CASE NO.:
Appeal (civil) 4725 of 2002

PETITIONER:
Hira Tikkoo

RESPONDENT:
Union Territory, Chandigarh & Ors.

DATE OF JUDGMENT: 13/04/2004

BENCH:
Shivaraj V. Patil & D. M. Dharmadhikari.

JUDGMENT:
J U D G M E N T

With

Civil Appeal Nos. 4732-47,4748-49, 4728, 4729, 4750-51, 4730-31, 5319, 7260, 4752-4807, 4726-27, 4808-4809 of 2002 & 7109 of 2003 and SLP (c) Nos. 5115-17 of 2002.

Dharmadhikari J.

These appeals and special leave petitions are preferred against the common judgement dated 30.8.2001 passed by the Division Bench of High Court of Punjab & Haryana whereby a batch of writ petitions preferred by the applicants for allotment of industrial plots in the development scheme framed by the Union Territory, Chandigarh [shortly referred to as UTC] has been disposed of with certain directions. Different classes of allottees of industrial plots and UTC all feel aggrieved by the judgment of the High court and are before this Court.

The full factual background leading to the dispute inter se between the applicants for industrial plots and UTC is required to be set out :-

With a view to re-enact and modify the law in relation to the development and regulation of the new capital of Punjab at Chandigarh, Legislation by name Capital of Punjab [Development and Regulation] Act, 1952 [shortly referred to as the Act] was passed in the year 1952 vesting the State Government with legal authority to regulate the sale of building sites. In exercise of powers under the Act, rules for allotment of sites for building have been framed known as the Chandigarh Lease Hold of Sites and Building Rules, 1973 [hereinafter referred to as the Rules], which among others provide that the Administration of UTC, may demise 'sites for industries and buildings by allotment or auction.

In accordance with the provisions of the Act and Rules mentioned above, the Administration of UTC issued an advertisement No. 1/81 on 14.4.1981 inviting applications from interested entrepreneurs seeking allotment of the industrial plots of different sizes ranging from 10 marlas to 4 kanals. Pursuant to the said advertisement, 3735 applications were received from different parties. The Screening Committee of the Administration of UTC on 16.7.1982 short-listed 339 parties for allotment of industrial plots of different sizes after studying their project reports and conducting interviews. The 339 successful applicants, selected for allotment of plots of different sizes, were directed to deposit 25% of the total cost of the plots. On 30.11.1982, for allotting specific plots, a draw of lots was held among 339 successful allottees. As a result of the draw of lots,

57 parties were given possession of their plots in developed industrial areas i.e. Phase-I and Phase-II. Twenty one parties took refund of their money. Seven allottees were given option for change of their plots. Remaining 254 allottees could not be given possession of the plots, allotted to them, as there were objections from the State Authorities to the industrial development of the land it being covered by the notification, issued in the year 1961, declaring area of the land as reserved forest. The Administration of UTC could not deliver the possession of that land which was covered in the reserved forest, to 254 allottees of the year 1989 but it continued to accept the yearly installments fixed for payment from the selected allottees.

Certain allottees filed writ petitions in the year 1987 in the High Court seeking directions to the Administration of UTC to deliver possession of the industrial plots allotted to them in accordance with the short-listing done by the Screening Committee and consequent draw of lots.

On 29.11.1990, the Director of Industries, Government of India, intimated to the allottees that the Administration of UTC was not in a position to deliver possession of the industrial plots allotted to them as the land was found to be a part of reserved forest. The Administration proposed to allot one kanal land to each allottee irrespective of the size of plot originally allotted.

On 10.12.1990, the Administration of UTC then framed a new industrial policy to accommodate 250 allottees of 1982 who could not be given possession of the industrial plots because of the land being reserved for forest. To meet aforesaid difficult situation, the Administration decided to reduce the size of 4 kanal and 2 kanal of industrial plots by 25% so as to accommodate and to enable itself to allot plots to all 254 allottees. In view of the new industrial policy of 1990, the earlier letter dated 29.11.1990 proposing each allottee one kanal of plot was withdrawn. On 05.2.1991, a letter was issued to allottees of plots measuring 4 kanal and 2 kanal to give their consent for accepting reduced size of plot by 25% of the original plot allotted to each of them. The option was invited within a period of 30 days. No option was asked from the allottees of plots measuring one kanal and 10 marlas.

Some allottees had given their consent who shall be hereinafter referred to shortly as 'the consentees'.

Many others who did not give their consent for reduced size of plots challenged the action of the Administration of UTC in the High Court. The new declared industrial policy of 1990 was also challenged. Such allottees who did not give consent for smaller sizes of plots and approached the High Court shall be, hereinafter, referred to as 'the non-consentees'. These non-consentees in the petitions filed by them in the High Court obtained stay against the draw of lots scheduled to be held on 27.3.1991 for allotment of specific plots of smaller sizes to the consentees. The non-consentees made a three-pronged attack in the writ petitions by challenging the notification of declaring the area as reserved forest, the new industrial policy of 1990 and the decision to reduce the size of plots taken by the Administration of UTC. A single Judge of the High Court by order dated 15.11.1991 dismissed the writ petitions filed by the non-consentees. But as the Administration of UTC was found to be blameworthy for the situation created, the learned single Judge merely expressed a wish that they would be accommodated in the alternative schemes. After decision of the case by the single Judge of the High Court, the Administration of UTC on 07.2.1992 issued a letter asking all the 254 allottees to furnish an affidavit in prescribed form indicating that none of them possessed any industrial plot in the territory of Chandigarh, Panchkula or Mohali in his/her name or in the name of his/her spouses/children. This affidavit

was demanded in terms of the new industrial policy of 1990. Out of 254 allottees only 161 consentees gave their affidavits. Some of the non-consentees again approached the High Court challenging the new industrial policy of 1990 by filing fresh petitions and others filed letters patent appeals. In their petitions and appeals, they insisted on grant of relief of directing delivery of possession of the original plots allotted to them. The filing of this petition and appeals resulted in stalling the allotments of alternative plots pursuant to the new industrial policy of 1990 even to consentees who had agreed for plots of reduced sizes at alternative locations and had filed affidavits in the requisite form. The consentees approached the High Court with a prayer that the Administration be directed to give them possession of the alternative plots of smaller sizes. The Division Bench of the High Court passed an order dated 22.11.1994 and by modifying its earlier order dated 13.1.1992 clarified that the Administration of UTC can proceed to allot the industrial plots to consentees subject to the condition that the plots of the size allotted to the non-consentees, who are in litigation, shall be kept reserved and not reduced. Despite the above modification and clarification made by the High Court, the Administration of UTC did not deliver possession of the plots even to consentees stating that in some other cases, stay orders against the allotments were operating against the Administration. On 12.8.1995, the High Court again modified its earlier orders and gave liberty to the Administration to give possession of alternative plots to consentees. Despite the above order, the Administration of UTC did not choose to deliver possession of the alternative plots even to consentees as in their view, the interim orders of the High Court restrained them from reducing the size of plots allotted to non-consentees.

The consentees then approached by substantive petitions before the High Court seeking relief in their favour of issuing direction to the Administration of UTC to deliver possession of alternative plots to them. In response to the writ petitions filed by consentees, the Administration expressed its inability to deliver possession of the plots even to consentees. It was stated that some part of the land to be allotted as alternative plots falls within the restricted zone under the notification issued under the Aircrafts Act for Air-Force base.

The Division Bench of the High Court, after long drawn hearing and detailed consideration of the competing claims of consentees and non-consentees as also the stand of the Administration, passed a common judgement with the directions which are subject matter of these appeals preferred by non-consentees who are aggrieved by denial to them of alternative plots. Consentees feel aggrieved by direction permitting from them demand of the price at the rate prevailing on the date of draw of lots i.e. 27.3.1991. According to the Chandigarh Administration, during long pendency of litigation, a new industrial policy of 2001 has been promulgated in which one phase of industrial area is to be reserved for setting up the Information Technology industries. The Administration is aggrieved by the directions permitting them to charge price only at the rate prevailing on the date of draw of lots i.e. 27.3.1991 and not at current rate.

Amongst the consentees and non-consentees, there are individuals and parties who did not file any writ petitions in the High Court and as the relief granted is restricted to the parties before the court, such parties and individuals have filed applications seeking intervention and/or impleadment as parties in this group of appeals.

The directions given by the High Court in the impugned judgment are as under :-

1. The prayer of the appellants/petitioners for directing the authorities of Chandigarh Administration to hand over possession of the plots allotted on the basis of draw held in

November, 1982 is rejected.

2. However, the authorities of Chandigarh Administration are directed to issue allotment letters to those appellants/petitioners who had given consent for allotment of alternative plots of smaller sizes and who were successful in the draw held on 27.3.1991. They should be charged price at the rate prevailing on the date of draw.

3. Those who were declared successful in the draw held on 27.3.1991 but cannot be allotted plots due to non-availability of sufficient land in the wake of prohibition imposed vide notification dated 5.1.1988 shall be allotted plots in any other scheme already framed or which may be framed hereafter by Chandigarh Administration.

4. Those who were declared successful in the draw held in 1982, but did not give consent for allotment of alternative plots shall be refunded the amount deposited by them with interest at the rate of 12% from the date of deposit till the date of actual payment.

5. Within one month from the date of receipt of this order, Chandigarh Administration shall get published in the Tribune the list of the applicants who had given consent for allotment of alternative plots and were declared successful in the draw held on 27.3.1991 specifying the number of plots earmarked for them.

6. Notification dated 28.4.2000 is held inapplicable and inoperative qua the allotments made to the appellants/petitioners on the basis of the draw held on 27.3.1991.

.....

In this Court when the arguments commenced, it was felt by all parties involved as also by this Court that some amicable solution reasonably acceptable to all the parties can be found out on the basis of mutual discussions and negotiations between the authorities of the Chandigarh Administration, the contesting consentees and non-consentees.

Despite giving them repeated opportunities to settle the matter through negotiations, we are unhappy to record that the counsel for the parties reported that efforts to amiably solve the issue have failed.

Learned senior counsel Shri M. L. Verma appearing for the non-consentees very fairly stated that the notification reserving certain lands for the forest and the restrictions imposed on construction in periphery of 900 metres from the Air-Force base under the Aircrafts Act cannot be questioned and that part of the judgment of the High Court is not being assailed in these appeals. With regard to the restrictions under Aircrafts Act, it is however, pointed out that the period of restriction under notification dated 22.5.2001 has expired and therefore, the said restriction of 900 metres under the Aircrafts Act is no longer in operation.

Learned counsel appearing for the Administration of UTC had pointed out to us that the contents of the letter dated 20.11.2003 received by the Administration from Ministry of Defence, Government of India do show that the period of notification imposing restriction has expired but it has been intimated in the same letter that the similar restriction is under contemplation and a fresh notification imposing same is likely to be issued in future. In the aforesaid circumstances,

learned counsel for the Chandigarh Administration submitted that allotment of alternative plots within 900 metres would be subject to any imposition of restriction under the Aircrafts Act and if such restrictions are imposed, the allottees of plots falling in that area would have no right to claim any compensation or damage from the Administration.

We shall take up first for consideration the grievances raised and the challenges made to the directions of the High Court by the learned counsel appearing on behalf of the non-consentees. On their behalf, learned counsel states that amongst them are large number of allottees who, on having been only given letter of allotment, have paid full price of the plots. Lease-deeds have been executed in their favour and they have been placed in formal possession of the plots although they have not been allowed to take physical possession and raise super-structures. Such allottees, it is contended, have acquired a vested right to obtain the plots. Reliance is placed on section 3(3) of the Act read with rules 4, 6 & 10 of the Rules which read as under :-

"Section 3. Power of Central Government in respect of transfer of land and building in Chandigarh. \026 (1).....
(2) .....
(3) Notwithstanding anything contained in any other law for the time being in force, until the entire consideration money together with interest or any other amount, if any, due to the Central Government on account of the transfer of any site or building, or both, under sub-section (12) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government.

Rule 4. The Chandigarh Administration may demise sites and buildings at Chandigarh on lease for 99 years. Such leases may be given by allotment or by auction in accordance with these rules.

Rule 6. Commencement and period of lease. \026 The lease shall commence from the date of allotment or auction, as the case may be, and shall be for a period of 99 years. After the expiry of the said period of 99 years, the lease may be renewed for such further period and on such terms and conditions as the Government may decide.

Rule 10. Delivery of possession. \026 Actual possession of the site/building shall be delivered to the lessee on payment of 25 per cent of the premium in accordance with rule 8 or rule 9 as the case may be.

Provided that no ground rent payable under rule 13 and interest on the instalments of premium payable under sub-rule(2) of rule 12 shall be paid by the lessee till the actual and physical possession of the site/building is delivered or offered to be delivered to him, whichever is earlier.

Some decisions, which need not detain us for consideration, were cited to contend that on execution of lease-deads, payment of price and formal delivery of possession of the plots, a vested right in law in the plots allotted has been created in favour of the allottees regardless of their consent or non-consent for alternative plots.

We have examined the scheme and provisions of the Act and the Rules. They do not seem to contemplate creation of any vested right where any other state or central legislation bars use of a particular land for industrial development. The Chandigarh Administration, in

these cases, had prepared a scheme, carved out plots, auctioned them and received part or full payment of the price. In implementing its development scheme, it ignored the notification issued reserving a major portion of the land covered by the scheme as 'forest'. It is in this circumstance that the Administration is showing its inability to honour the commitment made by offering the plots, acceptance of price and giving delivery of possession. When a scheme of development of land and the allotments made thereunder are found to be in contravention of any law and contrary to general public interest, no claim based on so called vested right can be countenanced. Similar is the position with regard to 900 metres restriction imposed under the Aircrafts Act. No citizen can be allowed to claim any vested right which would result in violation of a statutory provision of law or Constitution. The claim, therefore, based on alleged vested right, has to be outright rejected.

The learned senior counsel then made some attempts to rely on the doctrines of 'promissory estoppel' and 'legitimate expectation'. Doctrine of 'legitimate expectation' has developed as a principle of reasonableness and fairness and is used against statutory bodies and government authorities on whose representations or promises, parties or citizens act and some detrimental consequences ensue because of refusal of authorities to fulfil their promises or honour their commitments. The argument under the label of 'estoppel' and 'legitimate expectation' are substantially the same. The Administration herein no doubt is guilty of gross mistake in including in its development scheme, a portion of land covered by the forest and land with restrictions under the Aircrafts Act. A vital mistake has been committed by the Chandigarh Administration in overlooking the notification reserving land under the Forest Act and the restrictions imposed under the Aircrafts Act, but overriding public interest outweighs the obligation of a promise or representation made on behalf of the Administration. Where public interest is likely to be harmed, neither the doctrine of 'legitimate expectation' nor 'estoppel' can be allowed to be pressed into service by any citizen against the State Authorities. In M/s Jit Ram Shiv Kumar & Ors. vs. State of Haryana & Ors. [1981 (1) SCC 11], a two-Judge Bench of this Court by explaining and distinguishing Union of India vs. Indo-Afgan Agencies Ltd., [1968 (2) SCR 366] and Motilal Padampat Sugar Mills Co. (P) Ltd. vs. State of U.P. [1979 (2) SCC 409], observed thus :-

'It is only in public interest that it is recognized that an authority acting on behalf of the government or by virtue of statutory powers cannot exceed his authority. Rule of ultra vires will become applicable when he exceeds his authority and the government would not be bound by such action. Any person who enters into an arrangement with the government has to ascertain and satisfy himself that the authority who purports to act for the government, acts within the scope of his authority and cannot urge that the government is in the position of any other litigant liable to be charged with liability'.

In the aforesaid case of M/s Jit Ram Shiv Kumar (supra), the Municipal Committee of Bahadurgarh town to develop a Mandi promised that the traders who purchase plots in Mandi would be exempted from paying octroi duty on goods imported for trade to the Mandi. The State Government in exercise of powers under the Punjab Municipal Act directed the Municipal Committee to withdraw the exemption from payment of octroi duty. When the traders, who had set up their business in the Mandi on promise of getting exemption from octroi duty, challenged the action of the Municipality and the Punjab Government and raised on plea of 'estoppel' \026 it was rejected by this Court by relying on the decision of Constitution Bench of this

Court in the case of M. Ramanatha Pillai vs. The State of Kerala & Anr. [1973 (2) SCC 650] and State of Kerala & Anr vs. The Gwalior Rayon Silk Manufacturing (WVG.) Co. Ltd. Etc. [1973 (2) SCC 713]. This Court in M/s Jit Ram Shiv Kumar (Supra), recorded the following conclusion which supports the view we propose to take in the circumstances of the present case :-

'On a consideration of the decisions of this Court, it is clear that there can be no 'promissory estoppel' against the exercise of legislative power of the State. So also the doctrine cannot be invoked for preventing the government from acting in discharge of its duty under the law. The government would not be bound by the act of is officers and agents who act beyond the scope of their authority and a person dealing with the agent of the government must be held to have notice of the limitations of his authority. The court can enforce compliance by a public authority of the obligation laid on him if he arbitrarily or on his mere whim ignores the promises made by him on behalf of the government. It would be open to the authority to plead and prove that there were special considerations which necessitated his not being able to comply with his obligations in public interest'.

In public law in certain situations, relief to the parties aggrieved by action or promises of public authorities can be granted on the doctrine of 'legitimate expectation' but when grant of such relief is likely to harm larger public interest, the doctrine cannot be allowed to be pressed into service. We may usefully call in aid Legal Maxim : 'Salus populi est suprema lex : regard for the public welfare is the highest law. This principle is based on the implied agreement of every member of society that his own individual welfare shall in cases of necessity yield to that of community. His property, liberty and life shall under certain circumstances be placed in jeopardy or even sacrificed for the public good'.

On the same principle and to protect larger public interest, the Chandigarh Administration can be relieved of fulfilling legitimate expectation arising from its allotment of plots on the ground that their development schemes under consideration have been found to be in contravention of Forest Act and Aircrafts Act. Another legal maxim which can be invoked to their aid is : 'Lex non cogit ad impossibilia : the law does not compel a man to do that which he cannot possibly perform'.

The allottees of the plots are, no doubt, faced with an uncertain situation with loss already caused to them due to negligence and mistake on the part of the Planning Authorities of the Chandigarh Administration. In preparing the development scheme, the existing notification reserving major part of land as forest under the Indian Forest Act and restriction on construction in periphery of 900 metres from the Air-force base under the Aircrafts Act were overlooked. As we have held above, on a representation that the land is available for allotment of industrial plots, the allottees staked their money and plans for setting up their industries. The representations made to them by the Planning Authorities have turned out to be misleading as a substantial part of the land could not have been included in the development scheme. The allottees paid price for the plots and incurred expenses in preparing their industrial projects. We have held above that the doctrine of 'legitimate expectation' and 'estoppel' cannot be applied against the Administration to compel it to allot the original plots because that would be permitting violation of Statutes intended to conserve forest and restrictions imposed in the interests of general public and security of Nation under Aircrafts Act. Doctrine of 'estoppel' cannot, therefore, be allowed to be urged against the

Administration. This Court cannot direct the Administration to commit breach of statutory provisions and thus harm general public interests. De Smith, Woolf and Jowell in their authoritative book on 'Judicial Review of Administration Action' [5th Edition at page 565 para 13-028], have stated one of the principles of public law powers thus : 'A public body with limited powers cannot bind itself to act outside of its authorised powers; and if it purports to do so it can repudiate its undertaking, for it cannot extend its powers by creating an estoppel'.

Surely, the doctrine of estoppel cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a Statute and therefore, against general public interest. The question, however, is whether the parties or individuals, who had suffered because of the mistake and negligence on the part of the statutory public authorities, would have any remedy of redressal for the loss they have suffered. The 'rules of fairness' by which every public authority is bound, requires them to compensate loss occasioned to private parties or citizens who were misled in acting on such mistaken or negligent advice of the public Authority. There are no allegations and material in these cases to come to a conclusion that the action of the authorities was mala fide. It may be held to be careless or negligent. In some of the English cases, the view taken is that the public authorities cannot be absolved of their liability to provide adequate monetary compensation to the parties who are adversely affected by their erroneous decisions and actions. But in these cases, any directions to the public authorities to pay monetary compensation or damages would also indirectly harm general public interest. The public authorities are entrusted with public fund raised from public money. The funds are in trust with them for utilisation in public interest and strictly for the purposes of the Statute under which they are created with specific statutory duties imposed on them. In such a situation when a party or citizen has relied, to his detriment, on an erroneous representation made by public authorities and suffered loss and where doctrine of 'estoppel' will not be invoked to his aid, directing administrative redressal would be a more appropriate remedy than payment of monetary compensation for the loss caused by non-delivery of the possession of the plots and consequent delay caused in setting up industries by the allottees.

[See the Administrative Law by H.W.R. Wade & C.F. Forsyth, Eight Edition at pages 370-373. Also the book on 'Judicial Review of Administration Action' by De Smith, Woolf and Jowell, 5th Edition at page 565 para 13-028].

In the predicament aforesaid, the Administration has adopted a fair attitude. It has come out with a proposal to give alternative plots but of smaller sizes because of the paucity of land available in development schemes in Phase-I & II. The statutory compulsion and the rule of fairness have both to be evenly balanced. This Court cannot allow the Administration to commit breach of law and harm public interest. At the same time, it cannot be absolved of its liability to give appropriate redressal and compensation to the parties and citizens who have suffered loss because of their grossly mistaken decisions and actions. The allottees of the plots, when they were given option to accept alternative plots of smaller sizes, ought to have accepted the offer being the appropriate compensation to them in the circumstances obtaining. The allottees who have consented to accept alternative plots even of smaller sizes and others who did not consent, maybe, because they were in litigation and required plots of bigger sizes, constitute two different groups requiring different treatment in the matter of directing grant of appropriate redressal to them by the Administration.

The learned counsel on behalf of non-consentees submitted that in denying choice of alternative plots to non-consentees at par with consentees, the High Court unreasonably discriminated the non-

consentees. It is submitted that the non-consentees were legitimately fighting for their rights for the original plots allotted of required sizes and which suited to their industrial projects. Merely because in the course of court proceedings, draw of lots for alternative plots were stayed and held up, is no ground to deny non-consentees the allotment of alternative plots, when in many of their cases, full prices have been paid, lease-deeds executed and even formal possessions have been obtained although they could not set up industries. It is submitted that the rule of fairness requires consentees and non-consentees be treated at par for allotment of alternative plots. No prejudicial treatment could be meted out to non-consentees by completely depriving them of alternative plots and merely directing refund of their prices. In this respect, it is urged that pendency of court proceedings should harm no one and mere approach to the law courts for enforcement of their legal and constitutional rights should not be taken as a circumstance against the parties. The contention advanced is that discrimination between consentees and non-consentees is violative of right of equality guaranteed under Article 14 of the Constitution.

We have also heard the learned senior counsel Shri M. N. Krishnamani appearing for the consentees, who has very stiffly opposed the claim for alternative plots advanced on behalf of the non-consentees. The plots of small sizes are limited in number in which both consentees and non-consentees cannot be accommodated. Learned counsel submits that differential treatment given to consentees and non-consentees by the High Court is fully justified for various reasons. It is submitted that the writ petitions filed by the non-consentees challenging the notification of reservation of land for forest and their refusal to accept alternative plots of smaller sizes, occasioned long delay in making available the alternative plots to all. The consentees had to intervene and fight independently in the High Court as also in this Court to obtain possession of the plots which they could have obtained on the basis of their consent and draw of lots on 27.3.1991. It is submitted that non-consentees were mainly responsible for stalling actions of the Administration and attempts by them to accommodate as much number of allottees in the alternative plots as was possible on the basis of availability of developed land and the size of plots. They submitted that the non-consentees having entered into a long drawn litigation against the Administration and failed, they cannot now, for the first time in this Court, be allowed to change their stand and compete with consentees in draw of lots for smaller sizes of available alternate plots. The High Court, therefore, was right in completely excluding the non-consentees from being considered for grant of alternative plots. The other grievances raised on behalf of the consentees is with regard to direction no. 2 in the judgment of the High Court by which the consentees have been directed to be allotted alternative plots under draw of lots held on 27.3.1991 but on the price prevailing on the date of the draw of lots. This part of the direction no. 2 of the High Court is questioned on behalf of the consentees by stating that they had paid full or part price for the original plots as allotted to them in the year 1982 and the said money was throughout with the Administration. Now directing the consentees to pay the price for the alternative plots on the price prevailing on the date of draw i.e. 27.3.1991 is prima facie unfair and highly burdensome because the consentees for no fault on their part are made to pay much higher price. The Administration despite their vital mistake in preparing schemes for the land partly covered by reserved forest should not be allowed enrichment by allowing them to charge higher price for smaller sizes of plots in the same scheme or the alternative schemes.

We have heard learned senior counsel Shri Rakesh Dwivedi assisted by Ms. Kamini Jaiswal appearing for the Administration on the question of charging of price for alternative plots of smaller sizes in the

same scheme or the other schemes. The justification advanced for demanding higher price is that in the course of long drawn litigation, additional expenditure was required to be incurred for replotting and prices of land have gone up in the meantime. It is also submitted that it may not be possible to accommodate all consentees even for smaller sizes of plots in the same scheme. Some of them will have to be accommodated in other schemes. The acquisition cost of land in other schemes is higher. The direction of the High Court to charge from the consentees for alternative plots, price as was prevailing on the date of draw of lots held on 27.3.1991 is, therefore, described as highly unreasonable.

After considering the rival submissions made on behalf of various parties, we are of the view that the rule of reasonableness and fairness by which every statutory authority is bound, demands that the consentees, who, for no fault on their part, were deprived of the original plots of larger sizes, should not be further made to suffer by demanding from them higher price for the alternative plots of smaller sizes. It would be highly iniquitous to demand from them higher price for smaller sizes of plots and add to their losses caused by undue delay in setting up their industries. The Administration is mainly to be blamed for the situation in which the allottees of plots find themselves today. In preparing scheme and allotting plots, it could not have ignored the notification reserving a part of land for the forest and the restriction to the extent of 900 metres around the Air-Force base. The allottees of the plots have paid full or part price and that amount throughout remained with the Administration. In such circumstances, the Administration must bear a portion of loss, if any, occasioned to it and compensate to some extent the loss caused to the consentees who never objected to allotment of alternative plots of smaller sizes. The direction no. 2 of the High Court, therefore, to the extent of charging price from the consentees as prevailing on the date of draw of lots i.e. 27.3.1991, deserves to be set aside and substituted with the directions that the consentees on being allotted a particular plot of smaller size shall be charged the same price which was prevailing at the time of original allotment of the plot in their favour. Necessary adjustment or refund of price, as the case may be, shall be given to them for the small size of plot allotted.

So far as the non-consentees are concerned, we are not prepared to accept that by their action and/or inaction, they can claim parity for allotment with the consentees. The consentees have to be considered in priority as, at the first available opportunity, they agreed to the offer of alternative plots of smaller sizes. The non-consentees not only questioned the offer made by the Administration to provide them plots of smaller sizes but even assailed the government notification declaring major part of the land in the scheme as reserved forest. They might have a legitimate right to approach the courts for necessary reliefs but having failed in their challenges in the court, they can claim no right of being treated similarly with consentees who right from the earliest opportunity were willing and trying through the Administration and the court for early allotment of alternative plots. The consentees and the non-consentees, on the basis of their actions and inactions, constitute two different classes of allottees and a differential treatment to them cannot be held to be unjustified or in violation of Article 14 of the Constitution. On a just and reasonable ground, the consentees deserve a more favourable treatment than non-consentees more so because plots of small sizes available in the existing scheme in Phase-I & II are extremely limited in number.

After mutual negotiations for settlement between the allottees and the Administration failed, the Assistant Estate Officer, Chandigarh Administration has filed a detailed affidavit on 16.2.2004 showing the latest position with regard to the availability of alternative plots in the same scheme in phase-I & II for which the original allotments were

made and in the new scheme in phase-III in Mouli Jagran. We have to proceed on the facts mentioned in the latest affidavit dated 16.2.2004 filed on behalf of the Administration. It is necessary to briefly indicate the facts and developments which have been brought to our notice in the affidavit and the proposals now made on behalf of the Administration to accommodate the consentees and non-consentees. In the affidavit, it has been stated that after the order dated 17.9.2003 of this Court, parties involved in the litigation were invited before a committee in meetings held between 3.10.2003 to 12.12.2003. Other 164 applicants who were also parties to the draw of lots on 27.3.1991 and some of whom are intervenors or seeking impleadments as parties were also invited as a measure personnel to them. In accordance with the new industrial policy of 1990, the parties in the court were required to furnish necessary information in the prescribed form as to whether in their own name or in the name of their spouses and children they own any plot in Mohali, Panchkula and in the Union Territory of Chandigarh. The second information demanded was whether the applicant is a government or semi-government employee because there is prohibition for allotment of plot to such employees.

In the affidavit, it is further stated that, in accordance with the new industrial policy, the environmental restrictions have been imposed categorising different industrial projects into three categories i.e. Red, Orange and Green. In accordance with the environmental norms, in the new industrial policy of 1990, the parties litigating were given option to submit their fresh project reports. Some of the parties neither provided necessary information on affidavit nor submitted their revised project reports conforming to the environmental norms. According to the Administration, allotments are possible only to such parties who fulfil the conditions shown in the prescribed affidavit and conform to environmental norms. On the basis of the information received in the course of the mutual negotiations for settlement, it is reported to this Court that 47 projects fall in red category and 4 projects fall in orange category. These projects cannot be considered to be set up as per the prevalent pollution norms. They can be considered if they submit fresh project reports which comply with the latest environmental/pollution norms and are viable in the existing marketing conditions. It has been stated on affidavit by the Administration that out of 35 consentees who have furnished the necessary information, only 23 consentees are fulfilling the laid down criteria. The names of those 23 allottees with full details are shown in paragraph no. 7 of the affidavit and the names and details of other 12 consentee allottees who did not furnish complete information and do not fulfil the requisite conditions are also given in the same paragraph of the affidavit.

In the affidavit, there is a second category shown by the Administration as comprising such allottees from whom consent was not asked for as it was proposed to allot them the same size of plot measuring one kanal which they had applied for. In this category, from whom no consent was needed, are allottees of one kanal of plots. Thirteen applicants have been found to have given complete information and fulfilling requisite environmental norms. Their names are also mentioned under category-II of the affidavit.

We have stated above that there is no justification for the non-consentees to claim parity with consentees. The third category pointed out by the Administration and some of whom are also before us represented through their counsel are allottees of one kanal of plots. They are being offered same size of alternative plots and from them no consent was asked for. This category of allottees of one kanal of plot are also required to be accommodated in the available alternative plots.

On this identification of 23 consentees and 13 allottees of one kanal of plot each, the Administration is justifiably required to consider their cases to allot them alternative plots available in industrial areas phase-I and phase-II as shown in their chart (Annnexure-A) annexed to their affidavit. This chart (annexure-A) annexed to the affidavit shall be read as part of our order and is reproduced as under :-

ANNEXURE \026 A
LIST OF INDUSTRIAL PLOTS LYING VACANT IN THE INDUSTRIAL AREA, PHASE I & II, CHANDIGARH.

Sr.	Category	Vacant	Trees & Other Encroachments which can be removed	Major Encroachment like Elect. Transformer Electric pole, Telephone pole which cannot be removed	Total
INDUSTRIAL AREA PHASE I					
1.	1.5 Kanal	1	4	-	5
2.	1 Kanal	1	8	-	9
INDUSTRIAL AREA PHASE II					
3.	3 Kanal	-	1	-	1
4.	1.5 Kanal	3	18	1	22
5.	1 Kanal	18	1	1	20
6.	10 Marla	9	12	2	23
Total		32	44	4	80

From the available plots of different sizes totalling 80, both the consentees and allottees of one kanal of plots have to be accommodated. The directions made by the High Court in favour of the consentees are, therefore, required to be suitably modified with additional directions which we propose to make in these batch of cases :-

So far as non-consentees are concerned, we have already held above that they can claim no parity with the consentees and allottees of one kanal of plots. The number of plots of smaller sizes are also limited and therefore, the non-consentees cannot be allowed to compete with consentees and allottees of plot of one kanal.

In the latest affidavit submitted by the Administration mentioned above, it has been stated that 152 acres of land has been acquired in the Revenue Estate of village Mouli Jagran and Raipur Kalan which fall entirely outside the reserved forest area and are being developed as industrial area phase-III. According to the Administration since alternative sites available in industrial areas phase-I & II as mentioned

in annexure-A are limited, all other left-out allottees can be accommodated in industrial area phase-III. The Administration has, however, stated that in the new industrial zone Mouli Jagran, the cost of acquisition and development has been much higher calculated at Rs.2,892 per sq. yard. Based on the above affidavit, the only relief that can be granted to the non-consentees would be to permit them to submit their willingness within a period of one month from the date of our order in writing to the Administration to be considered for allotment of a suitable plot in the new industrial zone i.e. Mouli Jagran but at the price prevailing on the date of such fresh allotment. Suitable direction is, therefore, required to be issued in favour of such willing non-consentees.

Now we are left with the individuals and parties falling in none of the three categories i.e. 1) consentees, 2) non-consentees, or 3) allottees of one kanal of plot. They were not parties before the High Court and were invited to participate in the discussions and negotiations which have taken place during pendency of these cases before us. They have approached by way of special leave petitions or applications seeking interventions or impleadment as parties in the present cases. This group of individuals and parties, who were not parties before the High Court either as petitioners or respondents and who are merely intervenors or parties seeking impleadments and/or have sought permission to file special leave petitions cannot be allowed to join race for allotment of available alternative plots. It will have to be presumed that having not ventilated their grievances and enforced their rights, if any, at any earlier stage, they have abandoned their claims. Merely because during pendency of court proceedings, some rounds of negotiations and discussions took place in which the Administration also invited them, would not furnish them a cause of action to raise their claims which they had earlier given up by their inaction and lapse. In adjusting equities and on rule of fairness, those who have languished and slept over their rights have to be denied any relief more so when there has been such a time lag between the original allotment and the proposed allotment of alternative plots. In the meantime, there have been various developments including escalation of land prices. Any speculative deals and attempt to take chance of getting allotment by such parties have to be discouraged. We, therefore, refuse to grant any relief to remaining class of consentees or non-consentees and other allottees who were not parties in the litigation before the High Court.

As a result of detailed discussion aforesaid, the appeals and connected matters are disposed of by partly maintaining the directions contained in the impugned order of the High Court but with the modifications, substitution and addition of directions as mentioned below :-

1. The prayer of the appellants/petitioners for directing the authorities of Chandigarh Administration to hand over possession of the plots allotted on the basis of draw held in November, 1982 is rejected.

2. The total available plots of different sizes as mentioned in Annexure-A to the affidavit of the Administration of UTC, shall be allotted by draw of lots separately or jointly as per the procedure evolved by the Administration to 23 consentees found eligible in accordance with the new environmental norms and to 13 allottees of one kanal plot. It is for the Administration of UTC to work out the manner in which draw of lots will be held between 23 consentees and 13 allottees of one kanal plot for the available number of plots of different sizes as contained in Annexure-A to the affidavit. It is made clear that the Administration of UTC will have liberty, keeping in view the industrial projects submitted by the consentees and other

restrictions, if they make it necessary, to suitably alter the sizes of plots to accommodate the identified 23 consentees. It is clarified that allotment of plots from the area of the scheme which falls within restricted 900 metres zone from the air-base under Aircrafts Act, would be granted by the Administration with a condition that if in future, any such restriction is reimposed, the allotments may be cancelled and there would be no liability on the Administration of UTC to pay any damage or compensation to the parties due to non-utilisation of plots or its cancellation. If the allotments of plots in the restricted zone are cancelled due to restriction aforesaid, the price paid for the plots shall be refunded to the parties concerned without any liability of interest on the price which remained as deposit with the Administration.

3. The consentees and allottees of one kanal plot, who even though found eligible for allotment, because of limited number of plots (as mentioned in annexure-A), do not get accommodation in the available plots, they be considered on the same price paid by them for alternative plots in the new industrial area phase-III i.e. Mouli Jagran. It is made clear that the requirement of the Act and the Rules and the new environmental norms as existing on the date of fresh allotment of plots in the industrial area phase-III would be made applicable to such consentees and allottees of one kanal plot.

4. The non-consentees shall be granted by the Administration of UTC, option by asking them to submit their willingness in writing within a period of one month from the date of this order for considering allottment to each of them a suitable plot in the new industrial zone Phase III at Mouli Jagran. It is left to the Administration of UTC to evolve a fair and just method of allotment by draw of lots in accordance with the Act and the Rules. It is made clear that the allotment of plots in the new industrial area III i.e. Mouli Jagran would be at the price prevailing on the date of fresh allotments. The price already paid by the non-consentees for their original plots, if so far not refunded to them, shall be adjusted towards the total price payable for the new sites. It is also made clear that in accordance with existing industrial policy and the environmental norms, the allottees will have to submit their project reports for considering viability of their proposed industries by the Administration.

In the event, the non-consentees are unwilling to take plots in the new industrial zone phase III or their project reports are ultimately found to be not approvable, the price deposited by them for the original plots would be refunded to them with interest at the rate of 12% per annum from the date of initial deposit.

5. The reliefs in the nature of directions made in favour of consentees and non-consentees and allottees of one kanal plot are restricted only to such of them who were parties before the High Court. All claims of remaining consentees or non-consentees or allottees of one kanal plot, who were not parties in the cases before the High Court, stand rejected.

6. Notification dated 28.4.2000 containing new Industrial Policy would not be made applicable to the allottees of plots in phase-I & II who are successful in fresh draw of lots to be held under the above directions.

7. The Administration of UTC shall complete the requisite formalities and carry out the directions made above in

accordance with law within a period of four months from the date of this order and hand over possession of the plots to the successful allottees.

8. All applications seeking interventions, impleadment as parties and special leave petitions filed by parties, who were not parties before the High Court, are, hereby, rejected.

As a result of the discussion aforesaid, the appeals and connected matters are disposed of by substituting/modifying above-mentioned directions for the directions contained in the impugned order of the High Court.

Keeping in view the peculiar circumstances of the case, we make no order as to costs which shall be borne by the parties as incurred by them.