Jaipur

29. The appellants also furnished in their aforementioned counter-affidavit particulars of the land referred by this Court in its order dated 17.05.2015, plots offered by the JDA in its additional affidavit dated 16.07.2015 and the lands suggested by them to be allotted in terms of the policy circular dated 13.12.2001 as depicted in the tables hereunder:

I

DISTANCE FROM CENTRAL POINT JAIPUR OF SCHEMES/VILLAGES EARLIER PROPOSED BY JAIPUR DEVELOPMENT AUTHORITY BY AFFIDAVITS DATED 17.09.2014 AND 26.04.2015 AND WHICH HAV EBEEN REJECTED BY THIS HON'BLE COURT VIDE ORDER DATED 07.05.2015		
Srl. No.	**Scheme/Village**	**Distance from Central Point Jaipur**
1	Lal Chandpura	17 KM
2	Mansarampura (Not a JDA scheme)	19.30 KM
3	Boytawala	14.70 KM
4	Anantpura	39 KM

II

DISTANCE FROM CENTRAL POINT JAIPUR OF SCHEMES/VILLAGES NOW PROPOSED BY JAIPUR DEVELOPMENT AUTHORITY BY AFFIDAVIT DATED 16.07.2015 PURSUANT TO ORDER OF THIS HON'BLE COURT DATED 07.05.2015.		
Srl. No.	**Scheme/Village**	**Distance from Central Point Jaipur**
1	Rohini Phase I	36.80 KM
2	Anupam Vihar	25.40 KM

3	Pitambara & Rajbhawan	35.00 KM
4	Rohini Phase II	36.80 KM
5	Abhinav Vihar	31.70 KM
6.	Harit Vihar	31.70 KM

III.

DISTANCE OF DEVELOPED SCHEMES OF JDA FROM CENTRAL POINT VILLAGE BOYTAWAWLA WITH AMPLE LAND AVAILABLE, WHICH CAN BE ALLOTED TO ALL THE KHATEDARS.		
Srl. No.	**Scheme/Village**	**Distance from Central Point Jaipur**
1	Vidhyadhar Nagar	5.0 KM
2	Gokul Nagar	10.5 KM
3	Truck Terminal	15.6 KM
4	Vaishali Nagar	12.8 KM

30. The State followed up the chain of pleadings by its additional affidavit dated 28.09.2015 to state that in addition to the Lalchandpura, land at Boytawala was also offered to the appellants and accused them of unreasonably rejecting the options of developed land being offered to them from time to time. Reference to land at Anand Vihar JDA Residential Developed Scheme situated near Ajmer Road at a distance of 3-4 kms from main National Highway No.8 was also made to indicate that the same was available as well. According to the State, the amount of compensation payable to the appellants for the land acquired as on date, computed on the basis of the enhanced rate of Rs.15000/- per bigha, would be Rs. 95,59,044/- and insisted that the market value of the plots identified by them would be disproportionately higher than the quantum of

compensation to which they are entitled.

31. In between, an additional affidavit was also filed being sworn by the Deputy Commissioner, Zone – Jaipur Development Authority on 16.07.2015, bringing on record, the Rules framed in exercise of powers framed by the Governor of the State under Clauses (2) & (3) of Article 166 of the Constitution of India, including amongst others, the notification No. F(27)(2)(a) dated 05.03.1999 amending the Rules.

32. In the above imposing mass of contentious pleadings and records, it has been assiduously urged by Dr. Dhawan that the circular dated 13.12.2001 being a policy decision of the State, it was obligatory on its part to act in terms therewith and, therefore, the denial to the appellants of 15% developed land in lieu of the compensation for the land acquired is grossly illegal, arbitrarily, unconstitutional, unfair and unjust. According to the learned senior counsel, the series of circulars on the issue of allotment of developed land in lieu of compensation, commencing from the one dated 22.04.1992 do assuredly attest a consistent decision of the State to pursue the same as its solemn policy qua the land oustees responding thereto and thus the impugned conduct of the respondents in reneging therefrom besides being whimsical, arbitrary and highhanded also tentamounts to a patent infraction of

their unassailable right to property guaranteed under Article 300A of the Constitution of India.

33. The appellants having been beckoned to believe that they would stand adequately compensated by accepting developed land to the extent of 15% of the total area of their land in lieu of compensation, they cannot be left high and dry over three decades and further subject them to a spate of vexatious litigation, he urged.

34. Dr. Dhawan, insistently asserted with particular reference to the affidavit filed by the State responding to the queries of this Court, that the circular issued on 13.12.2001 was indeed a policy decision in conformity with the Rules and that any stand in divagation therefrom ought to be dismissed in limine.

35. While rejecting the endeavour on the part of the respondents to plead that in view of the amendment in the Rules w.e.f. 05.03.1999, the approval of the Chief Minister on the issue of acquisition and release of land was mandatory and thus the circular dated 13.12.2001 being opposed thereto was non est, the learned senior counsel also urged that the orders/circulars dated 08.07.1994 and 20.07.1998 amongst others clearly belied the same.

36. While underlining that the State and the JDA are perceptionally and essentially one in the process, Dr. Dhawan endeavoured to demonstrate as well that in all the relevant circulars

starting from the date 22.04.1992 on the issue, a copy thereof had been marked to the Secretariat of the Chief Minister of the State. The learned senior counsel referred to the Rules in details to evince that on the date of issuance of the circular dated 13.12.2001, the departmental minister was exclusively competent to take a decision on the issue of acquisition and release of land in lieu of compensation and, thus the respondents were bound thereby. That in the memorandum of appeal before the High Court, they had accepted the circular dated 13.12.2001 as the policy decision of the State was urged by the learned senior counsel. He asserted that the impugned judgment was founded only the premise that the circular dated 13.12.2001 did not conform to the prescriptions of Article 166(1) & (2) of the Constitution of India and neither any plea was raised qua the Rules or Article 166(3) nor there was any occasion to deal with it. Dr. Dhawan has thus urged that this belated plea is wholly untenable in law.

37. Adverting to Section 90 of the JDA Act in particular, the learned senior counsel has argued that as in terms thereof, the JDA was under an obligation to implement the government policy, it is impermissible for it to turn around and contend that the appeal filed by the appellants before the Tribunal was not maintainable.

38. According to the learned senior counsel, in this premise,

the finding recorded in the impugned judgment, that the appeal filed by the appellants before the Tribunal was unsustainable is patently erroneous. Further it being no longer res integra that the prescriptions of Article 166 (1) & (2) of the Constitution of India are directory in nature, the policy circular dated 13.12.2001 could not have been rendered non-existent on the ground that the same had not been expressed and issued in the name of the Governor of the State or had not been authenticated as required under the said provision, he maintained. Dr. Dhawan also urged, that as the interpretation of the policy circular dated 13.12.2001, having regard to the theme thereof, has to be purposively liberal and fructuous vis-à-vis the rights of the land users under Article 300A of the Constitution of India, the Tribunal was perfectly justified, in the attending facts, circumstances and conduct of the respondents to direct them to allot 15% developed land at Vidyadhar Nagar to them. Dr. Dhawan argued that, on the one hand, the State did not deposit the amount of compensation at the enhanced rate as granted by the Court, and on the other, denied the appellants their share of developed land at Vidyadhar Nagar as was due to them. He therefore urged, that it is a fit case in which direction ought to be issued to the respondents to allot 15% developed land in the areas, as suggested by the appellants i.e. Vidyadhar Nagar, Gokul Nagar,

Truck Terminal and Vaishali Nagar.

39. Supplementing the above, Mr. Dhruv Mehta, learned senior counsel has urged that in the face of clear and categorical stand of the State, that the circular dated 13.12.2001 did embody its policy on land in lieu of compensation and that the departmental minister was authorized and competent to decide thereon, the belated stand of the respondents is contrary thereto and ought to be summarily rejected. The land having been compulsorily acquired in the year 1981 with no compensation therefor paid till date, the resistance offered by the respondents it sustained would result in their undue enrichment which is impermissible in law, he urged. Rejecting the land at Lalchandpura and other sites as offered by the respondents in their counter affidavit as wholly undeveloped, Mr. Mehta has asserted that insistence for acceptance of these lands is apparently in the exercise of superior bargaining power of the State and ought to be firmly disapproved. According to him, the appellants have been wrongly non-suited by the Division Bench of the High Court on the ground of non-compliance of Article 166 (1) & (2) of the Constitution of India. Mr. Mehta insisted that in face of the rejection of the lands at Anantpura, Lalchandpura, Mansarampura and Boytawala by this Court, vide its order dated 07.05.2015, the endeavour on the part of the respondents to impose

the same on the appellants betrays lack of bona fides as well. He urged that in any view of the matter, the respondents have already acted on the policy circular dated 13.12.2001 in allotting, amongst others, plots at Vidyadhar Nagar to some of the persons who are similarly situated and thus they cannot be permitted to retrace their steps arbitrarily at the cost of the appellants. The learned senior counsel urged as well, that the policy circular in question was fully in accordance with the Rules and that the endeavour of the respondents to weigh the amount of compensation payable to the appellants for their lands with the value of the developed land, as on date, as a factor for allotment under the policy is not only indefensible but also irrational and illogical as well. To reinforce his arguments, Mr. Mehta cited the decisions of this Court in ***Dattatreya Moreshwar Pangarkar Vs. The State of Bombay & Ors.***, 1952 SCR 612, ***R. Chitralekha Vs. State of Mysore & Ors.***, AIR 1964 SC 1823, ***Hari Ram and Anr. Vs. State of Haryana & Ors.,*** (2010) 3 SCC 621.

40. Per contra Mr. Sunderam has assertively refuted the status of the circular dated 13.12.2001 as one conveying a policy decision of the State on the issue of land in lieu of compensation, enforceable in law. He has urged that, as in view of the amendment to the Rules occasioned on 05.03.1999, prior to the date of the

circular in question i.e. 13.12.2001, the approval of the Chief Minister was an indispensible pre-condition for the validity thereof, the same is of no avail to the appellants for all intents and purposes. As the Rules are mandatory, no deviation there from is allowable and, thus the circular dated 13.12.2001 does not vest any right with the appellants to claim developed land in lieu of compensation in terms thereof, he maintained. This is notwithstanding the response of the State in its affidavit in reply to the Court's queries, he urged. He argued that the factum of the amendment by the Notification to that effect had been duly brought on record on time to amply authenticate this contention and there can be no estoppel against law. Profused reference was made to the provisions of the Rules including the Second Schedule to endorse this plea. While admitting the above notwithstanding that the appellants are entitled to be allotted 65,000 sq.mtrs. of developed land, the learned senior counsel has contended that the land at Vidyadhar Nagar is being utilized for housing colony is thus not available for them.

41. Referring to the circular dated 13.12.2001, Mr. Sunderam has emphasized that even assuming that this document espouses the cause of the appellants, in any view of the matter, they are not competent to dictate their preference of any land and thus the Court in exercise of its power of judicial review should not permit the

same. Apart from contending that the circular dated 13.12.2001 besides being non complaint with Article 166(2) of the Constitution of India, is even otherwise not enforceable in law, the learned senior counsel contended that the same at the best amounts to an offer to allot 15% developed land, if available within the scheme area and if not, in an adjacent locality. Thereby the land oustees were not clothed with an inviolable right to demand any land of their choice by laying a counter offer, he maintained. Mr. Sunderam urged that neither the circular dated 13.12.2001 does envisage such an indulgence nor this Court ought to direct the State to abide thereby. That in the instant case, the JDA had only acted on the decisions of the State, as taken from time to time, and thus on this ground, the appeal filed by the appellants before the Tribunal under Section 83 of the JDA Act, was rightly held to be not maintainable, was underlined. Following authorities were cited at the Bar in ***Census Commissioner and others vs. R. Krishnamurthy*** (2015) 2 SCC 796, ***Goa Glass Fibre Ltd. vs. State of Goa & Anr.***, (2010) 6 SCC 499, ***MRF Ltd. vs. Manohar Parikar & Ors***., (2010) 11 SCC 374, ***Rajasthan Housing Board vs. New Pink City Nirman Sahkari Samiti Limited and Anr***., (2015) 7 SCC 601.

42. In his rejoinder, Dr. Dhawan adverted to the Rules as well as the notifications/circulars on the issue of land in lieu of

compensation prior, and subsequent to the one dated 13.12.2001, to assert that the same irrefutably testified an abiding and conscious decision and the unreserved intention of the State to allot developed land to the land losers as a matter of implementable policy and not ex-contractu as is sought to be suggested. Reiterating that at no earlier point of time, the aspect of Article 166(3) had either been pleaded or urged, the learned senior counsel insisted that even otherwise, a conjoint reading of the provisions of the Rules would amply attest that the circular dated 13.12.2001 indeed contained a coeval state policy of allotment of developed land in favour of land losers in lieu of compensation and that it is unquestionably enforceable in law against the respondents i.e. the State and the JDA acting in tandem. Dr. Dhawan thus urged that, in the attendant factual and legal premise, an appropriate writ of mandamus ought to be issued as sought for, by invoking the doctrines of promissory estoppel and legitimate expectation to actualize the constitutional right to the property of the appellants. The following decisions were relied upon in endorsement of the above:

a) ***Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd. and others*** (2007)8 SCC 705;
b) ***Steel Authority of India Limited vs. Sutni Sangam and others*** (2009) 16 SCC 1;
c) ***Dev Sharan and Others vs. State of Uttar Pradesh and***

others (2014) 4 SCC 769;

d) ***State of Haryana vs. Mukesh Kumar and others*** (2011) 10 SCC 404;
e) ***Union of India vs. Anglo Afghan Agencies*** (1968) 2 SCR 366;
f) ***Motilal Padampat Sugar Mills Co. Ltd. vs. State of U.P***. (1979) 2 SCC 409;
g) ***State of Punjab vs. Nestle India Limited and another*** (2004) 6 SCC 465;
h) ***Monnet Ispat and Energy Limited vs. Union of India and others*** (2012) 11 SCC 1;
i) ***S.V.A. Steel Re-Rolling Mills Limited and Others vs. State of Kerala and others*** (2014) 4 SCC 186;
j) ***Food Corporation of India vs. M/s. Kamdhenu Cattle Feed Industries*** (1993) 1 SCC 71.

43. The contentious pleadings and the accompanying documents along with the competing arguments have received our in-depth consideration. The fulcrum of the debate, though is the circular dated 13.12.2001, construed as a communiqué of state policy, on acquisition of land and land in lieu of compensation, to be awarded in respect of the acquired land, the appellants herein seem to have been non-suited as well on the ground that the appeal/reference preferred/laid by them before the Tribunal under Section 83 of the JDA Act, was not maintainable, being impermissible. Though this issue need not detain us, as the rival assertions have sprawled beyond such peripheral contours, a passing reference thereto and the finding thereon would clear the deck for the ensuing decisive adjudication.

44. The JDA Act which received the assent of the President on

12.10.1982, as the preamble thereof would evince, is a legislation for forming the Jaipur City and certain contiguous areas into Jaipur Region, to provide for the establishment of an Authority for the purpose of planning, co-ordinating and supervising the proper, orderly and rapid development of the Jaipur Region and for executing plans, projects and schemes for such development and to provide for matters connected therewith. The expressions "amenities" and "development" have been defined in Sections 2(2) and 2(5) of JDA Act respectively, as extracted herein under:

> 2(2) "amenities" includes roads, bridges, any other means of communication, transport, streets, open spaces, parks, recreational grounds, play grounds, water, gas and electric supply, and source of energy, street lighting, sewerage, drainage, conservancy, public works and such other utilities, services and conveniences as the State Government in consultation with the Authority may, by notification in the Official Gazette, specify to be an amenity for the purpose of this Act.
>
> 2(5) "development" with its grammatical variations, means the carrying out of building, engineering, mining or other operations in, or over, or under any land (including land under river, lake or any other water) or the making of any material change in any building or land or in the use of any building or land, and includes re-development and lay-out, and sub-division of any land and also the provision of amenities and projects and schemes for development of agriculture, horticulture, floriculture, forestry, dairy development, poultry farming, piggery, cattle breeding, fisheries and other similar activities, and 'to develop" shall be construed accordingly.

45. In terms of Section 54 of the JDA Act, notwithstanding anything contained in the Rajasthan Land Revenue Act, 1956, the land as defined in Section 103 thereof, excluding land referred to in sub-clause (ii) of clause (a) of the said Section and Nazul land placed at the disposal of a local authority under Section 102-A of that Act in Jaipur Region, shall immediately after establishment of the JDA be deemed to have been placed at the disposal of and vested in it whereupon it would take over such land for and on behalf of the State Government and would use the same for the purposes of the JDA Act and dispose of the same by way of allotment, regularisation or auction subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time, prescribe. Sub-section 2 of Section 54 prohibits development of any land except by or under the control and supervision of the JDA.

46. The constitution of the Tribunal has been provided for under Section 83 of the JDA Act and sub-section 8(a) thereof permits any person aggrieved by an order or notice of the JDA to file an appeal in the Tribunal within thirty days of the communication of such order or notice to him. Under sub-clause 8(b), any person aggrieved by any threatened act or injury from the JDA affecting his rights, may refer the dispute to the Tribunal within thirty days of

the communication or knowledge of such threatened act or injury. The provision mandates that the decision of the Tribunal in such appeal or reference would be final. Section 90 of the JDA Act predicates, that the JDA would exercise its powers and perform its duties under the Act in accordance with the policy framed and guidelines laid down, from time to time by the State for development of the areas in the Jaipur Region. It obligates the JDA to be bound to comply with such directions which may be issued, from time to time, by the State for efficient administration of the JDA Act.

47. On a cumulative reading of the above provisions of the JDA Act, it is apparent that with the enactment thereof, the land, as referred to in Section 54 thereof, would stand vested in JDA, whereupon it is competent, amongst others, to dispose of the same by way of allotment, regularisation or auction subject to such conditions and restrictions as may be prescribed by the State. The definition of the expressions "amenities" and "development" also in categorical terms outlines the imperative features of a developed land, as statutorily ordained. The JDA, thus being a creature of the statute, assuredly cannot deviate from such legislative edict in identifying a developed land at its disposal for allotment as and when warranted.

48. The immediate cause of action for the appellants to

approach the Tribunal, to recall, was the letter dated 1.7.2005 of Urban Development Department of the State to the JDA, conveying its sanction for allotment of land at Lalchandpura and Anantpura Villages to the land losers in terms of the circular dated 13.12.2001 and the draw of lots conducted on 20.7.2005 pursuant thereto as well as the allotment of land on the basis thereof. In view of the functional amalgam of the State and the JDA as contemplated by the Act, and having regard to the composition of the entity conducting the lots, we are of the view that the appellants ought not to be non-suited on the specious plea that the order impugned by them before the Tribunal and the exercise undertaken pursuant thereto was not one by the JDA. As the Authority unmistakably was the implementing instrumentality of the primary decision of the allotment conveyed by the letter dated 1.7.2005, their appeals/reference before the Tribunal contesting the allotment of land at Lalchandpura and Anantpura Villages, in the entire conspectus of facts, cannot be said to be either unsustainable or impermissible. Any contrary view, in our comprehension, would be unwarrantably pedantic and repugnant to the letter and spirit of the JDA Act, and in particular undermine the objective of providing a forum of appeal/reference thereunder. We, however, limit the determination to the singular facts and circumstances of the case.

49. Be that as it may, the simmering epicentre of the dissensus that engaged the serious attention of the contestants is located in the Rules. The parties, however, are not so much in issue, herein over the status and bearing of the enjoinment of Article 166(1) & (2) of the Constitution of India as qua Article 166(3). To reiterate, the impugned judgment had razed the circular dated 13.12.2001 only on the ground that it was neither expressed in the name of Governor nor was it authenticated as obligated by Article 166(1) and (2) of the Constitution of India. Article 166(3) did not surface for any analysis in the decision. Even the grounds formulated by the JDA in the writ petition as well as in the writ appeal before the High Court did not pose a challenge to the circular dated 13.12.2001 to be invalid and non-construable as policy, being in derogation of Rules.

50. The documents laid at the disposal of this Court being official circulars/communications issued by the Government of Rajasthan, Urban Development and Housing Department would attest that in order to address the issue of often protracted process of acquisition of land and possession thereof, in view inter alia of the intervening litigations, a pre-meditated decision had been taken by the State to hasten the exercise without any hassle and on mutual settlement and to that effect, circular No F.6(44)UDH/3/89 dated

1.1.1990 had been issued. As the circular No. F.6 (44) UDH/3/89, Jaipur dated 22.4.1992 of the same Department would reveal, the implementation of the decision had been kept in abeyance for want of guidelines. However, the State on a re-consideration of all aspects, did thereafter decide that persons/institutions surrendering their land free of cost to the Land Urban Improvement Trust/Jaipur Development Authority/Rajasthan Housing Board/ Municipal Council/Municipality, would be allotted developed land equivalent to maximum of 12% of the surrendered land on the terms and conditions as enumerated therein. A Settlement Committee was also constituted for receiving the land surrendered free of cost on mutual settlement.

51. This was followed by circular No. F.6(19)UDH/3/89, Jaipur dated 21.09.1999 in continuation of the one dated 22.4.1992, referred to hereinabove, whereby the decision of the State to provide developed land equivalent to 15% of the acquired land to the khatedar/land owner in lieu of land being acquired, was communicated. It was clarified, that in case of allotment of 15% developed plots, no separate compensation would be payable.

52. A meeting under the chairmanship of the departmental minister was thereafter convened on 18.10.2001 to formulate a composite policy on various aspects and procedures in relation to

allotment of 15% developed land, in lieu of the land acquired, in land acquisition cases. It was discussed, amongst others, that in many land acquisition cases, compensation had not been paid to the land owners. It was eventually decided on the basis of the deliberations, that in cases where awards had been passed, but cash compensation could not be paid to the khatedars/land owners, one more opportunity to them to opt for the developed land, be offered. That the option was extended till 31.3.2002 and the allotment of the land was resolved to be made through Allotment Committee of the concerned organisation, was recorded. It was decided in specific terms, that the developed land in lieu of the acquired land would be generally allotted in the same area where the land was acquired and if it was not possible to develop the scheme within a period of five months or it was not possible to offer land in the same area, it was only then that land would be allotted in some other scheme area. It was underlined that as far as possible, however, the concerned committee would endeavour to allot such land near the scheme area. In terms of the decision, as a corollary, it was generally and primarily incumbent on the JDA to allot the developed land within the scheme area and any departure was contemplated only in the above two eventualities.

53. The circular dated 13.12.2001, the pivot of the lis, is

really in continuation of the circulars preceding it and is in reiteration of the otherwise unequivocal and unreserved decision of the State to offer 15% developed land to the khatedars/land owners in lieu of compensation for the land acquired. This is amply testified, amongst others, by the reference of the Circular dated 21.9.1999, referred to hereinabove. The following extract of the circular dated 13.12.2001, in our estimate, is determinatively revealing:

> "Hence, the State Government after considering this matter in detail has taken this decision that in such old cases in which award has been passed but the compensation could not be made to the khatedars till date, in these matters one more opportunity shall be given to the khatedars. Hence, now this provision is being made that such khatedars/landowners can present their options till 28.2.2002 and they will be allotted 15% developed land by the allotment committee of the concerned organisation after approval from the State Government. If no allotment committee has been constituted in any organisation, then a Committee other than Jaipur Development Authority and Rajasthan Housing Board, shall be constituted of minimum three officers and a public representative from the Municipal Corporations/boards or corporations which will give its report to its organization. The allotment shall be made with prior approval of the State Government."

54. A prolonged lull followed, where after the letter dated 01.07.2005 was issued, offering lands at Lalchandpura and Anantpura Villages to the appellants and other similarly situated, representing the same to be the 15% developed land in lieu of

compensation as already resolved. The circular dated 27.10.2005 issued by the Government of Rajasthan, Urban Development and Housing Department thereafter sought to enhance the extent of developed area to be allotted in lieu of the acquired lands/compensation from 15% to 25% (20% residential and 5% commercial); Significantly, none of the circulars/letters dealing with the issue of allotment of developed land in lieu of compensation, was issued in the name of Governor but a copy thereof had been marked to the Secretary of the JDA. However those dated 13.12.2001, 1.7.2005 and 27.10.2005 had been forwarded also to the Secretariat of the Chief Minister of the State for information and necessary action.

55. Before adverting to the Rules, it would be expedient to take note of the Order Nos. F(18)23 UDH/2/7 Jaipur dated 20.7.1998 and F.18(23)UDH/2/7, Jaipur dated 8.7.2004 of the Urban Development Department, Government of Rajasthan and the Notification dated 5.3.1999 amending the Rules. In the Order dated 20.7.1998 issued under Rules 21 and 22 of the Rules, the following arrangement for transaction of the departmental business pertaining to matters relating to the land acquisition and deacquisition was mandated as follows:

SN	**Post**	**Work**	**Work**	**State**	**Shall**

		shall be examined by	**shall be disposed of by**	**Minister**	**presented before the Minister**
1	2	3	4	5	6
1 to 105	-	-	-	-	-
106	Matters relating to Land acquisition & de-acquisition	Group Officer	Dy. Secretary/ Secretary	-	Minister
107 to 110	-	-	-	-	-

56. The notification No. F.27(2)Cab/99, Jaipur dated 5.3.1999 issued under Article 166 (2) and (3) of the Constitution of India occasioned an amendment, amongst others, to Rule 31(1) of the Rules including therein, inter alia, the following clause:

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

57. Logically thus, by order dated 8.7.2004 issued as well under Rules 21 and 22 of the Rules the working arrangement for the transaction of the departmental business on matters relating to deacquisition of land under acquisition and acquired land was redesigned as hereunder:

SN	**Post**	**Work shall be examined by**	**Work shall be disposed of by**	**Shall be presented before the Minister**
1 to 115	-	-	-	-

D. As per rule 31 of the Rules of Business and final disposal of the matters relating to the Department mentioned in II Schedule under Rule 8				
116 to 117				
118	Matters relating to de-acquisition of land under acquisition and acquired land.	Group Officer	Dy. Secretary/ Secretary/ Pr. Secretary	Minister/ With approval of Chief Minister
119 to 121	-	-	-	-

58. A plain comparison of the texts of these two Orders i.e. 20.7.1999 and 8.7.2004 would demonstrate that whereas by the former, the issue was required to be presented before the departmental minister, under the latter, the authority on the issue was departmental minister with the approval of the Chief Minister. It is, therefore, the plea of the respondents that following the amendment of the Rules on 5.3.1999, the circular dated 13.12.2001, to assume the status of an enforceable State policy ought to have been approved by the Chief Minister and that in absence thereof, it is wholly ineffectual.

59. Apropos the Rules framed under Section 166(2) & (3) of the Constitution of India, the expression "Minister-in-charge" and "Minister of State" are defined in Rule 2 (f) as hereunder:

> "'Minister-in-charge' means the Minister or Minister of State, if appointed to hold independent charge as the case may be, appointed by the Governor to be in-charge of the department of the Government to which the relevant case belongs."
>
> Explanation: A case shall be deemed to belong to the department to which under the schedule to these rules, the subject matter thereof pertains or is mainly related.
>
> "'Minister of State' means a Minister of State appointed by the Governor to hold independent charge of a department or to assist a Minister in the discharge of his responsibilities or both."

60. Part I of the Rules deals with the allocation and disposal of business where under in terms of Rule 4, the business of the Government is to be transacted in the Secretariat Departments specified in the First Schedule and is to be classified and distributed between those departments as laid down therein. Rule 5 provides that the Governor shall, on the advice of the Chief Minister, allot among the Ministers or Ministers of State the business of Government, by assigning one or more departments to the charge of a Minister. Rule 6 which prescribes the constitution of the departments of the Secretariat, enjoins that it would ordinarily consist of a Secretary to the Government who shall be the official head of that department and of such other officers and servants subordinate to him as the Government may determine.

61. As per Rule 8, subject to the orders of the Chief Minister

under Rule 14, all cases referred to in the Second Schedule to the Rules would be brought before the Council or a Sub-committee thereof in accordance with the provisions of the Rules contained in Part III. The restriction in matters in which finance department is required to be consulted under Rule 10 is carved out in the proviso to Rule 8. Rule 9 in categorical terms underlines that the Minister-in-charge or the Minister of State-in-charge of a department shall be primarily responsible for the disposal of the business pertaining to that department. While Rule 11 enjoins that all orders or instruments made or executed by or on behalf of the Government of Rajasthan shall be expressly made or executed in the name of the Governor, Rule 12 requires that every order or instrument of the Government shall be signed by a Secretary, a Special Secretary, an Additional Secretary, a Joint Secretary etc. as enumerated therein so much so that such signature shall be deemed to be a proper authentication of such order or instrument.

62. Part III of the Rules dwells upon the procedure of the Council of Ministers. In terms of Rule 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 obtain his orders for circulation of the case under Rule 15 or

for bringing it up for consideration at a meeting of the Council or Sub-Committee thereof. Such laying would not be necessary if a case falls within the purview of a Sub-Committee of the Cabinet constituted under Cabinet Secretariat Order No. F.3(3)/Cab/81, dated 30.9.1981.

63. The manner of departmental disposal of business is elucidated under Part-IV. Rule 21 predicates that except otherwise provided by any other rule, disposal of business relating to items common to all departments shall be made in the manner specified in Appendix 'B' and for the disposal of business relating to other items, the Minister-in-Charge or the Minister of State-in-Charge, as the case may be, by means of standing orders, give such directions as he thinks fit. Under Rule 22, the standing orders referred to in Rule 21 shall be sent by the Minister-in-charge or the Minister of State-in-Charge, as the case may be, to the Governor and the Chief Minister. Rule 31 lists the cases to be submitted to the Chief Minister before issuance of any order.

64. Incidentally, the extracted clause of the notification dated 5.3.1999 appears at serial No. (iii) under Rule 31. Significantly, clause (xii) also mentions "cases raising question of policy". As is evident from clause (xix), it would 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 of 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 by the Minister-in-Charge or the Chief Secretary. Reverting to the Order dated 20.7.1998 which patently replicated the standing order contemplated under Rules 21 and 22 of the Rules and was in force on the date on which the circular dated 13.12.2001 was issued, it authorised the departmental minister exclusively to deal with and take a decision on matters relating to land acquisition and deacquisition. Our attention has not been drawn to any other order under the Rules after the amendment on 5.3.1999, superseding the same. The earliest in point of time as available is one dated 8.7.2004, whereby the departmental minister with the approval of the Chief Minister had been authorised to take decision on matters relating to deacquisition of land under acquisition and acquired land. Apart from the fact that both these Orders are evidently under the hand of the departmental minister/state minister (independent charge), the unmistakable inference is that these had been issued with the sentient awareness of the prescripts of the Rules.

65. To reiterate, the State in its additional affidavit dated 22.3.2013 in response to a categorical query of this Court as to whether the circular dated 31.12.2001 did convey a policy decision

on the issue of allotment of land in lieu of land averred in clause (b) in answer to query No. 1 as hereunder:

> "Policy Circular dated 21.9.1999: This policy Circular provides for 15% developed land in lieu of cash compensation for the acquired land, provided that the award was not passed earlier and compensation had not been paid till then. This circular was issued with the approval of Minister In-charge of the Department."

66. Rule 31(1)(ii) of Rules, to reiterate, after the amendment on 05.03.1999 did provide that the cases raising question of policy and all the cases of administrative importance not already covered by Second Schedule would have to be laid before the Chief Minister before any order is issued.

67. With this preface, the State did, however, in unqualified terms aver in its affidavit dated 22.3.2013 that in terms of the Standing Orders under Rule 21 at item No. 106, the Minister-in-Charge was the competent authority in matters relating to land acquisition and also for releasing the land under acquisition. It was clarified, that the competent authority in relation to land acquisition/release of land used to be the Minister-in-Charge and that subsequent to the notification dated 8.7.2004, the Rules of Business allocation had been amended whereafter, the matters relating to land under acquisition/release of land from acquisition, had been brought within the ambit of Second Schedule and thus by

virtue of Rule 8 read with 31, the file had to be approved by the Chief Minister of the State. Further, it was stated as well that since the matter of land in lieu of compensation was considered as a matter relating to acquisition or for releasing the land under acquisition, it was within the ambit of Rule 21 and, therefore, the Minister-in-Charge was capable of taking the decision as required.

68. In the face of above overwhelming and unambiguous verified averments made on behalf of the State as well as the sequence of the orders/circulars on the issue involved, we are of the unhesitant opinion that at the relevant point of time i.e. 13.12.2001, the departmental minister was in exclusive charge and was competent to take a final decision on the issue of acquisition of land, release thereof from acquisition and allotment of land in lieu of compensation and thus the said circular indeed does represent an enforceable State policy. In any view of the matter, the State Government had acted on the circular in allotting developed land to others and, thus under the shield of repugnance of the Rules, it cannot be permitted to resile from its policy intended to be invoked.

69. The authorities cited at the Bar now need be traversed to test the conclusions made. The propositions contained therein, being dominantly structured on the textual facts, reference thereof in bare minimum is unavoidable.

70. In ***Dattatreya Moreshwar*** (supra), before a Constitution Bench of this Court, in challenge was the order of confirmation of the detention of the petitioner under the Preventive Detention Act, 1950, amongst other, on the ground that it was with a confidential letter of the Secretary to the Government of Bombay, Home Department and the same not being expressed/made in the name of Governor, as required by Article 166(1) of the Constitution of India, was not in proper legal form. It was urged with reference to the said constitutional provision, that all executive actions of the Government of State have to be expressed and authenticated in the manner as provided therein. This Court, while observing that every executive action need not be formally expressed, more particularly so when one superior officer directs his subordinate to act or forbear from acting in a particular way, ruled that when an executive decision affects an outsider or is required to be officially notified or to be communicated, it should normally be expressed in the form mentioned in Article 166(1) of the Constitution of India i.e. in the name of Governor. The plea that an omission to make and authenticate an executive decision in the form mentioned in Article 166 does not per se make the decision itself illegal was, however sustained. It was underlined, that generally speaking the provisions of a statute creating public duties are directory and those conferring

private rights are imperative. It was propounded that when the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it had been the practice of the Courts to hold such provisions to be directory only, the neglect thereof not affecting the validity of the acts done. Elaborating on this deduction, it was held, that strict compliance with the requirements of Article 166 would give an immunity to the order so much so, that it cannot be challenged on the ground that it is not an order made by the Governor and thus in case of non-compliance of the said provision, such an immunity cannot be claimed by the State. It was, however, observed that such a failure would not vitiate the order itself. In clear terms, it was expanded that though Article 166 of the Constitution of India directs all executive action to be expressed and authenticated in the manner laid down therein, an omission to comply therewith does not render the executive action a nullity.

71. Concurring with the majority view as above, Hon'ble Mukherjee, J. observed that Article 166(1) did not lay down how an executive action of the Government of a State is to be performed; it

only prescribed the mode in which such an act is to be expressed. It was emphasised that the manner of expression is ordinarily a matter of form but whether a rigid compliance with a form is essential to the validity of an act or not, depends upon the intention of the legislature. It was enunciated that Article 166 of the Constitution of India has to be read as a whole whereunder as per clause (3), the Governor is to make rules for the more convenient transaction of the business of the Government of a State and for allocation thereof among the ministers, insofar as that did not relate to matters with regard to which the Governor was required to act in his discretion. It was reiterated that any executive action as contemplated therein, is to be taken by way of an order or instrument, to be expressed in the name of Governor, in whom the executive power of the State is vested and further to be authenticated in the manner specified in the Rules framed under Article 166(3). That compliance of Article 166(1) & (2) would render such an order or instrument immune from challenge in a court of law on the ground that it had not been made or executed by the Governor of the State, was reaffirmed. While concluding that even if clause (1) of Article 166 is taken to be an independent provision unconnected with clause (2), it was highlighted that the prescription of the former would only be directory and not imperative and was indeed a formality for doing a

public act. Following extract from the Maxwell on Interpretation of Statutes, 11th Edition, page 369 was adverted to:

> "Where the prescriptions of a statute relate to the performance of a public duty, and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, yet not promote the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only."

72. A letter issued by the Under Secretary to the Government of Mysore, Education Department conveying the decision of the Government to award 25% marks in the interview for admission to Engineering Colleges and Technical Institutions suffered the assailment of being non-compliant with the requirements of Article 166 of the Constitution of India as it had neither been expressed in the name of Governor nor implemented in the manner as enjoined in ***R. Chitralekha*** (supra). A Constitution Bench of this Court, while expressing its view in majority in essence recounted the proposition enunciated in ***Dattatraya Moreshwar*** (supra) and also ***State of Bombay vs. Purvshottam Jog Naik*** (1952 SCR 674) and ***Ghaio Mall and Sons vs. State of Delhi*** (1959 SCR 1424) to the effect that the essentials of Article 166(1) and (2) if not complied with, the order in question would be defective in form. It reiterated that the enjoinments are not mandatory but directory and if not adhered to

would only deny the claim of immunity thereof from challenge as to whether the decision in fact had been of the State Government or the Governor and would not per se render the same a nullity. In such an eventuality, it would be necessary to be established as a question of fact that the decision or the order involved was in fact validly taken by the State Government or the Governor. That however in any case, there has to exist a decision or order of the Governor as per the Rules of Business framed under Article 166(3) and that it would be the burden upon the Government to establish the same was emphasised upon by Hon'ble Mudholkar, J. in supplementation of the majority view.

73. The vires and constitutional validity of the Goa (Prohibition of Further Payment and Recovery of Rebate Benefits) Act, 2002 was impeached in ***Goa Glass Fibre Limited vs. State of Goa and another*** (2010) 6 SCC 499, amongst others, on the ground that the said legislation was founded on a decision of the High Court of Bombay, Panji Bench rendered on 19.4.2001/24.4.2001 to the effect that Notifications dated 15.5.1996 and 1.8.1996 had been issued without compliance with the requirements of Article 166(3), though the said verdict was subjudice in appeal before this Court. Resisting the challenge, the State of Goa, not only endorsed the validity of the Statute but also insisted that the notifications

involved were illegal, unauthorised and that the legislation had been made to prohibit any further payment there under in order to save the public exchequer from getting denuded of its coffers. It was urged as well, that the decision of the State Government to issue notifications mentioned above was not authorised by law inasmuch as the Council of Ministers had rescinded the same. But despite this, the Power Minister himself had issued a notification at his own level without making a reference to either the Chief Minister or the Council of Ministers or consulting the Finance Department as mandatorily required under the Rules of business. It was asserted as well that the decision of the then Minister of Power to issue the notifications was wholly unauthorised as he had no authority in law to issue them at his level and the subject matter was required to be placed before the Cabinet in view of the huge financial implication involved therein and further that the Cabinet had earlier rescinded the notifications offering rebate. It was underlined too, that for any modification or variation of such decision, it was required to be placed before the Council of Ministers in view of the business Rules framed under Article 166(3) of the Constitution of India. The State maintained further that the two notifications had imposed a heavy burden on the state exchequer and that the concurrence of the Finance Department of the State Government was mandatory. That

not only such concurrence was absent, the note in the concerned file of the Power Minister that he had consulted the Chief Minister was found to be false as per the police investigation conducted. The State pleaded too that despite no budgetary allocation or any provision for making payment, finance was sought to be diverted to the private industrialists by virtue of the two notifications, as a result whereof, an amount of Rs. 16 crores had already been lost and further sum of Rs. 50 crores of public money was in the course of being siphoned off.

74. This Court in the above overwhelming factual backdrop, supported by the official records, did take note of the amply demonstrated grounds, justifying the legislation and did sustain the validity thereof. In essence, this Court did accept on the face of contemporaneous records that the notifications had already been rescinded by the Council of Ministers and though under the Rules of Business, the Finance Department was to be mandatorily consulted due to huge financial implication, the then Minister of Power on his own had issued the same resulting in heavy and unwarranted financial burden on the State Exchequer in absence of any budgetary sanction therefor.

75. In ***M.R.F. Limited*** (supra), this Court was in seisin of a challenge to the said two notifications dated 15.5.1996 and

1.8.1996 granting rebate of 25% in tariff in respect of power supply to certain categories of industrial consumers, inter alia, on the ground that those were null and void for want of compliance with the concerned Rules of Business of the State Government framed under Article 166(3) of the Constitution of India. Skipping over the otherwise chequered background of these notifications, suffice it to state that the challenge thereto was also laid on the ground of non-compliance of the mandate of Articles 154 and 166 of the Constitution of India and instead being the yields of the Minister of Power. It was contended that the said notifications could not be termed as those issued by the State Government on account of non-compliance with the Rules of Business and, therefore, were non est and void ab initio and resultantly the consequential actions based thereon were a nullity. The same issue did arise principally for the scrutiny of this Court in the appeals preferred by the industrial consumers involved. The State Government in its counter-affidavit in the appeals in support of the judgment impugned, pleaded that the notifications did not embody the Government decision inasmuch as the matter was neither placed before the State Cabinet in terms of the business Rules nor was the mandatory concurrence of the Finance Department there under obtained. It was contended as well that in view of the notifications, the State had already paid an

amount of Rs. 16 crores as rebate and that it could not afford to pay further on account of the financial crunch faced by it. It was urged further that the Notifications, if upheld, would result in loss of Rs. 50 crores to the State Exchequer. The pleadings of the State, as noticed by this Court, reflected that there was neither the financial sanction nor the budgetary provision, nor a cabinet approval as was mandatorily required under the Rules and that there was clear breach of the mandatory provisions thereof.

76. In the course of adjudication, the plea of estoppel against the State Government in repudiating the notifications was negated on the ground that the issue of validity thereof, being repugnant to the mandatory provisions of the Rules of business had not arisen in the earlier round of litigation. The contention that it was impermissible for the State Government to take contradictory stand in the pleadings was rejected. The conclusion of the High Court that in a democratic set-up, the validity of the decisions of the Government, that decides the destiny of the people should be decided not only on the basis of the affidavits filed by the officers of the Governments or on incomplete or inadequate information made available by them, but on the basis of constitutional provisions and the Business Rules framed there under was sustained. Adverting to the directory or mandatory character of the constituents of Article

166 of the Constitution of India, this Court, amongst other, quoted with approval the following excerpts from its earlier decision in ***Haridwar Singh vs. Bagun Sumbrui*** & others (1973) 3 SCC 889:

> "13. Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory...
>
> 14. Where a prescription relates to performance of a public duty and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, such prescription is generally understood as mere instruction for the guidance of those upon whom the duty is imposed."

77. The cavil of estoppel against the State on the plea that it did not agitate against the legality or validity of the notifications in the earlier round of litigation, was dismissed in view of the illegality thereof, being repugnant to the mandatory provisions of the Rules. It was held that mere omission on the part of the State Government to assail the validity of the notifications on the ground of non-compliance of the Rules, would neither debar or disentitle it from raising such a plea.

78. Apart from noting the extract from the erudite work,

Maxwell on Statutes, referred to hereinabove, this Court did refer as well to the following quote from the Halsbury"s Laws of England, 4th Edn. Reissue, Vol. 44(1) at para 1238:

> "*Mandatory and directory enactments*.—The distinction between mandatory and directory enactments concerns statutory requirements and may have to be drawn where the consequence of ailing to implement the requirement is not spelt out in the legislation. The requirement may arise in one of two ways. A duty to implement it may be imposed directly on a person; or legislation may govern the doing of an act or the carrying on of an activity, and compel the person doing the act or carrying on the activity to implement the requirement as part of a specified procedure. The requirement may be imposed merely by implication.
>
> To remedy the deficiency of the legislature in failing to specify the intended legal consequence of non-compliance with such a requirement, it has been necessary for the courts to devise rules. These lay down that it must be decided from the wording of the relevant enactment whether the requirement is intended to be mandatory or merely directory. The same requirement may be mandatory as to some aspects and directory as to the rest. The court will be more willing to hold that a statutory requirement is merely directory if any breach of the requirement is necessarily followed by an opportunity to exercise some judicial or official discretion in a way which can adequately compensate for that breach. Provisions relating to the steps to be taken by the parties to legal proceedings (using the term in the widest sense) are often construed as mandatory. Where, however, a requirement, even if in mandatory terms, is purely procedural and is imposed for the benefit of one party alone, that party can waive the requirement. Provisions requiring a public authority to comply with formalities in order to render a private individual liable to a levy have generally been held to be mandatory.
>
> Requirements are construed as directory if they relate to the performance of a public duty, and the case is such that to hold void acts done in neglect of them would work serious general inconvenience or injustice to persons who

> have no control over those entrusted with the duty, without at the same time promoting the main object of the legislature. This is illustrated by many decisions relating to the performance of public functions out of time, and by many relating to the failure of public officers to comply with formal requirements. On the other hand, the view that provisions conferring private rights have been generally treated as mandatory is less easy to support; the decisions on provisions of this type appear, in fact, to show no really marked leaning either way."

79. The assertion on behalf of the respondents that there can be no universal rule with regard to violation of Rules of Business and that each case must be decided on the facts and further that prohibitive or negative words in the provision thereof, in matters concerning revenue or finance, exclusive competence of the Cabinet to take a decision on an issue, prior consultation of the Finance Department and the like do indicate mandatory feature thereof, was taken note of. It was held that the Rules of Business in those contingencies, if not complied with, the decision/communication could not be termed as a Government decision and that an individual functionary cannot bypass the Rules of Business.

80. This Court took cognizance, amongst other, of the decision of this Court in ***Kripalu Shankar*** (supra) which proclaimed that a noting by an official in the departmental file would not amount to an executive decision within the meaning of Article 166 of the Constitution of India. It noted the observation as well that while

clauses (1) and (2) of Article 166 did relate to the mode of expression of the order and the authentication thereof, clause (3) pertained to the making of the rules by the Governor for more convenient transaction of the business of the Government. Referring to Rules 3, 6 and 7 of the Business Rules of the Government of Goa as involved and judging the same on the touchstone of the above judicially evolved formulations, this Court concluded that any proposal likely to be converted into a decision of the State Government involving expenditure or abandonment of revenue for which there was no provision made in the Appropriation Act or an issue which involved concession or otherwise having a financial implication on the State, was required to be processed only after the concurrence of the Finance Department and could not be finalised merely at the level of the Minster-in-charge. It was ruled that after the concurrence of the Finance Department, the proposal had to be placed before the Council of Ministers and/or the Chief Minister and only after a decision was taken in that regard, the same would result in a decision of the State Government. It was held that Rules 3, 6, 7 and 9 were mandatory in nature so much so that any decision taken by any individual minister in violation thereof could not be termed as a decision of the State Government.

81. In arriving at this conclusion, this Court did acknowledge

the decision of the Constitution Bench in ***R. Chitralekha*** (supra) which propounded that the provisions, Article 166 (1) & (2) were directory in nature and not mandatory, but observed that the same could not be relied upon to uphold the contention that Business Rules made under Clause (3) were directory as well.

82. Dwelling on this aspect, this Court elucidated that under Article 154 of the Constitution of India, the Governor was vested with the executive power of the State, to be exercised either directly or through the officers subordinate to him in accordance with the provisions of the Constitution. It was set down that the Governor was advised by the Council of Ministers with the Chief Minister as its head in exercise of his functions except those specifically stated to be in the discharge of his discretion as the Head of the State. It was reiterated that the Rules of Business framed under Article 166(3) of the Constitution were for convenient transaction of the business of the Government and for allocation of the business among the Ministers who collectively in the Council were responsible to the Legislative Assembly of the State. It was emphasised that any decision taken by the State Government, therefore, reflected the collective responsibility of the Council of Ministers and their participation in the decision making process and thus the Rules of Business framed under Article 166(3) of the

Constitution are framed in order to fulfil the constitutional mandate embodied in Chapter II of Part VI of the Constitution making it obligatory for the decision of the State Government to be in accord therewith. The following excerpt from the decision in ***Haridwar Singh*** (supra) was also referred to:

> 15. Where however, a power of authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right or authority."...

83. It was, thus, concluded that the Business Rules framed under the provisions of Article 166(3) are mandatory and must be strictly adhered to so much so that any decision of the Government in breach thereof would be a nullity in the eye of the law.

84. In the facts of the above reported case, this Court, on a consultation of the official records and being convinced that the notifications concerned had been issued in non-compliance of the Rules, sustained the verdict of the High Court proclaimed as above.

85. Allusion to Article 166 as a whole, figured in a different context before this Court in ***Jaipur Development Authority*** (supra), to assay the attributes of the letter dated 6.12.2001 issued by the Deputy Secretary (Administration), Urban Development and Housing Department to the Secretary, Jaipur Development Authority, Jaipur in the matter of allotment of plots in addition to

the compensation paid to the awardees in connection with the acquisition of land involved. For the construction of new building of the Legislative Assembly, educational institutions, stadium complex, district shopping centre, MLA quarters etc., under the project "Lal Kothi Scheme", notification under Section 4 and declaration under Section 6 of the Rajasthan Act were issued on 13.5.1960 and 11.5.1961 respectively whereafter, notice was issued to the land owners/khatedars under Sections 9 (1) and (3) of the Rajasthan Act. The claimants for compensation, included persons who had purchased portions of the acquired land. Initially, 65 khatedars filed claims for compensation, but this figure rose to more than 137 because those who purchased land from the khatedars after publication of the notification issued under Section 4 and their nominees/sub-nominees, also filed claims for compensation.

86. The Land Acquisition Officer, Jaipur by his award dated 9.1.1964 not only determined the amount of compensation payable to the land owners and the beneficiaries of transfers which were illegal being made after the notification under Section 4 of the Rajasthan Act, but also directed allotment of plots measuring varying areas to the owners/their transferees and nominees/sub-nominees out of the acquired land. Initially, neither the State Government nor the Urban Improvement Trust, Jaipur, the architect

of the project, did challenge the direction contained in the award of the Land Acquisition Officer. However, as the execution applications by the beneficiaries mounted with time, they did so. While the litigation was pending, the functionaries of the State, in their bid to confer legitimacy on the illegal transactions involving purchases of the acquired land after the notification under Section 4, caused a Committee to be constituted at the instance of the then Minister of Urban Development and Housing, who was also the Chairman of the Trust for suggesting the methodology for allotment of land in terms of the directions given by the Land Acquisition Officer. The Committee, accordingly, recommended that the land be allotted to the beneficiaries of illegal transactions at the rate fixed by it and a circular representing to be a policy decision, was issued in 1978 to that effect. The draw of lots was held thereafter for allotment of plots to the awardees and the beneficiaries of illegal transfers of the acquired land. Those unsuccessful in the process, approached the High Court which held that the directions given by the Land Acquisition Officer and the Minister for allotment of plots were ex facie illegal and had the effect of defeating the public purpose for which the land was acquired. The recorded facts revealed, that an inquiry was made into the episode by the Lokayukta of the State, who returned a finding, that the persons named therein including

the then departmental minister had misused their official position to favour a few influential and highly placed individuals and had also thereby caused wrongful gain to them and wrongful loss to the JDA (successor of Jaipur Improvement Trust) and the public at large.

87. This Court recalled its adjudication in ***Jaipur Development Authority vs. Radhey Shyam*** (1994) 4 SCC 370 to the effect that the Land Acquisition Officer did not have any jurisdiction, power or authority to direct allotment of land to the claimants under the Rajasthan Act in lieu of compensation. It was also noted that as held in ***Jaipur Development Authority vs. Daulat Mal Jain*** (1997) 1 SCC 35 that there was no policy laid by the Government to this effect and that it could not have been so, being contrary to the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 and that no such power was given to the individual minister by executive action to that effect. This Court also recalled its observation that the decision taken by the Minister and the actions of the bureaucrats were meant to benefit only those who had illegally secured transfer of land after the publication of the notification issued under Section 4 and that the so-called policy was an artifice to feed corruption and to deflect the public purpose.

88. The facts divulged that the purchasers involved initially challenged the notice dated 19.12.1996 issued by the JDA for

auction of their plots before the Tribunal and being unsuccessful in view of the pronouncement in ***Radhey Shyam Case*** (supra) and ***Daulat Mal Jain*** (supra), challenged the determination made by the Tribunal before the learned Single judge of the High Court which met the same fate. The Division Bench of the High Court however, though did uphold the finding of the learned Single Judge that the dispute relating to title of the property could not be decided under Article 226 of the Constitution, sustained the plea of the purchasers that in terms of the policy decision taken by the State Government, expressed in the letter dated 6.12.2001 and the order dated 9.1.2002 passed by another Division Bench, they were entitled to regularisation of the plots in question.

89. In the contextual facts, this Court noticed that the vendors of the purchasers had no valid title, they having purchased the land involved from the khatedars, after the publication of the notification under Section 4 and that thus the intervening transactions did not convey any title. It recorded that till the disposal of the writ petition by the learned Single Judge, the letter dated 6.12.2001, sought to be passed off as a policy decision, was not in existence and that a Committee of Ministers was formed vide order 30.10.2001 to suggest a solution of the problem in the regularisation of illegal constructions/encroachments of land under

the Lal Kothi and Prithviraj Nagar Schemes in relation to which several cases were pending in different courts. It was observed that the recommendations made by the Committee were given the colour of Government decision, though no material had been produced to establish that the same were accepted by the State Government. That such a lacuna was discernible from the letter dated 6.12.2001 was also observed. Apart from holding that the Division Bench of the High Court had erred in entertaining a new case without the essential pleadings, the reliance on the said policy decision which was in flagrant violation of the judgments of this Court in ***Radhey Shyam*** (supra) and ***Daulat Mal Jain*** (supra) was strongly disapproved. Holding that the letter dated 6.12.2001, by no means, could be construed to be a policy decision of the State Government, this Court ruled that the High Court had impermissibly sought to legitimise the illegal transactions in violation of the dictum of this Court in ***Radhey Shyam*** (supra) and ***Daulat Mal Jain*** (supra).

90. It is in this context that the prescriptions of Articles 77 & 166 of the Constitution of India were adverted to, with special reference to the decision of this Court in ***Kripalu Shankar*** (supra) to the effect that a noting by an official in the departmental file could not be construed to be an executive decision. It was thus concluded, that unless an order is expressed in the name of

President or the Governor and is authenticated in the manner prescribed by the Rules of Business, the same cannot be treated as an order made on behalf of the Government. The letter dated 6.12.2001 in the opinion of this Court, having failed to meet this prescript, it was discarded as a policy decision of the Government within the meaning of Article 166 of the Constitution. It was held as well, that in any case, even if this letter dated 6.12.2001 could be treated to be a policy decision, it being contrary to the determinations made in ***Radhey Shyam*** (supra) and ***Daulat Mal Jain*** (supra), it was non est.

91. This Court had an occasion to dilate on the prescriptions of Articles 166 and 77 of Constitution of India in ***Delhi International Airport Ltd. vs. International Lease Finance Corporation and others*** 2015 (8) SCC 446. While testing the validity of the minutes of the meeting of the Committee, comprised amongst others of the representatives of Ministry of Civil Aviation, Airport Authority of India (AAI), Delhi International Airport Pvt. Ltd. (DIAL) and Central Board of Excise and Customs (CBEC), regarding release of aircrafts of the respondent Kingfisher Airlines (KAL) by Delhi International Airport Ltd., the issue that surfaced was whether the minutes of the meeting could override the Airport Authority of India (Management of Airports) Regulations, 2003 (for short,

hereinafter referred to as "Regulations"). Under Regulation 10 of Regulations, the competent authority, as defined in Regulation 3(8) only was empowered to detain or stop the departure of an aircraft unless otherwise provided by the Airport Authority of India Act, 1994 or by general or speaking order in writing of the Central Government. Responding to the plea of the appellant that the minutes of the meeting dated 26.3.2013 permitting release of aircrafts, as mentioned therein, being not a general or speaking order passed by the Central Government, it could not override the powers of the AAI under Regulation 10, this court referring to Articles 77 and 166 of the Constitution of India held that in terms of Rule 3 of the concerned Rules of business, the decision taken in the meeting dated 26.3.2013 should have been sanctioned by/under the general or special directions of the Minister-in-Charge and further as stakes of different departments headed by different ministries were concerned, the decision should have been taken by the concerned Committee of the Cabinet. The concurrence of the Finance Department due to the financial bearing, was also necessary. It was held that the minutes of the meeting purportedly stated to be an order in writing by Central Government and later communicated to all concerned, were not disposed of in pursuance of Rule 4 of the Rules i.e. neither the decision was sanctified by the Cabinet nor the

concurrence of Finance Department was taken. This Court held the view that from a combined reading of Rules 3,4 and 4(2), the minutes of the meeting were required to be proceeded only after the concurrence of the Finance Department and could not have been finalised at the level of officers/representatives of Civil Aviation, Central Board of Excise and Customs etc. Additionally, after the concurrence of the Finance Ministry, the minutes of the meeting ought to have been placed before the concerned Minister as per the Rules of Business. It was held that sanctification by the concerned ministry and the concurrence of the Finance Department was a mandatory requirement in order to construe the minutes of the meeting to be a general or special order in writing by the Central Government. That there was nothing on record to prove that the minutes of the meeting had the concurrence of the Finance Department or had either been confirmed or approved by the concerned Minister or such directions had been issued pursuant to any decision taken by a competent authority in terms of Rules of Business framed under Article 77 of the Constitution of India, was noted. The intervention of this Court was, thus on a clear and demonstrable infraction of Rules of Business framed under Article 77 of the Constitution of India enjoining peremptory compliance of the requirements for fructification of the minutes of the meeting to

be a general or special order in writing by the Central Government, as contemplated by the Rules.

92. In ***Rajasthan Housing Board*** (supra), land was acquired for the purpose of housing scheme of the Board and a notification under Section 4 of the Rajasthan Act was issued on 12.1.1982. The possession was handed over to the Board on 22.5.1982. The award was passed in four cases on 30.11.1982 and in remaining cases on 2.1.1989 by the Land Acquisition Officer in favour of the khatedars. The respondent society applied for reference under Section 18 of the Rajasthan Act and the Reference Court determined the compensation at Rs. 260 per square yard. The High Court, in appeal, reduced the compensation to Rs. 100 per square yard. The Division Bench of the High Court, however, in addition directed consideration for allotment of 25% of the developed land in view of the circular dated 27.10.2005.

93. According to the respondent society, it had entered into an agreement of sale with the khatedars on various dates prior to the notification dated 12.1.1982 and that it also obtained a decree in a suit on the basis of compromise. That it had developed the land by making a huge investment, was also asserted. The claim of the respondent society for compensation was resisted by the State Government and the Rajasthan Housing Board contending that the

transactions, on the basis of which it claimed the same, were ab intio void being in contravention of provisions of Section 42 of the Rajasthan Tenancy Act. It was contended as well that the circulars dated 13.11.2001 and 27.10.2005 relied upon by the Society, were not applicable to the facts of the case and were not enforceable as well. The direction for allotment of developed land was, thus, seriously assailed.

94. Referring to Section 42 of the Rajasthan Tenancy Act, 1955, this Court upheld the objection of nullity of the transactions for sale as claimed by the respondent-society as it prohibited sale, gift or bequest by a member of a Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe. It was recorded that the cast of the original khatedars was "Bairwa" which was a Scheduled Caste.

95. Reverting to the circular dated 27.10.2005, this Court marked that the applicability thereof depended on the land surrendered by the khatedars without compensation, thus entitling them to obtain 25% of the developed residential area in lieu thereof. It was held that as it was not a case of surrender of land, the said circular was inapplicable which, in fact, was in the form of guidelines for future acquisition, conditionally on the surrender of

the land by the khatedars. The ratio of the decisions of this Court in ***Radhey Shyam***(supra), ***Daulat Mal Jain*** (supra) and ***Vijay Kumar Data*** (supra) was reiterated.

96. In the context of the circular dated 27.10.2005, reference was again made to the decision of this Court in ***Kripalu Shankar*** (supra) involving the noting in a file, which as held, did not amount to an executive decision by itself. The mandate of Article 166 with regard to mode of expression of the decision of the Government, the manner of authentication thereof and making of the rules by the Governor for more convenient transaction of the business of the Government was revisited. In the contextual facts, the circular dated 27.10.2005 was held to be inapplicable besides being beneficial to the purchasers, who claimed to have acquired right in the land, after issuance of the notification under Section 4 and in violation of the mandate of Section 42 of the Rajasthan Tenancy Act. The direction of the High Court to allot land on the basis of the circular dated 27.10.2005 was, thus, interfered with.

97. The decision of this Court in ***Hari Ram*** (supra) pertains to the grievance of discrimination in the matter of release of acquired lands. Following the commencement of the initiative for acquisition of land under the Land Acquisition Act 1894, writ petitions were filed in the High Court of Punjab & Haryana

challenging the notifications under Section 4 and 6 of the said Act on various grounds. The writ petitioners also prayed for release of their respective lands. During the pendency of writ petitions, a Committee was constituted to inspect the site and make recommendations as to whether the land of the writ petitioners could be released or not. The Committee submitted its report whereby, however, it did not recommend release of land of the appellants before this Court. The High Court, acting on the report, though ordered release of land in favour of some of the writ petitioners, dismissed the claim of others including the appellants. During the pendency of appeal before this Court, the appellants were granted liberty to make representations before the State Government for release of their land. The representations filed were, however, rejected on the basis of policy dated 26.10.2007.

98. In the facts of that case, this Court noticed that prior to 26.10.2007, the State of Haryana did not have any uniform policy governing the release of land from acquisition, though a letter dated 26.6.1991 pertaining to review the progress of various schemes of Haryana Urban Development Authority was sought to be pressed into service in that regard. The same, however, was not of any decisive significance. This Court held, that neither the letter dated 26.6.1991 nor any other policy had ever been followed by the State

Government while releasing the land of various land owners acquired in the same acquisition proceedings. That the policy dated 26.10.2007 had not been applied to any of the land owners whose land had been acquired along with the appellants' land was also noted. It was noticed that lands of more than 40 land owners out of the same acquisition proceedings had been released by the State Government which also included those, who had not even challenged the acquisition proceedings and whose cases had not been recommended by the Committee for withdrawal from acquisition. Concluding thus, that no firm policy had been applied for release of lands from the acquisition proceedings involved, this Court entered a finding that it was unfair on the part of State Government in not considering the representations of the appellants by applying the same standards. A direction was made to the State to issue appropriate order(s) concerning the appellants' land on the same terms and in the same manner as done qua the others similarly situated. In adopting this course, this Court observed in no uncertain terms that the land owners who were similarly situated have a right of similar treatment by the State Government as equality of citizens' right was one of the fundamental pillars on which the edifice of the rule of law rested.

99. The postulations judicially adumbrated vis-a-vis Article

166 of the Constitution of India, as can be gleaned from the above referred decisions, verily convey the quintessence of the content and expanse thereof. Needless it is thus to burden this adjudication by referring to other pronouncements on the issue.

100. Article 154 of the Constitution of India vests the executive power of the State in the Governor to be exercised by him either directly or through officers subordinates to him in accordance with the Constitution. As per Article 163, there would be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under the Constitution required to exercise his functions or any of them in his discretion. It is in this presiding premise that the conduct of Government business is designed under Article 166 which for ready reference is extracted herein under:

> 166. Conduct of business of the Government of a State –
>
> (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 in so far as it is not business with respect to which the

Governor is by or under this Constitution required to act in his discretion.

101. Whereas under Clause (1), all executive action of the Government of a State is enjoined to be expressed to be taken in the name of Governor, as predicated by clause (2), orders and other instruments made and executed in the name of Governor have to be authenticated in such manner as may be specified in rules to be made by the Governor and if so done, 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. Clause (3) makes it incumbent on the Governor to frame rules for the more convenient transaction of the business of the Government of the State and for the allocation among the Ministers of the said business, insofar as it is not one with respect to which, the Governor is by or under the Constitution required to act in his discretion.

102. A combined reading of these provisions, thus would evince that the executive power of the State is vested in the Governor and is to be exercised by him either directly or through the officers subordinate to him, however, in accordance with the Constitution and except insofar as he is required to exercise his functions or any of them in his discretion, there would be a Council of Ministers with the Chief Minister as the head to act and advise him in the

discharge of his other functions. The Rules of Business as contemplated in clause (3) of Article 166 unmistakably relate to the transactions to be undertaken by the Governor with the aid and advise of the Council of Ministers headed by the Chief Minister, subject however to the allocation of business in terms thereof.

103. The essentials of Article 166, as a corollary, are a valid executive decision in terms of the Rules of Business framed under clause (3), expressed in the name of Governor and authentication of the resultant orders and instruments in the manner specified in the rules to be made by the Governor. Thus, Article 166(3) mandates the making of the Rules of Business for more convenient transactions of the affairs of the Government. Clause (1) stipulates the mode of expression of an executive action taken in conformity therewith and clause (2) ordains the manner of authentication of the consequential orders and instruments. Having regard to the role assigned to the Council of Ministers with the Chief Minister at the summit, the Rules of Business framed under Article 166(3) meant for convenient transaction of the affairs of the Government, by allocation thereof among the Ministers, secures their collective participation in the administration of the governance of the State. This scheme of executive functioning, assuredly thus, is in assonance with the constitutional edict with regard thereto, modelling the steel frame of

the State machinery.

104. It is no longer res integra that the enjoinment of clauses (1) and (2) of Article 166, is not mandatory so much so, that any non compliance therewith, ipso facto would render the executive action/decision, if otherwise validly taken in terms of the Rules of Business framed under Article 166(3), invalid. Any decision however, to be construed as an executive decision as contemplated under Article 166, would essentially has to be in accordance with the Rules of Business. The Rules depending upon the scheme thereof, may or may not, accord an inbuilt flexibility in its provisions in the matter of compliance. It is possible that the provisions of the Rules en bloc may not be relentlessly rigid, obligatory or peremptory proscribing even a minimal departure ensuing in incurable vitiations. Contingent on the varying imperatives, some provisions may warrant compulsory exaction of compliance therewith e.g. negative/prohibitive expression/clauses, matters involving revenue or finance, prior approval/concurrence of the Finance Department, consultation/approval/ concurrence of the Finance and Revenue departments in connection therewith and issues not admitting of any laxity so as to upset, dislodge or mutilate the prescribed essentiality of collective participation, involvement and contribution of the Council of Ministers, headed by the Chief Minister in aid of the

Governor in transacting the affairs of the State to effectuate the imperatives of federal democratic governance as contemplated by the Constitution.

105. As noticed hereinabove, it is affirmatively acknowledged as well that where provisions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of these have the potential of resulting in serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, such prescriptions are generally understood as mere instructions for the guidance of those on whom the duty is imposed and are regarded as directory. It has been the practice to hold such provisions to be directory only, neglect of those, though punishable, would not however affect the validity of the acts done. At the same time where however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it would neither be unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right of authority.

106. Obviously, thus the mandatory nature of any provision of any Rule of Business would be conditioned by the construction and the purpose thereof to be adjudged in the context of the scheme as a

whole. The interpretation of the Rules, necessarily, would be guided by the framework thereof and the contents and purport of its provisions, and the status and tenability of an order/instrument, represented as an executive decision would have to be judged in the conspectus of the attendant facts and circumstances. No straight jacket formula can, thus be ordained, divorced from the Rules applicable and the factual setting accompanying the order/decision under scrutiny.

107. Viewed in this precedential backdrop, the annulment of the circular dated 13.12.2001 only on the ground of its non conformance with the mandate of Article 166 (1) and (2) of the Constitution of India, without any reference to Rules of business under Article 166(3), in our comprehension does not commend for acceptance. Admittedly and as the impugned judgment would unmistakably attest, no plea was either raised or examined, based on its repugnance with the Rules of Business framed under Article 166(3). The facts as obtained in the decisions cited at the Bar are distinctly different from those in the case in hand. Having regard to the overwhelming judicial exposition of the purport and purpose of Article 166 of the Constitution, the status of the circular dated 13.12.2001 and the bearing thereof would have to be adjudged in the prevailing facts and circumstances attendant there on.

108. It has not been argued before us that non-compliance of Article 166 (1) and (2) per se did vitiate the circular dated 13.12.2001. The gravamen of the impugnment thereof is founded on the non-observance of the Rule 31 of the Rules following its amendment on 5.3.1999, namely failure to lay the issue with regard to the allotment of developed land before the Chief Minister of the State. The march of events qua the decision to allot the developed land in lieu of compensation, in order to speed up the completion of the acquisition process and to secure timely delivery of possession of the land, by curtailing the impeding litigations, is traceable as hereinbefore referred, to the circulars from 22.4.1992 and did continue with variation in the percentage of land to be allotted even after the circular dated 13.12.2001.

109 Noticeably, no plea has been raised emphasising on the obligatory requirement of concurrence of the Finance Department, as a condition precedent or disapproval of the decision of the departmental minister and the Committee constituted by him for the purpose either by the Chief Minister of the State or the other Ministers of the Council. To reiterate, the State Government in its affidavit in reply to the queries of this Court made with order dated 15.1.2013, in unmistakable terms did vouch the competence and authority of the departmental minister to exclusively take a decision

on this issue. As the text of the said affidavit would clearly demonstrate, the State Government was then fully aware of the amendment to the Rules on 5.3.1999. Our attention has not been drawn to any circular/notification superseding the Order dated 20.7.1998 whereby the departmental minister in terms of the Standing Orders under Rules 21 and 22 of the Rules was entrusted with the duty and jurisdiction of dealing with the matters relating to land acquisition and deacquisition. It was only with the Order dated 8.7.2004, that as per Rule 31 of the Rules, matters relating to deacquistion of land under acquisition and acquired land were to be presented before the departmental minister with the approval of the Chief Minister. Nothing has come forth in the interregnum as to the working arrangement for the transaction of business in this regard under the Rules contrary to the one envisaged by the Order dated 20.07.1998. We have not been led to any provision in the Rules incorporating any determinative mandate prohibiting in absolute terms, the continuance of the arrangement under the Standing Order as conveyed by Order dated 20.7.1998 permitting transaction of the matters relating to land acquisition and deacquisiton solely by the departmental minister. This assumes importance as well in view of Rule 21 requiring disposal of business by means of Standing Orders as envisaged therein.

110. Rule 31 as well, though required submission of the enumerated cases before the Chief Minister prior to the issuance of the orders, there is nothing to suggest exclusion of the departmental minister from taking a decision on any issue if otherwise authorised by the Standing Order. Rule 14 of the Rules, on the other hand, prescribes that all cases referred to in the 2nd 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 obtain his orders for circulation of the case under Rule 15 or for bringing it up for consideration at a meeting of the Council or Sub-Committee thereof. Significantly, the Second Schedule mentions, amongst others, any proposal which would affect the finances of the State which does not have the consent of the Finance Minister, or a proposal involving any important change of policy or practice or cases required by the Chief Minister to be brought before the Council. Equally significant is the residuary power of the Chief Minister, reserved under Rule 31 (2) (xix) whereby he/she would be competent to call for the relevant papers/file(s), report and pass orders in any case involving a policy or a matter of 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 by the Minister-in-Charge or the Chief

Secretary. The suo moto intervention of the Chief Minister in these contingencies thus is also conceptualized.

111. Having regard to the progression of events pertaining to the decision of allotment of developed land and the conscious initiatives taken by the State Government in furtherance thereof, it is impossible as well as impermissible to conclude, that it had remained unaware thereof. The land of the appellants had been compulsorily acquired, in the exercise of the State's power of eminent domain by invoking an expropriatory legislation. Admittedly as well, the compensation as guaranteed by the Reference Court for the land has not been paid to them. To reiterate, the facts demonstrate that the State Government had taken a pre-meditated decision to allot developed land to the land oustees in lieu of compensation. As per the successive circulars including the one dated 13.12.2001, it was incumbent on the State Government to allot developed land with all the essential attributes thereof. As is apparent from the order dated 7.5.2015 of this Court, the plots offered to the appellants till now are not developed. The land had been acquired in the year 1981 and more than three decades have elapsed. In our view, the delay cannot be attributed to the appellants for the obvious failure of the State Government to allot developed land in lieu of compensation as represented.

112. The records produced pertain to the decision dated 1.7.2005 taken at the level of Ministerial Sub-Committee to allot 15% developed land to the awardees of acquisition for Field Firing Range including the appellants, at JDA Scheme Lalchandpura and Anantpura. It reveals that the process was initiated at the level of the Director of Land Records on the basis of the circular/policy dated 13.12.2001 and was routed through the Chief Minister for placing the approval of the proposal of developed land elsewhere due to non-availability of land at Vidyadhar Nagar, before the Ministerial Sub-Committee. On the approval of the Chief Minister, the matter was laid before the Ministerial Sub-Committee and eventually on 1.7.2005, the Sub-Committee resolved that 15% developed land be allotted at JDA scheme Lalchandpura and Anantpura.

113. The note accompanying the original file No. F6()/UDH/2004, however, discloses that the file regarding the policy dated 13.12.2001 and maintained by the Urban Development and Housing Department, Government of Rajasthan is not traceable. The revelation from the file thus produced, authenticates that the process for allotment of land at Lalchandpura and Ananatpura, as resolved by the Ministerial Sub-Committee was initiated on the basis of the circular/policy dated 13.12.2001 and was steered through the Chief Minister of the State. It is, thus, amply clear that all State

functionaries including the Chief Minister of the State were aware of the process undertaken in terms of the circular/policy dated 13.12.2001 and had affirmatively associated themselves therewith. Significantly, even at that stage, the circular dated 13.12.2001 was neither discarded as non est being not the repository of a state policy nor a decision repugnant to the Rules. It would thus be indefensible and too farfetched for the respondents to contend that the circular dated 13.12.2001 cannot be construed to be a policy reflecting the executive decision as contemplated under Article 166 and is not enforceable, as the subject matter thereof had not been laid before the Chief Minister under Rule 31 of the Rules. The non-acceptability of the land at Lalchandpura and Anantpura by the appellants, being undeveloped, does not detract from these conclusions.

114. In our comprehension, it is the burden of the State Government, in view of the belated attempt on its part to wriggle out of its commitment under the circular/policy dated 13.12.2001 to demonstrate on the basis of contemporaneous records that it was never intended to be acknowledged as its policy. As the file pertaining to the circular/policy dated 13.12.2001 is not traceable, in our unhesitant opinion, the State Government has failed to discharge its burden in this regard. The appellants understandably have no access either to the official records of the Government or

control over the manner of discharge of the role of the functionaries under the Rules. In this view of the matter, in the face of the predominant facts testifying the reflective and consistent decision of the State Government in the matter of allotment of developed land in lieu of compensation, spanning over a decade from the year 1992 to 2005, the endeavour on its part to disown the policy/circular dated 13.12.2001, in our estimate, betrays its truant disposition, cavalier indifference and impervious display of superior bargaining power which is constitutionally impermissible.

115. On a concatenation of the stream of events, traced from the acquisition of the land involved, we are thus of the view that the circular dated 13.12.2001 is indeed a policy decision of the State Government regarding the allotment of developed land in lieu of compensation to the persons referred to therein and is thus enforceable against it.

116. Even otherwise, having regard to the consistency in approach of the State Government in the matter of allotment of developed land in lieu of compensation as is evident from the series of circulars commencing from 22.4.1992 to 27.10.2005 in continuum, motivated by the objective of early culmination of the process of acquisition of land on the spirit of mutual settlement, the same irrefutably present an inviolable scheme of proclaimed State

action for compliance, thereby making it invocable against the respondents, more particularly as the same had been acted upon over the years. The plea of the respondents, at this belated stage, to take refuge of unenforceability of the circular dated 13.12.2001 in isolation, as not being a binding policy, cannot receive judicial imprimatur.

117. The process leading to the allotment of land at Lalchandpura and Anantpura villages, as the records produced discloses, did originate from the circular dated 13.12.2001, and received the approval of the Chief Minister at an appropriate stage. It would thus be conspicuously patent, that all concerned State functionaries were not only aware of the relevance and the obligatory bearing of the said circular, but also had participated in the exercise, contemplated by it for allotment of developed land in lieu of compensation. The respondents, in the totality of the existent facts and circumstances are thus estopped from questioning the status and efficacy of the said circular in vesting a right in the appellants to claim their due in law there under.

118. To recall, not only in the meeting dated 18.10.2001 under the chairmanship of the departmental minister, which indeed, as the minutes thereof would disclose, was called to formulate a composite policy on various aspects and procedures in relation to

allotment of 15% developed land in lieu of compensation, but also in the resultant circular dated 13.12.2001, it had been resolved in clear terms that the developed land would normally be allotted in the scheme area and at the place where the land had been acquired and that, if it was not possible to develop the scheme within a fixed period of five months or it was not possible to give land in the same area, it was only then that land would be allotted in some other area. In that eventuality as well, a sincere endeavour was to be made to allot land near the scheme area. Developed status of the land to be allotted and its proximity to the site from where the land had been acquired for a scheme, were thus the two imperatives to identify the land to be allotted. It was only if the developed land within the scheme area was not available for allotment, that a plot near the scheme area was to be made available. In any case, the requirement of developed character of the land could not be undermined, disregarded or waived.

119. As by the time, the allotment was contemplated, the JDA Act had been brought into force, the concept of developed land was clearly traceable to one informed with the concept of "development" and "amenities" defined thereunder. Any land to be allotted in lieu of compensation, thus, was required to mandatorily comply with the requisites of 'development' and 'amenities' as envisaged under the

JDA Act. As only a certain percentage of land acquired was offered by way of allotment and understandably as the same was in lieu of compensation i.e. the market value along with the incidentals, it was expectedly assessed to be proportionate thereto in value/worth. 15% developed land was, thus construed to be equivalent to the amount of compensation then payable for the land acquired. However, for the purpose of identification of developed land as on today, equivalence of the value thereof with that of the land acquired as on date after three decades would not be a correct measure. The appellants were entitled to 15% developed land in the year 2001, the point of time when the value thereof was comparable to the compensation then payable for the acquisition of their land. Had the developed land, as conceived of, been allotted to them, then the value thereof over the years, as on date, would have been much higher than their land so acquired. Though the development of a plot of land depends upon various factors e.g. location, potential, facilities, use etc., it is a matter of common experience that the pace of enhancement of the value of an already developed land would be increasingly higher in comparison to the one not developed. The value of the acquired land of the appellants, thus, as on today, cannot be taken to be an unmistakable index to identify the developed land to be allotted to them.

120. Be that as it may, the land offered to the appellants at Lalchandpura and Anantpura as well as at Boytawala and Mansarampura have been held by this Court, as recently on 7.5.2015, to be not fully developed and more importantly conceded to be so by the JDA as recorded in the said order. According to the JDA, it would require further two years to develop the land thereat. The land of the appellants, as acquired, was situated at Boytawala which, thus has not yet been fully developed as on date. Thus, in any view of the matter, the market value of the land at Boytawala cannot be an acceptable yardstick to identify the developed land to which they are entitled. This is more so, as for the last thirty years and above, the respondents have failed to allot 15% developed land as envisaged by the policy to the appellants. Admittedly, two of the land oustees had been allotted developed land at Vidyadhar Nagar and as the letter dated 16.10.2007 referred to hereinabove would reveal, till then, land at the same site was available. As a matter of fact, allotment of land at Lalchandpura, Anantpura, Boytawala and Mansarampura, which admittedly had not been fully developed, was in breach of the promise engrafted in the policy dated 13.12.2001. The approach of the respondents, when viewed in the backdrop of compulsory acquisition of land in the exercise of the State's power of eminent domain and its persistent failure to act on this policy, only

demonstrates a highly insensitive and evasive orientation at the cost of its citizenry by a show of dominant bargaining power. The policy, though was to allot developed land in lieu of compensation to ensure quick and unhindered completion of the process of acquisition, the respondents have remained apathetically inert, having obtained the land, without living up to their commitments. To gloss over this inexplicable default, would signify effacement of decades of indifference and mute inaction of the respondents, more particularly the State, inspite of a binding policy decision, to the suffering detriment and prejudice to the appellants without their fault. In this overwhelming conspectus of facts, the respondents cannot be permitted to dictate terms to the appellants in the matter of allotment of land inter alia on the consideration of equivalence of the value of their land as acquired with the one offered to them as developed land as on date.

121. The assertions founded on the right to property and the doctrines of promissory estoppel and legitimate expectation assumes significance at this juncture.

122. The right to property though no longer a fundamental right is otherwise a zealous possession of which one cannot be divested save by the authority of law as is enjoined by Article 300A of the Constitution of India. Any callous inaction or apathy of the State

and its instrumentalities, in securing just compensation would amount to dereliction of a constitutional duty, justifying issuance of writ of mandamus for appropriate remedial directions.

123. This Court in ***Indore Vikas Pradhikaran*** *(supra)* had an occasion to refer to the Declaration of the Rights of Man and the Citizen (dated 26.8.1789) to expound that though earlier, human rights existed to the claim of individuals' right to health, livelihood, shelter and employment etc., these have started gaining a multifaceted approach, so much so that property rights have become integrated within the definition of human rights.

124. The right of the owner of a land to receive just compensation, in the context of his claim to access to justice as declared by the International Covenant on Economic, Social and Cultural Rights, had been underlined by this Court in ***Steel Authority of India Limited*** *(supra)*.

125. While recognising the power of the State to acquire the land of its citizens, it has been proclaimed in ***Dev Sharan*** *(supra)* that even though the right to property is no longer a fundamental right and was never a natural right, it has to be accepted that without the right to property, other rights become illusory.

126. In a catena of decisions of this court, this prize privilege has also been equated to human right. In ***Mukesh Kumar*** *(supra)*,

this Court has succinctly propounded this proposition in the following terms:

> "The right to property is now considered to be not only a constitutional or statutory right but also a human right. Human rights have already been considered in the realm of individual rights such as the right to health, right to livelihood, right to shelter and employment etc. But now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even the claim of adverse possession has to be read in that context.
>
> The changing attitude of the English courts is quite visible from the judgment of Beaulane Properties Ltd. vs. Palmer (2005)4All ER 461. The Court here tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights. With the expanding jurisprudence of the European Courts of Human Rights, the Court has taken an unkind view to the concept of adverse possession.

127. In summa, the right to property having been elevated to the status of human rights, it is inherent in every individual, and thus has to be venerably acknowledged and can, by no means, be belittled or trivialized by adopting an unconcerned and nonchalant disposition by anyone, far less the State, after compulsorily acquiring his land by invoking an expropriatory legislative mechanism. The judicial mandate of human rights dimension, thus, makes it incumbent on the State to solemnly respond to its constitutional obligation to guarantee that a land looser is

adequately compensated. The proposition does not admit of any compromise or laxity.

128. Added to this, is the promissory estoppel perspective, the State being the promisor. Estoppel is a rule of equity which has entrenched itself with time in the domain of public life. A new class of estoppel recognised as "promissory estoppel" has assumed considerable significance in the recent years. So far as this Court is concerned, it invoked the doctrine in ***Anglo Afghan Agencies*** (supra) in which it was enounced that even if a case would not fall within the purview of Section 115 of the Indian Evidence Act, 1872, it would still be open to a party, who had acted on a representation made by the Government, to claim that it should be bound to carry out the promise made by it, even though the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution of India. This principle, evolved by equity, to avoid injustice is traceable as well in the leading case on the subject in ***Central London Property Trust Ltd. vs. High Trees House Ltd*** (1947) 1 KB 130.

129. In a later decision of this Court in ***Motilal Padampat Sugar Mills Co.*** *(supra),* responding to the plea of the State Government, inter alia, that there could be no promissory estoppel against it, so as to inhibit it from formulating and implementing its

policies in public interest, this Court underlined, in reiteration, the well-known preconditions for the operation of the doctrine as under:

(1) A clear and unequivocal promise, knowing and intending that it would be acted upon by the promisee;

(2) On such acting upon the promise by the promise, it would be inequitable to allow the promisor to go back on the promise.

130. This Court in ***Nestle India Limited*** *(supra)*, while referring to the decision of ***Motilal Padampat Sugar Mills*** *(supra)* quoted para 24 of that judgment to the effect that the Government stood on the same footing as a private individual so far as the obligation in law was concerned and that the former was equally bound as the latter and it was difficult to see on what principle, could a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel.

131. This hallowed notion of equitable estoppel has stood the test of time with peripheral variations to reverberate in the following exposition in ***Monnet Ispat*** *(supra)* in the following terms:

> 182.1. Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by

> the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.
>
> 182.2 The doctrine of promissory estoppels may be applied against the Government where the interest of justice, morality and common fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to present fraud or manifest injustice. However, the Government or even a private party under the doctrine of promissory estoppels cannot be asked to do an act prohibited in law. The nature and function which the Government discharges is not very relevant. The Government is subject to the rule of promissory estoppels and if the essential ingredients of this doctrine are satisfied, the Government can be compelled to carry out the promise made by it.

132. Adding a caveat to the State Government otherwise inescapably bound by the doctrine, this Court in ***S.V.A. Steel Re-Rolling Mills*** *(supra)* ruled that before extending benefits to its subjects by laying down any policy, it must ponder over the pros and cons thereof and its capacity to accord the same, as it would be unfair and immoral on its part thereafter, not to act as per its promise.

133. A parallel doctrine founded on the doctrine of fairness and natural justice baptised as “legitimate expectation” has grown as well in the firmament of administrative law to ensure the predication of

fairness in State action. The concept of "legitimate expectation" is elaborated in ***Halsbury"s Laws of England, Fourth Edition,*** Volume 1(1) 151 as hereunder:

> "81. *Legitimate expectations.*— A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.
>
> *The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's* legitimate expectation, it must afford him an opportunity to make representations on the matter. The courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant."

134. In espousing this equitable notion of exacting fairness in governmental dealings, this Court *in* ***Food Corporation of India*** *(supra)* proclaimed that there was no unfettered discretion in public law and that a sovereign authority possessed powers only to use them for public good. Observing that the investiture of such power imposes with it, the duty to act fairly and to adopt a procedure which

is 'fair play in action', it was underlined that it also raises a reasonable or legitimate expectation in every citizen to be treated fairly in his dealings with the State and its instrumentalities.

135. The observance of this obligation as a part of good administration, is obligated by the requirement of non-arbitrariness in a state action, which as a corollary, makes it incumbent on the State to consider and give due weight to the reasonable or legitimate expectations of the persons, likely to be affected by the decision, so much so that any failure to do so would proclaim unfairness in the exercise of power, thus vitiating the decision by its abuse or lack of bona fide. The besieged decision would then be exposed to the challenge on the ground of arbitrariness. It was propounded that mere reasonable or legitimate expectation of a citizen, may not by itself be a distinct enforceable right in all circumstances, but the failure to consider and give due weight to it, may render the decision arbitrary. It was thus, set down that the requirement of due consideration of legitimate expectation formed a part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. In reiteration to the above enunciation, this Court in ***Monnet Ispat*** (supra) did rule as well, that the doctrine of legitimate expectation is founded on the principle of reasonableness and fairness and arises out of the principles of natural justice and can be invoked as a

substantive and enforceable right.

136. In course of the arguments, as adverted to hereinabove, host of pleadings have been exchanged portraying contrary view points on the developed status of the land sought to be allotted, the summary whereof has been extracted hereinabove. It appears there from that the sites at Boytawala, Lalchandpura, Anantpura and Mansarampura are located within a range of 14.70 K.M. to 39 K.M. from the central point Jaipur, the nearest being at Boytawala. All these lands have been recorded by this Court, as admitted by the JDA, to be not fully developed. The plots offered by the respondents at Rohini Phase I, Anupam Vihar, Pitambara Scheme including Rajbhawan Yojana , Rohini Phase II, Abhinav Vihar Vistar and Harit Vihar are situated within a distance of 25.40 K.M. to 36.80 K.M. from the central point, Jaipur.

137. The appellants, in categorical terms, have asserted that the plots at these places are not developed inasmuch as they are bereft of the essential facilities like water, electricity, communication/connectivity, sewerage, drainage etc. and have sought to substantiate their plea on the basis of recent photographs along with sworn pleadings. On the other hand, they have suggested plots at Vidyadhar Nagar, Gokul Nagar, Truck Terminal and Vaishali Nagar, located within a distance of 5 K.M. to 15.6 K.M. from the

central point Jaipur for allotment. That these plots of land are developed has been unreservedly admitted by the respondents, their plea being that, the appellants are not entitled thereto, judged by the factor of equivalence of the value of the acquired land.

138. At this distant point of time, we are disinclined to sustain this demur of the respondents. As the facts have unfolded, the appellants cannot be held accountable for the delay in between, the respondents having failed to offer developed land as contemplated in the policy. This stands fortified, amongst others, by the order dated 7.5.2015 vis-a-vis the land at Boytawala, Lal Chandpura, Anantpura and Man sarampura. The other plots offered by the respondents, also having regard to the attributes of developed land as envisioned by the Rajasthan Act do not accord with the letter and spirit of the policy.

139. Administrative discretion, irrespective of its ostensible expanse, it is a trite proposition, can never be unregulated, omnipotent and fanciful. A public authority vested with power has to essentially exercise its discretion, if conferred, conditioned by the dictates of duty as envisaged, to effectuate the exercise of the prerogative to achieve the objective therefor. The central and cardinal canon of administrative governance, enjoins a framework of controlled use of discretion coupled with duty which is inscribed in

felicitous terms in Administrative Law, 10th Edition by H.W.R. Wade and C.F. Forsyth at Page 286 as quoted:

> "The first requirement is the recognition that all power has legal limits. The next requirement, no less vital, is that the courts should draw those limits in a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen. Parliament constantly confers upon public authorities powers which on their face might seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the courts refuse to countenance. They have woven a network of restrictive principles which require statutory powers to be exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empowering Act."

Vis-à-vis public duties it has been expressed at page 496 thus:

> "As well as illegal action, by excess or abuse of power, there may be illegal inaction, by neglect of duty. Public authorities have a great many legal duties, under which they have an obligation to act, as opposed to their legal powers, which give them discretion whether to act or not. The remedies so far investigated deal with the control of powers. The remedies for the enforcement of duties are necessarily different. The most important of them is mandamus.

140. Dwelling upon the constitutional imperative of fairness in State action in ***Noida Entrepreneurs Association vs. Noida and others*** (2011)6 SCC 508, this Court revisited the dynamics of the interplay between administrative power and discretion vis-a-vis public duty accompanying the same. Underlying the essentiality of non-arbitrariness and transparency in executive functioning as a guarantee of certitude and probity, it was observed thus:

"39: State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

40: The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. [Vide *Erusian Equipment & Chemicals Ltd.* v. *State of W.B.*, *Ramana Dayaram Shetty* v. *International Airport Authority of India*, *Haji T.M. Hassan Rawther* v. *Kerala Financial Corpn*, *Shrilekha Vidyarthi* v. *State of U.P* and *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*.]

41: Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. [Vide *Commr. of Police* v. *Gordhandas Bhanji*, *Sirsi Municipality* v. *Cecelia Kom Francis Tellis*, *State of Punjab* v. *Gurdial Singh*, *Collector*

(District Magistrate) v. *Raja Ram Jaiswal*, *Delhi Admn.* v. *Manohar Lal* and *N.D. Jayal* v. *Union of India.*]

141. In the overall perspectives, in our discernment, the respondents have utterly failed to abide by a public policy upon which, the appellant had altered their position and had suffered immense prejudice. The persistent denial to the appellants of their right to the developed land in lieu of compensation and that too without any legally acceptable justification, has ensued in manifest injustice to the appellants over the years. Neither have they been paid just compensation for the land acquired nor have they been provided with the developed land in place thereof, as assured. They are thus predominantly entitled for the remedial intervention of this court to ensure fair, just, efficacious, tangible and consummate relief in realistic terms. If fairness is an indispensable and innate constituent of natural justice, this imperative indubitably has to inform as well the judicial remedy comprehended. In the overwhelming factual scenario, as obtains in the instant case, refusal to grant the relief to which they are entitled, would amount to perpetuation of gross illegality, unjustness and unfairness meted out to them. The textual facts demand an appropriate response of the judicial process to effectuate the guarantee of justice, engrafted in the preamble of the Constitution reinforced by the canons of

equity.

142. The remedy indeed has to be commensurate to the cause and the prejudice suffered. The invocable judicial tools, predominantly in the form of a writ of mandamus, and the plentitude of the powers of constitutional courts, and more particularly, this court under Article 142 of the Constitution are assuredly the potential redressal aids in fact situations akin to the one in hand.

143. A writ of mandamus is an extraordinary remedy and is intended to supply deficiencies in law and is thus discretionary in nature. The issuance of writ of mandamus pre-supposes a clear right of the applicant and unjustifiable failure of a duty imposed on an authority otherwise obliged in law to imperatively discharge the same.

144. The dominant features of a writ of mandamus authoritatively figures in the following extract from the Halswbusy Laws of England, 4th Edition (page 111):

> **"Nature of mandamus**. The order of mandamus is of a most extensive remedial nature, and is, in from, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may

issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.

145. An insight into the equitable theory in the application of law was explored by the celebrated jurist Roscoe Pound in his treatise "An Introduction to the Philosophy of Law" in the following excerpts:

> "To the adherents of this theory the essential thing is a reasonable and just solution of the individual controversy. They conceive of the legal precept, whether legislative or traditional, as a guide to the judge, leading him toward the just result. But they insist that within wide limits he should be free to deal with the individual case so as to meet the demands of justice between the parties and accord with the reason and moral sense of ordinary men. They insist that application of law is not a purely mechanical process. They contend that it involves not logic only but moral judgments as to particular situations and courses of conduct in
> view of the special circumstances which are never exactly alike. They insist that such judgments involve intuitions based upon experience and are not to be expressed in definitely formulated rules. They argue that the cause is not to be fitted to the rule but the rule to the cause
>
> … … … …
>
> Equity uses its powers of individualizing to the best advantage in connection with the conduct of those in whom trust and confidence has been reposed
>
> … …. … ….
>
> Philosophically the apportionment of the field between rule and discretion which is suggested by the use of rules and of standards respectively in modern law has

its basis in the respective fields of intelligence and intuition. Bergson tells us that the former is more adapted to the inorganic, the latter more to life.

The rule, mechanically applied, works by repetition and precludes individuality in results, which would threaten the security of acquisitions and the security of transactions. On the other hand, in the hand-made as distinguished from the machine-made product, the specialized skill of the workman gives us something infinitely more subtle than can be expressed in rules. In law some situations cal or the product of hands, not of machines, for they involve not repetition, where the general elements are significant, but unique events, in which the special circumstances are significant.

... ...

Where the call is for individuality in the product of the legal mill we resort to standards. And the sacrifice of certainty in so doing is more apparent than actual. For the certainty attained by mechanical application of fixed rules to human conduct has always been illusory."

146. The above extracts authoritatively underscore the indispensable essentiality of individuality in results in a persuasive fact situation to obviate mechanical application of fixed rules, by invoking equity and discretion to secure realistic remedies tailor-made to the situational demands justifying the paramountcy of the rule of law.

147. Our national charter, being a living and organic document, no provision thereof can remain static or stale and must

be accorded a vibrant import to guarantee the effectuation of the preambular pledge in its fullest content. The plenary powers of this Court enshrined in Article 142 of the Constitution of India for achieving complete justice is only an insignia of empowerment so that the constitutional guarantees are not reduced to mere ritualistic incantations.

148. This Court extra-ordinarily does exercise its power under Article 142 of the Constitution of India as warranted in a given fact situation, for making order (s) as is felt necessary for doing complete justice in a case a matter pending before it.

149. As the nature and extent of the power indicates, there can be no straight jacket formula, for its exercise nor there can be any fetter thereto, it being plenary in nature. The invocation of this power is to reach injustice and redress the same, if it is not feasible otherwise to achieve this avowed objective. In doing so, this Court acts in its equity jurisdiction to balance the conflicting interests of the parties and advance the cause of administration of even handed justice. The purport and purpose of this power being justice oriented and guided by equitable principles, it chiefly aims at the enforcement of a public duty, if not forthcoming on legitimate justification ensuing in oppressive injustice, militating against the constitutional ordainment of equality before law and equal

protection of laws enshrined in Article 14 of the Constitution of India and entrenched as are, among others, in the invaluable right to life envisioned in Article 21 of the Constitution of India.

150. The Constitutional Courts are sentinels of justice and vested with the extra-ordinary power of judicial review to ensure that the rights of the citizens are duly protected. That the quest for justice is a compulsion of judicial conscience, found its expression in ***C. Chenga Reddy and Others vs. State of A.P.*** (1996) 10 SCC 193 in the following extract:

> "A court of equity must so act, within the permissible limits so as to prevent injustice. "Equity is not past the age of child-bearing" and an effort to do justice between the parties is a compulsion of judicial conscience. Courts can and should strive to evolve an appropriate remedy, in the facts and circumstances of a given case, so as to further the cause of justice, within the available range and forging new tools for the said purpose, if necessary to chisel hard edges of the law."

151. This underlying thought found erudite elaboration in ***Manohar Lal Sharma vs. Principal Secretary and Others*** (2014) 2 SCC 532.

> "The Supreme Court has been conferred very wide powers for proper and effective administration of justice. The Court has inherent power and jurisdiction for dealing with any exceptional situation in larger public interest which builds confidence in the rule of law and strengthens democracy. The Supreme Court as the sentinel on the qui vive, has been invested with the powers which are elastic and flexible and in certain areas the rigidity in exercise of such powers is

considered inappropriate."

152. Thus failure to discharge an obligatory duty defined by public policy without any justification in disregard thereto viewed in the context of the sacrosanct content of human rights in Article 300A is an inexcusable failure of the state to discharge its solemn constitutional obligation, the live purpose for its existence. The predominant facts herein, justifiably demand a fitting relief modelled by law, equity and good conscience. Thus, the elaborate preface.

153. In the overall view of the matter, we are of the confirmed opinion, that in the singular facts and circumstances of the case and for the sake of complete justice, the appellants are entitled to be allotted their quota of 15% developed land in the terms of policy/circular dated 13.12.2001 in one or more available plots at Vidyadhar Nagar, Gokul Nagar, Truck Terminal and Vaishali Nagar as enumerated by them in their affidavit dated 17.8.2015. The respondents are hereby directed to accommodate them accordingly.

154. In the wake up of above, the appeals are allowed. The impugned judgment and order is set-aside. The respondents would allot the developed land as per policy decision dated 13.12.2001 to the appellants at the places indicated hereinabove without fail and within a period of six weeks herefrom. To secure a permanent

resolution to the lingering lis, the respondents would ensure that a transparent and fair process is undertaken, if necessary, to be overseen by an appropriate authority to obviate any disparity in treatment in the matter of allotment as ordered.

155. We part with the belief and expectation that the respondents would be alive to their duty cast by law and would not precipitate any further cause of action necessitating the intervention of this Court with stringent initiatives. No costs.

.....J.
[V. GOPALA GOWDA]

.....J.
[AMITAVA ROY]

NEW DELHI;
DECEMBER 1, 2015.