

*Before Surya Kant & Surinder Gupta, JJ*

**SURINDER KAUR AND OTHERS**

*versus*

**STATE OF PUNJAB AND OTHERS**

**LPA No. 166 of 2007**

January 10, 2014

*Constitution of India, 1950 — Art.14 — Land Acquisition Act, 1894— S. 6 — Allotment of plot to oustees on acquisition of land — State acquired appellant's land for development of 'Residential Urban Estate' — According to State Government policy dated 17.4.1974, an oustee was entitled to allotment of a residential plot on preferential basis, if he had no other residential house or plot anywhere in state — PUDA (Punjab Urban Planning Development Authority) issued public notice on 5.7.1981 inviting applications from oustees — Appellants applied for allotment of a plot measuring 200 square yards in 1981 — PUDA issued another public notice in 1983 and stipulated allotment of plots of 100, 200 and 500 square yards according to area acquired as well as annual gross income of oustees — PUDA allotted a plot measuring 100 square yards to appellants in year 1997 at rate of ₹2700 per square yard prevailing in 1997 — In writ petition, PUDA was directed to consider rate of ₹85 per square yard in accordance with 1981 scheme — But appellants' claim was turned down — Held, that entitlement of every oustee with respect to size of plot was to be determined in accordance with 1983 policy — Further, acquisition and consequential right to consideration for allotment of plots under oustee category accrued in favour of appellants in year 1976 — Authorities took over five years in inviting applications firstly in year 1981 and then in 1983 last call was given — Initially two residential sectors were developed and sold out but appellants were asked to wait indefinitely and finally allotments were made in year 1997 — Few oustees secured allotment in year 1985-86 of plot of maximum size and that too at rate of ₹170 per square yard — Appellants had been subjected to hostile discrimination in brazen violation of Art. 14 of Constitution — In view of this, appellants were entitled to allotment of plots at same rates on which allotments were made to other oustees in year 1985-86.*

*Held that, there is no gain saying that ordinarily the landowner whose land has been acquired for a public purpose would be entitled to*

compensation in lieu thereof and the Land Acquisition Act, 1894 does not contemplate admissibility of any other benefit. However, if the State Government in deference to its duty to act as a welfare State has formulated a Scheme to rehabilitate the land losers, it is imperative upon it to adhere to such policy and extend its benefit to the eligible displaced persons. Any deviation, denial or deprivation of the benefits flowing from such policy can always be subjected to the judicial review.

(Para 19)

*Further held*, that the different policy decisions taken in the years 1974 to 1983 would bear out that the restriction against the allotment of a plot of more than 200 square yards to an oustee was incorporated in the policy on 2nd February, 1981 only, which stood superseded *vide* the later policy dated 26th May, 1983. Under the policy dated 17th April, 1974 or the later policy dated 26th May, 1983, no such embargo was created. On the contrary, both the later policies explicitly contemplated to carve out plots of different sizes including 400 or 500 square yards as also the eligibility criteria for allotment of such plots which was uniformly applicable including the oustees as well. Further, under the later policy dated 26th May, 1983 the size of plot to be allotted to an 'oustee' depended upon the 'total area' of his 'acquired land'. If the acquisition was below three acres and more than half acre, the oustee was entitled to a plot of 100 square yards only whereas if the area of his acquired land was more than five acres, such oustee was entitled to the allotment of a plot of 500 square yards unless he desired a smaller plot.

(Para 26)

*Further held*, that there can indeed be no doubt from the narration of the facts, that PUDA authorities themselves applied the 1983 policy for the purpose of determining the eligibility of the oustees and the list of eligible oustees notified on 11th July, 1984 [P-6] was actually based upon the said policy only. Otherwise also, either PUDA was required to apply the 1974 policy which was in vogue at the time of acquisition of the land or passing of Award No.352 or they could uniformly apply the policy which was prevalent at the time of determining the eligibility of such oustees, namely, 1983 policy. Since the PUDA chose to apply the 1983 policy for determining the eligibility and/or making some of the allotments to the oustees, it is held that the entitlement of every oustee with respect to the size of the

plot is required to be determined in accordance with the criteria contained in the 1983 policy.

(Para 32)

*Further held*, that clause 4(v) of 1981 policy sought to be relied upon by the PUDA is absolutely redundant and inapplicable as neither was it in existence at the time when right of consideration accrued in favour of the oustees nor was it operational at the time of determining their eligibility. The above said clause of 1981 policy cannot be slapped on case to case basis nor can it be used as a tool of discrimination by the PUDA authorities.

(Para 33)

*Further held*, that the acquisition, and consequential right to consideration for allotment of plots under the oustee category accrued in favour of the writ petitioners in the year 1976. The authorities took over five years in inviting applications firstly in the year 1981 and then after a period of another two years when the last call was given in the year 1983. The oustees legitimately expected that their claim shall also be considered along with other categories of applicants to whom PUDA had started allotting plots. Two residential sectors were developed and sold out but most of the oustees were asked to wait indefinitely till they approached the Courts, obtained different directions and compelled the authorities for consideration of their claims and make consequential allotments in the year 1997. As against it, there were a few oustees, may be affluent or fortunate enough, that they secured the allotments in the year 1985- 86 of the plots of maximum size and that too at the rate of ₹ 170 per square yard. The writ petitioners having laid firm foundation in establishing that they have been subjected to hostile discrimination in brazen violation of Article 14 of the Constitution, it is ridiculous on the PUDA authorities to apply the principle of estoppel against enforcement of their fundamental rights. The written undertaking given by the oustees has to be construed in a reasonable and fair manner. It necessarily means that they were bound to accept the allotment at the rate applied to all the oustees on uniform basis.

(Para 37)

*Further held*, that the public authorities like PUDA are bound to act reasonably and fairly and each action of such authorities must pass the test of reasonableness on the touch stone of Article 14 of the Constitution. They can neither act on pick and choose basis nor at their whims and fancies. Once the policy makers, namely, the State

Government has taken a policy decision, it was imperative upon the executive to give effect to such policy decision in its true letter and spirit. It was nothing but an inaction bordering *mala fide* misuse of power when PUDA kept on selling plots in the open market without caring for most of the oustees for whom the policy makers emphasised to give priority.

(Para 38)

*Further held*, that consequently, we hold that the oustee-writ petitioners in the instant case are entitlement to allotment of plots at the same rates on which allotments were made to other oustees or allottees in the year 1985-86.

(Para 43)

D.V. Sharma, Sr. Advocate with Ms. Shivani Sharma, Advocate, *for the appellants* in LPA No. 10 of 2009; for respondent Nos. 2 and 3 in LPA Nos. 166, 167 of 2009 and for the respondents in CWP Nos. 16372 and 17185 of 2009.

T.S. Gujral, Advocate, *for the petitioners* in CWP Nos. 16372 and 17185 of 2009 and *for the appellants* in LPA Nos. 166 and 167 of 2007 and for private respondents in LPA Nos. 10, 11 and 14 of 2009 and for respondent No. 1 in CACP No. 13 of 2001.

Balwinder Singh, Advocate, *for the appellants* in LPA No.11 of 2009.

Ashish Grover, Advocate, *for the appellant* in LPA No.14 of 2009.

Naresh Prabhakar, Advocate, *for the appellant* in CACP No. 13 of 2001.

#### **SURYA KANT, J.**

(1) This order shall dispose of LPA Nos. 166, 167 of 2007, 10, 11 and 14 of 2009, CWP Nos. 16372 and 17185 of 2009 and CACP No. 13 of 2001 as the principal issue “whether the writ petitioners are entitled to allotment of plots under the Ousteers' Quota at the rate of the year 1984 or they are liable to pay such rate prevailing at the time of the allotment” or other peripheral issues thereto are commonly involved in these cases. However, for a better clarity, the facts of each case need to be briefly noticed. ***LPA No. 166 OF 2007 [Surinder Kaur & Ors. versus State of Punjab & Ors.] and LPA No. 14 of 2009 [Chief Administrator, PUDA & Ors. versus Surinder Kaur & Ors.]***

(2) State of Punjab acquired 751 Acres of land of village Jamalpur Awana, Tehsil & District Ludhiana for the development of 'Residential Urban Estate' by the Punjab Urban Planning Development Authority [in short 'PUDA'], which included the land measuring 12 Kanals 9 Marlas owned by the husband of appellant No. 1 and the father of appellants No. 2 to 4 [late Mohinder Singh] also. The Land Acquisition Collector vide Award No. 352 dated 31<sup>st</sup> March, 1976 specifically held as follows:-

“That Government should give them industrial plots measuring 100 square yards to 1500 square meters to make them to earn their livelihood. According to Government Policy an oustee is entitled to allotment of a residential plot on preferential basis, if he has no other residential house or plot anywhere in the State. Therefore, if any of the interested persons qualifies for the allotment of the plot he can apply to Government at the proper time”.

(3) The LAC issued the above reproduced direction in conformity with the State Government policy dated 17<sup>th</sup> April, 1974 which *inter-alia* provided that before any plots are allotted, all the oustees whose lands have been acquired for the setting up of an Urban Estate shall be accommodated within the frame-work of the income criteria. The entitlement of the oustees for preferential allotment of plots was reiterated by the State Government in a later policy dated 2<sup>nd</sup> February, 1981 also.

(4) PUDA therefore issued two Public Notices dated 5<sup>th</sup> July, 1981 and another in the year 1983 inviting applications from the oustees. Late Mohinder Singh – predecessor-in-interest of the appellants too applied for allotment of a plot measuring 200 square yards along with the requisite earnest money on 31<sup>st</sup> July, 1981. Though PUDA developed two residential Sectors No. 38 and 39 in the Urban Estate, Ludhiana but all the plots therein were sold out without considering the claim of any oustee. It appears that the predecessor-in-interest of the appellants was informed in the year 1987 that his application was still under consideration. Since some of the oustees including those mentioned in Para No. 7 of the writ petition were allotted the plots under Ousteas' Quota, late Mohinder Singh filed a Civil Suit in the year 1992 seeking allotment of a 200 square yards plot @ ₹85/- per square yard which was prevalent as on 31<sup>st</sup> July, 1981 when he had applied and not at the rate of ₹1200/-per square yard which PUDA started demanding in the year 1992. Mohinder Singh

unfortunately passed away on 3<sup>rd</sup> May, 1995. The Civil Court, Ludhiana decreed the suit holding late Mohinder Singh entitled to allotment of plot on preferential basis as per the State Policy but rest of the relief was declined. The first appellant finally approached this Court in ***RSA No. 1896 of 1999*** which was allowed on 17<sup>th</sup> August, 2000 [Annexure P-23] holding the plaintiff entitled to allotment of plot “*on the reserved price as per the Scheme of 1981 on preferential basis.....*”. PUDA was thus directed to consider the claim. It may be mentioned at this stage that even before passing of the above stated order, PUDA had already allotted a plot measuring 100 square yards to the predecessor-in-interest of the appellants on 8<sup>th</sup> October, 1997 [Annexure P-24] but @ ₹2700/- per square yard.

(5) While the appellants were still awaiting the implementation of the above mentioned order passed by this Court in Regular Second Appeal, one Sukhwinder Singh who too was a similarly placed person approached this Court in ***CWP No. 15206 of 1999*** which was disposed of with a direction to PUDA to consider his claim for allotment of a plot @ ₹85/- per square yard in accordance with the 1981 Scheme. Those directions were, however, not complied with, hence Sukhwinder Singh initiated contempt of Court proceedings through COCP No. 193 of 2000 which was disposed of by this Court vide order dated 31<sup>st</sup> October, 2001 with a clarificatory direction to allot him a plot measuring 200 square yards @ ₹85/- per square yard.

(6) The appellants also instituted ***CWP No. 7998 of 2000*** which was disposed of on 3<sup>rd</sup> July, 2000 with the directions similar to those issued in ***Sukhwinder Singh's case*** but the appellants' claim for allotment of plot @ ₹85/- per square yard was turned down by PUDA vide order dated 8<sup>th</sup> November, 2000 [Annexure P-29], justifying the rate of ₹2700/- per square yard charged from them was sought to be justified. The appellants, thus, approached this Court challenging the original order dated 8<sup>th</sup> October, 1997 as well as the one dated 8<sup>th</sup> November, 2000 and sought a direction for allotment of the plot @ ₹85/- per square yard.

(7) The learned Single Judge vide order under appeal dated 01<sup>st</sup> March, 2007 has held the appellants entitled to the allotment of a 100 square yard plot @ ₹85/- per square yard, subject to the condition that they shall pay interest @ 10% per annum to be compounded annually *w.e.f.* 01<sup>st</sup> January, 1985 till the payment of balance price. Both the parties are aggrieved and have filed cross-appeals.

***LPA No. 167 OF 2007 [Tarlochan Singh versus State of Punjab & Ors.] and LPA No. 10 of 2009 [Chief Administrator, PUDA & Ors. versus Tarlochan Singh & Ors.]***

(8) The only distinguishable facts of this appeal from the earlier one are that the land of the appellant was acquired by the State of Punjab/PUDA on two occasions. His land measuring 32 kanals 4 marlas and again 31 kanals 6 marlas was acquired in respect of which two different awards No. 258 dated 29<sup>th</sup> August, 1972 and Award No. 352 dated 31<sup>st</sup> March, 1976 respectively, were passed. The appellant applied for allotment of a plot measuring 400 square yards at the reserved price of Rs.127.50 per square yard on 26<sup>th</sup> April, 1984. The appellant waited for long and finally instituted a Civil Suit in the year 1992 which was partially decreed on 01<sup>st</sup> March, 1996 to the extent of his entitlement to allotment but not at the reserved price of ₹127.50. His Regular Second Appeal was accepted by this Court on 17<sup>th</sup> August, 2000 but notwithstanding the direction to reconsider the rate of allotment, the appellant was offered allotment @ ₹3200/- per square yard, which prompted him to file a writ petition in this Court.

(9) The learned Single Judge has allowed the writ petition holding him entitled to allotment of 400 square yards plot @ ₹127.50 per square yard. The appellant, however, has been held liable to pay interest @10% per annum to be compounded annually w.e.f. 1985 till the balance payment is made. Both the parties feeling aggrieved have filed cross-appeals.

***LPA No.11 of 2009 [Chief Administrator, PUDA & Ors. versus Sukhwinder Singh & Ors.]***

(10) The land of respondent No.1 [Sukhwinder Singh] measuring 9 kanals 11 marlas was also part of the acquisition of 751 Acres of land, referred to in the first set of cases. His claim was also covered under the directions of the Land Acquisition Collector contained in Award No. 352 dated 31<sup>st</sup> March, 1976. He applied for allotment of a plot measuring 200 square yards under the oustees category/local displaced person on 26<sup>th</sup> October, 1981 along with the requisite amount. He claimed allotment @ ₹85/- per square yards. After representing to the Authorities on several occasions, the first respondent came to this Court in CWP No. 8793 of 1999 which was disposed of on 7<sup>th</sup> July, 1999 with a direction to the respondents to consider his entitlement for allotment at the rate prevalent when the 1981 policy was issued.

(11) In compliance with those directions, the first respondent was allotted a plot but @ ₹2700/- per square yard. He, therefore, again approached this Court through CWP No. 15206 of 1999 which was disposed of on 01<sup>st</sup> November, 1999 with a direction to the Chief Administrator, PUDA to reconsider the rate of allotment in the light of the facts noticed by this Court including the fact that those who got allotments under the directions of the Supreme Court or the High Court were not burdened with the liability to pay ₹2700/- per square yard. The non-compliance of the above mentioned orders prompted the first respondent to initiate contempt proceedings and COCP No. 193 of 2000 was also disposed of on 31<sup>st</sup> October, 2001 with a clarificatory direction to the respondents to allot a plot of 200 square yards to respondent No. 1 @ ₹85/- per square yard. Notwithstanding those directions, the Chief Administrator, PUDA passed an order dated 09<sup>th</sup> August, 2002 [P-26] holding that no allotment was ever made by PUDA under the oustee category @ ₹85/- per square yard nor such a direction was issued by the Court.

(12) The first respondent, therefore, again came to this Court challenging the above mentioned action and sought a direction for allotment of the plot @ ₹85/- per square yard. The learned Single Judge vide order under appeal dated 01<sup>st</sup> March, 2007 has held him entitled to allotment @ ₹ 85/- per square yard though along with interest and compound interest. Feeling aggrieved, PUDA has preferred this appeal.

**CACP No. 13 of 2001:**

(13) This Contempt Appeal has been preferred by the then Chief Administrator, PUDA against the order dated 31<sup>st</sup> October, 2001 passed by a learned Single Judge in COCP No. 193 of 2000 whereby the appellant though was found to have willfully disobeyed the directions issued by a Division Bench of this Court but taking a lenient view, the contempt petition was disposed of with clarificatory directions that the allotment be made to the first respondent @ ₹85/- per square yard in a time-bound manner. The Contempt Appeal primarily raises the question whether such like directions could be issued by the Contempt Court?

***CWP No.16372 of 2009 [Tarlochan Singh versus State of Punjab & Ors.]:***

(14) This writ petition is an off-shoot of the order dated 01<sup>st</sup> March, 2007 passed by the learned Single Judge in the petitioner's earlier writ petition i.e., CWP No. 16713 of 2000 in which he was held



entitled to allotment of a plot of 400 square yard @ ₹127.50/- per square yard. The respondents have vide the impugned order dated 18<sup>th</sup> September, 2009 held the petitioner entitled to allotment of a 500 square yards plot but @ ₹3750/- per square yard. Since the petitioner seeks allotment @ ₹170/- per square yards as per the government policy and the public notice dated 18<sup>th</sup> September, 1983, this writ petition was ordered to be heard along with LPA No. 10 of 2009 which PUDA has preferred against the order dated 01<sup>st</sup> March, 2007 of the learned Single Judge.

***CWP No. 17185 of 2009 [Surinder Kaur & Ors. versus State of Punjab & Ors.]:***

(15) This writ petition is an off-shoot of the order dated 01<sup>st</sup> March, 2007 passed by the learned Single Judge in the petitioners' earlier writ petition i.e., CWP No. 7998 of 2000 in which they were held entitled to allotment of a plot of 100 square yard @ ₹85/- per square yard. The respondents have vide the impugned order dated 20<sup>th</sup> March, 2009 held the petitioners entitled to allotment of a 100 square yards plot but @ ₹2700/-per square yard. The petitioners seek allotment of a 200 square yard plot @ ₹85/- per square yard. Since the order of the learned Single Judge dated 01<sup>st</sup> March, 2007 is *sub-judice* in LPA No. 14 of 2009, this writ petition was admitted and ordered to be heard along with the above mentioned Letters Patent Appeal.

(16) The learned Single Judge vide order dated March 1, 2007 which is under challenge in the Letters Patent Appeals has held the oustees/local displaced persons entitled to allotment of plots @ ₹85/- per square yard [Plot Size 100 square yards] and ₹127.50/-[Plot Size 400 square yards] after observing that the lists of oustees were finalised in the year 1984 in which the writ-petitioners were held eligible for 400 or 100 square yards plots, as the case may be. He has held that since PUDA started making allotments to others in the year 1985-86, it would have been proper for it to make allotment to the oustees as well as their land was acquired way back in the year 1976 and they were admittedly entitled for allotment of plots on preferential basis. The action of the PUDA Authorities in demanding higher rate of allotment was, thus, negated.

(17) We have heard learned counsel for the parties and have gone through the paper-books including various documents brought on record during pendency of the appeals or writ petitions.

(18) There are two principal issues that arise for consideration, namely:-

- [i] Whether the oustees/local displaced persons [writ petitioners] are entitled to the allotment of plots bigger than the 200 square yards' size under the Ousteers Quota?
- [ii] Whether the oustees/local displaced persons were entitled to the allotment of plots [a] at the rates when they applied for such allotments in the year 1981-1984 or [b] at the rates prevalent at the time when the allotments were made in the year 1997 or so?

**Question No.1:-**

(19) There is no gain saying that ordinarily the landowner whose land has been acquired for a public purpose would be entitled to compensation in lieu thereof and the Land Acquisition Act, 1894 does not contemplate admissibility of any other benefit. However, if the State Government in deference to its duty to act as a welfare State has formulated a Scheme to rehabilitate the land losers, it is imperative upon it to adhere to such policy and extend its benefit to the eligible displaced persons. Any deviation, denial or deprivation of the benefits flowing from such policy can always be subjected to the judicial review.

(20) Notwithstanding the down-gradation of Right to hold Property from Fundamental to Constitutional Right, the Supreme Court showed its concern for the rehabilitation of land-losers in *State of U.P. versus Smt. Pista Devi & Ors.*<sup>1</sup> and strongly advocated to follow the provision contained in the Delhi Development Act by all Development Authorities through-out the Country, observing as follows:-

“10. Although the said section is not in terms applicable to the present acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired will as far as practicable provide a house site or shop site of reasonable size on

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<sup>1</sup> AIR 1986 SC, 2025

reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question”.

(21) The State of Punjab had way back on 17<sup>th</sup> April, 1974 formulated a Policy for the future development of the Urban Estates in Punjab which also contained reservation of plots in the new Urban Estates for various categories like the Defence Personnel, Scheduled Castes/Backward Classes, Ex.-Servicemen, NRIs etc. and in specific the 'Oustees', laying down that:-

“It has been decided to revise the existing policy of reservation as follows:-

[i] Before any plots are allotted, all oustees, whose land has been acquired for the setting up of an Estate shall be accommodated within the framework of the income criteria [prescribed] mentioned above. Further, all war widows will also be accommodated on cent-percent basis and plots allotted to them as per their requirements and social needs”.

(22) As per the income criteria mentioned in Para 6 of the above stated policy, the size of the plot to be allotted depended upon the gross monthly income of a person.

(23) The directions which the Land Acquisition Collector gave in his Award No. 352 dated 31<sup>st</sup> March, 1976 were in fact the same as the above mentioned Government policy.

(24) The State Government took a new policy decision on the development and disposal of residential plots on 02<sup>nd</sup> February, 1981. The new policy contemplated the size of residential plots beyond 200 square yards, i.e., 250, 300, 400 and 500 square yards and for the purpose of eligibility the criteria of 'Gross Annual Income' was also revised. The oustees were entitled to allotment of plots under this policy also but Clause 4[v] of it laid down as under:-

“v]. **Oustees:** The oustees whose land has been acquired for setting up of the Urban Estates will be accommodated within the framework of the income criteria at the reserve price but the allotment of plots will be restricted to area measuring 200 square yards”.

(25) The above stated policy dated 2<sup>nd</sup> February, 1981 was reconsidered and replaced by a new policy notified on 26<sup>th</sup> May, 1983. This policy prescribed eligibility criteria on the basis of Gross Annual

Income for allotment up to the plot size of 250 square yards and for the plots of 250 square yards and above, it said as follows:-

“.....The plots of the size of 250 square yards, 300 square yards and 400 square yards will be allotted at one and a half times of the prevalent reserve price chargeable for the entire area of the plot. Plots of 500 square yards will be allotted at double the prevalent reserve price chargeable for the entire area of the plot as per reserve price fixed by government from time to time”.

(26) As regard to the entitlement and eligibility of the 'oustees', the above stated 1983 policy laid down that:

**“Accommodation of oustees:-**

The policy regarding the allotment of plots to oustees will be as under:-

- [i] The plot should be allotted to an oustee in the Urban Estate for his bona-fide residence.
- [ii] No application from the oustee would be entertained after a period of three years from the date of taking possession of his acquired land. This would, however, apply to the future oustees. The present oustees would be given one year's time to apply for the allotment of plots.
- [iii] An oustee would only be allotted plot on the following basis:-

	<u>Land Acquired</u>	<u>Size of plot</u>
[a]	½ acre to 3 Acres	100 Sq. Yards.
[b]	Between 3 to 5 Acres	200. Sq. yards
[c]	Above 5 Acres	500. Sq. yards unless he asks for a smaller plot.

Explanation: However, if on the land acquired there was a dwelling unit, 100 square yards plot may be allotted even though the area acquired may be less than ½ acre.

- [vi] The price chargeable for allotment of plots to the oustees would be same as for general category.
- [v] All oustees of any joint Khata would be entitled to one plot only”.

(27) The different policy decisions taken in the years 1974 to 1983 would bear out that the restriction against the allotment of a plot

of more than 200 square yards to an oustee was incorporated in the policy on 2<sup>nd</sup> February, 1981 only, which stood superseded vide the later policy dated 26<sup>th</sup> May, 1983. Under the policy dated 17<sup>th</sup> April, 1974 or the later policy dated 26<sup>th</sup> May, 1983, no such embargo was created. On the contrary, both the later policies explicitly contemplated to carve out plots of different sizes including 400 or 500 square yards as also the eligibility criteria for allotment of such plots which was uniformly applicable including the oustees as well. Further, under the later policy dated 26<sup>th</sup> May, 1983 the size of plot to be allotted to an 'oustee' depended upon the 'total area' of his 'acquired land'. If the acquisition was below three acres and more than half acre, the oustee was entitled to a plot of 100 square yards only whereas if the area of his acquired land was more than five acres, such oustee was entitled to the allotment of a plot of 500 square yards unless he desired a smaller plot.

(28) The ancillary question that arises for further consideration is as to which policy decision shall apply in the instant case where the acquisition stood finalised with the passing of the Award No. 352 on 31<sup>st</sup> March, 1976?

(29) The undisputed facts reveal that in *Surinder Kaur and Others' case*, their predecessor-in-interest – Mohinder Singh applied for allotment of a 200 square yards plot under the oustees quota firstly on 31<sup>st</sup> July, 1981 and again in the year 1983, in response to the public notices issued by PUDA. In the case of Tarlochan Singh, he applied for a 400 square yard plot on 26<sup>th</sup> April, 1984. In the case of Sukhwinder Singh, he applied for a 200 square yard plot on 26<sup>th</sup> October, 1981. The lands of all the three oustees were subject matter of Award No. 352 dated 31<sup>st</sup> March, 1976 though in the case of Tarlochan Singh a part of his acquired land was covered under Award No. 258 dated 29<sup>th</sup> August, 1972 also.

(30) It is undeniable that after inviting applications from the oustees through different public notices, PUDA published the notice dated 18<sup>th</sup> September, 1983 [P-4], the relevant extracts whereof having a direct bearing on the issues involved, are to the following effect:

“Application for the allotment of residential plots in SAS Nagar [Mohali], Patiala, Bhatinda, Dugri Road and Samrala Road [Ludhiana], Urban Estates are invited from all those persons whose land has been acquired by the Department of Housing and Urban Development Department, Punjab for setting up of these Urban Estates, for their bona-fide residence. Eligibility for the allotment of this will be determined on the basis of following

criteria. The applicants [oustees] would be allotted plots on the following basis:-

<u>Land Acquired</u>	<u>Size of plot admissible</u>
½ acre to 3 Acres	100 square yards
Between 3 to 5 Acres	200 square yards
Above 5 Acres	500 square yards

The applicant [oustees] can ask for a smaller sized plot provided he fulfills the prescribed income criteria for the same. However, if the area acquired is less than ½ acre but there was a dwelling unit of 100 square yards, plot will be allotted. All oustees of any joint Khata would be entitled to one plot only.

**Income Criteria:-**

The eligibility for the allotment of various sizes of plots will further be on the basis of following income criteria:-

<u>Size of plots</u>	<u>Gross Annual Income</u>
100 Sq. yards	Upto Rs. 8000/- p.a.
150 Sq. yards	above Rs. 8000/- up to Rs. 12000/- pa
200 Sq. yards	above Rs. 12000/- up to Rs. 20000/-pa
250 Sq. yards	above Rs. 20000/- up to Rs.25000/-pa
Above 250 sy.	above Rs. 25000/-pa”

(31) The above reproduced notice conclusively suggests that for the purpose of determining the eligibility of the oustees, PUDA mixed up 1981 and 1983 policies whereunder the total area of the acquired land as well as the Gross Annual Income of an oustee was made the determinative factor for the size of the plot admissible to him. It is also an admitted fact that the Estate Officer, PUDA thereafter issued a list dated 11<sup>th</sup> July, 1984 [P-6] containing names of the Ousteers of Samrala Road, Ludhiana, i.e., the subject acquisition, in which the size of the plots applied for as well as the size of the plot to which an oustee was found eligible, were duly mentioned.

(32) It is also uncontroverted and had to be admitted by the PUDA Authorities that some of the eligible oustees were allotted plots measuring 500 square yards in the year 1985 and 1986 vide allotment letters like dated 01<sup>st</sup> August, 1986 [Annexures P-12 and P-13]. That allotment was admittedly made @ ₹170/- per square yards.

(33) There can indeed be no doubt from the narration of the above facts, that PUDA authorities themselves applied the 1983 policy for the purpose of determining the eligibility of the oustees and the list

of eligible oustees notified on 11<sup>th</sup> July, 1984 [P-6] was actually based upon the said policy only. Otherwise also, either PUDA was required to apply the 1974 policy which was in vogue at the time of acquisition of the land or passing of Award No. 352 or they could uniformly apply the policy which was prevalent at the time of determining the eligibility of such oustees, namely, 1983 policy. Since the PUDA chose to apply the 1983 policy for determining the eligibility and/or making some of the allotments to the oustees, we hold that the entitlement of every oustee with respect to the size of the plot is required to be determined in accordance with the criteria contained in the 1983 policy. The PUDA Authorities having been caught in adopting a pick and choose policy in an indiscriminate manner, have tried to justify the allotments of 500 square yards plots vide allotment letters [P-12 to P-14] on the pretext that the acquired land of these allottees was measured to 9.40, 9.49 and 5.50 acres respectively. Suffice it to observe that the 1983 policy says that where the acquired land is five acres or above, the oustee is entitled to a 500 square yard plot. Every landowner whose acquired land is more than five acres, therefore, will have to be treated at par for the purpose of size of the plot to be allotted to him. The explanation put up by PUDA in this regard is, thus, totally false and misleading.

(34) In our considered view Clause 4[v] of 1981 policy sought to be relied upon by the PUDA is absolutely redundant and inapplicable as neither was it in existence at the time when right of consideration accrued in favour of the oustees nor was it operational at the time of determining their eligibility. The above said clause of 1981 policy can not be slapped on case to case basis nor can it be used as a tool of discrimination by the PUDA authorities.

(35) The entitlement of the oustees for a plot measuring more than 200 square yards has in fact been approved by this Court though by an interlocutory order dated 26<sup>th</sup> May, 2009 which too has a bearing on the issue and reads as follows:-

“....Main contention of learned counsel for the appellants is that policy notified vide Press Note, Annexure P-4, was to be read with policy dated 2.2.1981, Annexure P-10, restricting the entitlement for allotment to 200 square yards plot.

Learned counsel for respondent No. 1 points out that the very fact that eligibility for allotment of plots beyond 200 square yards finds mentioned in policy, Annexure P-4, which is subsequent to Annexure P-11, shows that plots could be allotted beyond 200 square yards. He also refers to allotment letters, Annexures P-12,

P-13 and P-14, whereby plots of 500 square yards were allotted. He also relies on statement of one Gurcharan Singh, Annexure P-37, in civil suit filed by respondent No. 1, stating that displaced persons were allotted plots of 500 square yards. He further states that Gurcharan Singh, Darshan Singh and Kuldeep Kaur in whose favour allotment of 500 yards plots has been made are displaced persons on account of acquisition, which is clear from the statement of Gurcharan Singh.

In view of above, the contention of the appellants that no plot of more than 200 square yards could be allotted to an oustee is belied by their action. This appeal may be liable to be dismissed on this ground. However, learned counsel for the appellants seeks opportunity to produce the record of allotment vide Annexures P-12, P-13 and P-14 and to file an affidavit to show that no oustee was allotted a plot of more than 200 square yards and that allotments vide Annexures P-12, P-13 and P-14 do not relate to the oustees.....”.

(36) The first issue stands answered accordingly.

**Question No.[ii]:-**

(37) As regard to the rate of allotment, it was vehemently urged by learned counsel for PUDA that the oustee-writ petitioners in their respective applications expressly undertook that “I will pay the price of plot at the rate prevalent at the time of allotment.....”, hence they are estopped by their act and conduct from questioning the rate of allotment as it prevailed in the year 1997. He heavily relied upon the decision of the Hon'ble Supreme Court in *State of Punjab & Ors. versus Mewa Singh*<sup>2</sup> and a Full Bench of Delhi High Court in *Rama Nand versus Union of India & Ors.*<sup>3</sup> to urge that the allotment price has to be at the rate prevalent at the time of actual allotment. It was also contended that no indefeasible right can be said to have accrued in favour of the oustees under the Rehabilitation Policy which can always be changed or withdrawn and that it being a case of mere concession, can not be claimed as a matter of right, as observed by a Division Bench of this Court in *Chander Kanta versus State of Punjab & Ors.*<sup>4</sup>

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<sup>2</sup> (2006) 9 SCC 276

<sup>3</sup> AIR 1994 Delhi 29

<sup>4</sup> 1996(1) RRR 374



(38) We are, however, not impressed by the above noticed contentions. We say so for the reasons that the acquisition and consequential right to consideration for allotment of plots under the oustee category accrued in favour of the writ petitioners in the year 1976. The authorities took over five years in inviting applications firstly in the year 1981 and then after a period of another two years when the last call was given in the year 1983. The oustees legitimately expected that their claim shall also be considered along with other categories of applicants to whom PUDA had started allotting plots. Two residential sectors were developed and sold out but most of the oustees were asked to wait indefinitely till they approached the Courts, obtained different directions and compelled the authorities for consideration of their claims and make consequential allotments in the year 1997. As against it, there were a few oustees, may be affluent or fortunate enough, that they secured the allotments in the year 1985-86 of the plots of maximum size and that too at the rate of ₹170/- per square yard. The writ petitioners having laid firm foundation in establishing that they have been subjected to hostile discrimination in brazen violation of Article 14 of the Constitution, it is ridiculous on the PUDA authorities to apply the principle of estoppel against enforcement of their fundamental rights. The written undertaking given by the oustees has to be construed in a reasonable and fair manner. It necessarily means that they were bound to accept the allotment at the rate applied to all the oustees on uniform basis. Since 500 square yard plots have been allotted to some of the oustees @₹170/- per square yard and smaller plots @₹85/- per square yard, namely, the rates duly approved by the State Government vide Memo dated 27<sup>th</sup> October, 1980 [P-7] and Memo dated 10<sup>th</sup> February, 1987 [P-8], the undertaking given by the allottees has to be construed to mean that they were liable to pay the allotment price at the above mentioned approved rates only.

(39) The public authorities like PUDA are bound to act reasonably and fairly and each action of such authorities must pass the test of reasonableness on the touch stone of Article 14 of the Constitution. They can neither act on pick and choose basis nor at their whims and fancies. Once the policy makers, namely, the State Government has taken a policy decision, it was imperative upon the executive to give effect to such policy decision in its true letter and spirit. It was nothing but an inaction bordering *mala-fide* misuse of power when PUDA kept on selling plots in the open market without caring for most of the oustees for whom the policy makers emphasized to give priority.

(40) The decision in *Mewa Singh's case (supra)* does not advance the case of PUDA as that was a case where the oustee applied on 08<sup>th</sup> September, 2000 seeking allotment of a plot under the 1974 Scheme pertaining to the land where he was a co-sharer and which was acquired vide Award dated 24<sup>th</sup> March, 1976. The oustees claim for allotment of plot at the 1985 rate was accepted by the High Court on an erroneous premise as if he was granted relief in an earlier round of litigation where entitlement of different co-sharers for allotment of plots under the oustees' category was determined. The correct facts were that no relief was granted to him in the earlier round. Secondly, while applying on 8<sup>th</sup> September, 2000, he agreed to accept the prevalent rate of allotment. The facts of the instant case are totally converse.

(41) The Full Bench decision of Delhi High Court in *Rama Nand's case (supra)* is also distinguishable for the reason that Clause 1 of Rule 2 of the Nazool Rules, 1981 expressly stipulated that rates of premium chargeable from different categories of persons shall be determined by notification from time to time, by the Central Government. The Full Bench held that the expression 'from time to time' implies that the rates may be determined as and when required and that the rates once notified would operate during the period that may be specified, or till such time that the rates may be changed as and when necessary.

(42) The observations made by this Court in Para No. 5 of its order in *Chander Kanta's case (supra)*, are wholly irrelevant and inapplicable as the policy has admittedly not been scrapped and entitlement of the oustees has been determined and rightly so as per the revised policy of 1983.

(43) In our considered view, the principles laid down by the Hon'ble Supreme Court in a later decision in *Brij Mohan & Ors. versus Haryana Urban Development Authority & Anr.*<sup>5</sup> are fully attracted in the instant case being closer to the facts and circumstances. In that case, the allotment applications were made in the year 1990 and after the intervention of High Court in the year 1992, the allotments were made in the year 1993 at the increased price prevalent in the year 1993. In this factual backdrop, the Supreme Court ruled as follows:-

“20. As noticed above, the scheme requires the allottees under the scheme for land-losers/oustees, to pay the normal allotment rates

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<sup>5</sup> (2011)2 SCC 29

for the allotted plots. The question is what is the meaning of the term 'the normal allotment rate'. No doubt, the term would ordinarily refer to the allotment rate prevailing at the time of allotment. If an acquisition is made in 1985 and the developed layout in the acquired lands is ready for allotment of plots in 1990, and allotments are made in the years 1990, 1991, 1992, 1993, 1994 and 1995 at annually increasing rates, a land-loser who is allotted a plot in 1990 will naturally be charged a lesser price. But if his application is kept pending by the Development Authority for whatsoever reason and if the allotment is made in 1992, he may have to pay a higher price; and if the allotment is made in 1995 he may have to pay a much higher price.

21. The question is whether any discrimination should be permitted depending upon the whims, fancies and delays on the part of the authority in making allotments. To take this case itself, the application for allotment was made in 1990. On 9.9.1991, HUDA advertised the residential plots in the sectors developed from the acquired lands for allotment, wherein the allotment rate was shown as ₹1032 per sq.m. (₹863/- per sq.yd) for plots of 300 sq. m. In the year 1993, the allotment price was increased to ₹1342/- per sq.m. (₹1122/- per sq.yd.) and the appellants are required to pay the 1993 price instead of paying the rate in vogue when the layout was ready for allotment. Should the land loser who promptly made the application in 1990 be made to suffer, because of the inaction on the part of HUDA in making the allotment? We get the answer in the HUDA scheme itself.

22. The policy clearly states that "claims of the oustees shall be invited before the sector is floated for sale". This is also reiterated in the subsequent scheme dated 19.3.1992 which provides that "claims of the oustees for allotment of plots under this policy shall be invited by the Estate Officer, HUDA concerned, before the sector is floated for sale". It is therefore evident that the land loser-applicants for allotment should be given the option to buy first, before the applications for allotment are invited from the general public. This means that the prices to be charged will be the rate which is equal to the rate that is fixed when the sector was first floated for allotment. In this case, it is not in doubt that when the sector was floated for sale, the rate that was fixed in regard to plots of 300 sq.m. or less, was ₹1032/- per sq. m. (₹863/- per sq.yd)".

(44) Consequently, we hold that the oustee-writ petitioners in the instant case are entitled to allotment of plots at the same rates on which allotments were made to other oustees or allottees in the year 1985-86 vide allotment letters like Annexures P-12 to P-14. The second question stands answered accordingly.

(45) Resultantly, LPA Nos. 10, 11 and 14 of 2009 are ordered to be dismissed.

(46) We may also mention at this stage that LPA Nos. 10, 11 and 14 of 2009 could be dismissed outrightly on the ground of inordinate delay of 626 days. In the applications filed seeking condonation of delay, the only plea taken is that SLP No. 14286 of 2007 was filed in the Hon'ble Supreme Court against the order of the learned Single Judge under a *bona-fide* mistake which was withdrawn on 04<sup>th</sup> November, 2008 with liberty to file the Letters Patent Appeal. The record reveals that the LPAs were thereafter filed on 16<sup>th</sup> December, 2008 though the limitation to file a LPA is thirty days only. The respondent-writ petitioner has opposed the application for condonation of delay. As the appeals were admitted without passing any order on the application for condonation of delay, we have, in all fairness, heard and decided the appeal on merits. In the peculiar facts and circumstances of the case, we allow the applications and condone the delay.

(47) Adverting to the cross-appeals preferred by the oustees-writ petitioners questioning the imposition of rate of interest or compound interest on the balance payments towards allotment price, we are not inclined to interfere in the discretion exercised by the learned Single Judge for the reason that prices of real estate have escalated during the intervening years and if they have been made to suffer due to steep hike in the cost of construction, they have got the benefit of retaining the amount of allotment price with them which they would have otherwise parted with in the year 1985-86. The question of levy of interest or compound interest, in any case, does not raise an important question of law to entertain these cross-appeals. LPA Nos. 166 and 167 of 2007 are accordingly dismissed.

(48) Since we have already held the writ petitioners entitled to allotment at the rates which prevailed in the year 1985-86 and have upheld the order passed by the learned Single Judge to that extent, CWP Nos. 16372 and 17185 of 2009 stand allowed to that extent and impugned orders insisting for payment of higher rate of allotment are hereby quashed. The excess amount, if any, charged from the writ petitioners shall be refunded to them within a period of four months

from the date of receipt of certified copy of this order without payment of interest but thereafter they shall be entitled to simple interest @9% per annum.

**CACP No. 13 of 2001**

(49) As has been noticed in *extenso* in Para Nos. 12 and 14 of this order, the contempt Court in no uncertain terms directed the Chief Administrator, PUDA to allot a plot measuring 100 square yards to Sukhwinder Singh @₹85/- per square yard. We are constrained to observe that despite categoric and specific directions issued firstly by the writ Court and thereafter by the learned Contempt Judge with an intent to purge the contempt, the then Chief Administrator has exhibited complete defiance and deliberate disobedience to these directions.

(50) The tone and tenor in which the order dated 09<sup>th</sup> August, 2002 was passed by the Chief Administrator in purported compliance of the order dated 07<sup>th</sup> August, 2002 of this Court passed in contempt proceedings is full of arrogance and shows scant respect for the court orders. He has also attempted to mislead the Court with a false averment that “no applicant has been allotted any plot under the oustee category at Ludhiana @ ₹85/- per square yard....”

(51) The legal plea raised in this appeal that the directions issued by the learned Judge in exercise of contempt jurisdiction is beyond the scope of such jurisdiction, is also misconceived. Invariably, when the contempt Court finds that the Authorities have not been able to comply with an order due to *bona-fide* misconstruction thereof or lack of understanding of its import, it shows magnanimity and clarifies the order with directions to give an opportunity to the contemner to give effect to the original order. Such clarificatory directions are in continuity of the original order. These are not in substitute or in supersession of the original order.

(52) For the reasons afore-stated we dismiss this appeal with costs of ₹25,000/- to be personally recoverable from the then Chief Administrator [appellant] and the same shall not be reimbursed from the State exchequer or by PUDA. The cost amount shall be deposited with the Mediation and Conciliation Centre of this Court and a compliance affidavit shall be filed.

(53) Disposed of. *Dasti.*

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M. Jain