

**BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOKATA.**

Original Application No.190 of 2024/EZ

IN THE MATTER OF:

M/s Bhagwati Stone Crushers

.....Applicant

Versus

Union of India

.....Respondents

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**PAUSHALI BANERJEE
ADVOCATE
7A, KIRON SHANKAR ROY ROAD,
KOLKATA-700001**

F.No. 11-65/2014-FC(Pt) dated 08.06.2018 of the Ministry of Environment Forest and Climate Change (MOEF& CC), Government of India whereby the Management Plan for Sustainable Mining and delineation of Mining Zone and Conservation Area/ No Mining Zone in Saranda and Chaibasa in Singhbhum district of Jharkhand was approved by competent authority and communicated to the Chief Secretary and Principal Secretary, Forest of the Government of Jharkhand. The Applicant has further prayed in the instant application that a direction be passed to the DFO, Chaibasa to furnish a revised No-Objection Certificate to the Applicant correcting the Memo No. 1062 dated 27.06.2024 to the extent that the area in question does not fall under the no mining zone as the report of the MPSM is not applicable as the same does not cover stone mining over non forest land.

2. I say that during the course of arguments, the Applicant seeks to rely upon certain documents/ judgements which are required to be brought on record before this Hon'ble Tribunal.
3. It is submitted that the following documents/ judgement are essential for the adjudication of the instant matter:
 - a) A copy of the judgement passed by the Hon'ble Supreme Court in the case of Parbhani Transport Cooperative Society Limited

vs. Regional Transport Authority, Aurangabad & Ors. reported in AIR 1960 SC 801

- b) A copy of the judgement passed by the Hon'ble Supreme Court in the case of B. Shankara Rao Badami & Ors. vs. State of Mysore & Anr. reported in (1969) 1 SCC 1
- c) A copy of the judgement passed by the Hon'ble Supreme Court in the case of DDA and Others vs, Joginder S. Monga & Ors. reported in (2004) 2 SCC 297
- d) A copy of the judgement passed by the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Limited vs. The State of Maharashtra reported in (2009) 5 SCC 24
- e) A copy of the Guidelines for Declaration of Eco Sensitive Zones around National Parks and Wildlife Sanctuaries dated 09.02.2011 .

Copies of the Judgements and the Guidelines are annexed serially as stated in paragraph 3 and collectively marked as Annexure 'A'.

2595 20/5/25
Minister of S. No.



VERIFICATION

, Manoj Kumar aged about 48 years Son of Danvir Prasad resident of New Colony, Nimdih, Chaibasa, District Singhbhum West, Jharkhand, PIN-833201, partner of M/s Bhagwati Stone Crushers, a registered partnership firm having its registered office at New Colony, Nimdih, Chaibasa, District Singhbhum West, Jharkhand, PIN-833201 do verify that the contents of paras.....1.....to 3..... of the Application are based on information and/or derived from sources I verily believe to be true. I have not suppressed any material facts; the rest of the paragraphs are my humble submissions.

Certified that above was affirms
deposec before me at.....Patna.....onby Manoj Kumar
'Who is Identified byManoj Kumar.....
Who is Personally Know to me certified
further than the contents has been read
explained to the deponent who Seemed
perfect to understand the at the name
of making there of

Applicant

Date- 20/5/25

Manoj Kumar
Prepared in my office Manoj Kumar

Manoj Kumar



IDENTIFY THE EXECUTANT / DEONANT
WHO HAS SIGNED IN MY PRESENCE

Manoj Kumar
20/5/25

ANNEXURE-A

1960 SCC OnLine SC 46 : (1960) 3 SCR 177 : AIR 1960 SC 801

In the Supreme Court of India

(BEFORE B.P. SINHA, C.J. AND S.J. IMAM, A.K. SARKAR, K.N. WANCHOO AND
J.C. SHAH, JJ.)

PARBHANI TRANSPORT COOPERATIVE SOCIETY
LTD. ... Petitioner;

Versus

REGIONAL TRANSPORT AUTHORITY, AURANGABAD
AND OTHERS ... Respondents.

Writ Petition No. 110 of 1959*, decided on March 7, 1960

Advocates who appeared in this case:

B.R.L. Iyengar and Shankar Anand, Advocates, for the Petitioner;

M.C. Setalvad, Attorney-General for India and B. Sen Senior Advocate R. Gopalakrishnan, R.H. Dhebar and T.M. Sen, Advocates, with them), for the respondents.

The Judgment of the Court was delivered by

A.K. SARKAR, J.— The petitioner is a cooperative society duly registered and it carries on the business of plying motor buses as stage carriages on the public highways in the State of Bombay. Its case in this petition is that it has been deprived of its right to carry on this business and has also been subjected to discriminatory treatment in the matter of the grant of permits to run its buses. It complains of the infringement of its fundamental rights under Articles 19(1)(g) and 14 of the Constitution.

2. The questions raised in this matter turn on some of the provisions of the Motor Vehicles Act, 1939, as amended by Act 100 of 1956. These provisions have to be examined before proceeding to discuss the questions that arise. We are concerned only with Chapters IV and IV-A of the Act. Chapter IV comprises Sections 42 to 68 and Chapter IV-A, which was in its entirety introduced by the amending Act, consists of Sections 68-A to 68-I.

3. Taking Chapter IV first, we find that Section 42(1) provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of a permit granted under the Act. A "transport vehicle" is defined in Section 2(33) as a public service vehicle or a goods vehicle. Clause (a) of sub-section (3) of Section 42 as it originally stood provided that sub-section (1) of that section would not apply to any transport vehicle owned by or on behalf of the Central Government or a State

Government other than a vehicle used in connection with the business of a railway. So under it the Government could ply stage carriages on the public highways without having to obtain permits in respect of them. The amending Act of 1956 substituted a new clause (a) in Section 42(3) for the old clause. The new clause (a) provides that sub-section (1) shall not apply to any transport vehicle owned by the Central Government or a State Government and used for the Government purposes unconnected with any commercial enterprise. Since the amendment, therefore, the Government cannot run stage carriages on the public highways without a permit, just as a private owner of stage carriages cannot do, because such use of the vehicles will not be for a purpose unconnected with a commercial enterprise. Section 44 authorises a State Government to constitute a State Transport Authority and Regional Transport Authorities for different areas in that State to carry out the duties specified. Section 45 provides that every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle. Section 47 specifies the matters to which a Regional Transport Authority shall have regard in considering an application for the grant of a permit.

4. We now come to Chapter IV-A. Section 68-A(b) defines a "State transport undertaking" for the purpose of the Chapter to mean an undertaking providing road transport service, carried on, among others, by a State Government. Section 68-B provides that the provisions of Chapter IV-A shall have effect notwithstanding anything to the contrary contained in Chapter IV. Section 68-C is in these terms:

"68-C. Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct."

Section 68-D provides for the preferring of objections to the scheme published under Section 68-C, consideration of such objections and final approval of the scheme by the State Government. The terms of Section 68-F(1) are as follows:

"68-F. (1) Where, in pursuance of an approved scheme, any State

transport undertaking applies in the manner specified in Chapter IV for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the Regional Transport Authority shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter IV."

5. The respondents to this petition are (1) The Regional Transport Authority, Aurangabad, (2) The State Transport Authority, Bombay, (3) The Divisional Controller of State Transport, Marathwada, and (4) The State of Bombay. Aurangabad and Marathwada are both in the State of Bombay. The first and second respondents are the authorities set up under Section 44 of the Act by the Government of Bombay. It is the duty of the first respondent to consider applications for and to grant, permits for stage carriages to be plied in Aurangabad region and the second respondent hears appeals from the decisions of the first respondent. The third respondent is the head of a department of the Government of the State of Bombay and is in charge of public transport work in Marathwada.

6. It appears that the petitioner had permits to run buses on four routes in Aurangabad and that these permits were due to expire on October 1, 1958. The third respondent who really represents the Government of the State of Bombay and who may be conveniently referred to as the State of Bombay, had permits for two of these routes. On May 19, 1958, the State of Bombay applied for permits for all these four routes under Chapter IV of the Act. On May 27, 1958, the petitioner applied for renewal of its existing permits. The first respondent rejected the application of the petitioner and granted those of the State of Bombay. The petitioner appealed to the second respondent but its appeal was rejected. In the meantime on some date which does not appear on the record, the petitioner had been granted temporary permits up to December 31, 1958. On the expiry of its temporary permits on December 31, 1958, the petitioner would have been unable to run any of its buses and it therefore moved the High Court at Bombay under Article 226 of the Constitution and the High Court quashed the orders of Respondents 1 and 2 and directed the applications of the petitioner and the State of Bombay for the permits to be reconsidered. With the reasons of this order of the High Court we are not concerned. Respondent 1, however, without reconsidering the applications as directed by the High Court, granted temporary permits to the State of Bombay. The petitioner again moved the High Court which thereupon quashed the order of Respondent 1 granting temporary permits to the State of Bombay. Thereafter, on March 20, 1959, Respondent 1 granted temporary permits to the petitioner which were later extended to July 20, 1959. On June 1, 1959, the State of

Bombay published a scheme under Section 68-C in Chapter IV-A of the Act. Various objections were filed against the scheme and nothing further appears to have been done to make the scheme final. On July 18, 1959, Respondent 1 purporting to carry out the directions of the High Court, reconsidered the petitioner's applications for renewal and the applications of the State of Bombay for permits and rejected the petitioner's applications while allowing those of the State of Bombay. On July 20, 1959, the petitioner's temporary permits having expired, it ceased to operate its buses. On August 27, 1959, the petitioner filed the present petition in this Court under Article 32 of the Constitution for appropriate writs quashing the order of Respondent 1 dated July 18, 1959, restraining the State of Bombay from applying for permits save under the provisions of Chapter IV-A and Respondent 1 from entertaining any application by the State of Bombay under Chapter IV and directing Respondent 1 to hear the petitioner's applications for permits according to law. Various grounds have been advanced in support of the petition and these will now be discussed.

7. The petitioner first contends that in view of Chapter IV-A the State of Bombay had no right to apply for permits under Chapter IV of the Act as it had done. It says that the order of the first respondent granting permits to the State of Bombay under Chapter IV was therefore illegal and affected its fundamental rights under Article 19(1) (g).

8. The first question then is whether the State of Bombay was entitled to apply for permits under Chapter IV. The petitioner says that special provisions having been made in Chapter IV-A to enable the Government to run its buses the Government's right to run buses was restricted to those provisions and the Government was not entitled to resort to the other provisions of the Act. In support of this contention reference was made to the case of *Nazir Ahmad v. King-Emperor*¹ where it was observed that "where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all". But this principle can apply only where one power is given and has no application where more powers than one are conferred. If a statute contains provisions giving more than one power, then the rule cannot be applied so as to take away the powers conferred by any one of these provisions. As pointed out in *Taylor v. Taylor*² referred to by the Judicial Committee in *Nazir Ahmad case*¹ "When a statutory power is conferred for the first time upon a court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted".

9. Now the position here is different. The Government has of course the power to do any business it likes and therefore the business of running stage carriages. We have earlier drawn attention to the change

made in clause (a) of Section 42(3) by the amendment of 1956. Previously, it was not necessary for the Government to obtain permits under Section 42(1) for buses that it intended to run as stage carriages. Since the amendment the Government can no longer run transport vehicles for commercial purposes without obtaining permits under Section 42(1). Now the plying of buses as stage carriages is a commercial enterprise and for such buses, therefore, under the sections as they stand, the Government would require permits as anyone else. That being so, the sections clearly contemplate that the Government may apply for and obtain permits for its buses run as stage carriages. The rule applied in *Nazir Ahmad case*¹ does not permit the ordinary meaning of Section 42 sub-section (1) and sub-section (3) clause (a) to be cut down because of the provisions of Chapter IV-A. The Act lays down two independent sets of provisions in regard to the running of buses by the Government, one under Chapter IV and the other under Chapter IV-A. Chapter IV-A was intended to give the Government, a special advantage. When the Government chooses to proceed under that chapter, it becomes entitled as a matter of right under Section 68-F(1) to the necessary permits. Under Chapter IV the Government does not have any such advantage; it has to compete with other applicants, to secure permits to be able to run its buses. The powers under the two Chapters are therefore different. To such a case the principle of *Nazir Ahmad case*¹ cannot be applied.

10. The learned counsel for the petitioner also referred to the maxim *expressio unius est exclusio alterius* and contended that since the Act by Chapter IV-A provided that the Government would be entitled to run buses under a scheme it impliedly prohibited the running of buses by the Government otherwise. It does not seem to us that this maxim carries the matter further. It is a maxim for ascertaining the intention of the legislature. Where the statutory language is plain and the meaning clear, there is no scope for applying the rule. Section 42(3)(a) appears to us to be perfectly plain in its terms. It contemplates that the Government has to apply for permits under Section 42(1) to run buses as a commercial enterprise. That being so, the maxim cannot be resorted to for ascertaining the intention of the legislature and implying a prohibition against the Government applying for permits under Chapter IV.

11. The learned counsel then referred to the case of *Viscountess Rhondda claim*³ where it was observed at p. 365 that "The words of the statute are to be construed so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it has used, and in so construing them the existing state of the law, the mischiefs to be remedied, and the defects to be amended, may

legitimately be looked at together with the general scheme of the Act". His point is that Chapter IV-A was introduced by the amendment of 1956 to meet the observations made in *Moti Lal v. Government of Uttar Pradesh*⁴ and some other cases that Section 42(3)(a) was discriminatory in that it exempted the Government from the requirement of a permit and was hence void as offending Article 14 of the Constitution. It is said that Chapter IV-A must, therefore, be construed as containing the only provisions enabling the Government to run a stage carriage. It is difficult to appreciate this contention. The observations in the cases referred to, had been made in regard to clause (a) of Section 42(3) as it stood before its amendment in 1956. That section has been amended and as it now stands it is not discriminatory. The evil pointed out no more exists and no question of reading the Act keeping in view that evil of discrimination, arises. We find nothing in *Moti Lal case*⁴ or any other case which points to an evil nor has the learned counsel drawn our attention to any, which the Act can be said to have intended to remedy. We, therefore, find no justification for reading Chapter IV-A as containing the only provisions under which the Government can ply stage carriages.

12. It is next said that Section 42 contemplates the owner of a transport vehicle obtaining a permit and a "State transport undertaking" cannot apply for a permit under Chapter IV as it cannot be such owner. But here we are not concerned with a State transport undertaking for that comes into existence for the purposes of Chapter IV-A and that chapter has not been resorted to by the Government yet. Here the Government applied for the permits under Chapter IV. The Government can of course be the owner of transport vehicles. We have earlier said that in view of clause (a) of Section 42(3) the Government has to apply for permits under Section 42(1) as any other owner. Therefore the Act contemplates the Government as owner of transport vehicles. Further, under Section 68-A a "State transport undertaking" has been defined as an undertaking providing road transport service carried on by a State Government. Such an undertaking is really a department of a Government and in order to be able to provide transport service, it must be able to own transport vehicles. In fact Section 68-F(1) requires the State transport undertaking to apply for permits under Chapter IV and therefore contemplates it as an owner of a transport vehicle for the purposes of Section 42 which is contained in that chapter.

13. The learned counsel then referred to the concluding portion of Section 47(1) which makes it incumbent on the authority considering applications for permits to take into consideration the representations made by the persons therein mentioned. He said that the persons there mentioned did not include the Government and therefore the intention

is clear that applications for permits by the Government were not intended to be considered under Section 47 and if the Government could not come under Section 47, it could not come under Chapter IV at all. But assume that representations by the Government are not contemplated by Section 47. That does not show that applications for permits by the Government are also not contemplated by that section.

14. It is also said that the matters to which the authority granting the permits is required to have regard in considering applications for permits under Section 47 are such that if the State enters into competition with citizens for the grant of permits the State must necessarily get them. Therefore, it is said that it could not have been intended that the State would compete with the citizens in the matter of obtaining permits under Chapter IV. We are unable to assent to this contention. There is nothing in Section 47 which leads to the conclusion that whenever the Government applies along with private citizens for permits, the Government must get them. Indeed, if that were so, then it would not have been necessary to provide by Section 68-F(1) that when the Government, that is, its State transport undertaking, applied in pursuance of an approved scheme for a permit, the authority concerned would be bound to grant such permit. Section 68-F(1) clearly contemplates that without the provision made therein it may so happen that the authority acting under Section 47 may think it fit to grant the permit to a private operator in preference to the Government. It also seems to us that there is nothing in our law to prevent the Government from entering a business in competition with private citizens. Indeed, Article 19(6) by providing that nothing in Article 19(1) (g) shall affect the application of any existing law insofar as it relates to, or prevent the State from making any law relating to the carrying on by the State of any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise, would seem to indicate that the State may carry on any business either as a monopoly, complete or partial, or in competition with any citizen and that would not have the effect of infringing any fundamental rights of such citizen.

15. Our attention was then drawn to the proviso to Section 47(1) under which other things being equal a cooperative society is entitled to preference over individual owners in the matter of grants of permits. It is said that the Government is not an individual owner and therefore it is not contemplated as an applicant for a permit under Section 47. It seems to us that if the Government is not an individual owner — as to which we are not called upon to say anything — it does not follow that that section does not contemplate the Government as an applicant for permit. If Government is not an individual owner, then all that will happen in view of the proviso to Section 47(1) will be that a cooperative society will not be able to claim any preference over the

Government. All that the proviso does is to give a cooperative society a preference over individual owners. It is not concerned with stating who can apply for permits.

16. It seems to us therefore that the petitioner's contention that the Government cannot apply for a permit under Chapter IV of the Act is unsustainable. The petitioner cannot complain of the Government having applied under that chapter. We are not called upon, therefore, to discuss the further question, whether any fundamental right of the petitioner under Article 19(1)(g) would have been affected by the Government having applied for and obtained permits under Chapter IV without having the right to do so. This disposes of the contentions concerning the infringement of the petitioner's fundamental rights under Article 19(1)(g) of the Constitution.

17. We will now consider the question of the violation of Article 14 of the Constitution. The first contention in this regard was based on the proviso to Section 47(1). It is said that in the circumstances of this case, as a cooperative society the petitioner was entitled to preference over the Government, considered as an individual owner, and had not been given that preference. It is contended that Respondent 1 relying on various promises made by the State of Bombay to repair roads and to give other facilities to the travelling public had held that the other conditions were not equal while under the proviso, it was entitled to rely only on the existing conditions. It is contended that thereby the provisions of Article 14 had been infringed. This contention is in our view clearly untenable. The decision of Respondent 1 may have been right or wrong and as to that we say nothing, but we are unable to see that that decision offends Article 14 or any other fundamental right of the petitioner. Respondent 1 was acting as a quasi judicial body and if it has made any mistake in its decision there are appropriate remedies available to the petitioner for obtaining relief. It cannot complain of a breach of Art, 14.

18. The other contention of the petitioner is that if Chapter IV permits the State to compete with a private citizen, it offends Article 14 because in view of the vast resources of the State a private citizen is bound to lose in such competition. This point is clearly unfounded. Article 19(6) as it now stands, contemplates such a competition as we have earlier pointed out. The petitioner can base no grievance on such competition.

19. For these reasons we think that this petition must fail and hence it is dismissed with costs.

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* (Under Article 32 of the Constitution of India for enforcement of Fundamental Rights.)

¹ 63 IA 372 at p. 381

² (1876) 1 Ch D 426, 431

³ (1922) 2 AC 339

⁴ (1951) 1 ILR All 269

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a

SUPREME COURT CASES (1969) 1 SCC

b

(1969) 1 Supreme Court Cases 1

(From Mysore)

(BEFORE M. HIDAYATULLAH, C.J., AND J.C. SHAH, V. RAMASWAMI (I),
G.K. MITTER AND A.N. GROVER, JJ.)

5J

c

B. SHANKARA RAO BADAMI & OTHERS . . . Petitioners;

Versus

STATE OF MYSORE & ANOTHER . . . Respondents.

Writ Petitions Nos. 188 and 189 of 1968, decided on 4th December, 1968

d

A. Property Law — Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (1 of 1955) — Constitutionality of — Protection under Art. 31-A of the Constitution — Constitution of India, Arts. 31 (2) and 31-A — Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (1 of 1955) — Karnataka Inams Abolition Laws (Amendment) Act, 1973 (27 of 1973)

e

The petitioners' case was that Section 17 of the impugned Act does not provide adequate compensation in respect of lands and buildings vested in the Inamdar under Sections 3 and 9 of the said Act. In appeals to High Court the constitutional validity of the awards were held not maintainable in view of the decision in *K.S. Venkataraman & Co. v. State of Madras*, (1966) 60 ITR 112 : 1965 SCC OnLine SC 40. The petitioners, therefore, filed these writ petitions.

f

Held, that the *ratio decidendi* contained in the decisions: *State of W.B. v. Bella Banerjee*, (1953) 2 SCC 648; *State of Madras v. D. Namasivaya Mudaliar*, 1964 SCC OnLine SC 169 and *P. Vajravelu Mudaliar v. Collector*, 1964 SCC OnLine SC 22 will not apply to the facts of this case. *Bella Banerjee case* is of no avail as Article 31-A introduced by the first amendment protects the provisions of the impugned Act from contravention of Article 31(2) on the score that no principle of compensation has been provided, or that the compensation provided for is not just or is illusory or inadequate. The decisions in *Namasivaya Mudaliar* and *Vajravelu Mudaliar* are also not relevant as they are related to legislations not pertaining to agrarian reform. The impugned Act deals with agrarian reform and so directly attracts the application of Article 31-A. Writ petitions were therefore dismissed.

g

B. Constitution of India — Schedule 7 List I Entry 33, List II Entry 36, List III Entry 42 — As it stood before the Seventh Amendment — Legislative Competency as to the impugned Act

h

Held, Article 31(2) of the Constitution enjoins a clear public purpose and payment of compensation. No law can abridge these rights. It is therefore incorrect to treat the obligation to pay compensation and existence of public purpose as *implicit* in the Legislative Entry 36 of List II as they are separately provided for in Article 31(2).

Attorney General v. De Keyser's Royal Hotel, [1920] A.C. 508, 542; *Central Control Board v. Canon Brewery*, [1919] A.C. 744, referred to

The Judgment of the Court was delivered by

i

V. RAMASWAMI (I), J.—In these writ petitions under Article 32 of the Constitution a common question of law arises for determination viz. whether the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (1 of 1955), is constitutionally valid.

2. The villages of Debur and Kappasoge in Mysore District were Inam grants made to Bakshi Bhima Rao, the ancestors of the petitioners. The Inam grants were made by the Ruler of Mysore State in recognition of the military services of Bakshi Bhima Rao. The Inam included not only the income from the lands but from every kind of revenue including excise and the right to treat all lands newly brought into cultivation as the personal property of the Inamdars. The Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954 (Mysore Act 1 of 1955), (hereinafter called “the impugned Act”), was passed by the Mysore Legislature and received the assent of the President on 18th March, 1955 and published in the Mysore *Gazette* on 19th March, 1955. The Act was subsequently amended by Mysore Act 7 of 1956, which received the assent of the President on 28th June, 1956, and which was published in the Mysore *Gazette* on 5th July, 1956. By virtue of a notification, dated 2nd October, 1956, under Section 1, clause (iv) of the impugned Act, the two Inam villages vested in the State of Mysore under Section 3 of the impugned Act. Compensation of the various items was the subject-matter of dispute between the petitioners and the Special Deputy Commissioner who was appointed to assess compensation under the machinery of the Act. Awards of compensation were made under Sections 17 and 20 of the impugned Act by the Special Deputy Commissioner. The petitioners preferred Miscellaneous Appeal Nos. 89 and 130 in the High Court of Mysore under Section 31 of the impugned Act. These appeals were heard and decided by the Mysore High Court by a consolidated order of 27th October, 1960. Against that decision two appeals were brought to this Court in Civil Appeals 196 and 197 of 1965. These appeals were heard on 25th October, 1967. It was then pointed out by the Court that the constitutional validity of the provisions of the Act cannot be challenged in the statutory appeals in view of the decision of this Court in *K.S. Venkataraman and Co. v. State of Madras*¹. The petitioners thereafter filed these writ petitions challenging the constitutional validity of the Act.

3. The main contention raised by the petitioners is that the impugned Act does not provide for adequate compensation for the property acquired, that the compensation provided for was not a “just equivalent”, in other words, the market-value of the property at the time of acquisition and there was hence a violation of the guarantee under Article 31(2) of the Constitution. The impugned Act is entitled as an Act to provide for the “abolition of personal Inams and certain miscellaneous Inams in the State of Mysore except Bellary District”.

4. The preamble states that it is expedient in the public interest to provide for the abolition of personal Inams and certain miscellaneous Inams in the State of Mysore except Bellary District and for other matters connected therewith. Section 1(4) enacts that this section and Sections 2, 27, 38 and 40 shall come into force in respect of any Inam village, or minor Inam in an unalienated village, on such date as the Government may by notification appoint. Section 3 provides for the consequences of the vesting of an Inam in the State and States as follows:

“(1) When the notification under sub-section (4) of Section 1 in respect of any Inam has been published in the Mysore *Gazette*, then notwithstanding anything contained in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting, and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely:

1 (1966) 60 ITR 112 : 1965 SCC OnLine SC 40 : (1966) 2 SCR 229

SHANKARA RAO BADAMI v. STATE OF MYSORE

3

(V. Ramaswami (I), J.)

- a (a) the provisions of the Land Revenue Code relating to alienated holdings shall, except as respects minor Inams to which this Act is not applicable, be deemed to have been repealed in their application to the Inam; and the provisions of the Land Revenue Code and all other enactments applicable to unalienated villages shall apply to the said Inam;
- b (b) all rights, title and interest, vesting in the Inamdar including those in all communal lands, cultivated lands, uncultivated lands, whether assessed or not, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries, shall cease and be vested absolutely in the State of Mysore, free from all encumbrances;

c x x x x”

Section 9 enacts:

“**Lands and buildings to vest in the Inamdar.**—(1) Every Inamdar shall, with effect on and from the date of vesting, be entitled to be registered as an occupant of all lands other than—

- d (i) communal lands, waste lands, gomal lands, forest lands, tank beds, mines, quarries, rivers, streams, tanks and irrigation works;
- e (ii) lands in respect of which any person is entitled to be registered under Sections 4, 5, 6, 7 or 8; and
- (iii) lands upon which have been erected buildings owned by any person other than the Inamdar.

(2) Every building situated within the limits of the Inam which was owned immediately before the date of vesting by the Inamdar shall, with effect on and from such date, vest in the Inamdar.

Explanation: In this section ‘Inamdar’ means an Inamdar other than a holder of a minor Inam referred to in Section 7.”

f Section 17 provides as follows:

“**Amount of compensation payable.**—(1) Save as otherwise provided in Section 26, the total compensation payable in respect of any Inam shall be the aggregate of the sums specified below:

- g (i) a sum equal to twenty times the amount of land revenue payable in respect of land held by Kadim tenants and permanent tenants entitled to be registered under Section 4 and Section 5, respectively.

Explanation: Where the land revenue is paid in kind, the amount of land revenue for purposes of this clause shall be determined on the basis of the market-value prevailing on the 1st day of January, 1954, of the crop or crops paid as land revenue;

- h (ii) a sum equal to seventy-five per centum of the amount payable by the *quasi*-permanent tenants of the Inamdar under sub-section (2) of Section 6 in respect of lands of which they are entitled to be registered as occupants under sub-section (1) of the said Section 6;

- i (iii) a sum calculated at the rates specified below in respect of lands referred to in clause (iii) of sub-section (1) of Section 7 or of Section 9,—

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- (a) seventy-five rupees per acre within the municipal limits of the cities of Bangalore, Mysore and Devangere and within an area of one mile from such limits; a
- (b) forty rupees per acre within the municipal limits of the towns of Kolar, Tumkur, Chitaldurg, Shimoga, Bhadravati, Chickmagalur, Hassan and Mandya and the limits of the Kolar Gold Fields Sanitary Board Area, and within an area of one mile from such limits; and b
- (c) twenty rupees per acre in all other areas;
- (iv) a sum equal to twenty times the Jodi, quit-rent or other amount, if any, of like nature, derived by the Inamdar concerned from persons holding minor Inams under such Inamdar; and c
- (v) a sum equal to ten times the average net annual income derived by the Inamdar during a period of five years immediately preceding the date of vesting, from lands other than lands referred to in clause (iii) and lands in respect of which any person is entitled to be registered under Sections 4, 5, 6, 7, 8 and 9: d

Provided that—

- (a) the income from sandal wood or any other forest produce shall not be included in the annual income from forests unless the right thereto was expressly conferred on the Inamdar by a competent authority; e
- (b) the income from royalty on minerals or from mining lease shall not be included in the annual income unless the right to such minerals or mines was expressly conferred on the Inamdar by a competent authority and such right was recognised under Section 38 of the Land Revenue Code; f
- (c) the income from ferries shall not be included unless the right to such ferries was expressly granted to the Inamdar by a competent authority. g

x x x x²

5. On behalf of the petitioners learned Counsel stressed the argument that the Inamdar of the estate was completely deprived of any sort of compensation in regard to the category of lands mentioned in Section 9(1)(i). It was said that in regard to the permanent tenants, the compensation was fixed at 20 times of the land revenue, but in the case of *quasi*-permanent tenants the compensation is 75 per cent of the value payable by the *quasi*-permanent tenants under Section 6(2). That is to say, the Government recovers a premium under Section 6(2) at 40 times the land revenue and hands over 75 per cent, as compensation to the holder of the Inam estate. It was contended that compensation was not fixed on the basis of the market-value on the date of acquisition and that the guarantee embodied in Article 31(2) of the Constitution has been violated. h

6. In support of this argument reference was made to the decision of this Court in *State of W.B. v. Bela Banerjee*² in i

2 (1953) 2 SCC 648 : 1954 SCR 558

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(*V. Ramaswami (I), J.*)

which this Court observed that while under Entry 42, List III the Legislature was given discretionary power to lay down the principles which should govern determination of the amount to be given to the owner of the property appropriated. Article 31(2) of the Constitution required that such principles must ensure what is determined as payable must be “compensation” i.e. a just equivalent of what the owner has been deprived of. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected is a justiciable issue to be adjudicated by the Court. The Court, therefore, held in that case that the West Bengal Land Development and Planning Act, 1948, which was enacted primarily for the settlement of immigrants who had migrated into West Bengal due to communal disturbances in East Bengal and which by Section 8 provided that the compensation to be awarded for compulsory acquisition to the owner of the land was not to exceed the market-value of the land on 31st December, 1946, was ultra vires of the Constitution and void under Article 31(2) of the Constitution. At p. 564 of the report the Court observed as follows:

“Turning now to the provisions relating to compensation under the impugned Act, it will be seen that the latter part of the proviso to Section 8 limits the amount of compensation so as not to exceed the market-value of the land on December 31, 1946, no matter when the land is acquired. Considering that the impugned Act is a permanent enactment and lands may be acquired under it many years after it came into force, the fixing of the market-value on December 31, 1946, as the ceiling on the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of Article 31(2).”

7. In our opinion, this principle cannot apply in testing the validity of the impugned Act in the present case. Article 31(2) before its amendment by the Constitution (4th Amendment) Act reads as follows:

“(2) No property, movable or immovable, including any interest in, or in any company, owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.”

8. But Article 31-A was added in the Constitution with retrospective effect by Section 4 of the Constitution (1st Amendment) Act, 1951, which provides as follows:

“4. After Article 31 of the Constitution, the following article shall be inserted, and shall be deemed always to have been inserted, namely:

‘31-A. *Saving of laws providing for acquisition of estates, etc.*—(1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by, any provisions of this Part:

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Provided that where such a law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent. a

(2) In this Article—

(a) the expression ‘estate’ shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any Jagir, Inam or Muafi or other similar grant; b

(b) the expression ‘rights’ in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary and any rights or privileges in respect of land revenue.’” c

9. Article 31-A was amended again by Section 3 of the Constitution (4th Amendment) Act, 1955 with retrospective effect. Section 3 of the Constitution (4th Amendment) Act reads as follows:

“(a) for clause (1), the following clause shall be, and shall be deemed always to have been substituted, namely:

(1) Notwithstanding anything contained in Article 13, no law providing for— d

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or e

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or f

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers or corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, g

shall be deemed to be void on the ground that it is inconsistent with, or taken away from or abridges any of the rights conferred by Article 14, Article 19 or Article 31: h

Provided that where such a law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent; and

(b) in clause (2),— i

(i) in sub-clause (a), after the word ‘grant’ the words ‘and

*Madras v. D. Namasivaya Mudaliar*⁶, and *P. Vajravelu Mudaliar v. Collector*⁷, has no application to the present case because those cases related to legislation not dealing with agrarian reform and the protection of Article 31-A of the Constitution was not available to either of the statutes challenged in those cases. a

12. We pass on to consider the next question raised on behalf of the petitioners, namely, whether the impugned Act was beyond the legislative competence of the Mysore Legislature under Entry 36 of List II to the Seventh Schedule and Entry 42 of List III as those entries stood before the Seventh Amendment of the Constitution. The argument may be summarised thus: Entry 36 of List II, read with Article 246(3) of the Constitution was obviously intended to authorise the State Legislature to exercise the right of eminent domain i.e. right of compulsory acquisition of private property. The exercise of such power has been recognised in Anglo-Saxon Jurisprudence as conditioned by public necessity and payment of compensation. All legislations in this country authorising such acquisition of property from Regulation 1 of 1834 to Land Acquisition Act, 1894, proceeded on that footing. The existence of public purpose and the obligation to pay compensation are, therefore, necessary concomitants of compulsory acquisition of private property, and so, the term “acquisition” must be construed as importing by necessary implication the aforesaid two conditions. It is also a recognised rule for the construction of statutes that, unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation: *Attorney General v. De Keyser’s Royal Hotel*⁸. The power to take compulsorily raises by implication a right to payment: *Central Control Board v. Cannon Brewery*⁹. The word “subject to the provisions of Entry 42 in List III” in Entry 36 reinforce the argument, as these words must be taken to mean that the power to make a law with respect to acquisition of property should be exercised subject to the condition that such law should also provide for the matters referred to in Entry 42, in other words, a two-fold restriction as to public purpose and payment of compensation (both of which are referred to in Entry 42) is imposed on the exercise of the law making power under Entry 36. Entry 36 at the material time read as follows: b
c
d
e
f

“Acquisition or requisition of property, except for the purposes of the Union, subject to the provisions of Entry 42 of list III.”

Entry 42 was to the following effect:

“Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given.” g

13. By the Constitution (7th Amendment) Act, 1956, Entries 36 of List II, 33 of List I, were omitted and Entry 42 of List III, was altered and the altered entry reads as follows: “Acquisition and requisitioning of property”. It was, however, pointed out on behalf of the petitioners that the amendment was not retrospective and the validity of the impugned Act must be tested by the language of Entries 36 of List II and 42 of List III as they stood at the material time. h

14. In our opinion, there is no substance in the argument. It is true that under the common law of eminent domain as recognised in Anglo-Saxon i

6 1964 SCC OnLine SC 169 : (1964) 6 SCR 936

614

8 [1920] A.C. 508, 542

7 1964 SCC OnLine SC 22 : (1965) 1 SCR

9 [1919] A.C. 744

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Jurisprudence the State cannot take the property of its subject unless such property is required for a public purpose and without compensating the owner for its loss. But, when these limitations are expressly provided for in Article 31(2) and it is further enacted that no law shall be made which takes away or abridges these safe-guards, and any such law, if made, shall be voids there can be no room for implication, and the words “acquisition” of property in Entry 36 must be understood in their natural sense of the act of acquiring property, without importing into the phrase an obligation to pay compensation or a condition as to the existence of a public purpose. In other words, it is not correct to treat the obligation to pay compensation as implicit in the Legislative Entry 33 of List I or Legislative Entry 36 of List II for it is separately and expressly provided for in Article 31(2). The well known maxim *expressum facit cessare tacitum* is indeed a principle of logic and commonsense and not merely a technical rule of construction. The express provision in Article 31(2) that a law of acquisition in order to be valid must provide for compensation will therefore necessarily exclude all suggestion of an implied obligation to provide for compensation sought to be imported into the meaning of the word “acquisition” in Entry 36 of List II. In the face of the express provision of Article 31(2), there remains no room for reading any such implication in the legislative heads. The entries in the Lists of the Seventh Schedule are designed to define and delimit of the respective areas of legislative competence of the Union and State Legislatures. Such a context is hardly appropriate for the imposition of implied restrictions on the exercise of legislative powers, which are ordinarily matters for positive enactment in the body of the Constitution.

15. It was said that the words “subject to the provisions of Entry 42 of List III” must be taken to mean that the law making power under Entry 36 could be exercised subject to the two conditions as to public purpose and payment of compensation both of which are referred to in Entry 42. In our opinion, the contention is unsound. The two entries are merely heads of legislation and are neither interdependent nor complementary to each other. These words in Entry 36 mean no more than any law made under Entry 36 by a State Legislation can be displaced or overridden by the Union Legislation making a law under Entry 42 of List III. It is important to notice that similar words do not occur in Entry 33 of List I which confers on Parliament the power to make laws with respect to acquisition of property for the purpose of the Union. For if these restrictive conditions as to public purpose and payment of compensation are to be derived only from those words, then it must follow that in the absence of those words, Parliament can make law, authorising acquisition of property without a public purpose and without a provision for compensation. No reason was suggested why Parliamentary Legislation with respect to such acquisition of property is to be free from such restrictive conditions, while State Legislation should be subject to them. The true inference is that the power to make law belonging to both Parliament and the State Legislatures can be exercised only subject to the aforesaid two restrictions not by reason of anything contained in the legislative entries themselves but by reason of positive provisions contained in Article 31(2). But as legislation falling within Article 31-A cannot be called in question in a Court of law for non-compliance with those provisions such legislation cannot be struck down as unconstitutional and void. In our opinion, counsel on behalf of the petitioners is unable to make good his argument that the impugned Act was beyond the legislative competence of the Mysore Legislature at the time when it was enacted.

16. For these reasons we hold that the petitioners have made out no case for

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grant of relief under Article 32 of the Constitution. These writ petitions accordingly fail and are dismissed with costs. There will be one set of hearing fee.

a

(1969) 1 Supreme Court Cases 10

(From Calcutta)

3J

(BEFORE J.C. SHAH, V. RAMASWAMI (I) AND A.N. GROVER, JJ.)

PUSHKAR MUKHERJEE AND OTHERS

.. Petitioners;

b

Versus

STATE OF WEST BENGAL

.. Respondents.

Writ Petition No. 179 of 1968, decided on 7th November, 1968

c

Preventive Detention Act, 1950 — Sections 3(1)(a), (2), 11(1) — Acts prejudicial to public order — One vague ground enough to vitiate order — Connotation of “public order”, “Law and Order”, “vague” — Petition partly allowed — Constitution of India — Arts. 32 and 22 (b)

Rule issued to show cause why release from detention should not be ordered against all or any of the respondents.

d

Held :

It is settled law that the satisfaction of the detaining authority under Section 3(1) of the 1950 Act is subjective and not justiciable. Reasonableness of the satisfaction cannot be questioned. (Para 10)

State of Bombay v. Atma Ram Shridhar Vaidya, 1951 SCC 43, *relied on*

e

But the satisfaction of the detaining authority can be challenged if the grounds are irrelevant or mala fide.

What was meant by maintenance of public order was the prevention of disorder of a grave nature whereas the expression “maintenance of law and order” meant prevention of disorder of comparatively lesser gravity and of local significance. (Para 13)

f

Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9 (per Hidayatullah, J.) *relied on*

It is well established that even if one of the grounds or reasons that led to the satisfaction of the detaining authority is irrelevant, the order of detention would be invalid, for it can never be certain as to what extent the bad reasons operated on the mind of the authority concerned or whether the detention order would have been made at all if only one or two good reasons had been before them. (Para 16)

g

Shibban Lal Saksena v. State of U.P., (1953) 2 SCC 617; *Ram Manohar Lohia v. State of Bihar*, 1965 SCC OnLine SC 9, *relied on*

Even though one ground is vague and the other grounds are not vague the detention order has to be struck down as not in accordance with law. “Vagueness” discussed. (Para 15)

h

Ram Kishan Bharadwaj v. State (Delhi Admn.), (1953) 1 SCC 695, *relied on*

Petitioners 1, 7, 12, 13, 19, 22 alone were directed to be released for the aforesaid reasons.

The Judgment of the Court was delivered by

i

V. RAMASWAMI (I), J.—In this case the petitioners have obtained a rule calling upon the respondent viz. the State of West Bengal to show cause why a

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(BEFORE ASHOK BHAN AND S.B. SINHA, JJ.)

a DDA AND OTHERS . . . Appellants;

Versus

JOGINDER S. MONGA AND OTHERS . . . Respondents.

Civil Appeals No. 1781 of 2000[†] with No. 1782 of 2000,
decided on December 12, 2003

b **A. Town Planning — Resale — Allotment of leasehold land — Sale by allottee — Difference between premium paid and market value — Recovery of — Nazul land governed by statutory provisions — Lease granted by DDA to cooperative society — Members of the Society required to execute deeds of sub-lease in favour of lessee as well as President of India — Deeds of sub-lease entitling the lessor to recover the portion of unearned increase in value i.e. difference between the premium paid and market value of plot at the**

c **time of sale — Market value determined by the lessor to be final and binding — Circular letters issued by Delhi Administration, in exercise of power delegated by President of India, fixing market price of the nazul land localitywise — Agreement of sale of plot by sub-lessee — Subsequent circular letter issued indicating policy decision to convert leasehold lands into freehold lands only on payment of conversion charges — Held, deeds of sub-lease had statutory force and hence terms thereof binding — Market value fixed in exercise of power under the terms of the sub-lease and the circular letter, therefore, also binding and lessor cannot resile from the same — Unearned increase in value has to be determined on the basis of the market value so fixed and no demand can be raised hypothetically on the basis of any agreement of the purchaser to pay any further amount — Delhi Development Act, 1957 (61 of 1957), Ss. 22 and 56 — Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, R. 23**

e **B. Practice and Procedure — Mistake — It is not fraud — It must be pleaded and such plea must lead to a fundamental error — It can be a subject-matter of acquiescence**

f **C. Civil Procedure Code, 1908 — S. 34 — Interest — Pendente lite and for future — Discretionary remedy — Rate of interest has to be fixed having regard to the principle of restitution — Rate of interest can be reduced by the appellate court — Award of then prevailing rate of 18% by High Court, on facts, reduced to 9% p.a. in the interest of justice having regard to drastic fall in bank rate of interest**

g **D. Practice and Procedure — Relief — Moulding the relief — Supreme Court can mould the relief having regard to subsequent events but thereby it cannot substitute a new relief based on a fresh cause of action**

g **E. Administrative Law — Administrative action — Subordinate legislation — Executive instructions — If in conflict with statutory provisions, the latter will prevail — But in absence of any conflict both will prevail**

h The lands in question being *nazul* lands are governed by the provisions of the Delhi Development Act, 1957 and the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 framed thereunder. Pursuant to

[†] From the Judgment and Order dated 22-1-1999 of the Delhi High Court in CW No. 883 of 1995

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or in furtherance of the provisions of the said Act and the Rules, the appellant granted lease in favour of a cooperative society known as Government Servants Cooperative House Building Society Limited. One *M* and others were the members of the said Cooperative Society. They in terms of the provisions of the Rules were required to execute deeds of sub-lease in favour of the lessee as also the President of India. A statutory sub-lease was executed on 13-12-1968 in favour of *M* in respect of a residential plot in Delhi on payment of premium (Rs 17,560) and development charges (Rs 26,656). In terms of the proviso appended to sub-clause (*b*) of clause 6 of the deed of sub-lease, the lessor was entitled to recover a portion of the unearned increase in the value i.e. “the difference between the premium paid and the market value of the residential plot at the time of sale”. Determination of the lessor in respect of the market value therefor was to be final and binding. By reason of clause 10(*a*) of the said deed, the President delegated his power to the Chief Commissioner of Delhi who is now the Lt. Governor of Delhi. Purported to be in exercise of such delegated power, the Delhi Administration fixed the market price of the *nazul* lands situated in different localities for the purpose of recovery of increase in the cost of the land upon sale for the periods from 1-4-1988 to 31-3-1990, 1-4-1990 to 31-3-1991 and 1-4-1991 to 31-3-1992, in terms whereof the price of the land in the area was determined at Rs 10,500 per sq metre. Admittedly, the said circular letter was communicated to the officers concerned. Respondent 1 being the heir of *M* (who died on 13-11-1983) entered into an agreement for sale with Respondents 8 and 9 wherein the amount of consideration was shown as Rs 5,00,00,000. The proposed purchaser, besides the said amount and other expenses also agreed to bear 50% of the amount towards unearned increase. The Income Tax Department also granted a no-objection certificate on or about 12-5-1994 showing the consideration of Rs 5,00,00,000 in respect of the plot in question. Respondent 1 thereafter, filed an application before the competent authority of the appellant on or about 23-5-1994 for sale of the leasehold property indicating the cost of construction and price of the plot as Rs 5,00,00,000. The Government of India, however, without enforcing any increase in the sale price of the land extended the validity of the land rates in force till 31-3-1992 for a further period from 1-4-1994 to 31-3-1996 by a circular letter dated 11-11-1994. The appellant despite the same proceeded on the basis that having regard to the fact that the purchaser had agreed to pay the consideration of Rs 5,00,00,000 and further agreed to bear the cost of difference in unearned increase, the market value of the land would be Rs 7,50,00,000 and on that basis demanded a sum of Rs 3,62,44,420 as a condition of grant of permission by a demand letter dated 22-2-1995. Such amount was to be paid within a period of sixty days. The respondents filed writ petitions before the Delhi High Court questioning the said demand letter. The High Court referring to the circular letters issued by the Lt. Governor as also the Union of India and upon taking notice of the fact that only the difference in increased price on the basis of such circular letters had been demanded from the persons similarly situated allowed the writ petition. It directed DDA to issue fresh demand to the petitioners. In case any amount had been paid on the basis of the impugned demand, DDA shall be entitled to appropriate only that portion of the amount calculated in accordance with fixation of market rate of land as issued by the Delhi Administration and shall pay back the balance with interest @ 18% p.a. from the date of payment by the petitioner concerned. When the matter was taken up for hearing before different Division Benches, the respondents sought to

- bring to the Supreme Court's notice a certain subsequent event, namely, adoption of a purported policy by reason of a circular letter dated 28-6-1999 purported to have been given a prospective effect in terms whereof the leasehold land was sought to be converted into freehold. In cases of the first respondent as well as one Rajeev Gupta the High Court passed interim orders directing them to deposit the entire amount/part-amount demanded by DDA. Rajeev Gupta however, did not pay the said amount. He was permitted to execute the deed by paying only the conversion charges i.e. without payment of even 50% of the unearned increase. The respondents herein, however, complied with the directions of the High Court.

Dismissing the appeals the Supreme Court

Held :

- Clause 6(b) of the deed of sub-lease and the proviso appended thereto confers a discretion upon the lessor. The decision of the lessor in respect of the market value is to be final and binding. A market value, thus, fixed by the lessor in exercise of such power either in general or in a particular case, would, therefore, be binding on it. The lessor in a case of this nature cannot be said to be inhibited in any manner to fix the market value for a locality which would be applicable to all the plots of lands situated therein. As the market value has to be fixed in terms of the provisions contained in the statutory lease, the lessor is not precluded from fixing it for an area in question and thereby avoid any arbitrary or unreasonable action by any of its officers. Market values are fixed by the authority for different purposes. Fixation of such market value, therefore, for the purpose of recovery of unearned increase cannot be said to be dehors the DDA Act and the Rules framed thereunder. (Para 29)

- The appellant becomes entitled to invoke clause 6(b) of the sub-lease at the time of each and every transaction in relation to sale, transfer and assignment of the lands in question by a member of a cooperative society to a non-member. Such subsequent purchaser indisputably would have to become a member of the cooperative society. It was, therefore, not unusual on the part of the lessor to fix the market price for the entire area which had been developed by it keeping in view the fact that save and except some cases, the market value of the land would be same or similar. (Para 38)

- When a stand is taken that clause 6(b) of the sub-lease contains a statutory provision and, thus, cannot be altered either by the Union of India or by the Lt. Governor, recourse should not be taken to the provisions of Sections 2 and 3 of the Government Grants Act in terms whereof the term of any grant or term of any transfer of land made by the Government would stand insulated from the tentacles of any statutory law as thereby unfettered discretion of the Government has been conferred to enforce any condition or limitations or restrictions in all types of grants and the right, privilege and obligations of the grantee would be regulated thereunder. (Para 39)

- Clause 6(b), if construed to be imperative, in terms thereof a member of the Society is prohibited from transferring his interest in any manner whatsoever. Even delivery of possession of the premises pursuant to or in furtherance of the agreement is prohibited. But by reason of the circular letter dated 28-6-1999, which has not been issued even in terms of Article 77 of the Constitution, not only such permission is not required to be taken but even the right to recover 50% of the unearned increase is waived and only on payment of conversion charges a leasehold is made freehold, pursuant whereto or in furtherance whereof

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only upon payment of conversion charges any member of the Society would become entitled to transfer or assign his interest in the land or the building constructed thereupon without even obtaining any prior consent of the lessor.

(Para 42) a

It is not a case where a conflict has arisen between a statute or a statutory rule on the one hand and an executive instruction, on the other. Only in a case of such a conflict, the former will prevail over the latter. The lessor under the deed of lease is to fix the market value. It could do it areawise or plotwise. Once it does it areawise which being final and binding, it cannot resile therefrom at a later stage and take a stand that in a particular case it will fix the market value on the basis of the price disclosed in the agreement of sale.

(Para 30) b

Therefore, the circular letters are valid. Determination of market value by reason of such circular letters, thus, became a part of the terms of the lease having regard to the finality clause attached thereto.

(Para 42)

Jawajee Nagnatham v. Revenue Divisional Officer, (1994) 4 SCC 595; *Land Acquisition Officer v. Jasti Rohini*, (1995) 1 SCC 717; *State of Punjab v. Mohabir Singh*, (1996) 1 SCC 609; *R. Sai Bharathi v. J. Jayalalitha*, (2004) 2 SCC 9, distinguished c

Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910 : (1968) 1 SCR 111; *State of M.P. v. G.S. Dall & Flour Mills*, 1992 Supp (1) SCC 150, relied on

After circulars are to be applied, the unearned increase must be calculated on the basis thereof and no demand can be raised hypothetically that the purchaser would be agreeable to pay a further sum of Rs 7,50,00,000. Such an assumption is wholly on a wrong premise.

(Para 48) d

The respondents complied with the order of the High Court whereas one Rajeev Gupta did not. Having regard to the subsequent events, he got the benefit of the 1999 circular ignoring the fact that he was a power-of-attorney holder and had already entered into possession and, thus, clause 6(b) stood attracted. It may be true that by such an action, the respondents stood discriminated. The appellant being a State, it was required to act fairly and reasonably in all circumstances even in the matter of eviction of a tenant. But the respondents are victims of situation. Stricto sensu they cannot take advantage of the order passed by the High Court. The High Court gave them opportunities to get their deed registered. They could have refused to do so and in that event like Rajeev Gupta they were not required to deposit the amount. The parties did not contemplate that the Central Government would come out with another policy decision, which would be more beneficial to the sub-lessee. A fortuitous circumstance like the issuance of the said circular dated 28-6-1999 was not in contemplation. The appellant, therefore, cannot, keeping in view the prospective effect given to the said circular, take any benefit thereof. Furthermore, they have not filed any application to amend their writ petition. They merely have urged additional grounds. It is no doubt true that the Supreme Court can take into consideration subsequent events and mould relief accordingly but thereby it cannot substitute a new relief based on a fresh cause of action. Therefore, the interim order passed by the High Court does not come to the aid of the respondents. (Paras 50 and 51) e

Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293 : AIR 1989 SC 1642, relied on f

DDA v. Rajeev Gupta, CA No. 1783 of 2000, disposed of on 30-4-2003, referred to

A mistake is not a fraud. It may be discovered and in a given case it must be pleaded. Such plea must lead to a fundamental error. It can be a subject-matter of acquiescence. The High Court specifically granted three opportunities to the respondents to place on its records any other policy decision whereupon it g

h

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intended to place reliance. Keeping in view the fact that the appellant despite being given several opportunities by the High Court did not disclose its policy, they should not otherwise also be given an opportunity to raise new grounds.

a

(Paras 43, 44 and 46)

Kerr: *Law of Fraud and Mistake*, 7th Edn., at p. 599, *relied on*

By reason of the aforementioned interim order, the High Court directed payment of 18% interest. The rate of interest which was prevailing at the relevant time was 18%. However, the bank rate of interest has since gone down drastically. Grant of interest pendente lite and for future is a discretionary remedy. The court of appeal can, therefore, exercise the same power while finally disposing of the lis as that of the High Court keeping in view the principle engrafted in Section 34 CPC. The rate of interest may have to be fixed having regard to the principle of restitution. In the facts and circumstances of the case grant of 9% interest shall meet the ends of justice. Therefore, while dismissing the appeals it is directed that instead and in place of 18% interest, the appellant shall be liable to pay interest @ 9% per annum. The amount payable to the respondents must be paid within a period of six weeks from this date together with interest, failing which the respondents would be entitled to claim 18% interest on the expiry of the said period till actual payment is made.

b

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(Paras 52 and 57)

South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648; *K.T. Venkatagiri v. State of Karnataka*, (2003) 9 SCC 1; *Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission*, (2003) 8 SCC 593 : (2003) 8 Scale 553, *relied on*

d

Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304, *cited*

It is also directed that the application for conversion filed by the respondents herein should be disposed of expeditiously. Keeping in view the conduct of the appellant herein, they should bear the costs of the respondents. Counsel's fee is assessed at Rs 25,000 in each appeal.

e

R-M/Z/29444/C

Advocates who appeared in this case :

P.P. Rao, A.N. Haksar and S. Balakrishnan, Senior Advocates (Ms Indu Malhotra, Ms V. Deepa, Arvind Kr. Sharma, S.U.K. Sagar, Rajeev K. Virmani, Ms Rashmi Virmani, S. Prasad and S.N. Jha, Advocates, with them) for the appearing parties.

Chronological list of cases cited

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f

1. (2004) 2 SCC 9, *R. Sai Bharathi v. J. Jayalalitha* 313a
2. (2003) 9 SCC 1, *K.T. Venkatagiri v. State of Karnataka* 320b
3. (2003) 8 SCC 648, *South Eastern Coalfields Ltd. v. State of M.P.* 319c
4. (2003) 8 SCC 593 : (2003) 8 Scale 553, *Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission* 320d

g

5. CA No. 1783 of 2000, disposed of on 30-4-2003, *DDA v. Rajeev Gupta* 305f, 306e-f
6. (1996) 10 SCC 304, *Khoday Distilleries Ltd. v. State of Karnataka* 320b-c
7. (1996) 1 SCC 609, *State of Punjab v. Mohabir Singh* 313e
8. (1995) 1 SCC 717, *Land Acquisition Officer v. Jasti Rohini* 313a
9. (1994) 4 SCC 595, *Jawajee Nagnatham v. Revenue Divisional Officer* 312f
10. 1992 Supp (1) SCC 150, *State of M.P. v. G.S. Dall & Flour Mills* 306a-b, 314c
11. (1989) 3 SCC 293 : AIR 1989 SC 1642, *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay* 318f

h

12. AIR 1967 SC 1910 : (1968) 1 SCR 111, *Sant Ram Sharma v. State of Rajasthan* 306a-b, 314b

The Judgment of the Court was delivered by

S.B. SINHA, J.— These appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment. a

Background facts

2. The admitted facts are: the lands in question being *nazul* lands are governed by the provisions of the Delhi Development Act, 1957 (the Act) and the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (the Rules) framed thereunder. Pursuant to or in furtherance of the provisions of “the Act” and “the Rules”, the appellant herein granted lease in favour of a cooperative society known as Government Servants Cooperative House Building Society Limited, Shri Mangal Singh Monga, Shri N.R. Pillai and Shri Satish Chander Malhotra were the members of the said Cooperative Society. They in terms of the provisions of “the Rules” were required to execute deeds of sub-lease in favour of the lessee as also the President of India. b
c

3. The factual matrix of the matter is being considered from the case involved in Civil Appeal No. 1781 of 2000.

4. On 13-12-1968, a statutory sub-lease was executed in favour of Shri Mangal Singh Monga in respect of residential plot of 1568 sq yards in Vasant Vihar on payment of Rs 17,560 towards premium and Rs 26,656 towards the cost of development. In terms of the proviso appended to sub-clause (b) of clause 6 of the deed of sub-lease, the lessor was entitled to recover a portion of the unearned increase in the value i.e. “the difference between the premium paid and the market value of the residential plot at the time of sale”. Determination of the lessor in respect of the market value therefor was to be final and binding. d
e

5. By reason of clause X(a) of the said deed, the President delegated his power to the Chief Commissioner of Delhi who is now the Lt. Governor of Delhi. The said Mangal Singh Monga died on 13-11-1983. Purported to be in exercise of such delegated power, the Delhi Administration fixed the market price of the *nazul* lands situated in different localities for the purpose of recovery of increase in the cost of the land upon sale for the periods from 1-4-1988 to 31-3-1990, 1-4-1990 to 31-3-1991 and 1-4-1991 to 31-3-1992, in terms whereof the price of the land in Vasant Vihar area was determined at Rs 10,500 per sq metre. Admittedly, the said circular letter was communicated to the officers concerned. Although there appear to be some notings in the file by some officers to the effect that actual market value of the land should be recovered from the parties but it does not appear that any concrete decision was taken in that behalf. Respondent 1 herein being the heir of the original sub-lessee entered into an agreement for sale with Respondents 8 and 9 wherein the amount of consideration was shown as Rs 5,00,00,000. The proposed purchaser, however, besides the said amount and other expenses also agreed to bear 50% of the amount towards unearned increase. The Income Tax Department also granted a no-objection certificate f
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a on or about 12-5-1994 showing the consideration of Rs 5,00,00,000 in respect of the plot in question. Respondent 1 herein, thereafter, filed an application before the competent authority of the appellant on or about 23-5-1994 for sale of the leasehold property indicating the cost of construction and price of the plot as Rs 5,00,00,000.

b 6. The Government of India, however, without enforcing any increase in the sale price of the land extended the validity of the land rates in force till 31-3-1992 for a further period from 1-4-1994 to 31-3-1996 by a circular letter dated 11-11-1994. The appellant herein despite the same proceeded on the basis that having regard to the fact that the purchaser had agreed to pay the consideration of Rs 5,00,00,000 and further agreed to bear the cost of difference in unearned increase, the market value of the land would be Rs 7,50,00,000 and on that basis demanded a sum of Rs 3,62,44,420 as a condition of grant of permission by a demand letter dated 22-2-1995. Such amount was to be paid within a period of sixty days.

c 7. The respondents thereafter filed writ petitions before the Delhi High Court questioning the said demand letter dated 22-2-1995. During the pendency of the aforementioned proceedings, however, a purported resolution was passed by DDA to the effect that unearned increase should be worked out on the basis of sale consideration shown in the agreement of sale or income tax clearance certificate, as the case may be, if it is higher than the floor-level rate of DDA.

High Court judgment

e 8. The High Court in its impugned judgment referring to the circular letters issued by the Lt. Governor as also the Union of India and upon taking notice of the fact that only the difference in increased price on the basis of such circular letters had been demanded from the persons similarly situated allowed the writ petition, directing:

“We are of the view that DDA, had no power to issue the demands in these writ petitions. Accordingly, the writ petitions are allowed and following directions are issued:

f DDA shall issue fresh demand to the petitioners in all these three writ petitions on the basis of order dated 24-6-1992. In case any amount had been paid on the basis of the impugned demand, DDA shall be entitled to appropriate only that portion of the amount calculated in accordance with fixation of market rate of land as issued by the Delhi Administration on 24-6-1992 and accepted by DDA on 11-8-1992 and shall pay back the balance with interest @ 18% p.a. from the date of payment by the petitioner concerned.”

g 9. The Division Bench in its impugned judgment noticed various orders passed by the authorities of the appellant herein, inter alia, in respect of the writ petition being CWP No. 350 of 1995, wherein it was noted:

h “It is further stated that 50% of the unearned increase was also calculated on the basis of the market value/rate of Rs 5400 per sq metre, which was the rate notified by the Government of India by letter dated

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1-6-1987 and the said rates were considered for 100 FAR and since total FAR is 824 sq metre, the amount of 50% of the unearned increase was worked out to Rs 15,04,300.”

10. In another case relating to Plot No. S-23, Panchshila CHBS Ltd., it was noted by the authorities of the appellant:

“... On the basis of those rates i.e. Rs 15,120 per sq m, the 50% unearned increase comes to Rs 48,54,764.00. As stated above, this is the second sale, but the 50% unearned increase deposited at the time of first sale permission has not been deducted from the amount of 50% unearned increase calculated now for the second sale because, though, the issue regarding deduction of unearned increase paid earlier has been approved by the authority, but this matter is under consideration of the Ministry. The approval or otherwise, of the Ministry in this regard has not been received as yet. If approved, this amount may be conveyed to the appellant. Further, it may also be communicated to him that this demand is provisionally subject to revision on receipt of rates for the period 1993-94 from the Delhi Administration. For this, management shall be asked to obtain an affidavit from the legatee.”

11. Relying on or on the basis of the practice adopted by DDA and having regard to the orders dated 24-6-1992 issued by the Delhi Administration and that of the Government of India as also the resolution dated 28-11-1995, it was held:

“It does not require any argument to say that DDA was well aware of this clause and had issued the order dated 11-8-1992 on the basis of the order issued by the Delhi Administration on 24-6-1992. In the light of this, it is not open to DDA to put forth the case that the market value, within the meaning of clause 6 of the perpetual sub-lease deed could be what is stated in the agreement for sale.”

Subsequent events

12. When the matter was taken up for hearing, before different Division Benches, the respondents herein sought to bring to this Court's notice a certain subsequent event, namely, adoption of a purported policy by reason of a circular letter dated 28-6-1999 purported to have been given a prospective effect in terms whereof the leasehold was sought to be converted into freehold. The relevant portion of the said Scheme reads as under:

“1. Coverage of the Scheme

(i) The existing scheme of freehold conversion is extended to all residential leasehold built-up properties irrespective of size. As such, leased properties, situated on land, for which the land use prescribed in the master plan/zonal development plan in force is residential, will be covered under the Scheme, irrespective of size.

(ii) The Scheme will also extend to premium-free leases i.e. leases where premium has not been charged by agencies administering the leases.

2. *Computation of conversion fee*

a (i) In respect of properties with land area up to 500 sq metres, the conversion fee will be charged on the basis of already approved graded scale circulated vide Ministry's letter dated 14-2-1992 and land rates as applicable with effect from 1-4-1987, as indicated in the annexure.

(ii) In respect of properties with areas above 500 sq metres, the conversion fee will be charged on the basis of slab rates as per annexure and land rates as applicable with effect from 1-4-1987.

b (iii) In respect of premium-free leases, the conversion fee will be computable on the basis of the prevailing land rates as notified by the Government, from time to time, on a graded basis as applicable to other leases."

c 13. It is not in dispute that one Rajeev Gupta also filed a writ petition before the High Court acting on the basis of a power of attorney executed by Smt Kaushalya Rani Bhusari on similar grounds. In the cases of J.S. Monga, Abdul Rasool Virji as well as Rajeev Gupta, the High Court passed interim orders directing them to deposit the entire amount/part-amount demanded by DDA. Rajeev Gupta, however, did not pay the said amount and as such no sale deed was executed. The respondents herein, however, complied with the directions of the High Court.

d 14. Relying on clause 3 of the said Scheme which is to the following effect:

"3. It is further clarified that these orders will have prospective effect and the cases already decided will not be reopened.

e *Note.*—In respect of pending applications, where conveyance deeds are yet to be executed/registered, refund in respect of conversion fee paid, if any, on account of these instructions should be allowed.

4. This issues with the approval of Finance Division's UO No. 1066-F dated 21-6-1999."

f Rajeev Gupta was permitted to execute the aforementioned deed by paying only the conversion charges i.e. without payment of even 50% of the unearned increase. It is not disputed that *DDA v. Rajeev Gupta*¹ was disposed of on 30-4-2003 in terms of a signed order as the case was said to be covered by the policy of conversion from leasehold to freehold and the proposal of DDA to compromise was noted. The respondents herein, thereafter, filed an application for raising additional pleas, inter alia, on the ground that having regard to the interim order passed in the writ petition by the High Court of Delhi, the deed of sale having been executed by them pursuant to or in furtherance thereof, they were entitled to be treated similarly as Rajeev Gupta. An objection to the said application had been filed by the appellant, inter alia, on the ground that the subject-matter of the writ petition leading to filing of these appeals has no nexus with the aforementioned Scheme dated 28-6-1999.

h

1 CA No. 1783 of 2000

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Submissions

15. Mr P.P. Rao, learned Senior Counsel appearing on behalf of the appellant, inter alia, would submit that: (1) As the statutory sub-lease refers to the market value of the residential plot, the circular letters cannot override the same and, thus, are illegal. Strong reliance in this behalf has been placed on *Sant Ram Sharma v. State of Rajasthan*² and *State of M.P. v. G.S. Dall & Flour Mills*³. (2) Notings made in different files would show that except in one of the three cases, the fact situations prevailing in other cases were different. (3) As the circular letter dated 24-6-1992 showed localitywise market rates for the earlier period, the fixation of market rates was retrospective and not prospective. (4) Such a circular letter in any event having not been issued by the Lt. Governor, was illegal. (5) Resolution No. 98/1995 dated 28-11-1995 being applicable to pending cases, the High Court committed a manifest error in not giving an effect thereto and in any event, any past transaction on the basis of the said circular could not have been made the basis for determination by the High Court by applying the principle of estoppel as there is no estoppel against the statute. (6) In any event, only because a mistake has been committed in other cases, the same by itself would not entitle the respondents to claim any benefit on the basis thereof as in such an event Article 14 would have no application. (7) The interim order having been passed by the High Court on the asking of the respondents, whereby and whereunder an option was given to them to deposit the amount in the event they intend to get the sale deed executed registered, upon execution and registration thereof on the exercise of option by the respondents, the subsequent policy decision which has been given a prospective effect cannot have any application.

16. Mr A.N. Haksar, learned Senior Counsel, appearing on behalf of the respondents, on the other hand, would submit: (1) The fact of the matter in pending cases as also in the case of *Rajeev Gupta*¹ would clearly demonstrate that they stood on a common footing and as such the respondents herein cannot be treated differently to that of Rajeev Gupta. (2) The market value as determined by the Central Government or the Delhi Administration refers to the market value and the same does not say that thereby any benchmark has been provided. (3) The submissions raised hereinbefore on behalf of the appellant were not raised before the High Court nor had they been adverted to in the counter-affidavit. (4) Any mistake on the part of the Delhi Administration had never been pleaded nor urged. (5) As three opportunities had been granted to the respondents to clarify their stand as regards the existing policy decision and they having failed and/or neglected to do so, it is not open to them to raise the plea of inequities before this Court. (6) Even in the form of application required to be filed for conversion of leasehold into freehold, it having been stated that unearned increase would be recoverable, the same cannot be recovered from case (*sic* each) of the respondents only because the sale deeds had been executed by them pursuant to the interim

² AIR 1967 SC 1910 : (1968) 1 SCR 111

³ 1992 Supp (1) SCC 150

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order granted by the High Court. (7) The interim order passed by the High Court must be construed in such a manner so as to have a bearing in the pending appeals.

a

Are these two cases similar to that of Rajeev Gupta?

17. The following chart will show that the cases of J.S. Monga and Shri Abdul Rasool Virji stand on a similar footing as that of Rajeev Gupta:

<i>Sl. No.</i>	<i>Particulars</i>	<i>J.S. MONGA</i> <i>Plot No. A-5/3,</i> <i>Vasant Vihar,</i> <i>New Delhi</i>	<i>ABDUL RASOOL VIRJI</i> <i>Plot No. A-1,</i> <i>Maharani Bagh,</i> <i>New Delhi</i>	<i>RAJEEV GUPTA</i> <i>Plot No. 4,</i> <i>Palam Marg,</i> <i>Vasant Vihar,</i> <i>New Delhi</i>
b				
c	1. Date of execution of sub-lease deed	13-12-1968	1-1-1965	27-4-1971
d	2. Name of sub-lessee	Shri Mangal Singh Monga and after his death mutation allowed in the joint names of his legal heirs: 1. Smt Harbans Monga (wife) 2. Smt Prabha Sehgal (daughter) 3. Smt Indira Batra (daughter) 4. Smt Ella Bajaj (daughter) 5. Shri Joginder Singh Monga (son) 6. Shri Mohinder Singh Monga (son) 7. Shri Jagjit Singh Monga (son) 8. Shri Upjeet Singh Monga (son)	Shri N.R. Pillai. After his death mutated in favour of (1) Shri R.A. Pillai (2) Shri R.S. Pillai. Mutated on 28-5-1993 (in the names of sons of sub-lessee).	Shri Satish Chander Malhotra. Transferred on the basis of sale permission, in favour of Smt Kaushalya Rani Bhusari, w/o Shri Sampuran Singh, dated 2-12-1988.
e				
f	3. Name of purchaser	1. Shri Rattan Chand Burman 2. Smt Brij Rani Burman	Shri Abdul Rasool Virji	Shri Rajeev Gupta
g	4. Date of agreement of sale	19-2-1994	16-1-1994	24-10-1993
h	5. Date on which sale permission applied	23-5-1994	17-4-1994	30-4-1994

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6.	Amount of 50% UEI demanded	Rs 3,62,44,420 dated 22-2-1995	Rs 2,23,34,725 dated 12-6-1996	Rs 4.13 crores dated 1-12-1994	a
7.	Date and amount of 50% UEI paid	dated 16-5-1995 Rs 3,62,44,420	dated 12-6-1996 Rs 1,49,72,225 paid as per the order of the High Court of Delhi dated 22-5-1996	Not paid	b
8.	Date of execution of sale deed/ registration of the same	6-6-1995	17-1-1997	Not executed	c
9.	Date on which sale permission granted/ transfer allowed	25-1-1996 (transfer allowed)	30-7-1996	Not granted	d
10.	Date on which conversion from leasehold to freehold applied	24-12-1999	24-12-1999	17-12-1999	e

18. From the aforementioned chart it would appear that not only the application of Rajeev Gupta was contemporaneous, all other relevant facts are almost identical. Rajeev Gupta was to pay a sum of Rs 4,13,00,000, whereas J.S. Monga and Abdul Rasool Virji were to pay sums of Rs 3,62,44,420 and Rs 2,23,34,725 respectively, pursuant to the interim order passed by the High Court. Whereas J.S. Monga deposited the entire amount as demanded, Abdul Rasool Virji deposited a sum of Rs 1,49,72,225, as per the directions of the High Court.

19. The contention of the learned counsel appearing on behalf of the respondents, therefore, must be held to have some substance that whereas Rajeev Gupta has received the benefit of the purported new policy of conversion from leasehold to freehold, the respondents herein were deprived therefrom for no fault on their part.

Statutory provisions

20. Section 22 of the DDA Act reads as under:

“22. *Nazul lands*.—(1)-(2) * * *

(3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.”

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Section 56 of the Act reads as under:

a “56. *Power to make rules.*—(1) The Central Government, after consultation with the Authority may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that consultation with the Authority shall not be necessary on the first occasion of the making of rules under this section, but the Central Government shall take into consideration any suggestions which the Authority may make in relation to the amendment of such rules after they are made.

b (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

* * *

c 21. Rule 23 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 provides as under:

d “23. *Agreements between the cooperative societies and their members.*—Where nazul land has been allotted to a cooperative society, such members of the society who are allotted a plot or flat by such society shall execute a sub-lease in favour of the society in respect of each plot or flat allotted to them. The terms and conditions of such sub-lease shall, as nearly as circumstances permit, be in accordance with Form ‘A’ and Form ‘B’ appended to these Rules. In addition, such sub-lease may contain such covenants, clauses or conditions, not inconsistent with the provisions of Form ‘A’ or Form ‘B’ as may be considered necessary and advisable by the society, having regard to the nature of a particular sub-lease.”

e 22. Sub-lease is granted in Form ‘B’. Sub-clauses (a) and (b) clause 6 of the perpetual sub-lease read as under:

“(a) The sub-lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential plot in any form or manner, *benami* or otherwise, to a person who is not a member of the lessee.

f (b) The sub-lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential plot to any other member of the lessee except with the previous consent in writing of the lessor which he shall be entitled to refuse in his absolute discretion:

g Provided that the Lt. Governor reserves the right to resume, lessor may impose such terms and conditions as he thinks fit and the lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the residential plot at the time of sale, transfer, assignment or parting with the possession, the amount to be recovered being fifty per cent of the unearned increase and the decision of the lessor in respect of the market value shall be final and binding:

h Provided further that the lessor shall have the pre-emptive right to purchase the property after deducting fifty per cent of the unearned increase as aforesaid.”

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23. Clauses X(a) and (b) of the sub-lease read as under:

“X. (a) All powers exercisable by the lessor under this sub-lease may be exercised by the Lt. Governor, the lessor may also authorize any other officer or officers to exercise all or any of the powers exercisable by him under this sub-lease. a

(b) The Lt. Governor may authorize any officer or officers to exercise all or any of the powers which he is empowered to exercise under this sub-lease except the powers of the lessor exercisable by him by virtue of sub-clause (a) above.” b

Clause XI of the sub-lease reads as under:

“In this sub-lease, the expression ‘the Lt. Governor’ means the Lt. Governor of Delhi for the time being, or in case his designation is changed or his office is abolished, the officer who for the time being is entrusted, whether or not in addition to other, of the Lt. Governor by whatever designation such officer may be called. The said expression shall further include such officer as may be designated by the lessor to perform the functions of the Lieutenant Governor under this sub-lease.” c

Effect of the circulars

24. It is not in dispute that the grant of lease or sub-lease is in consonance with the provisions of the DDA Act and the Rules framed thereunder. The sub-lease had been executed in Form ‘B’. Delhi was a Union Territory. It used to be governed by the Chief Commissioner on behalf of the Governor General-in-Council. The Chief Commissioner is now designated as the Lt. Governor. Delhi has now also become a Part ‘B’ State. The authority of the Lt. Governor, therefore, is to be exercised by the Delhi Administration but such an authority being a delegated one, the Union of India cannot be said to have been denuded of its power to issue statutory directions as and when necessary or to issue policy decision in terms of the said Act or the Rules. The power to fix market value is that of the lessor. Whereas the Chief Commissioner has been delegated with the power of the lessor, he in terms of clauses X(a) and (b) of the deed of sub-lease cannot sub-delegate the same to any officer or officers to exercise such power. f

25. When a market value is fixed in case of a locality by the lessor or his delegated authority, the same would be binding on it. Although the sub-lease is a statutory one, the Rules provide for suitable modifications. In terms of Rule 23, the terms and conditions of the sub-lease shall as nearly as circumstances permit, be in accordance with Forms ‘A’ and ‘B’. The lessor or lessee, therefore, not only could have agreed to vary the terms and conditions, any unilateral action taken by the lessor and accepted by the lessee cannot be questioned as they are not imperative in character. From a perusal of the order dated 24-6-1992, it appears that the practice of fixation of such market value for the purpose of recovery of unearned increase had been in vogue for a long time. The relevant portion of the said order is as under: h

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“ORDER

Subject: Fixation of market rate of land for the purpose of recovery of unearned increase in the value of land/plot consequent upon sale/transfer of residential plots allotted under the Scheme of Large-Scale Acquisition, Development and Disposal of Land in Delhi.

Lt. Governor of National Capital Territory of Delhi is pleased to revise the market rates of land for the purpose of recovery of unearned increase in the cost of land/plot consequent upon the transfer/sale of residential plots allotted under the Scheme of Large-Scale Acquisition, Development and Disposal of Land in Delhi, superseding his previous orders conveyed vide Order No. FR 16(7)/82-L&B/3026-34 dated 31-1-1992, as given below:

* * *

26. The appellant itself issued the following circular, relevant portion of which reads as under:

“*Sub:* Fixation of market rate of land for the purpose of recovery of unearned increase in the value of land/plot consequent upon the transfer or sale of residential plots allotted under the ‘Scheme of Large-Scale Acquisition, Development and Disposal of Land in Delhi’ for the period from 1-4-1990 to 31-3-1991 and 1-4-1991 to 31-3-1992.

A copy of the Joint Secretary (Admn.) L&B Deptt. Delhi Admn. Letter No. F-16(7)/82/L&B/20369-75 dated 24-6-1992 conveying the market rates of land in different areas of Delhi for computation of unearned increase recoverable in case of transfer/sale of residential plots allotted under the Scheme of Large-Scale Acquisition, Development and Disposal of Land in Delhi is enclosed:

1. These rates would be applicable to the plots measuring up to 500 sq metres. In respect of sale/transfer of plots measuring more than 500 sq metres, a rebate of 15% on the market price of area in excess of 500 sq metres would be allowed.”

27. It is not in dispute that the question as regards enhancement of the market value @ 20% per year was under consideration of the Central Government and it by a circular letter dated 11-11-1994 issued the following directions:

“*Subject:* Schedule of market rate.

Sir,

The question of fixation of market rates of land in different areas of Delhi/New Delhi w.e.f. 1-4-1994 has been under consideration of the Government and it has been decided not to increase the land rates w.e.f. 1-4-1994 but to extend the validity of the land rates of commercial/residential purposes as well as the guidelines/principles laid down in this Ministry’s Letter No. J-22011/1/91-LD dated 3-3-1993 for two more years i.e. w.e.f. 1-4-1994 till March 1996 as per the schedule attached.”

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28. In terms of clause 6(a), a sub-lessee is prohibited from making any sale, transfer, assign or otherwise part with possession of the whole or any part of the residential plot in any form or manner, *benami* or otherwise, to a person who is not a member of the lessee, but such sale, transfer, assignment and parting with possession is permissible with the previous consent in writing of the lessor. The proviso appended thereto states that in the event such consent is given, the lessor would be entitled to impose such terms and conditions as it may think fit and shall furthermore be entitled to claim and recover a portion of the unearned increase in the value.

a

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29. Sub-clause (b) of clause 6 of the deed of sub-lease and the proviso appended thereto, therefore, confers a discretion upon the lessor. The decision of the lessor in respect of the market value is to be final and binding. A market value, thus, fixed by the lessor in exercise of such power either in general or in a particular case, would, therefore, be binding on it. The lessor in a case of this nature cannot be said to be inhibited in any manner to fix the market value for a locality which would be applicable to all the plots of lands situated therein. As the market value has to be fixed in terms of the provisions contained in the statutory lease, the lessor is not precluded from fixing it for an area in question and thereby avoid any arbitrary or unreasonable action by any of its officers. Market values are fixed by the authority for different purposes. Fixation of such market value, therefore, for the purpose of recovery of unearned increase cannot be said to be de hors the DDA Act and the Rules framed thereunder.

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30. It is not a case where a conflict has arisen between a statute or a statutory rule on the one hand and an executive instruction, on the other. Only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. The lessor under the deed of lease is to fix the market value. It could do it areawise or plotwise. Once it does it areawise which being final and binding, it cannot resile therefrom at a later stage and take a stand that in a particular case it will fix the market value on the basis of the price disclosed in the agreement of sale.

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31. Reliance placed by Mr Rao on the decision in *Jawajee Nagnatham v. Revenue Divisional Officer*⁴ is wholly misplaced. Therein the question which arose for consideration was as to whether the compensation should be awarded for acquisition of land on the basis of basic valuation register maintained by the Registering Authority for collection of stamp duty which had been fixed by the Revenue Authority at the market value for commercial as also residential areas. Keeping in view the provisions contained in Section 23(1) of the Land Acquisition Act, it was held that in determining such market value, the court has to take into account either one or the other of the three methods laid down therein, keeping in view the date of issuance of notification under Section 4(1) of the Act and, thus, the basic valuation register prepared and maintained for the purpose of collecting stamp duty has

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⁴ (1994) 4 SCC 595

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no statutory base or force and cannot form a foundation to determine the market value mentioned thereunder.

a **32.** In *Land Acquisition Officer v. Jasti Rohini*⁵ it was held: (SCC p. 721, para 6)

“The question of fixation of market value is a paradox which lies at the heart of the law of compulsory purchase of land. The paradox lies in the facts that the market value concept is purely a phenomenon evolved by the courts to fix the price of land arrived between the hypothetical willing buyer and willing seller bargaining as prudent persons without a medium (*sic modicum*) of constraints or without any extraordinary circumstances. But the condition of free market is the very opposite of the condition of the compulsory purchase which is *ex hypothesi*, a situation of constraints. Therefore, to say, that for compulsory purchase, compensation is to be assessed and market value is to be determined in that state of affairs has to be visualized in terms by its direct opposite. To solve the riddle, courts have consistently evolved the principle that the present value as on the date of the compulsory acquisition comprised of all utility reached in a competitive field as on the date of the notification and the price on which a prudent and willing vendor and a similar purchaser would agree. The value of the land shall be taken to be the amount that the land if sold in the open market by a willing seller might be expected to realise from a willing purchaser. A willing seller is a person who is a free agent to offer his land for sale with all its existing advantages and potentialities as on the date of the sale and willing purchaser taking all factors into consideration would offer to purchase the land as on the date of the sale.”

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e **33.** In *State of Punjab v. Mohabir Singh*⁶ this Court observed that the guidelines provided under Section 47-A of the Stamp Act would only serve as *prima facie* material available before the Registering Authority to alert him regarding the value, holding: (SCC pp. 611-12, para 5)

“It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be predetermined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47-A.”

(See also *R. Sai Bharathi v. J. Jayalalitha*⁷.)

h 5 (1995) 1 SCC 717

6 (1996) 1 SCC 609

7 JT (2003) 9 SC 343 : (2004) 2 SCC 9

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34. The aforementioned decisions have no application in the instant case. In those cases, registers of land acquisition were being maintained for the purpose of evasion of stamp duty. In the instant case, as rightly submitted by Mr Haksar, it has not only remained unsaid in the impugned circular, but have been issued for the very purpose of recovery of unearned increase in the market value of the property on a general basis to which the Union of India or the Lt. Governor was entitled in law. a

35. In *Sant Ram*², this Court has categorically stated: (AIR p. 1914, para 7) b

“It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

36. Yet again in *G.S. Dall & Flour Mills*³ this Court observed as under: (SCC p. 174, para 19) c

“Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect.”

37. The matter may be considered from another angle. Nazul lands had been leased out to a cooperative society formed by the persons who intended to have roofs over their heads. The Society in question was formed by the government servants; the premium of which, having regard to the fact that the sub-lease was to be a perpetual one for all intent and purport, would denote the amount of consideration for transfer. The undeveloped lands had been developed by the appellant wherefor also the appellant had realized the development charges. d

38. The appellant becomes entitled to invoke clause 6(b) of the sub-lease at the time of each and every transaction in relation to sale, transfer and assignment of the lands in question by a member of a cooperative society to a non-member. Such subsequent purchaser indisputably would have to become a member of the cooperative society. It was, therefore, not unusual on the part of the lessor to fix the market price for the entire area which had been developed by it keeping in view the fact that save and except some cases, the market value of the land would be same or similar. e

39. It is also not in dispute that the Central Government was the ultimate authority for determination of the market value. The proposal of the appellant before the Union of India to enhance such market value @ 20% per annum did not receive any favourable response. They thought it fit to continue with the same valuation till 1996. Such a decision on the part of the Union of India was a conscious one. It is really surprising that on the one hand a stand is taken that clause 6(b) of the sub-lease contains a statutory provision and, thus, cannot be altered either by the Union of India or by the Lt. Governor, recourse is sought to be taken to the provisions of Sections 2 and 3 of the Government Grants Act in terms whereof the term of any grant or term of any f

transfer of land made by the Government would stand insulated from the tentacles of any statutory law as thereby unfettered discretion of the Government has been conferred to enforce any condition or limitations or restrictions in all types of grants and the right, privilege and obligations of the grantee would be regulated thereunder.

40. It is all the more surprising that the appellant being a delegatee has even questioned the policy decision of the delegator, namely, the Union of India. Furthermore, such a stand is being taken despite the fact that the circular letter dated 28-6-1999 as contained in Annexure R-3 to IA No. 6 of 2003 which has also not been issued by the Union of India in terms of the DDA Act or the rules framed thereunder has been relied and acted upon by DDA despite ex facie the same stares on the face of the condition of the statutory lease to the effect that lease cannot be transferred without the consent of the lessor.

41. Clause 6(b), as noticed hereinbefore, if construed to be imperative, in terms thereof a member of the Society is prohibited from transferring his interest in any manner whatsoever. Even delivery of possession of the premises pursuant to or in furtherance of the agreement is prohibited. But by reason of the said circular letter dated 28-6-1999, which has not been issued even in terms of Article 77 of the Constitution, not only such permission is not required to be taken but even the right to recover 50% of the unearned increase is waived and only on payment of conversion charges a leasehold is made freehold, pursuant whereto or in furtherance whereof only upon payment of conversion charges any member of the Society would become entitled to transfer or assign his interest in the land or the building constructed thereupon without even obtaining any prior consent of the lessor.

42. We, therefore, are of the opinion that the said circular letters are valid. Determination of market value by reason of such circular letters, thus, became a part of the terms of the lease having regard to the finality clause attached thereto.

Mistake

43. A mistake is not a fraud. It may be discovered and in a given case it must be pleaded. Such plea must lead to a fundamental error. It can be a subject-matter of acquiescence. In Kerr: *Law of Fraud and Mistake*, 7th Edn., at p. 599, it is stated:

“Where one party makes a mistake either of law or fact and the other party to a transaction allows him to act upon it, then (even though such other party may himself not know of the mistake), he may be estopped from setting up the mistake for having in effect ratified it. In one case where parties had acted on one construction of a deed for forty years the House of Lords held that neither party was estopped from setting up the mistake, and that rent underpaid for so long as it was not barred by the statute of limitation could be recovered.”

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44. It is not disputed that the said question had not been raised in the counter-affidavit; on the other hand, it appears that the High Court specifically granted three opportunities to the respondents to place on its records any other policy decision whereupon it intended to place reliance as would appear from the following:

“16-10-1996

Present: Mr A.N. Haksar, Senior Advocate with Mr R.K. Virmani for the petitioner.

Ms Sudha Bhandari, counsel for the respondent.

CWP No. 3948 of 1995

There is no counter filed on behalf of the respondent. There is no appearance on behalf of the Union of India today. Learned counsel for the petitioner has invited the attention of the Court to the averments made in paragraph 23 of the petition and the documents, Annexure 1 at p. 50 of the paper-book which according to him is the policy governing unearned increase during the relevant period. Reply to this paragraph 23 of the counter is evasive.

Learned counsel for the petitioner has also invited the attention of the Court to yet another circular issued by DDA on unearned increase calculations which is dated 28-11-1995. Let counsel for the respondents seek specific instructions and make clear statement preferably on affidavit as to whether they admit or deny the policy dated 11-11-1994 Annexure 1 and the circular dated 28-11-1995. If there be any other policy operating, let respondent DDA disclose it.

Compliance within six weeks.

To come up for hearing on 24-2-1997.

R.C. Lahoti, J.
S.N. Kapur, J.”

“24-2-1997

Present: Mr A.N. Haksar, Senior Advocate with Mr R.K. Virmani for the petitioner.

Mr Sumit Bansal for the respondent DDA.

CWP No. 3948 of 1995

On 16-10-1996, six weeks' time allowed to DDA to make a clear statement on affidavit as to whether it admits or denies the policy dated 11-11-1994 and the circular dated 28-11-1995. It was also directed that if there be any other policy operating, the same should also be disclosed by DDA. The said order has not been complied with. Two weeks' further time by way of last opportunity is allowed to DDA to comply with these directions.

To be taken up for disposal towards the end of the short matters on 10-4-1997.

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Within a period of four weeks the parties will also place on record short synopsis or notes.

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“10-4-1997

Present: Mr A.N. Haksar, Senior Advocate with Mr R.K. Virmani for the petitioner.

b

Mr Ravinder Sethi, Senior Advocate with Mr Sumit Bansal for the respondent DDA.

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Mr Sethi states that additional affidavit of Shri Jagdish Chandra, Director (R), DDA, has been filed pursuant to the last order. Learned counsel for the petitioner states that information contained in the affidavit does not comply with the Court’s order. List on 21-8-1997, at the end of the ‘after notice miscellaneous matters’. Synopsis will be filed by the parties within four weeks from today.

Devinder Gupta, J.
K.S. Gupta, J.”

New points

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45. The instances relied upon by the High Court in its judgment had not been distinguished. Such an attempt has been made only before us for the first time. Even in relation to A-14 Anand Lok, no distinction is to be found as it is stated:

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“In the case of A-14 Anand Lok, New Delhi, the date of application is 26-6-1989 and the permission was granted on 26-7-1989 by receiving unearned increase calculated with reference to the market rate of the land in the locality contained in the relevant circulars but not on the basis of the circular dated 24-6-1992 relied on by the High Court.”

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46. Keeping in view the fact that the appellant despite being given several opportunities by the High Court did not disclose its policy, we do not think that they should otherwise also be given an opportunity to raise new grounds.

Determination of the amount of unearned increase by the appellant

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47. The appellant proceeded on the premise in the case of the respondents, that the circular letters issued by it or the Union of India need not be given effect to and the valuation of the land should be worked out as Rs 7,50,00,000 for the purpose of computing the unearned increase.

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However, it must be presumed that the vendees proceeded on the basis that the amount of unearned increase would be determined in terms of the said circulars. Furthermore, 50% of the unearned increase was to be paid to the appellant as a condition of lease. While determining the amount, the appellant was required to take into account the amount of consideration specified in the agreement and/or clearance certificate issued by the Income Tax Officer. They even did not do so.

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Interim order — effect of

48. The respondents herein questioned the demand of Rs 3,62,44,420 made by DDA. DDA calculated the aforementioned demand on the basis that the total consideration for the transaction was Rs 7,50,00,000. The calculation was made having regard to the fact that Respondents 8 and 9 agreed to pay 50% of the unearned increase, the total amount of Rs 7,50,00,000. It failed to notice that after circulars are to be applied, the unearned increase must be calculated on the basis thereof and no demand can be raised hypothetically that the purchaser would be agreeable to pay a further sum of Rs 7,50,00,000. Such an assumption is wholly on a wrong premise.

49. A prayer, therefore, was made before the High Court that sale deed be permitted to be executed. Keeping in view the stand taken by the parties before it, it was directed:

“... In case the petitioners are interested in the grant of sale permission, the adjournment of the matter in any case before 13-7-1995, they may pay the demanded sum of Rs 3,62,44,420 under to DDA. In case ultimately it is held that the amount payable is less, the excess amount can be ordered to be refunded to the petitioners with interest at the rate of interest (sic for 18%) per annum. In case the payment is made under protest it is subject to fulfilment of other formalities would consider application for sale permission.”

50. The respondents complied with the order of the High Court whereas Rajeev Gupta did not. Having regard to the subsequent events, he got the benefit of the 1999 circular and as indicated hereinbefore, DDA ignoring the fact that he was a power-of-attorney holder and had already entered into possession and, thus, clause 6(b) stood attracted. It may be true that by such an action, the respondents herein stood discriminated.

51. The appellant being a State, it was required to act fairly and reasonably in all circumstances even in the matter of eviction of a tenant. (See *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay*⁸.) But the respondents herein are victims of situation. Stricto sensu they cannot take advantage of the order passed by the High Court. The High Court gave them opportunities to get their deed registered. They could have refused to do so and in that event like Rajeev Gupta they were not required to deposit the amount. The parties did not contemplate that the Central Government would come out with another policy decision, which would be more beneficial to the sub-lessee. A fortuitous circumstance like the issuance of the said circular dated 28-6-1999 was not in contemplation. The appellant, therefore, cannot, keeping in view the prospective effect given to the said circular, take any benefit thereof. Furthermore, they have not filed any application to amend their writ petition. They merely have urged additional grounds. It is no doubt true that this Court can take into consideration subsequent events and mould relief accordingly but thereby it cannot

8 (1989) 3 SCC 293 : AIR 1989 SC 1642

substitute a new relief based on a fresh cause of action. We are, therefore, of the opinion that the interim order passed by the High Court does not come to the aid of the respondents.

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Rate of interest

52. By reason of the aforementioned interim order, the High Court directed payment of 18% interest. The rate of interest which was prevailing at the relevant time was 18%. However, the bank rate of interest has since gone down drastically. Grant of interest pendente lite and for future is a discretionary remedy. The court of appeal can, therefore, exercise the same power while finally disposing of the lis as that of the High Court keeping in view the principle engrafted in Section 34 of the Code of Civil Procedure. The rate of interest may have to be fixed having regard to the principle of restitution.

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53. Recently, this Court has examined this principle in *South Eastern Coalfields Ltd. v. State of M.P.*⁹ stating: (SCC p. 661, para 21)

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“21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (see *Chitty on Contracts*, 1999 Edn., Vol. II, para 38-248 at p. 712). Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.”

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54. Despite the same, the Court reduced the statutory rate of interest from 24% to 12% stating: (SCC p. 665, para 30)

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“30. So far as the appeal filed by the State of Madhya Pradesh seeking substitution of rate of interest by 24% per annum in place of 12% per annum as awarded by the High Court is concerned, we are not inclined to grant that relief in exercise of our discretionary jurisdiction under Article 136 of the Constitution, especially in view of the opinion formed by the High Court in the impugned decision. The litigation has lasted for a long period of time. Multiple commercial transactions have taken place and much time has been lost in between. The commercial rates of interest (including bank rates) have undergone substantial variations and for quite some time the bank rate of interest has been below 12%. The High Court has, therefore, rightly (and reasonably) opined that upholding entitlement to payment of interest at the rate of 24% per annum would be excessive and it would meet the ends of justice if the rate of interest is reduced from 24% per annum to 12% per annum on the facts and in the circumstances of the case. We are not inclined to interfere with that view of the High Court but make it clear that this concession is confined to the facts of this case and to the parties herein

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9 (2003) 8 SCC 648 : JT 2003 Supp (2) SC 443

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and shall not be construed as a precedent for overriding Rule 64-A of the Mineral Concession Rules, 1960. It is also clarified that the payment of dues should be cleared within six weeks from today (if not already cleared) to get the benefit of reduced rate of interest of 12%; failing the payment in six weeks from today the liability to pay interest @ 24% per annum shall stand.”

55. In *K.T. Venkatagiri v. State of Karnataka*¹⁰ it is stated: (SCC p. 11, para 30)

“30. We are, therefore, of the opinion that with a view to do complete justice between the parties and having regard to the order passed by this Court in *Khoday Distilleries case*¹¹ the following directions should be issued:

(1)-(6) * * *

(7) On the amount found to be due and owing to MSIL by any of the appellants the same shall be paid and interest at the rate of 18% per annum shall be leviable from the date of realisation till 12-2-1997 and thereafter at the rate of 9% per annum, within twelve weeks from the date of final determination.”

56. We may notice that in *Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission*¹² the rate of interest awarded by the arbitrator was reduced to 6% in exercise of its power under Article 142 of the Constitution of India.

Conclusion

57. In the facts and circumstances of this case, we are of the opinion that grant of 9% interest shall meet the ends of justice. We, therefore, while dismissing the appeals direct that instead and in place of 18% interest, the appellant shall be liable to pay interest @ 9% per annum. The amount payable to the respondents must be paid within a period of six weeks from this date together with interest, failing which the respondents would be entitled to claim 18% interest on the expiry of the said period till actual payment is made.

58. We, keeping in view the facts and circumstances of the case, also direct that the application for conversion filed by the respondents herein should be disposed of expeditiously. Keeping in view the conduct of the appellant herein, we think that they should bear the costs of the respondents. Counsel’s fee is assessed at Rs 25,000 in each appeal.

10 (2003) 9 SCC 1

11 *Khoday Distilleries Ltd. v. State of Karnataka*, (1996) 10 SCC 304

12 (2003) 8 SCC 593 : (2003) 8 Scale 553

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	(2009) 5 Supreme Court Cases 24		
	(BEFORE MARKANDEY KATJU AND AFTAB ALAM, JJ.)		
	Civil Appeal No. 1746 of 2007 [†]		a
	GODREJ AND BOYCE MANUFACTURING COMPANY LIMITED	.. Appellant;	
	<i>Versus</i>		
	STATE OF MAHARASHTRA AND OTHERS	.. Respondents.	
	<i>With</i>		b
	Civil Appeals Nos. 1591-92 of 2007		
	GODREJ AND BOYCE MANUFACTURING COMPANY LIMITED AND ANOTHER	.. Appellants;	
	<i>Versus</i>		
	STATE OF MAHARASHTRA AND OTHERS	.. Respondents.	c
	<i>With</i>		
	Civil Appeal No. 2045 of 2007		
	JYOTIKA B. PATEL (MRS) AND ANOTHER	.. Appellants;	
	<i>Versus</i>		
	MUNICIPAL CORPORATION OF GREATER MUMBAI	.. Respondent.	d
	<i>And</i>		
	Writ Petition (C) No. 190 of 2007		
	JYOTIKA B. PATEL (MRS) AND ANOTHER	.. Petitioners;	
	<i>Versus</i>		
	STATE OF MAHARASHTRA AND ANOTHER	.. Respondents.	e
	Civil Appeals No. 1746 of 2007 with Nos. 1591-92, 2045 of 2007 and WP (C) No. 190 of 2007, decided on February 6, 2009		
	A. Town Planning — Additional FSI or Transferable development rights (TDRs) — Entitlement to, on voluntary surrender of land, etc. — Measure of determining equivalence for grant of additional FSI — Applicability of relevant regulations — Relevance of value of amenity constructed/developed on the surrendered land — Executive discretion, if any		f
	— Land shown in development plan as reserved for road — Voluntary surrender of such land by owner after constructing thereon development plan roads at his own cost and as per specifications stipulated in relevant rules — Regulations framed under Maharashtra Regional and Town Planning Act, 1966 providing for FSI in the form of development rights certificate equal to gross area of surrendered reserved plot — Moreover, the Regulations providing for a further development right in such cases in the form of FSI equivalent to the area of construction/development done by landowner		g

[†] From the Judgment/Order dated 18-10-2005 of the Division Bench of the Bombay High Court on WP No. 323 of 2000 : (2006) 6 AIR Bom R (DOC) 196 : (2006) 3 All MR 271

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- In such circumstances, area of construction/development having been fixed by the Regulations as measure of equivalence, landowner, held, entitled to determination of equivalence in accordance therewith and not on any other basis such as value of the amenity constructed/developed on the surrendered land — Such a change could be effected only by amending the Regulations and not by any executive circular of municipal authorities — Presence of attorney of landowners in the meeting in which decision to issue such circular was taken, held, inconsequential — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — Ss. 126(1)(b), 2(2), (7), (9), (9-A), (13-A), (15), (23) to (27), 21, 22(b) to (m), 22-A, 24 to 31, 125, 154, 158 and 159 — Development Control Regulations for Greater Bombay, 1991 — Regns. 3(7), (42) & (76), 32 to 35, 62, 63 and App. VIII, Cls. 6 and 5 — Administrative Law — Subordinate/Delegated legislation — Amendment of — Mode permissible — Regulations — Provisions of statutory regulations, held, can be changed only by an amendment thereof and not by executive circular — Administrative orders/decisions/executive instructions — Circular — Held, cannot change provisions of statutory regulations — Words and Phrases — “Equivalent”, “equal”**

The plots of the appellants and the petitioners herein were shown in the development plan as reserved for roads. They voluntarily surrendered their lands. In addition, they constructed on their respective pieces of land the development plan roads at their own cost and as per the specifications stipulated in the relevant rules. The dispute between the parties was limited to the question of extent of floor space index (FSI) or transferable development rights (TDRs) for the roads constructed on the surrendered lands at the owners' cost.

The landowners claimed that for constructing the roads they were entitled to FSI or TDR for the whole of the surface area of the roads. They based their claim on Para 6 of Appendix VII to the Development Control Regulations for Greater Bombay, 1991 which provided for, ‘... a further development right in the form of FSI *equivalent to the area* of the construction/development done by him (landowner)...’. However, relying on a Circular dated 9-4-1996 issued by the Municipal Commissioner, Municipal Corporation of Greater Bombay, the municipal authorities granted them additional TDR only to the extent of 15% of the road area. That circular envisaged a graded scheme for grant of additional development rights for construction of amenities by the landowner e.g. in case of amenities like general hospital, municipal primary school, etc. it allowed FSI equal to the built-up area of the structure but in case of development plan road only 15% of the area of the road surface. By a subsequent Circular dated 5-4-2003, the extent of the additional development right for construction of development plan roads was increased from 15% to 25% of the area of the road.

The landowners contended that the contents of the said Circular dated 9-4-1996 were merely in the nature of executive instructions and could not supersede or override the provisions of the Regulations which were legislative in nature.

On the other hand, the respondent State and the municipal authorities contended that the law provided for grant of additional FSI or TDR commensurate to the *value* of the amenity constructed by the landowner and reading Para 6 of Appendix VII to the Regulations with other provisions of the Regulations and the Act, the Circular dated 9-4-1996 would appear to be merely clarificatory and fully applicable to the present case. That moreover, by introducing a graded scheme for grant of additional FSI or TDR the circular

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eliminated the possibility of any discriminatory or arbitrary action on the part of the authority competent to issue the development right certificate. That the law contemplated grant of further additional TDR commensurate to the *value* of the amenity constructed/developed on the surrendered land.

Moreover, opposing the claims of the appellants and the writ petitioners, the Municipal Corporation, Greater Mumbai contended that for acquisition of the designated plot, recourse to Section 126(1)(b) of the Maharashtra Regional and Town Planning Act, 1966 (the Act) could be taken only by mutual agreement of the parties concerned. That therefore, the municipal authorities could accept acquisition of the land on certain conditions to which the landowner might or might not agree. In case the landowner did not agree to the condition(s) put by the municipal authority he would not surrender the land and then the acquisition of the land could take place either in terms of Section 126(1)(a) or 126(1)(c). That since the appellants had agreed to construct the road as part of the condition to surrender the land and getting 100% TDR in lieu of the land, they were not entitled to claim any further TDR at all for construction of the roads by them. That it was only indulgence shown to the appellants and the petitioners that the municipal authorities had agreed to give them additional TDR to the extent of 15% or 25% of the road area.

The Municipal Corporation added that the measure of 15% (later raised to 25%) of the area of the road constructed for grant of TDR by the impugned Circulars of 9-4-1996, 5-4-2003 and 5-5-2004 was decided in meetings in which the attorney of the appellants was also present as the representative of the industry. Hence, it was no longer open to the appellants and the petitioners to question those circulars.

Allowing the appeals and the writ petition, the Supreme Court

Held :

Section 126(1)(b) of the Act uses the word “*against*”: one of the meanings of the word “*against*” is given as “in return of something” e.g. the exchange rate against Franc”. Another meaning of the word “*against*” is “in exchange for: in return for”. In Appendix VII to the Regulations Para 5 uses the words “*equal to the gross area of reserved plot*”. Therefore, insofar as the bare land is concerned there is no difficulty. Para 6 of the Appendix, however, uses the words “*equivalent to the area of the construction/ development*”. (Paras 51 and 52)

The meaning of the word “*equivalent*” can be made very clear by explaining it in contradistinction to the word “*equal*”. Equivalent is equal in such *properties* as affect the use which we make of things. Seen thus, any of the relevant properties e.g. value, area, volume, quantity, quality, etc. may form the basis for determining equivalence. But the Regulation fixes the measure of equivalence by using the words “*equivalent to the area of construction/development done on the surrendered land*”. “*Area*” of construction/development having being fixed as the measure of equivalence it is no longer open to contend that any other basis such as value could be used for determining equivalence. (Para 57)

Chambers 21st Century Dictionary, 1997 Indian Edn., reprinted 1999; *Webster’s Third New International Dictionary*; *Concise Oxford English Dictionary*; *Black’s Law Dictionary*; *New Webster’s Dictionary*; *Words and Phrases*, Permanent Edn., Vol. 15, p. 157; *Advanced Law Lexicon*, 3rd Edn., 2005, Book 2, *relied on*

Desoe v. Desoe, (1939) 304 Mass 231 : 23 NE 2d 82, 83; *Nahas v. Nahas*, 90 P 2d 223, 224 : 59 Nev 220, *referred to*

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a The submissions of the respondents regarding the rationale behind trying to make value of the development/construction rather than its area as the basis to recompense the landowner and for granting the additional FSI or TDR are not without substance, but that is not the law as it stands and the value of the development/construction can only be made the basis for granting additional FSI or TDR by making suitable amendments in the law and not by an executive circular. (Para 58)

b The attorney of the appellants might have been present in the meeting and he might or might not have voted for the graded scheme for grant of additional TDR but that would not authorise the municipal authorities to override or supersede the statutory provisions by issuing circulars in the nature of executive instructions. (Para 65)

Pune Municipal Corpn. v. Promoters and Builders Assn., (2004) 10 SCC 796, referred to

Godrej and Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2006) 6 AIR Bom R (DOC) 196 : (2006) 3 All MR 271, reversed

c **B. Town Planning — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — Ss. 126(1)(b), (a) & (c), 22, 2(2), (9) & (15), 34 and 159 — Power of municipal authorities under S. 126(1)(b), to impose conditions for accepting surrender of land which was shown in development plan as reserved for an amenity — Scope — Held, municipal authorities cannot impose any further condition beyond those enumerated in statutory provisions — Development Control Regulations for Greater Bombay, 1991, Regns. 3(7), 34 and App. VII, Cls. 6 and 5 — Constitution of India — Art. 300-A — Surrender of land to gain additional development rights as per statutory provisions/regulations — Power to alter conditions for, held, vests only in the legislature**

Held :

e The conditions, that is to say, the mutual rights and obligations subject to which the landowner may offer to surrender the designated plot to municipal authority and the latter may accept the offer are enumerated in detail in the statutory provisions. Beyond those conditions there can be no negotiations for surrender of the land, particularly in derogation to the landowner's statutory rights. (Para 63)

f The landowner whose land is designated in the development plan as reserved for any of the purposes enumerated in Section 22 of the Act or for any of the amenities as defined under Section 2(2) of the Act or Regulation 3(7) of the Regulations is not left with many options and he does not have the same bargaining position as the municipal authority. Therefore, surrender of the land in terms of Section 126(1)(b) of the Act cannot be subjected to any further conditions than those already provided for in the statutory provisions. It is of course open to the legislature to add to the conditions provided for in the statute (or for that matter to do away with certain conditions that might be in existence). But it certainly cannot be left in the hands of the executive to impose conditions in addition to those in the statutes for accepting the offer to surrender the designated land. (Para 64)

g **C. Town Planning — Development Control Regulations for Greater Bombay, 1991 — Regns. 3(7), 34 and App. VII, Cls. 6 and 5 — Transferable Development Rights — Object and utility of concept of, restated — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — Ss. 126(1)(b), 2(9-A), 34 and 159 — Transfer of Property Act, 1882 — Ss. 6,**

h

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7 and 8 — Transferability of development rights as distinct from the land itself — Words and Phrases — “Transferable Development Rights” — Property Law — Usufruct, Use and Enjoyment of property

Maharashtra town planning law has evolved, with a view to promote planned development and decongest the highly congested areas, the imaginative concept of making, under certain circumstances, the development potential of a plot of land separable from the land itself and further letting the development rights to be transferable by the landowner. (Para 1)

The provisions made for the development rights that arise from a piece of land and yet acquire a separate and independent existence with the added flexibility of being transferable come very useful in case of plots of land shown in the development plan as reserved for some public purpose or amenity that prohibits their owners from developing those plots by making any other kind of construction. In such circumstances it is open to the landowner to surrender the plot of land free of cost (and free from all encumbrances) to the municipal authorities who may acquire the land by granting to the landowner floor space index or transferable development rights against the area of the surrendered land. The law further provides for additional floor space index or transferable development rights against the development or construction of amenities (for which the plot is shown reserved in the plan) by the owner at his own cost.

(Para 2)

D. Town Planning — Additional FSI/Transferable development rights or (TDRs) — Municipal Commissioner’s circular reserving 100% FSI (built-up area) for public utilities some of which were not mentioned in definition of amenity in statutory regulations and yet some others which were not mentioned even in the definition of amenity in the Act — Introduction of such public utilities through circular as “amenities” within the meaning of the Act or Regulations, held, highly debatable — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — Ss. 126(1)(b), 2(2), 34 and 159 — Development Control Regulations for Greater Bombay, 1991, Regns. 3(7), 34 and App. VII, Cls. 6 and 5

Both Section 126(1)(b) of the Act and Para 6 of Appendix VII to the Regulations provide for additional FSI or TDR for construction or development of amenity, which term is defined both in the Act and the Regulations. But in the Circular dated 9-4-1996 100% FSI (built-up area) is reserved for public utilities none of which is expressly mentioned in the definition of amenity in Regulation 3(7) of the Regulations. Furthermore “municipal transport garage”, “fire station”, “auditorium”, “electric crematorium”, “municipal workshop”, “town duty office” and “office building” are not even covered by the definition of “amenity” under Section 2(2) of the Act. It is highly debatable if those public utilities can be introduced through the circular as “amenities” within the meaning of the Act or the Regulations.

(Para 59)

H-D/A/40378/C

Advocates who appeared in this case :

Ashok Desai and Milind Sathe, Senior Advocates (Mahendra Ghelani, Ms Chedda and Jay Savla, Advocates) for the Appellant;

Shekhar Naphade and Pallav Shishodia, Senior Advocates (Arun Pednekar, Sanjay V. Kharde, Ms Asha Goplan Nair, Siddhartha Chaudhary, Bhargava V. Desai and D.N. Mishra, Advocates) for the Respondents.

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| a | 1. (2004) 10 SCC 796, <i>Pune Municipal Corpn. v. Promoters and Builders Assn.</i> | 38a |
| | 2. (1939) 304 Mass 231 : 23 NE 2d 82, 83, <i>Desoe v. Desoe</i> | 41e-f |
| | 3. 90 P 2d 223, 224 : 59 Nev 220, <i>Nahas v. Nahas</i> | 41f |

The Judgment of the Court was delivered by

AFTAB ALAM, J.— Maharashtra town planning law has evolved, with a view to promote planned development and decongest the highly congested areas, the imaginative concept of making, under certain circumstances, the development potential of a plot of land separable from the land itself and further letting the development rights to be transferable by the landowner.

2. The provisions made for the development rights that arise from a piece of land and yet acquire a separate and independent existence with the added flexibility of being transferable come very useful in case of plots of land shown in the development plan as reserved for some public purpose or amenity that prohibits their owners from developing those plots by making any other kind of construction. In such circumstances it is open to the landowner to surrender the plot of land free of cost (and free from all encumbrances) to the municipal authorities who may acquire the land by granting to the landowner floor space index or transferable development rights against the area of the surrendered land. The law further provides for additional floor space index or transferable development rights against the development or construction of amenities (for which the plot is shown reserved in the plan) by the owner at his own cost.

3. The appellants and the petitioners in this batch of appeals and writ petition had their plots of land shown in the development plan as reserved for roads. They voluntarily surrendered their lands. In addition, they constructed on their respective pieces of land the development plan roads at their own cost and as per the specifications stipulated in the relevant rules.

4. There is no dispute between the parties in regard to the floor space index or transferable development rights granted to them for the surrendered pieces of land. But the parties are in serious controversy over the extent of floor space index or transferable development rights for the roads constructed on the surrendered lands at the owner's cost. The landowners claim that for constructing the roads they are entitled to floor space index or transferable development rights for the whole of the surface area of the roads.

5. In support of their claim the landowners rely upon Para 6 of Appendix VII to the Development Control Regulations for Greater Bombay, 1991 that provides for, '... a further DR in the form of FSI *equivalent to the area* of the construction/development done by him (landowner)...'. The municipal authorities would, however, grant them additional transferable development rights only to the extent of 15% of the road area.

6. The stand of the municipal authorities is based on a Circular dated 9-4-1996 issued by the Municipal Commissioner, Municipal Corporation of Greater Bombay. The circular envisages a graded scheme for grant of

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additional development rights for construction of amenities by the landowner e.g. in case of amenities like general hospital, municipal primary school, etc. it allows FSI equal to the built-up area of the structure but in case of DP road only 15% of the area of the road surface. a

7. On behalf of the landowners it is argued that the contents of the circular are no more than executive instructions and cannot supersede or override the provisions of the Regulations which are legislative in nature; in any event the circular would only operate prospectively and have no bearing on the cases in hand since it was issued after the appellants and the petitioners had surrendered their plots of lands after constructing roads on those lands as required by the authorities. b

8. The argument is sought to be repelled on behalf of the State and the municipal authorities by taking the position that the law provides for grant of additional floor space index or transferable development rights commensurate to the *value* of the amenity constructed by the landowner and the meaning of Para 6 of Appendix VII to the Regulations will be clear by reading it along with the other provisions of the Regulations and the parent Act. Seen thus, the Circular dated 9-4-1996 would appear to be merely clarificatory and fully apply to the claims of the appellants and the petitioners. On behalf of the Municipal Corporation the claims of the appellants and the petitioners are also resisted on certain grounds of facts that we shall consider in due course. c d

9. This is the parameter of the dispute between the parties.

10. At this point it will be useful to refer to some of the provisions of the Maharashtra Regional and Town Planning Act, 1966 (the Act) and the Development Control Regulations for Greater Bombay, 1991 (the Regulations). e

11. Section 2 of the Act contains the definitions. Sub-section (2) defines “amenity” very widely to cover vastly different public utilities from hospitals, secondary schools and colleges to roads, streets and open spaces, etc.

12. Section 2(2) of the Act is as under: f

“2. (2) ‘Amenity’ means roads, streets, open spaces, parks, recreational grounds, playgrounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences;” g

Sub-section (7) defines “development” and sub-section (9-A) defines “development right” as follows: h

“2. (9-A) ‘Development right’ means right to carry out development or to develop the land or building or both *and shall include the transferable development right in the form of right to utilise the floor space index of land utilisable either on the remainder of the land partially reserved for a public purpose or elsewhere*, as the final Development Control Regulations in this behalf provide; (emphasis supplied)”

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13. Sub-section (9) defines “development plan” to mean

- a* “2. (9) a plan for the development or redevelopment of the area within the jurisdiction of a planning authority and includes revision of a development plan and proposals of a special planning authority for development of land within its jurisdictions;”

Sub-section (13-A) defines “floor space index” as follows:

“2. (13-A) ‘Floor space index’ means the quotient or the ratio of the combined gross floor area to the total area of the plot viz.:

b Floor space index =
$$\frac{\text{Total covered area of all floor}}{\text{Plot area}}$$
”

14. Sub-section (15) defines “local authority” and expressly mentions, amongst others, Bombay Municipal Corporation constituted under the Bombay Municipal Corporations Act. Sub-section (19) defines “planning authority” to mean a local authority apart from certain other bodies.

c Sub-sections (23) to (26) define “region”, “Regional Board”, “regional plan” and “Regional Planning Committee” respectively. Sub-section (27) defines “regulation” to mean a regulation made under Section 159 of the Act and includes zoning, special development control regulation and other regulations made as part of the regional plan, development plan or town planning scheme.

d **15. Chapter II of the Act contains the provisions relating to regional plan under Sections 3 to 20. In this group of cases, however, we are concerned with the regulations forming part of a development plan which is dealt with under Sections 21 to 42 in Chapter III of the Act.**

e **16. Section 21 obliges every planning authority to prepare a draft development plan for the area within its jurisdiction subject to the provisions of the Act and in accordance with the provisions of a regional plan, where there is such a plan. Section 22 deals with the contents of the “development plan”. It mandates that the development plans would generally indicate the manner in which the use of land in the area of the planning authority is to be regulated and the development of land therein is to be carried out. Further, the development plan would provide for, in particular the proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, and recreational. It would also contain proposals for designation of lands for many different kinds of public purposes enumerated in clauses (b) to (l) of the section. As per clause (m) of the section the development plan would also provide for the provisions for grant of permission for controlling and regulating the use and development of land within the jurisdiction of a local authority and the matters connected therewith.**

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h **17. Section 22-A enumerates what is meant by modification of a substantial nature in the development plan. Sections 23 to 31 lay down the procedure for making development plan, including the development control regulations by the planning authority after inviting objections and submitting draft plans to the State Government. Section 31 empowers the State Government to sanction the draft development plan submitted by the**

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planning authority. Section 37 deals with modification of final development plan.

18. Chapter VII of the Act deals with land acquisition and Section 125 provides that a

“125. *Compulsory acquisition of land needed for purposes of regional plan, development plan on town planning schemes, etc.*—Any land required, reserved or designated in a regional plan, development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894.” b

19. Section 126 lays down three modes for acquisition of land required for public purposes specified in the plans. The provisions of this section are important for the cases in hand and are reproduced below insofar as relevant for the present:

“126. *Acquisition of land required for public purposes specified in plans.*—(1) When after the publication of a draft regional plan, a development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the planning authority, development authority, or as the case may be, any appropriate authority may, except as otherwise provided in Section 113-A, acquire the land,— c

(a) by agreement by paying an amount agreed to, or

(b) *in lieu of any such amount, by granting the landowner or the lessee, subject, however, to the lessee paying the lessor or depositing with the planning authority, development authority or appropriate authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor’s interest to be determined by any of the said authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894 floor space index (FSI) or transferable development rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional floor space index or transferable development rights against the development or construction of the amenity on the surrendered land at his cost, as the final Development Control Regulations prepared in this behalf provide,* d
or e

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894, and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of floor space index or additional floor space index, or transferable development rights under this section or under the Land Acquisition Act, 1894, as the case may be, shall vest absolutely free from all encumbrances in the planning authority, development authority, or as the case may be, any appropriate authority, f
g

(2)-(4) * * *

(emphasis added)

20. Section 154 of the Act obliges

“154. *Control by State Government.*—(1) Every Regional Board, planning authority and development authority shall carry out such directions h

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or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.”

a **21.** Section 158 contains the rule-making powers and authorises the State Government to make rules to carry out all or any of the purposes of the Act. Section 159 provides that any Regional Board, planning authority or development authority may with the previous approval of the State Government make regulations consistent with the Act and the rules made thereunder.

b **22.** The Municipal Corporation of Greater Bombay which is a planning authority under Section 2(19) of the Act prepared a revised development plan and on 30-4-1985 submitted the Revised Draft Building Bye-laws and the Development Control Rules to the State Government as required under Section 30(1) of the Act. The Development Control Rules, after being subjected to the procedure prescribed by law finally received the sanction of the State Government on 25-3-1991 and came into force from that date under the name, “the Development Control Regulations for Greater Bombay”.

c **23.** Before proceeding to examine the relevant provisions of the Regulations it may be noted that on the date on which the Regulations came into force certain amendments were introduced in the Act as well. Some of the amendments made in the Act with effect from 25-3-1991 include the definition of “amenity” in its present form that was substituted for the original definition of the term and the insertion of the definition of “development right” as sub-section (9-A) of Section 2.

d **24.** Another very important amendment made in the Act was the insertion of clause (b) in Section 126(1) of the Act. Before 25-3-1991, Section 126 of the Act provided for acquisition of land only by two means, one by payment of an amount agreed upon by the parties and the other by following the procedure under the Land Acquisition Act, 1894. The introduction of clause (b) in Section 126(1) provided for a third mode for land acquisition that is based on the concept of transferable development rights against the area of land surrendered free of cost and free from all encumbrances and a further additional floor space index or transferable development rights against the development or constructions of the amenity on the surrendered land by the landowner (or the lessee) at his own cost.

e **25.** On behalf of the appellants and the petitioners it is argued that apart from Section 2(9-A) and clause (b) of Section 126(1), there is no other provision in the Act dealing with the concept of transferable development rights and those two provisions were introduced in the Act on the same day the Regulations came into force in order to give effect to the concept of transferable development rights evolved in the Regulations.

f **26.** Coming back to the provisions of the Development Control Regulations for Greater Bombay, Regulation 2(2) provides that any terms and expressions not defined in the Regulations shall have the same meaning as in the Act or the Bombay Municipal Corporations Act, 1888 and the Rules and

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Bye-laws framed thereunder, as the case may be, unless the context otherwise required.

27. Regulation 3 contains the definitions and clause (7) defines “amenity” as under: a

“Amenity means roads, streets, open spaces, parks, recreational grounds, playgrounds, gardens, water supply, electric supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences.”

It is to be noted here that the definition of “amenity” under the Regulations is much restricted than the one given under the Act and under the Regulations. “Sport complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals” are not expressly included in the definition of amenity. b

28. “Road” indeed is common to the definitions both under the Act and the Regulations and in clause (76) of Regulation 3 it is defined in the widest possible terms. c

29. Regulation 3(42) defines floor space index as follows:

“3. (42) ‘Floor space index (FSI)’ means the quotient of the ratio of the combined gross floor area of all floors, excepting areas specifically exempted under these Regulations to the total area of the plot viz.:

$$\text{Floor space index (FSI)} = \frac{\text{Total covered area on all floors}}{\text{Plot area}} \quad d$$

30. Regulation 32 deals with floor space indices and tenement density and provides for different floor space indices for different areas in Greater Bombay. Regulation 33 provides for additional floor space index that may be allowed to certain categories. e

31. Regulation 34 contains the concept of transferable development rights and it reads as follows:

“34. *Transfer of development rights.*—In certain circumstances, the development potential of a plot of land may be separated from the land itself and may be made available to the owner of the land in the form of transferable development rights (TDR). These rights may be made available and be subject to the Regulations in Appendix VII hereto.” f

32. Regulation 35 provides for the method of computation of floor space index.

33. Regulation 62 empowers the State Government to interpret the Regulations in the event of any dispute between the Municipal Corporation and an aggrieved party. Regulation 63 empowers the Commissioner to delegate functions which he is empowered to discharge to other subordinate officers. Regulation 64 provides for discretionary power of the Commissioner which can be exercised in the event of any hardship. g

34. Appendix VII, referred to in Regulation 34, lays down the manner for the grant of transferable development rights to owners/developers and the conditions for the grant of such rights. The claim of the appellants and the h

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petitioners are fully based on the provisions of Appendix VII, hence, those provisions, insofar as relevant for the present, are reproduced below:

a

“APPENDIX VII

(Regulation 34)

Regulations for the grant of transferable development rights (TDRs) to owners/developers and conditions for grant of such rights

b

1. The owner (or the lessee) of a plot of land which is reserved for a public purpose in the development plan and for additional amenities deemed to be reservations provided in accordance with these Regulations, excepting in the case of an existing or retention user or any required compulsory or recreational open space, shall be eligible for the award of transferable development rights (TDRs) in the form of floor space index (FSI) to the extent and on the conditions set out below. Such award will entitle the owner of the land to FSI in the form of a development rights certificate (DRC) which he may use himself or transfer to any other person.

c

2. Subject to Regulation 1 above, where a plot of land is reserved for any purpose specified in Section 22 of the Maharashtra Regional and Town Planning Act, 1966, the owner will be eligible for development rights (DRs) to the extent stipulated in Regulations 5 and 6 in this appendix had the land been not so reserved, after the said land is surrendered free of cost as stipulated in Regulation 5 in this appendix, and after completion of the development or construction as in Regulation in this appendix if he undertakes the same.

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3. Development rights (DRs) will be granted to an owner or a lessee only for reserved lands which are retainable/non-retainable under the Urban Land (Ceiling and Regulation) Act, 1976, and in respect of all other reserved lands to which the provisions of the aforesaid Act do not apply, and on production of a certificate to this effect from the competent authority under that Act before a development right is granted. In the case of non-retainable lands, the grant of development rights shall be to such extent and subject to such conditions as the Government may specify. Development rights (DRs) are available only in cases where development of a reservation has not been implemented i.e. TDRs will be available only for prospective development of reservations.

f

4. Development rights certificates (DRCs) will be issued by the Commissioner himself. They will state, in figures and in words, the FSI credit in square metres of the built-up area to which the owner or lessee of the said reserved plot is entitled, the place and user zone in which the DRs are earned and the areas in which such credit may be utilised.

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5. The built-up area for the purpose of FSI credit in the form of a DRC shall be equal to the gross area of the reserved plot to be surrendered and will proportionately increase or decrease according to the permissible FSI of the zone wherefrom the TDR has originated.

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6. When an owner or lessee also develops or constructs the amenity on the surrendered plot at his cost subject to such stipulations as may be prescribed by the Commissioner or the appropriate authority, as the case may be and to their satisfaction and hands over the said developed/constructed amenity to the Commissioner/appropriate authority, free of cost,

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he may be granted by the Commissioner *a further DR in the form of FSI equivalent to the area of the construction/development* done by him utilisation of which, etc. will be subject to the Regulations contained in this appendix. a

7. A DRC will be issued only on the satisfactory compliance with the conditions prescribed in this appendix.

8. to 19. * * *

(emphasis added)

35. In light of the provisions of the Act and the Regulations the case of the appellants and the petitioners is plain and simple. b

36. Mr Ashok Desai, learned Senior Counsel appearing on behalf of the appellants submitted that the law clearly envisaged grant of FSI or TDR under two separate heads, one, for the land and the other for the construction of the amenity for which the land is designated in the development plan, at the cost of the owner. Section 2(9-A) defined “development right” to include the transferable development right and Section 126(1)(b) provided for the grant of FSI or TDR against the area of land surrendered free of cost and further additional FSI or TDR against the development or construction of the amenity on the surrendered land at the owner’s cost as the final Development Control Regulations should provide. c

37. Mr Desai further submitted that the extent of FSI or TDR for the land would be equal to the gross area of the surrendered plot and the extent of FSI or TDR for construction of the amenity for which the land was designated in the final development plan would be equivalent to the area of construction/development made on the land. Regulation 34 made provisions for transferability of development rights and Appendix VII referred to in Regulation 34 provided for the extent of FSI or DRT admissible under the two heads. Para 5 of Appendix VII that related to the surrender of the land provided for FSI credit in the form of a development right certificate “equal to the gross area of the reserved plot”. Para 6 of Appendix VII that dealt with the additional DR for construction of the amenity for which the surrendered plot was designated in the development plan at the owner’s cost provided for a further DR in the form of FSI “*equivalent to the area of the construction/development*” made on the surrendered land. Mr Desai contended that Para 6 of Appendix VII used the words “equivalent to the *area of construction/development*” which was capable of only one meaning, that is to say, the additional DR would be the same in area as the amenity constructed/developed on the surrendered land. d
e
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38. Mr Desai further pointed out that no provision of Appendix VII, much less Para 6 of the appendix made any distinction between the different amenities as defined under the Act or the Regulations and there was not the slightest hint or suggestion for grant of additional TDR on a variable and sliding scale for construction/development of different kinds of amenities on the surrendered land. Learned counsel submitted that the additional TDR permissible under the statutory regulations could not be reduced or curtailed on the basis of the circular issued by the Municipal Commissioner. g
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39. Here it would be appropriate to take a look at the Circular dated 9-4-1996 issued under the hand of the Municipal Commissioner, Municipal Corporation of Greater Bombay. It deals with the grant of additional development rights in lieu of construction of amenities as per the provisions of Regulation 34 read with Para 6 of Appendix VII of the Regulations. It was apparently issued on the basis of the decision arrived at in a meeting held on 17-6-1994 in which representatives of various bodies were present and in which after considering the various aspects such as *cost of construction of amenity, category of reservation, etc.* a scheme was formulated for grant of additional development right in lieu of various constructed amenities on a graded basis.

40. The Circular dated 9-4-1996 provides that 100% FSI (built-up area) would be granted for the following buildable reservations:

- | | | |
|----------|---------------------------------|-----------------------------|
| <i>c</i> | “(a) Municipal transport garage | (b) General hospital |
| | (c) Fire station | (d) Auditorium |
| | (e) Electrical crematorium | (f) Municipal workshop |
| | (g) Municipal primary school | (h) Municipal retail market |
| | (i) Town duty office | (j) Office building” |

41. Para 3 of the circular deals with construction of DP roads, etc. with which we are directly concerned in this group of cases, and insofar as relevant for the present, provides as under:

“3. *Construction of DP roads, widening of existing roads, etc.—(i)* Additional development right *equivalent to 15% area of DP road* constructed by the owner of the land as per the municipal specifications which includes provisions of SWDs, footpaths, central verge, dividers, providing street lights, laying water mains and sewer lines, etc. shall be considered.

(ii) to (viii) * * *

(emphasis supplied)

42. Later on, it appears, it came to the notice of the municipal authorities and the State Government that the matter was taken to the Court where the Circular dated 9-4-1996 was challenged and claim was made for additional development right equal to the area of the road constructed on the surrendered plot of land. The extent of the additional development right for construction of DP roads was then increased from 15% to 25% of the area of the road by Circular dated 5-4-2003, the relevant parts of which are as follows:

“Under the circumstances, the quantum of additional TDR for construction of roads/setback lands to be granted to owners/developer of DP roads/setback lands is being enhanced from 15% to 25% for all prospective cases which are not covered under litigation.”

And

“In cases where owners have filed writ petition which is pending in the court, the additional TDR will be granted as per the orders of the court. However, in case these owners are agreeable to accept 25% additional TDR,

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the same can be considered after withdrawal of the writ petition filed by them in the court.”

43. Mr Desai submitted that in *Pune Municipal Corpn. v. Promoters and Builders Assn.*¹ this Court held that the Development Control Rules framed under the Maharashtra Regional and Town Planning Act, 1966 had statutory force. On the other hand the circulars issued by the Municipal Commissioner were simply executive instructions. The circulars, therefore, could not override or supersede the provisions of the Regulations. He further submitted that the municipal authorities too were fully aware and conscious of this legal position and had accordingly requested the State Government vide Letter dated 19-7-1997 to suitably modify Para 6 of Appendix VII of the Regulations. a
b

44. Mr Desai further submitted that the Circular dated 9-4-1996 on the basis of which the appellant was being denied additional FSI or TDR equal in area to the road constructed on the surrendered plot was issued subsequent to the surrender of the land after construction of the road on it. In any event, therefore, the circular would not affect the appellant’s right as it would operate only prospectively and not retrospectively. c

45. Mr Naphade, learned Senior Counsel appearing for the State of Maharashtra, countered the claim of the appellants and the petitioners by submitting that the circulars simply made clear the position that was implicit in the statutory provisions and would be clearly discernable on reading Para 6 of Appendix VII to the Regulations along with other relevant provisions. Apart from clarifying the statutory position, by introducing a graded scheme for grant of additional FSI or TDR the circular eliminated the possibility of any discriminatory or arbitrary action on the part of the authority competent to issue the development right certificate. The submission of Mr Naphade is based on the premise that the law contemplated grant of further additional TDR commensurate to the *value* of the amenity constructed/developed on the surrendered land. d
e

46. Learned counsel pointed out that the definition of amenity covered vastly different public utilities like a school building or a road or even an open space. He further submitted that though both a single-storied school building and a road built on plots of land equal in area may have more or less the same carpet area, the cost of construction of the school building will be much higher than the road. Hence, the grant of additional TDR for construction of all the different kinds of amenities equal to the area of the construction would be illogical, unreasonable and discriminatory. Further, in case the graded system was not followed it would be left in the hands of the authority competent to issue the development right certificate to give additional FSI or TDR on a subjective basis. The circular, by introducing a graded scheme eliminated the subjective element and closed any possibility of arbitrary and discriminatory action on the part of the authority. f
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1 (2004) 10 SCC 796

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47. Coming back to the basic argument that under the law the grant of additional TDR could only be commensurate to the value of the amenity constructed/developed on the surrendered land and not necessarily equal in area of the construction/development Mr Naphade submitted that Para 6 of Appendix VII, unlike Para 5 didn't use the words "equal to the gross area of the reserved plot" or "equal in area". Instead, Para 6 used the words "equivalent to the area of construction/development". He further submitted that Para 6 of Appendix VII to the Regulations must be read with Section 126(1)(b), the relevant provision in the parent Act and Para 6 of Appendix VII must be controlled and must take its meaning from the provision of that section. Section 126(1)(b) used the words "against the area of the land surrendered" and "against the development or construction of amenity on the surrendered land".

48. Seen thus, Mr Naphade argued, it would be clear that the law provided for the grant of additional development right proportionate to the value of the amenity constructed by the owner at his own cost. The circulars issued by the Municipal Commissioner simply quantified the exchange value of the different kinds of amenities in percentage terms depending upon their costs of construction and other relevant considerations.

49. The Bombay High Court accepted the line of argument advanced by Mr Naphade and in the judgment coming under appeal it observed as follows:

"18. The terms used in a statute are to be read and understood in the context in which they are used in the relevant provision. The term 'equivalent' in the said clause is undoubtedly related to the area and the term 'area' relates to the construction or development of the amenity done in the surrendered plot. The word 'area' therein does not refer to that of the area of the plot. The term 'equivalence' is defined in *Black's Law Dictionary* to mean 'equal in value, force, measure, volume, power and effect or having equal or corresponding import, meaning or significance; alike; identical'. The equivalence in case of construction activity cannot be ascertained by merely referring to the carpet area of the land occupied by the construction but it has to take into consideration the total quantity as well as the quality of the construction. The term 'quantity' would refer to the total area of construction, not only on the ground of the land but it would include even the upper floors of construction. The quality of construction would include the description as well as the type of construction i.e. whether it is road or building or shed, etc., as well as of what material. The area of construction would obviously refer to its total area of the structure and when it relates to a building erected on a land, it would not only include the carpet area of the land occupied by such building but the total area of the superstructure and the same will have to be considered to ascertain the FSI and consequently, the value of such total area of the construction would be the determining factor in that regard. It is also to be noted that the term 'FSI' i.e. floor space index means and has been defined under the

Regulation 2(42) of the said Regulations as the quotient of the ratio of the combined gross floor area of all floors, excepting areas specifically exempted under the said Regulations, to the total area of the plot viz. floor space index is equal to the total covered area of all the floors divided by the plot area. Therefore the total expenditure incurred in the construction or development of amenity in the surrendered plot assumes importance while determining the entitlement of the owner or the developer for further DR in the form of FSI on that count under Clause 6 of Appendix VII.

19. As rightly submitted on behalf of the respondents, the differentiation in the percentage is directly linked to the value of the area of the construction or the development carried out in relation to the amenities in the surrendered plot. Certainly the valuation of the construction of a road in a specified area cannot be equated with that of the value of construction in relation to a building occupying the same measure of area of land. There is bound to be a substantial difference between the value of the road built in an area of land and that of the building constructed in same measure of area of land. In case of road, the construction lies merely on the carpet area of the land. In case of building, the construction is not only on the carpet area of the land but it goes vertically above depending upon the number of its floors. In other words, while the road would occupy the ground as many times as the number of floors it will have, being so, the area of land occupied by the construction or development of a road cannot be equivalent to the same area of the land occupied by the construction of a building. Considering this important aspect of the matter, the authorities having decided to grant FSI on the basis of the value of the area occupied by construction or development of amenity in the surrendered plot which would depend upon the prevailing rate of the cost of the construction or the development. The same cannot be found fault with.”

50. We are unable to agree with the view taken by the Bombay High Court and to accept the submissions of Mr Naphade because it seems to us to do violence to the plain language of the statute.

51. Section 126(1)(b) of the Act uses the word “against”: it speaks of granting FSI or TDR “against the area of land surrendered” and further additional FSI or TDR “against the development or construction of amenities on the surrendered land”. Now, one of the meanings of the word “against” is given as “in return of something” e.g. the exchange rate against Franc” (*Chambers 21st Century Dictionary*, 1st published in India 1997, reprinted 1999). *Webster’s Third New International Dictionary* gives the meaning of the word “against” as “in exchange for: in return for”. *Concise Oxford English Dictionary* gives one of the meanings of the word as “in exchange for, in return for; as an equivalent or set-off for; in lieu of, instead of”.

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52. Thus, on the basis of the language used in Section 126(1)(b) it could be legitimately argued that what is contemplated is to recompense the landowner proportionate to the *value* of the development or construction of the amenity on the surrendered land. But the matter does not stop there. As seen above in Appendix VII to the Regulations Para 5 uses the words “*equal to the gross area of reserved plot*”. Therefore, insofar as the bare land is concerned there is no difficulty. Para 6 of the appendix, however, uses the words “*equivalent to the area of the construction/development*” and much argument is made on the meaning of the word equivalent.

53. Mr Naphade cited before us *Black’s Law Dictionary* in which “equivalent” as an adjective is defined as:

“Equal in *value*, force, measure, volume, power, and effect or having equal or corresponding import, meaning or significance; alike, identical.”
(emphasis supplied)

54. *Chambers 21st Century Dictionary* defines equivalent as “equal in *value*, power or meaning”. (emphasis supplied) *Concise Oxford English Dictionary* defines the word as an adjective as “equal in value, amount, function, meaning, etc. (equivalent to) having the same or a similar effect as”. *New Webster’s Dictionary* defines equivalent as “equal in value, measure, force, effect, or significance; corresponding in position or function;” *Webster’s Third New International Dictionary* defines it as an adjective as:

“1: equal in force or amount ... equal in area or volume but not admitting of superposition (a square ~ to a triangle) 2a: like in signification or import ... 3a: equal in value : COMPENSATIVE.”

55. *Words and Phrases*, Permanent Edn., Vol. 15 at p. 157 defines “equivalent” as follows:

“To be ‘equivalent to’ means to be equal in value, to be the same, corresponding to and to be worth. *Desoe v. Desoe*²”.

“The word ‘equivalent’ has been defined to mean ‘equal in *value*, *area*, volume, force, meaning, or the like; synonym: alike, identical. *Nahas v. Nahas*³.”

56. *Advanced Law Lexicon*, 3rd Edn., 2005, Book 2, defines “equivalent” as follows:

“Equal in worth or value.

Equal in *value*, measure, force, effect, etc.

Equivalent, equal.—Equal expresses the fact that two things agree in anything which is capable of degree, e.g., in quantity, quality, value, bulk, number, proportion, rate, rank, and the like. Equivalent is equal in such properties as affect ourselves or the use which we make of things, such as value, force, power, effect impact and the like (as) ‘equivalent of money’.”
(emphasis supplied)

² (1939) 304 Mass 231 : 23 NE 2d 82 at p. 83

³ 90 P 2d 223 at p. 224 : 59 Nev 220

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57. The last of the above makes the meaning of the word “equivalent” very clear by explaining it in contradistinction to the word “equal”. It says equivalent is equal in such *properties* as affect the use which we make of things. Seen thus any of the relevant properties e.g. value, area, volume, quantity, quality, etc. may form the basis for determining equivalence. Now, if the words in Para 6 of the Schedule were to be “*equivalent to the construction/development*” then the submission of Mr Naphade would have been fully acceptable as in that case it would be open to determine equivalence on the basis of value of the construction and not on any other basis. But the regulation fixes the measure of equivalence by using the words “equivalent to the *area* of construction/development done on the surrendered land”. “*Area*” of construction/development having being fixed as the measure of equivalence it is no longer open to contend that any other basis such as value may be used for determining equivalence.

58. We may here make it clear that we fully appreciate the rationale behind trying to make value of the development/construction rather than its area as the basis to recompense the landowner and for granting the additional FSI or TDR. The submissions of Mr Naphade in that regard are not without substance but that is not the law as it stands and the value of the development/construction can only be made the basis for granting additional FSI or TDR by making suitable amendments in the law and not by an executive circular.

59. In regard to the circular there is something else too that we find quite curious. This aspect of the matter was not argued before us and it is not relevant for the present, nevertheless we would like to point it out as it may help the authorities concerned in future. It is to be noted that both Section 126(1)(b) of the Act and Para 6 of Appendix VII to the Regulations provide for additional FSI or TDR for construction or development of amenity, which term is defined both in the Act and the Regulations. But in the Circular dated 9-4-1996 100% FSI (built-up area) is reserved for public utilities none of which is expressly mentioned in the definition of amenity in Regulation 3(7) of the Regulations. Furthermore “municipal transport garage”, “fire station”, “auditorium”, “electric crematorium”, “municipal workshop”, “town duty office” and “office building” are not even covered by the definition of “amenity” under Section 2(2) of the Act. It is highly debatable if those public utilities can be introduced through the circular as “amenities” within the meaning of the Act or the Regulations.

60. Apart from the contention raised by Mr Naphade, Mr Shishodia, Senior Advocate appearing for the Municipal Corporation, Greater Mumbai resisted the claims of the appellants and the writ petitioners on certain other grounds. Mr Shishodia submitted that for acquisition of the designated plot of land recourse to clause (b) of sub-section (1) of Section 126 of the Act could only be taken by mutual agreement of the parties concerned. It was equally open to the municipal authorities not to accept the surrender of the

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land under clause (b) as it was open to the landowner to make the offer. Therefore, it followed according to him, that the municipal authorities could
 a accept acquisition of the land in terms of clause (b) on certain conditions to which the landowner might or might not agree. In case the landowner did not agree to the condition(s) put by the municipal authority he would not surrender the land and then the acquisition of the land could take place either in terms of clause (a) or clause (c) of Section 126(1).

b **61.** Mr Shishodia submitted that the appellants in all the cases had agreed to construct the road as part of the condition to surrender the land and getting 100% TDR in lieu of the land. According to him, since the construction of the road was a condition for grant of 100% TDR for the bare land the appellants and the petitioners were not entitled to claim any further TDR at all for construction of the roads by them.

c **62.** Mr Shishodia further submitted that it was only indulgence shown to the appellants and the petitioners that the municipal authorities agreed to give them additional TDR to the extent of 15% of the road area after the issuance of Circular dated 9-4-1996 and 25% of the road area after the issuance of the Circular dated 5-4-2003.

d **63.** The submission of Mr Shishodia is completely unacceptable. The conditions, that is to say, the mutual rights and obligations subject to which the landowner may offer to surrender the designated plot of land to municipal authority and the latter may accept the offer are enumerated in detail in the statutory provisions. Beyond those conditions there can be no negotiations for surrender of the land, particularly in derogation to the landowner's statutory rights.

e **64.** Having regard to the nature of the law the submission advanced on behalf of the municipal authority would lead to palpably unjust and inequitable results. The landowner whose land is designated in the development plan as reserved for any of the purposes enumerated in Section 22 of the Act or for any of the amenities as defined under Section 2(2) of the Act or Regulation 2(7) [*sic* Regulation 3(7)] of the Regulations is not left with many options and he does not have the same bargaining position as the
 f municipal authority. Therefore, surrender of the land in terms of clause (b) of Section 126(1) of the Act cannot be subjected to any further conditions than those already provided for in the statutory provisions. It is of course open to the legislature to add to the conditions provided for in the statute (or for that matter to do away with certain conditions that might be in existence). But it certainly cannot be left in the hands of the executive to impose conditions in
 g addition to those in the statutes for accepting the offer to surrender the designated land.

h **65.** Mr Shishodia next submitted that the measure of 15% (later raised to 25%) of the area of the road constructed for grant of TDR by the impugned Circulars of 9-4-1996, 5-4-2003 and 5-5-2004 was decided in meetings in which Mr Nayan M. Shah, constituted attorney of the appellants, was also present as the representative of the industry. Hence, it was no longer open to the appellants and the petitioners to question those circulars. We are once

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again unable to accept the submission, Mr Shah might have been present in the meeting and he might or might not have voted for the graded scheme for grant of additional TDR but that would not authorise the municipal authorities to override or supersede the statutory provisions by issuing circulars in the nature of executive instructions. a

66. In light of the discussions made above we find that the stand of municipal authorities is contrary to the law as it stands today and the view taken by High Court is unsustainable. The judgment and order dated 18-10-2005 passed by the High Court of Bombay in WP (C) No. 323 of 2000 and other analogous cases is accordingly set aside and the writ petitions are allowed. b

67. In the result, the appeals and the writ petition are allowed but with no order as to costs.

—————
(2009) 5 Supreme Court Cases 44 c

(BEFORE TARUN CHATTERJEE AND H.L. DATTU, JJ.)

EXECUTIVE ENGINEER, WATER SERVICES
DIVISION, HARYANA

.. Appellant;

Versus

KARTAR SINGH

.. Respondent. d

Civil Appeal No. 1795 of 2009[†], decided on March 23, 2009

Labour Law — Back wages — Reduction from 50% to 25% — Circumstances justifying reduction — Presumption that employee might be in gainful employment — Respondent, a chowkidar, reinstated in service by virtue of order of Labour Court — There was no plea or evidence or proof that he was not in gainful employment — Back wages therefore reduced from 50% to 25% — Service Law — Back wages — Reduction (Para 8) e

Executive Engineer, Water Services Division, Haryana v. Kartar Singh, Civil WP No. 8127 of 2007 decided on 25-5-2007 (P&H), *modified*

Appeal partly allowed

K-D/40751/CL

Advocates who appeared in this case :

Manjit Singh and T.V. George, Advocates, for the Appellant;

Harikesh Singh and Kamal Mohan Gupta, Advocates, for the Respondent. f

Chronological list of cases cited

on page(s)

1. Civil WP No. 8127 of 2007 decided on 25-5-2007 (P&H), *Executive Engineer, Water Services Division, Haryana v. Kartar Singh* 44a

ORDER g

1. Delay condoned.

2. Leave granted.

3. This appeal is filed against the judgment and order of the High Court of Punjab and Haryana in *Executive Engineer, Water Services Division*,

[†] Arising out of SLP (C) No. 9587 of 2008. From the Judgment and Order dated 25-5-2007 of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 8127 of 2007 h



Government of India
Ministry of Environment and Forests
(Wildlife Division)

Paryavaran Bhawan,
CGO Complex, Lodi Road,
New Delhi -110003.

F. No. 1-9/2007 WL-I(pt)
Dated: 9th February, 2011

To,
The Chief Wildlife Warden
All States/Union Territories

Sub: **Guidelines for Declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries.**

Sir

In pursuance to the decision taken by the National Board for Wildlife, all the States/Union Territory, Governments were requested for forwarding site specific proposals for declaration of Eco Sensitive Zones around National Parks and Wildlife Sanctuaries. Several reminders in this connection were also sent. Hon'ble Supreme Court had also take note of this decision had directed States/ Union Territory, Governments to forward proposals this Ministry. However, only very few States have forwarded proposals in this regard.

This Ministry after careful consideration, has therefore, decided to frame guidelines to facilitate the States/Union Territory, Governments for declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries. Kindly find enclosed a copy of the said Guidelines. It is requested to kindly take necessary action in this regard at the earliest

Yours faithfully,

(Prakriti Srivastava)

Deputy Inspector General (WL)

Telefax: 01-24360704

E-mail: digwl-mef@nic.in

Encl: As above

Copy to:

1. Principal Secretary (Forests), all States/Union Territories.
2. Principal Chief Conservator of Forests, all States/ Union Territories.
3. NIC Cell- with a request to upload the enclosed guidelines on the official website of MoEF.

**GUIDELINES FOR
DECLARATION OF ECO-
SENSITIVE ZONES AROUND
NATIONAL PARKS AND WILDLIFE
SANCTUARIES**



**GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT AND FORESTS**

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GUIDELINES FOR DECLARATION OF ECO-SENSITIVE ZONES AROUND NATIONAL PARKS AND WILDLIFE SANCTUARIES

1. Background:

1.1. IBWL Decision:

1.1.1 During the XXI meeting of the Indian Board for Wildlife held on 21st January 2002, a 'Wildlife Conservation Strategy-2002' was adopted wherein point no.9 envisaged that "lands falling within 10 Kms of the boundaries of National Parks and Sanctuaries should be notified as eco-fragile zones under section 3 (v) of the Environment (Protection) Act and Rule 5 Sub rule (viii) & (x) of the Environment (Protection) Rules."

1.1.2 The Additional Director General of Forests (WL), vide letter dated 6th February 2002, had requested all the Chief Wildlife Wardens for listing out such areas within 10 Kms of the boundaries of National Parks and Sanctuaries and furnish detailed proposals for their notification as eco-sensitive areas under the Environment (Protection) Act, 1986.

1.1.3 In response, some of the State Governments had raised concern over applicability of the 10 Kms range from the Protected Area boundary and informed that most of the human habitation and other areas including important cities in these States would come under the purview of eco-sensitive zone and will adversely affect the development.

1.2. National Wildlife Action Plan (2002-2016)

1.2.1 The National Wildlife Action Plan (NWAP) 2002-2016 indicates that *"Areas outside the protected area network are often vital ecological corridor links and must be protected to prevent isolation of fragments of biodiversity which will not survive in the long run. Land and water use policies will need to accept the imperative of strictly protecting ecologically fragile habitats and regulating use elsewhere."*

1.2.2 The Action Plan also indicates that *"All identified areas around Protected Areas and wildlife corridors to be declared as ecologically fragile under the Environment (Protection) Act, 1986."*

1.3. Decision of National Board for Wildlife:

1.3.1 Considering the constraints communicated by the states, the proposal was re-examined by the National Board for Wildlife in its 2nd meeting held on 17th March 2005 and it was decided that the '**delineation of eco-sensitive**

zones would have to be site specific and relate to regulation, rather than prohibition, of specific activities'. The decision was communicated to all the State Governments for compliance vide letter dated 27th May 2005. Thereafter, it was further communicated with subsequent reminders.

1.4. Hon'ble Supreme Court's decision:

1.4.1 A Public Interest Litigation was also filed by the Goa Foundation vide their Writ Petition No. 460/2004 before the Hon'ble Supreme Court regarding the issue of declaration of eco-sensitive zones.

1.4.2 Vide their order dated 4th December 2006, Hon'ble Supreme Court had directed the Ministry of Environment & Forests to give a final opportunity to all States/Union territories to respond to the letter dated 27.5.2005 and that the State Governments send their proposals within four weeks, to the Ministry. It was also directed that all cases where environmental clearances were granted where activities are within 10 Kms zone, be referred to Standing Committee of NBWL.

2. Statutory Provisions

2.1 *Section 5 C(1) of the Wildlife (Protection) Act, 1972 states that it shall be the duty of the National Board for Wildlife to promote the conservation and development of Wildlife and forests by such measures as it thinks fit.*

2.2 *Section 3 of the Environment (Protection) Act 1986 (EPA) gives power to the Central Government i.e. the Union Ministry of Environment and Forests to take all measures that it feels are necessary for protecting and improving the quality of the environment and to prevent and control environmental pollution. To meet this objective, the Central Government can restrict areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards [Section 3(2)(v)]*

2.3 *Section 5(1) of the Environment (Protection) Rules, 1986 (EPR), states that the central government can prohibit or restrict the location of industries and carrying on certain operations or processes on the basis of considerations like the biological diversity of an area (clause v) maximum allowable limits of concentration of pollutants for an area (clause ii) environmentally compatible land use (clause vi) proximity to protected areas (clause viii).*

3. Purpose for declaring Eco-Sensitive Zones:

The purpose of declaring Eco-sensitive Zones around National Parks and Sanctuaries is to create some kind of “Shock Absorber” for the Protected Areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. As has been decided by the National Board for Wildlife, the activities in the Eco-sensitive zones would be of a regulatory nature rather than prohibitive nature, unless and otherwise so required.

4. Extent of Eco-Sensitive Zones:

4.1 Many of the existing Protected Areas have already undergone tremendous development in close vicinity to their boundaries. Some of the Protected Areas actually lying in the urban setup (Eg. Guindy National Park, Tamil Nadu, Sanjay Gandhi National Park, Maharashtra, etc). Therefore, defining the extent of eco-sensitive zones around Protected Areas will have to be kept flexible and Protected Area specific. The width of the Eco-sensitive Zone and type of regulations will differ from Protected Area to Protected Area. However, as a general principle the width of the Eco-sensitive Zone could go upto 10 Kms around a Protected Area as provided in the Wildlife Conservation Strategy-2002.

4.2 In case where sensitive corridors, connectivity and ecologically important patches, crucial for landscape linkage, are even beyond 10 kms width, these should be included in the Eco-sensitive Zone.

4.3 Further, even in context of a particular Protected Area, the distribution of an area of Eco-sensitive Zone and the extent of regulation may not be uniform all around and it could be of variable width and extent.

5. Need for guidelines:

5.1 As has been indicated vide para 1.4 above, Hon’ble Supreme Court has vide their order dated 4th December 2006 directed all the State/Union Territory Governments to forward proposals for declaration of eco-sensitive zones around its Protected Areas. However, only States like Haryana, Gujarat, Mizoram, Meghalaya, Assam, Goa have forwarded proposals. However, several other States/Union Territories have not come forward, perhaps for want of guidelines in this regard.

5.2 In this context, it is pertinent to note here that Hon’ble Supreme Court vide their judgment dated 3rd December 2010 in the case relating to the construction of park at NOIDA near Okhla Bird Sanctuary filed by Shri Anand Arya & Anr vs. Union of India (I.A. Nos 2609-2610 of 2009) in Writ Petition (Civil) No. 202/1995, had noted that the State Government of Uttar Pradesh had not

declared Eco-sensitive zones around its Protected Areas as the Government of India had not issued any guidelines in this regard.

5.3 The Ministry of Environment & Forests had set up a committee under the Chairmanship of Shri Pronab Sen for identifying parameters for designating Ecologically Sensitive Areas in India. The said Committee had identified parameters for declaration of specific units of land/water etc as Ecologically Sensitive Zones based on parameters like richness of flora& fauna; slope; rarity & endemism of species in the area; origins of rivers etc. However, these parameters do not basically apply to the Eco-sensitive zones in the instant context, i.e around Protected Areas. In the instant case, the Eco-sensitive zones are meant to act as a “Shock absorbers”/ “transition zone” to the Protected Areas by regulating and managing the activities around such Protected Areas.

6. The procedure to be adopted :

6.1 As has been indicated in the forgoing paras, the basic aim is to regulate certain activities around National Park and Wildlife Sanctuary so as to minimize the negative impacts of such activities on the fragile ecosystem encompassing the Protected Area. As a first step towards achieving this goal, it is a pre-requisite that an inventory of the different land use patterns and the different types of activities, types and number of industries operating around each of the Protected Area (National Parks, Sanctuaries) as well as important Corridors be made. The inventory could be done by the concerned Range Officers, who can take a stock of activities within 10 km of his range.

6.2 For the above purpose, a small committee comprising the concerned Wildlife Warden, an Ecologist, an official from the Local Self Government and an official of the Revenue Department of the concerned area, could be formed. The said committee could suggest the:

- (i) Extent of eco-sensitive zones for the Protected Area being considered.*
- (ii) The requirement of such a zone to act as a shock absorber*
- (iii) To suggest the best methods for management of the eco-sensitive zones, so suggested.*
- (iv) To suggest broad based thematic activities to be included in the Master Plan for the region.*

6.3 Based on the above, the Chief Wildlife Warden could group the activities under the following categories (an indicative list of such activities is attached as **ANNEXURE-1**):-

- (i) Prohibited*
- (ii) Restricted with safeguards.*
- (iii) Permissible*

6.4 Once the proposal for Eco-sensitive zones has been finalized, the same may be forwarded to the Ministry of Environment and Forests for further processing and notification. Here, it may be noted that, the State/Union Territory Forest Department could forward the proposals to the respective authority in the State Government with copy to the Ministry of Environment and Forests, as and when the proposals (even if it is for single Protected Area) are complete. An indicative list of details that need to be submitted along with the proposals is at **ANNEXURE-2**.

6.5 It is to mention here that in cases where the boundary of a Protected Area abuts the boundary of another State/Union Territory where it does not form part of any Protected Area, it shall be the endeavour of both the State/Union Territory Governments to have a mutual consultation and decide upon the width of the eco-sensitive zone around the Protected Area in question.

6.6 The State Government should endeavour to convey a very strong message to the public that ESZ are not meant to hamper their day to day activities, but instead, is meant to protect the precious forests/Protected Areas in their locality from any negative impact, and also to refine the environment around the Protected Areas. A copy of the notification of the Sultanpur Eco-sensitive Zone issued by the Ministry is attached herewith at **ANNEXURE-3** for reference and guidance.

7. These guidelines are indicative in nature and the State / Union Territory Governments may use these as basic framework to develop specific guidelines applicable in the context of their National Parks, Wildlife Sanctuaries, important corridors, etc. with a view to minimizing and preferably eliminating any negative impact on protected areas.

ANNEXURE-1

Identification of Activities

While some of the activities could be allowed in all the eco-sensitive areas, others will need to be regulated / prohibited. However, which activity can be regulated or prohibited and to what extent, would have to be PA specific. A broad list of activities (this may need supplementation) which could be allowed, promoted, regulated or prohibited is given in the table below:

Sl. No.	Activity	Prohibited	Regulated	Permitted	Remarks
1.	Commercial Mining	Y			Regulation will not prohibit the digging of earth for construction or repair of houses and for manufacture of country tiles or bricks for housing for personal consumption
2.	Felling of trees		Y		With permission from appropriate authority
3.	Setting of saw mills	Y			
4.	Setting of industries causing pollution (Water, Air, Soil, Noise, etc.)	Y			
5.	Establishment of hotels and resorts		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals
6.	Commercial use of firewood	Y			For hotels and other business related establishment

7.	Drastic change of agriculture systems		Y		
8.	Commercial use of natural water resources including ground water harvesting		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.
9.	Establishment of major hydroelectric projects	Y			
10.	Erection of electrical cables		Y		Promote underground cabling
11.	Ongoing agriculture and horticulture practices by local communities			Y	However, excessive expansion of some of these activities should be regulated as per the master plan
12.	Rain Water harvesting			Y	Should be actively promoted
13.	Fencing of premises of hotels and lodges		Y		
14.	Organic farming			Y	Should be actively promoted
15.	Use of polythene bags by shopkeepers		Y		
16.	Use of renewable energy sources			Y	Should be actively promoted
17.	Widening of roads		Y		This should be done with proper EIA

					and mitigation measures
18.	Movement of vehicular traffic at night		Y		For commercial purpose
19.	Introduction of exotic species		Y		
20.	Use or production of any hazardous substances	Y			
21.	Undertaking activities related to tourism like over-flying the National Park area by any aircraft, hot-air balloons	Y			
22.	Protection of hill slopes and river banks		Y		As per the master plan
23.	Discharge of effluents and solid waste in natural water bodies or terrestrial area	Y			
24.	Air and vehicular pollution		Y		
25.	Sign boards & hoardings		Y		As per the master plan
26.	Adoption of green technology for all activities			Y	Should be actively promoted.

ANNEXURE-2**GENERIC INFORMATIONS TO BE INCORPORATED IN THE
PROPOSALS FOR DECLARATION OF ECO-SENSITIVE ZONE
AROUND PROTECTED AREAS**

- (i) Delineation of the physical boundaries on a topo-sheet with precise description in geographic terms together with a description of the significant features/attributes that would potentially qualify the area as eco-sensitive zone. A description of the boundaries alongwith the list of villages with exception and exemption in the delineated buffer zone area.
- (ii) An inventory of the existing legal status of rights, entitlements, privileges and obligations of the local communities.
- (iii) A description of bio-diversity values including bio-geographical representatives, endemism, species richness, geo-morphological characteristics, and unique land use practices including aesthetic and cultural values.
- (iv) A description of the resource base indicating the economic potential and livelihood implication for the people residing in and around the proposed eco-sensitive area.
- (v) An inventory of activities to be regulated and/ or prohibited in the proposed eco-sensitive zone.
- (vi) List of the protected areas for declaring eco-sensitive zone.



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अधिसूचना

नई दिल्ली, 27 जनवरी, 2010

का.आ. 191(अ).—चूँकि सुल्तानपुर राष्ट्रीय उद्यान (गुडगाँव से लगभग 15 कि.मी. और दिल्ली से लगभग 45 कि.मी. की दूरी पर स्थित) काफी महत्वपूर्ण है और जलीय पक्षी समुदाय के लिए विख्यात है, जहाँ शीत ऋतु के दौरान करीब 250 प्रजातियों से संबंधित लगभग 30,000 पक्षियों को इस उद्यान में सूचीबद्ध किया गया है और इस उद्यान में आने वाले महत्वपूर्ण पक्षियों में पेलिकंस, कोरमोरेंट्स, हेरोन्स, ईग्रेट्स, स्टॉर्क्स, फ्लेमिंगोस, हंस, बतखें आदि शामिल हैं।

और चूँकि, भारतीय मूल के काफी संख्या में क्षेत्रीय पक्षी वर्ष भर यहाँ रहते हैं; इस उद्यान में सारस, क्रॉच (क्रेन) और दुर्लभ ब्लैक नेकेड स्टॉर्क के प्रजनन को रिकार्ड किया गया है और जहाँ तक इस उद्यान की जैवविविधता का प्रश्न है, इस क्षेत्र की वनस्पतिजात में इसके बाहर स्थित अर्ध-शुष्क वनस्पतियाँ और उत्तर भारत के मैदानों में स्थित झीलों की विशेष जलीय वनस्पतियाँ भी आती हैं।

और चूँकि, सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमा से पांच किमी. तक के क्षेत्र को पारिस्थितिकीय और पर्यावरणीय दृष्टि से पारिस्थितिक संवेदनशील जोन के रूप में संरक्षित और सुरक्षित करना आवश्यक है;

और चूँकि, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (2) के खंड (v) और खंड (xiv) की उपधारा (1) के अंतर्गत एक प्रारूप अधिसूचना पर्यावरण एवं वन मंत्रालय, भारत सरकार की तारीख 29 जनवरी, 2009 की अधिसूचना का.आ. सं. 364(अ) के अधीन भारत के राजपत्र, असाधारण में

प्रकाशित की गई थी, जैसाकि पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप नियम (3) के अंतर्गत अपेक्षित था और जिसमें इससे संभावित रूप से प्रभावित होने वाले व्यक्तियों से उस तारीख से, जिस तारीख से उक्त अधिसूचना से उक्त राजपत्र की प्रतियां जनता को उपलब्ध करा दिए जाने के पश्चात है; साठ दिन की अवधि के भीतर आपत्तियां और सुझाव आमंत्रित किए गए थे;

और चूंकि, उक्त अधिसूचना से युक्त राजपत्र की प्रतियां जनता को 29 जनवरी, 2009 को उपलब्ध करा दी गई थी;

और चूंकि, उक्त प्रारूप अधिसूचना के जवाब में प्राप्त सभी आपत्तियों और सुझावों पर केन्द्रीय सरकार द्वारा साम्यक रूप से विचार किया गया है;

अतः, अब केन्द्रीय सरकार पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप नियम (3) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की उप धारा (1) और धारा 3 की उप धारा (2) के खंड (v) और (xiv) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा राज्य में स्थित सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमाएं से पांच किमी. तक के क्षेत्र (जैसा कि अनुबंध के रूप में इस अधिसूचना के साथ संलग्न मानचित्र में दर्शाया गया है)को पारिस्थितिक संवेदनशील जोन (जिसे इसके बाद पारिस्थितिक संवेदनशील जोन कहा जाएगा), के रूप में अधिसूचित करती है, अर्थात्

2. पारिस्थितिक संवेदनशील जोन की सीमाएं -(1) उक्त पारिस्थितिक संवेदनशील जोन हरियाणा के गुड़गांव जिले में स्थित सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमाएं से पांच किमी. तक का क्षेत्र है, जोकि 28° 24' 00" से 29° 32' 00" उत्तरी अक्षांश के बीच और 76° 48' 00" से 76° 58' 00" पूर्वी अक्षांश के बीच स्थित है।

(2) पारिस्थितिक संवेदनशील जोन का मानचित्र उपाखण्ड 'क' पर है और पारिस्थितिक संवेदनशील जोन में सुल्तानपुर राष्ट्रीय उद्यान की सीमाएं से पांच किमी. की दूरी के बीच आने वाले गांवों की सूची निम्नलिखित है :

मंकरौला, झांजरौला, मोहम्मदपुर, पाटली, धानावास, वजीरपुर, धानी, रामनगर, सिखावाला, गढ़ी हारसरू, तुगलकपुर, दया विहार, कालियावास, इकवालपुर, सैंदपुर, खैतावास, हमारपुर, चांडु, ओमनगर, बिधेरा, सुल्तानपुर, हरसिंहवाली, धनी मिर्चीवाली धानी, राधराना बरमरीपुर।

(3) सुल्तानपुर राष्ट्रीय उद्यान में सभी तरह की गतिविधियों का अधिशारान वन्यजीव (संरक्षण) अधिनियम, 1972 (1972 का 53) के उपबंधों द्वारा किया जा रहा है।

3. पारिस्थितिक संवेदनशील जोन के लिए जोनल मास्टर प्लान -

- (1) इस अधिसूचना के राजपत्र में प्रकाशित होने तथा पर्यावरण एवं वन मंत्रालय, भारत सरकार द्वारा इसे अनुमोदित किए जाने की तारीख से एक वर्ष की अवधि के भीतर राज्य सरकार द्वारा पारिस्थितिक संवेदनशील जोन के लिए एक मास्टर प्लान तैयार किया जाएगा।
- (2) पर्यावरणीय एवं पारिस्थितिकीय निहिताथों को इसमें शामिल करने के लिए सभी संबंधित राज्यों के राज्य पर्यावरण, वन, शहरी विकास, पर्यटन, विभागों, नगर निगम विभाग, सिंचाई और लोक निर्माण (बी एंड आर) विभाग, राजस्व विभाग तथा हरियाणा राज्य प्रदूषण नियंत्रण बोर्ड की भागीदारी के साथ जोनल मास्टर प्लान तैयार किया जाएगा।
- (3) इस जोनल मास्टर प्लान में वृक्षों से रिक्त क्षेत्रों की बहाली, मौजूदा जल निकायों का संरक्षण, कैचमेंट क्षेत्रों का प्रबंधन, वाटरशेड प्रबंधन, भूमिगत जल प्रबंधन, मृदा एवं नदी संरक्षण, स्थानीय समुदायों की आवश्यकताएं तथा पारिस्थितिकी और पर्यावरण के ऐसे अन्य पहलुओं के लिए व्यवस्था की गई है, जिनकी ओर ध्यान दिए जाने की आवश्यकता है।
- (4) जोनल मास्टर प्लान के अंतर्गत सभी मौजूदा और प्रस्तावित शहरी बस्तियों, ग्रामीण बस्तियों, वनों के स्वरूपों और किरमों, कृषि क्षेत्रों, उर्वरक भूमियों, हरित क्षेत्रों, बागवानी क्षेत्रों, फलोद्यानों झीलों तथा अन्य जल निकायों का सीमांकन दिया जाएगा।
- (5) इसमें सभी नहरों और जल निकास कार्यों को छूट दी जाएगी।
- (6) जोनल मास्टर प्लान के अंतर्गत हरित उपयोग जैसे फलोद्यानों, बागवानी क्षेत्रों, कृषि उद्यानों और इसी तरह के अन्य स्थानों के लिए इस्तेमाल की जा रही भूमि का उपयोग गैर-हरित उपयोगों के लिए करने की इजाजत नहीं होगी। सिवाय उन कार्यों के जिनमें विद्यमान स्थानीय आवासियों की आवास संबंधी आवश्यकताओं को पूरा करने के लिए अत्यंत सीमित मात्रा में कृषि भूमि का उपयोग करने की इजाजत दी गई हो और साथ ही जिससे विद्यमान स्थानीय आबादी का प्राकृतिक ढंग से विकास होता हो, सड़कों और पुलों संबंधी ढांचों में सुधार होता हो, जन उपयोगिता वाले अथवा सामुदायिक भवनों का निर्माण होता हो। यह कार्य राज्य सरकार की पूर्व अनुमति के नहीं किया जाना चाहिए।
- (7) विकास योजनाओं में प्रस्तावित नियोजित शहरीकरण को संबंधित नियंत्रित क्षेत्रों के लिए राज्य सरकार द्वारा अनुमोदित किया जायेगा।
- (8) राज्य स्तरीय मानीटरिंग कमेटी द्वारा छूट देने पर विचार किए जाने के मामलों सहित कोई भी निर्णय लेने के लिए जोनल मास्टर प्लान एक संदर्भ दस्तावेज का काम करेगी।
- (9) जोनल मास्टर प्लान के अंतर्गत ट्रेफिक के नियंत्रण हेतु उपायों को दर्शाया जाएगा और शतों का विनिर्धारण किया जाएगा।

(10) पारिस्थितिक संवेदनशील जोन के लिए जोनल मास्टर प्लान की तैयारी तथा पर्यावरण और वन मंत्रालय द्वारा इसका अनुमोदन लंबित होने के कारण सभी नए निर्माण कार्यों को पैराग्राफ 5 में उल्लिखित मॉनीटरिंग समिति द्वारा जांच और अनुमोदित करने के पश्चात ही अनुमति दी जायेगी।

(11) वन क्षेत्र, हरित क्षेत्र और कृषि क्षेत्र में कोई पारिमाणिक कटौती नहीं की जायेगी।

(12) उद्देश्यों को आगे बढ़ाने और इस अधिसूचना के उपबंधों को लागू करने के लिए आवश्यक होने पर राज्य सरकार अतिरिक्त उपाय निर्धारित करेगी।

4. पारिस्थितिक संवेदनशील जोन में विनियमित अथवा प्रतिबंधित गतिविधियां -

(क) औद्योगिक इकाइयां :-

- (i) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से एक किलोमीटर के अंदर किसी नये काष्ठ आधारित उद्योग की स्थापना नहीं होगी ;
- (ii) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से एक किलोमीटर के अंदर प्रदूषण फैलाने/अत्यधिक प्रदूषण फैलाने वाले किसी उद्योग की स्थापना नहीं होगी।

(ख) निर्माण गतिविधियां :-

- (i) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से तीन सौ मीटर की दूरी तक एक हजार क्यूबिक इंच से अधिक आकार के नलकूप चैम्बर को छोड़कर, किसी प्रकार के निर्माण कार्य की अनुमति नहीं दी जाएगी ;
- (ii) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से तीन सौ मीटर से पांच सौ मीटर के बीच पड़ने वाले क्षेत्र में दो मजिल (पच्चीस फीट) से अधिक किसी भवन के निर्माण की अनुमति दी जायेगी;
- (iii) सुल्तानपुर राष्ट्रीय उद्यान की सीमा से पांच सौ मीटर की दूरी तक नई हाई टेंशन ट्रांसमिशन वायर बिछाने की अनुमति नहीं दी जाएगी।

(ग) उत्खनन और खनन :-

- (i) सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमा से एक किलोमीटर तक खनन की अनुमति नहीं दी जाएगी ;
- (ii) सुल्तानपुर राष्ट्रीय उद्यान के संरक्षित क्षेत्र की सीमा से एक किलोमीटर तक क्रशिंग गतिविधि की अनुमति नहीं दी जाएगी।

(घ) वृक्ष : वन और राजस्व भूमि में वृक्षों की कटाई, केन्द्रीय सरकार अथवा उस कार्य के लिए नामित प्राधिकरण द्वारा अनुमोदित प्रबंध योजना के अधीन होनी चाहिए।

(ङ.) जल :

(i) प्लाट के मालिक को वास्तविक रूप से कृषि कार्य और घरेलू उपयोग के लिए ही भूजल निकालने की अनुमति दी जाएगी ;

- (ii) राज्य भूजल बोर्ड के उचित रूप से अनुमोदन के सिवाय, भूजल की बिक्री की अनुमति नहीं दी जानी चाहिए ;
- (iii) कृषि कार्य सहित पानी में किसी प्रकार के संदूषण अथवा प्रदूषण को रोकने के लिए सभी उपाय किए जाने चाहिए ।

(घ) ध्वनि प्रदूषण : पर्यावरण विभाग जैसा भी मामला हो, हरियाणा सरकार का वन विभाग, पारिस्थितिक संवेदनशील जोन में शोर पर नियंत्रण रखने के लिए दिशानिर्देश और विनियम बनाने के लिए प्राधिकरण होगा ।

(छ) बहिःस्रावों को बहाना :

(i) पारिस्थितिक संवेदनशील जोन के अंदर किराी भी जलाशय में अशोधित अथवा औद्योगिक बहिःस्राव को बहाने की अनुमति नहीं दी जानी चाहिए ।

(ii) शोधित बहिःस्राव के संबंध में जल (प्रदूषण निवारण एवं नियंत्रण) अधिनियम 1974 (1974 का 6) के उपबंधों का पालन किया जाना चाहिए ।

(ज) ठोस अपशिष्ट :

(i) ठोस अपशिष्ट का निस्तारण केन्द्र सरकार द्वारा 25 सितंबर, 2000 को जारी की गई और समय-समय पर संशोधित अधिसूचना संख्या -का. आ. 908(अ) के नगरीय ठोस अपशिष्ट (प्रबंधन और हथालन), नियम 2000 के उपबंधों के अनुसार किया जाना चाहिए ।

(ii) स्थानीय प्राधिकरण बायोडिग्रेडेबल और नॉन-बायोडिग्रेडेबल घटकों में ठोस अपशिष्टों का पृथक्करण करने के लिए योजनाएं बनाएंगे ।

(iii) बायोडिग्रेडेबल ठोस अपशिष्टों को कम्पोस्टिंग अथवा वर्मीकल्चर के द्वारा प्राथमिकता के आधार पर पुनर्चक्रित किया जा सकता है ।

(iv) अकार्बनिक पदार्थ, पारिस्थितिक संवेदनशील जोन के बाहर पहचान किए गए स्थान पर पर्यावरणीय रूप से स्वीकार्य ढंग से निस्तारित किए जा सकते हैं । पारिस्थितिक संवेदनशील जोन में ठोस अपशिष्टों को जलाने अथवा इनसिनरेशन की अनुमति नहीं दी जाएगी ।

5. मानीटरी समिति :-

(1) पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार इस अधिरूचना के उपबंधों के अनुपालन की मानीटरी के लिए एतद्द्वारा एक समिति का गठन करती है, जिसे मानीटरी समिति कहा जाएगा।

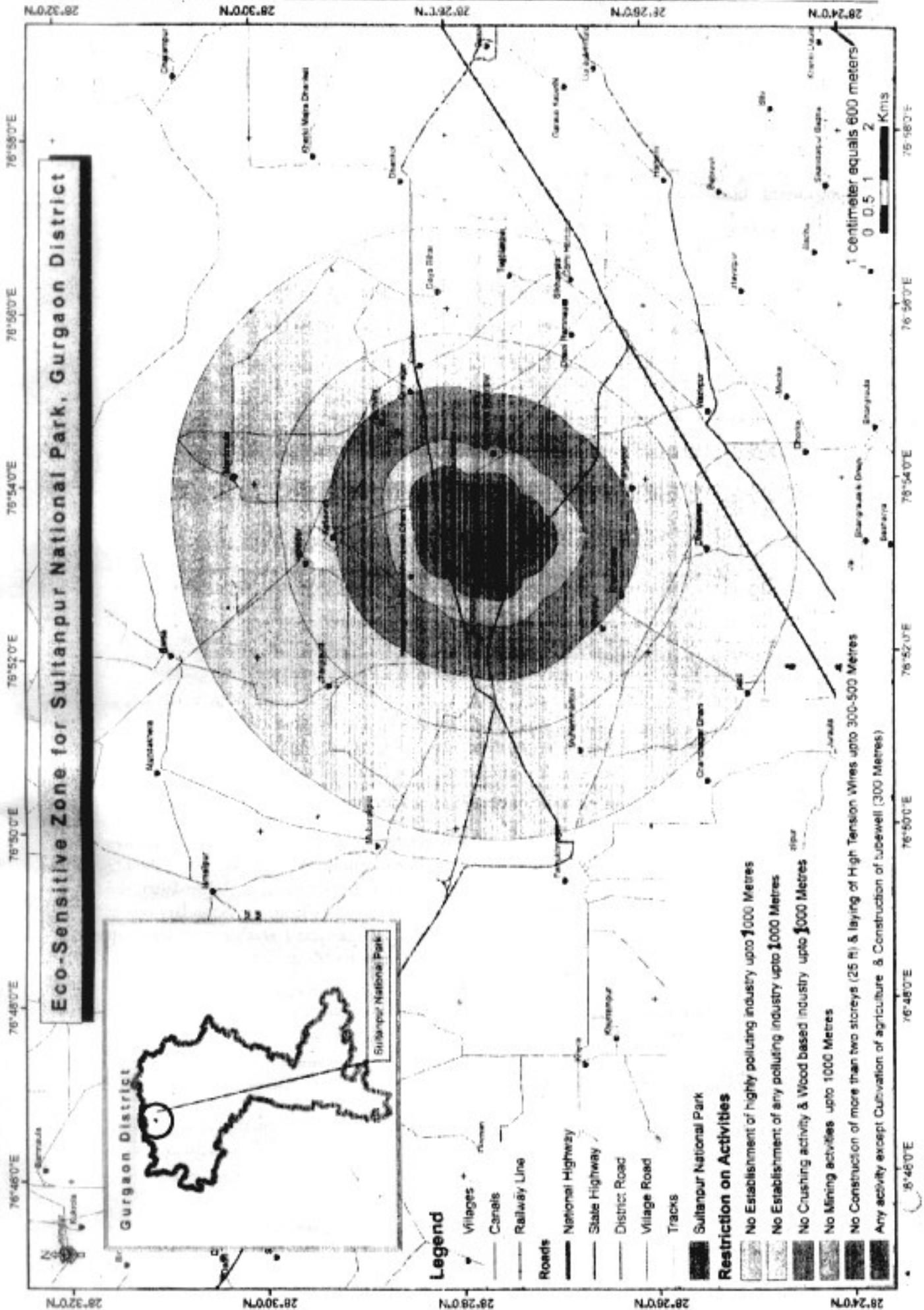
(2) उप पैरा (1) में उल्लिखित मानीटरी समिति में दस से अधिक सदस्य नहीं होंगे । जिसमें निम्नलिखित प्रतिनिधित्व करेंगे अर्थात् :-

(क) उपायुक्त, गुड़गांव - अध्यक्ष

- (ख) पर्यावरण एवं वन मंत्रालय, भारत सरकार का एक प्रतिनिधि - सदस्य
- (ग) पर्यावरण (विरासत संरक्षण सहित) क्षेत्र में काम करने वाले गैर-सरकारी संगठनों का एक प्रतिनिधि केन्द्र सरकार द्वारा नामांकित किया जाएगा - सदस्य
- (घ) क्षेत्रीय अधिकारी, हरियाणा राज्य प्रदूषण नियंत्रण बोर्ड, गुड़गांव - सदस्य
- (ङ.) क्षेत्र का वरिष्ठ टाउन प्लानर - सदस्य
- (च) जिला वन्यजीव वार्डन, गुड़गांव - सदस्य सचिव
- (3) मानीटरी समिति की शक्तियां और कार्य केवल इस अधिसूचना के उपबंधों के अनुपालन के अधीन होंगे।
- (4) पूर्व अनुमतियों अथवा पर्यावरणीय मंजूरी की आवश्यकता वाले कार्यकलापों के मामले में ऐसे कार्यकलाप राज्य स्तरीय पर्यावरण प्रभाव मूल्यांकन प्राधिकरण (एसईआईए) को भेज दिए जाएंगे जिसका गठन पर्यावरण एवं वन मंत्रालय, भारत सरकार की 14 सितंबर, 2006 अधिसूचना संख्या का.आ. 1533 (अ) के अधीन किया गया है और जो उक्त अधिसूचना के उपबंधों के अनुसार स्वीकृति देने के लिए सक्षम प्राधिकरण होगा।
- (5) मामला दर मामला आधार पर, आवश्यकताओं के आधार पर अपने विचार विमर्शों में मानीटरी समिति, संबंधित विभागों अथवा संस्थाओं के प्रतिनिधियों या विशेषज्ञों को भी आमंत्रित कर सकती है।
- (6) मानीटरी समिति का अध्यक्ष अथवा सदस्य सचिव, जैसा भी मामला हो, इस अधिसूचना के उपबंधों का अनुपालन न होने पर पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 19 के अंतर्गत शिकायतें दर्ज कराने के लिए सक्षम होगा।
- (7) मानीटरी समिति, प्रत्येक वर्ष की गई कार्रवाई की अपनी रिपोर्ट प्रत्येक वर्ष 31 मार्च को पर्यावरण एवं वन मंत्रालय को प्रस्तुत करेगी।
- (8) मानीटरी समिति के कर्तव्यों के प्रभावी ढंग से निर्वहन के लिए मंत्रालय समय-समय पर निर्देश देगा।

[फा. सं. 30/1/2008-ईएसजेड]

डॉ. जी. वी. सुब्रामण्यम, वैज्ञानिक 'जी'



MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 27th January, 2010

S.O. 191(E).— WHEREAS, the Sultanpur National Park (about 15 km from Gurgaon and about 45 km from Delhi) is important and known for aquatic avifauna where about 30,000 birds belonging to about 250 species have been listed in this park during winters and the important birds visiting this park are Pelicans, Cormorants, Herons, Egrets, Storks, Flamingoes, Geese, Ducks, etc.

AND WHEREAS, a number of territorial birds of Indian origin stay here the year round; breeding of Sarus, Crane and the Rare Black Necked Stork have been recorded in this park and as regards biodiversity of this National Park, the flora of this area is represented by semi arid vegetation outside it, and a typical aquatic vegetation of the lakes in plains of North India;

AND WHEREAS, it is necessary to conserve and protect the area up to five kilometers from the boundary of the protected area of Sultanpur National Park as Eco-sensitive Zone from ecological and environmental point of view;

AND WHEREAS, a draft notification under sub-section (1) and clauses (v) and (xiv) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) was published in the Gazette of India, Extraordinary, vide notification of the Government of India in the Ministry of Environment and Forests, vide number S.O. No. 364 (E), dated the 29th January 2009, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, inviting objections and suggestions from all persons likely to be affected thereby, within a period of sixty days from the date on which copies of the Gazette containing the said notification were made available to the public;

AND WHEREAS, copies of the Gazette containing the said notification were made available to the public on the 29th January 2009;

AND WHEREAS, all objections and suggestions received in response to the said draft notification have been duly considered by the Central Government;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) and clauses (v) and (xiv) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby notifies the area up to five kilometers from the boundary of the protected area of Sultanpur National Park in the State of Haryana (as shown in the map annexed to this notification as Annexure), as the Eco-sensitive Zone (herein after called as the Eco-sensitive Zone), namely:-

2. Boundaries of Eco-sensitive Zone. — (1) The said Eco sensitive Zone is the area up to five kilometers from the boundary of the protected area of Sultanpur National Park situated in the Gurgaon District of Haryana between 28° 24' 00" to 29° 32' 00" North latitude and between 76° 48' 00" to 76° 58' 00" East longitude.

(2) The map of the Eco-sensitive Zone is at Annexure and the list of the villages falling within five kilometers distance of the boundary of Sultanpur National Park in the Eco-sensitive Zone are as follows, namely:-

Mankraula, Jhanjraula, Mohammedpur, Patli, Dhanawas, Wazirpur, Dhani, Ramnagar, Sikhawala, Ghari Harasru, Tughlakpur, Daya Bihar, Kaliawas, Iqbalpur, Saidpur, Khaintawas, Hamarpur, Chandu, Ormnagar, Bidhera, Sultanpur, Harsinghwali, Dhani Mirchiwali Dhani, Sadhrana Barmripur.

(3) All activities in the Sultanpur National Park are being governed by the provisions of the Wildlife (Protection) Act, 1972 (53 of 1972).

3. Zonal Master Plan for the Eco-sensitive Zone: -

- (1) A Zonal Master Plan for the Eco-sensitive Zone shall be prepared by the State Government within a period of one year from the date of publication of this notification in the Official Gazette and approved by the Ministry of Environment and Forests, Government of India.
- (2) The Zonal Master Plan shall be prepared with the involvement of all concerned State Departments of Environment, Forest, Urban Development, Tourism, Municipal Department, Irrigation and PWD (Buildings & Roads) Department, Revenue Department and Haryana State Pollution Control Board for integrating environmental and ecological considerations into it.
- (3) The Zonal Master plan shall provide for restoration of denuded areas, conservation of existing water bodies, management of catchment areas, watershed management, groundwater management, soil and moisture conservation, needs of local community and such other aspects of the ecology and environment that need attention.
- (4) The Zonal Master Plan shall demarcate all the existing and proposed urban settlements, village settlements, types and kinds of forests, agricultural areas, fertile lands, green areas, horticultural areas, orchards, lakes and other water bodies.
- (5) It shall exempt all canals and drainage works.
- (6) No change of land use from green uses such as orchards, horticulture areas, agriculture parks and others like places to non green uses shall be permitted in the Zonal Master Plan, except that strictly limited conversion of agricultural lands maybe permitted to meet the residential needs of the existing local residents together with natural growth of the existing local populations, improvement of roads and bridges infrastructure, construction of public utility or community buildings without the prior approval of the State Government.
- (7) The planned urbanisation proposed in the development plans shall be approved by the State Government for the respective controlled areas.
- (8) The Zonal Master Plan shall be a reference document for the State Level Monitoring Committee for any decision to be taken by them including consideration for relaxation.
- (9) The Zonal Master Plan shall indicate measures and lay down stipulations for regulation of traffic.
- (10) Pending the preparation of the Zonal Master Plan for Eco-sensitive Zone and approval thereof by the Ministry of Environment and Forests all new constructions shall be allowed only after the proposals are scrutinized and approved by the Monitoring Committee as referred in paragraph 5.
- (11) There shall be no consequential reduction in Forest area, Green area and Agricultural area.
- (12) The State Government shall prescribe additional measures, if necessary, in furtherance of the objectives and for giving effect to the provisions of this notification.

4. **Regulated or restrictive activities in the Eco-sensitive Zone:** - The following activities in the Eco-sensitive Zone shall be regulated in the manner provided herein, namely:-

(a) Industrial Units

- (i) No establishment of new wood based industry within one kilometer from the boundary of the Sultanpur National Park;
- (ii) No establishment of any new polluting or highly polluting industry within one kilometer from the boundary of the Sultanpur National Park.

(b) Construction Activities

- (i) No construction of any kind shall be allowed from the boundary of Sultanpur National Park to a distance of three hundred meters, except tube well chamber of dimension not more than one thousand cubic inches;
- (ii) The construction of any building more than two storey (twenty five feet) shall not be allowed in the area falling between three hundred meters to five hundred meters from the boundary of Sultanpur National Park;
- (iii) The laying of new high tension transmission wires shall not be allowed from the boundary of Sultanpur National Park to a distance of five hundred meters.

(c) Quarrying and Mining

- (i) Mining up to one kilometer shall not be allowed from the boundary of the protected area of Sultanpur National Park;
- (ii) Crushing activity up to one kilometer shall not be allowed from the boundary of the protected area of Sultanpur National Park.

(d) Trees:- Felling of trees on forest and revenue land shall be subject to the approved management plan by the Central Government or an authority nominated for that purpose.

(e) Water:-

- (i) Extraction of ground water shall be permitted only for the bona-fide agricultural and domestic consumption of the occupier of the plot;
- (ii) No sale of ground water shall be permitted except with the prior approval of the State Ground Water Board.
- (iii) All steps shall be taken to prevent contamination or pollution of water including from agriculture.

(f) Noise pollution:- The Environment Department or, as the case may be, State Forest Department of the Government of Haryana shall be the authority to draw up guidelines and regulations for the control of noise in the Eco-sensitive Zone.

(g) Discharge of effluents:-

- (i) No untreated or industrial effluent shall be permitted to be discharged into any water body within the Eco-sensitive Zone.
- (ii) Treated effluent must meet the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974).

(h) Solid Wastes:-

- (i) The solid waste disposal shall be carried out as per the provisions of the Municipal Solid Waste (Management and Handling) Rules, 2000 issued by the Central Government vide notification number S.O. No. 908 (E), dated the 25th September 2000 as amended from time to time.
- (ii) The local authorities shall draw up plans for the segregation of solid wastes into biodegradable and non-biodegradable components.
- (iii) The biodegradable material may be recycled preferably through composting or vermiculture.

(iv) The inorganic material may be disposed in an environmentally acceptable manner at site identified outside the Eco-sensitive Zone. No burning or incineration of solid wastes shall be permitted in the Eco-sensitive Zone.

5. Monitoring Committee :-

- (1) In exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby constitutes a committee to be called the Monitoring Committee to monitor the compliance with the provisions of this notification.
- (2) The Monitoring Committee referred to in sub-paragraph (1), shall consist of not more than ten members so as to represent the following, namely:-
 - (a) Deputy Commissioner, Gurgaon – Chairman;
 - (b) A representative of the Ministry of Environment and Forests, Government of India - Member
 - (c) One representative of Non-governmental Organizations working in the field of environment (including heritage conservation) to be nominated by the Central Government - Member
 - (d) Regional Officer, Haryana State Pollution Control Board, Gurgaon - Member.
 - (e) Senior Town Planner of the area - Member
 - (f) District Wildlife Warden, Gurgaon - Member Secretary.
- (3) The powers and functions of the Monitoring Committee shall be restricted to the monitoring of the compliance of the provisions of this notification only.
- (4) In case of activities requiring prior permission or environmental clearance, such activities shall be referred to the State Level Environment Impact Assessment Authority constituted vide notification of the Government of India in the Ministry of Environment & Forests number S. O. 1533 (E), dated September 14, 2006, which shall be the Competent Authority for grant of such clearances as per the provisions of the said notification.
- (5) The Monitoring Committee may also invite representatives or experts from the concerned Departments or associations to assist in its deliberations depending on the requirements on issue to issue basis.
- (6) The Chairman or Member-Secretary, as the case may be, of the Monitoring Committee shall be competent to file complaints under section 19 of the Environment (Protection) Act, 1986 for non-compliance of the provisions of this notification.
- (7) The Monitoring Committee shall submit its annual action taken reports by the 31st March of every year to the Ministry of Environment and Forests.
- (8) The Ministry of Environment & Forests shall give directions, from time to time, to the Monitoring Committee for effective discharge of the functions of the Monitoring Committee.

[F. No. 30/1/2008-ESZ]

Dr. G. V. SUBRAHMANYAM, Scientist 'G'

