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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 31.07.2017
PRONOUNCED ON: 25.08.2017

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+ **W.P.(C) 1578/2013, CM APPL.2968/2013**

ROHIT RAJ CHHABRA AND ORS. ...Petitioners

Versus

UNION OF INDIA AND ORS. ...Respondents

W.P.(C) 1585/2013, CM APPL.2976/2013

RAVINDER KUMAR MITTAL AND ORS. ...Petitioners

Versus

UNION OF INDIA AND ORS. ...Respondents

W.P.(C) 2193/2013

K.K. GUPTA AND ORS. ...Petitioners

Versus

UNION OF INDIA AND ANR. ...Respondents

W.P.(C) 4759/2013

MANGAT RAM ...Petitioners

Versus

UNION OF INDIA AND ORS. ...Respondents

Through: Ms. Nandni Sahni, Advocate for
petitioners in W.P.(C)1578/2013 &
1585/2013.

None for the petitioners in W.P.(C)
2193/2013.

Mr. Manoj Sharma with Mr. Kapil Kaushik, Advocates for petitioner in W.P.(C) 4759/2013.

Mr. Sanjay Poddar, Sr. Advocate with Mr. B. Mahapatra, Mr. Yeeshu Jain and Mr. Govind Kumar, Advocates for LAC in all matters.

Mr. Ajay Verma, Advocate for DDA with Ms. Akshila, Advocate, in W.P.(C) 1578 & 1585/2013.

Mr. Yeeshu Jain, Standing Counsel for L&B/LAC with Ms. Jyoti Tyagi, Advocate, in W.P.(C) 2193/2013 & 4759/2013.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

S.RAVINDRA BHAT, J.

Facts

1. This batch of petitions involve decision on the same question of whether the cut off date for the impugned policy of relocation and rehabilitation issued by the Government of NCT is arbitrary, discriminatory and violative of Article 14 of the Constitution; and whether the Petitioners have a right to allotment to alternative plots *in lieu* of their properties which were acquired by the Government (the Respondents).
2. The Petitioners owned shops or were occupants of premises and also members of the Old Market Azadpur Association (Regd.) and were in possession/occupation of their respective properties

situated in G. T. Karnal Road, Azadpur, Delhi (hereafter the “subject properties”) for 70 to 100 years. They challenge the relocation and rehabilitation policy for the owners of urban properties whose land was acquired for public purpose, notified by the Land and Building Department of the Govt. of NCT of Delhi vide letter dated 25.7.2012 (hereafter, “the Policy”), for alleged *malafide* reasons, such as, *inter alia*, to exclude the Petitioners from such benefit.

3. The Petitioners had earlier filed, *inter alia*, W.P. Nos. 756/2008 challenging the acquisition proceedings and the notifications issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter, “the Act”), on 01.04.2007 and the Section 6 declaration dated 11.01.2008 as well as, notices under Sections 7 and 17 of the Act in respect of the Petitioners’ land. The Petitioners were permitted by the Court by order dated 25.08.2008 in those writ petitions to file their substantive writ petition for allotment of alternative plot.
4. The Petitioners thereafter, filed W.P. No.6782 of 2008 seeking issuance of writ, order or direction by the Court directing the Respondents to give alternative plots/properties to rehabilitate them *in lieu* of the properties which had been acquired and taken possession of, for the construction of a grade separator and underpass at G.T. Karnal Road, Azadpur, Delhi; and also for the allotment of commercial land/plots/shops to them in nearby areas at subsidized rates.
5. By way of acquisition proceedings, the Respondents had issued

a notification under Section 4 of the Act dated 18.04.2007 for the purpose of construction of the said grade separator and underpass. The Petitioners asserted that the objections filed under Section 5A of the Act were decided by the Land Acquisition Collector in a mechanical manner and without affording any meaningful hearing and the objections were dismissed on mere surmises and conjectures. During the pendency of their earlier writ petition, the Petitioners had withdrawn their challenge to the acquisition proceedings on the assurance/promises made by the Respondents and other government authorities that they were actively considering their case for allotment of alternative plots and a scheme was being framed by them; and as a result of these assurance/promises, the Petitioners acted to their detriment by demolishing their shops/residences on 27.3.2008 and handed over the possession of the same to the Respondents *in lieu* of the assurance of allotment of alternative plot/sites. The Petitioners asserted that the Respondents cannot go back from their promises and are estopped in law.

6. During the pendency of W.P. (C) No. 6782/ 2008 in June 2009, the Respondents framed a draft policy for the benefit of dislocated persons, including the Petitioners, for providing alternative land to them *in lieu* of taking over their industrial/commercial units for the construction of flyovers, grade separators etc. The Policy notified by the Respondents was made effective from 19.09.2011 by the Government of

India order No.0-16021/3/2010- DDVA(909), Central Government, Ministry of Urban Development, Delhi dated 22.09.2011. In terms of Clause XVIII of the said Policy, the cut off date for its eligibility was 19.09.2011, which the Petitioners argue is unreasonable, unfair and discriminatory. The Petitioners contended that the Respondents purposefully and deliberately made the rehabilitation Policy applicable from 19.9.2011 to exclude them from receiving benefit of the said Policy. They submit that there is no nexus or justification for fixing the said date as the effective date of applicability of the said Policy. Thus, the Petitioners challenge this relocation and rehabilitation Policy and the alleged discriminatory cut-off date of 19.09.2011.

Contentions of the Parties

7. The Petitioners argue that the cut-off date of 19.09.2011 for the application of the rehabilitation Policy is discriminatory and irrational; no reasons were cited by the Respondents to explain how this date became sacrosanct for the applicability of the said Policy. The Petitioners also highlight the constitutional assurance of equal treatment to all the citizens of India and the concept of fairness and reasonableness enshrined in Article 14 of the Constitution. It is asserted that the Petitioners had a legitimate expectation that they would be given alternative plots and they would be treated at par with other persons placed in

like or similar circumstances. However, the failure of the Respondents has rendered their impugned actions an arbitrary exercise of power by them.

8. The Petitioners further cited the policy decision dated 14.07.1987, and urge how pursuant to the said Policy, all lands including lands acquired for non-plan purposes were to be acquired through the D.D.A., to demonstrate how, even in the present case, the impugned notifications are in violation of this Policy since, the proposal for acquisition of land has come directly from the Respondents/PWD and not through the proper channel, i.e., the DDA. They highlighted the judgment of this Court passed in relation to the allotment of alternative plots in *Inder Singh Solanki v. Lt. Governor of Delhi* 112 (2004) DLT 332 (DB) to request similar treatment.
9. It was a further contention of the Petitioners that the Respondents in a *malafide* manner proposed to seize their properties without rehabilitating them and thus, discriminating against them, whereas similarly situated persons including unauthorized occupants/encroachers of the same area i.e. Azadpur Delhi, which was located across the road from the properties of the Petitioners- were given alternative shops in the year 1961-62 for the road widening project of the Respondents for the construction of the national highway. In the same vein, the Petitioners also cited the instance when in the year 2002 the Respondents had given alternative land to the squatters/encroachers of Timber Market in a petition filed in the

Delhi High Court.

10. Additionally, the Petitioners also cited how the bill titled “National Rehabilitation and Resettlement Policy 2007” which is applicable not only to those presently affected by the acquisition of land for projects for public purpose, but also to the involuntarily displacement of a permanent nature for any cause; to claim a legal right to claim alternative land/plots. To this effect, the Petitioners noted that a suitable site on Road No.51, Naniwalabagh, Azadpur, Delhi, lying vacant under PWD control, is under consideration by the Respondents for allotment to the Petitioners.
11. The Petitioners cited the Supreme Court decisions in *D.S. Nakara v. UOI* AIR 1983 SC 130 and *Babita Puniya v. Secretary & Anr* 168 DLT (2010) 1L5 where it was held that courts can interfere in policy matters, if the Government has acted unreasonably or discriminately, to submit that the present case is fit for the application of a similar decision, as the action of the Respondents mirror similar discrimination.
12. The Respondents urge that there is no infirmity either in the Policy on its merits, nor as regards adoption of a cut-off date. The decision of the Cabinet was to implement the rehabilitation Policy from the date when the scheme was approved by the Government. The project affected persons (105 in number, in terms of the report of the PWD) were not covered under the proposed policy. Since there was no policy of rehabilitation affected due to acquisition of land for the Azadpur

Grade Separator, it was asserted that the possible financial implication of rehabilitating them could not have been taken into consideration at the time of acquisition. This is highlighted in the affidavit of the Deputy Secretary (Alt) in the Land & Building Department, as follows:

“4. That the cabinet in its decision dated 11.6.2009 held that the scheme would be implemented from the date as per the approval by the government of India, However, the Cabinet on the same day decided to forward applications of 105 project affected persons to DDA for consideration as a special case for rehabilitation. The question of forwarding 105 applications has nothing to do with the rehabilitation policy. It was only for consideration of DDA as a one-time special case not intended to serve as even a precedent. A copy of the said letter is annexed here to as Annexure R 1.

5. That the issue of allotment of alternative plot in lieu of the properties taken in land acquisition cannot be raised as a matter of right in addition to compensation receivable by them as a consequence to acquisition of their properties. Rehabilitation is not a recognized right either under the constitution or under the provisions of the Land Acquisition Act, 1894.

6. That in respect of acquisition proceedings for construction of a grade separator and underpass at GT Karnal Road, Azadpur Delhi on Road numbers 58 and 64, a number of litigations had been filed for allotment of alternative plots and in those cases the petitioners have failed to persuade this Hon'ble Court and also the Hon'ble Supreme Court. So the issue of seeking an alternative plot under a rehabilitation of scheme in

respect of the acquisition proceedings in 2006 and 2007 have already been closed long back by virtue of judicial pronouncement by this Hon'ble and also the Supreme Court.

7. It is respectfully submitted that introduction of any rehabilitation scheme, after the acquisition process gets over, may result in potential recipe for considerable confusion and resultant litigation. Moreover, the direction to confine the benefit of retrospective application of the scheme that came in 2012 to the petitioners only may open an opportunity for litigations in respect of the other land acquisition matters after 25.10.2006. The rehabilitation policy dated 25.7.2012 effective from September 19, 2011, under which the benefit is being sought by the petitioners, is only prospective and cannot be made retrospective by a judicial order to cover acquisitions that may have since long been finalized. Hence the matter may be disposed of accordingly.”

13. In the counter affidavit filed on behalf of the Respondents in W.P. No. 1578 of 2013 dated 29.06.2013 it was contended that the Petitioners were not covered under any scheme and again particularly not under the scheme/ policy dated 25.07.2012 w.e.f. September 19, 2011; thereby they were not entitled to any alternative plot. The Respondents were of the opinion that any cut off date with regard to the implementation of a policy was bound to create controversies in case of retrospective application. It was the assertion of the Respondents that the

implementation of a policy was bound to create controversies in case they are applied retrospectively. In the present case, it was argued by the Respondents, that there was no allegation of arbitrariness or discrimination within the Policy and hence, the Policy cannot be said to be bad in law if it does not cover all the previous land acquisition cases.

14. It is submitted that the choice of a cut-off date in the present case, cannot be termed arbitrary, nor can the classification resulting from it, be called discriminatory. Counsel for the Respondents explained that in policy formulation, extensive deliberations and consultations take place. The date when the scheme was approved by the Central Government, thus became the cut-off date for its applicability, even though it was made known or published subsequently in a policy.

15. The Respondents further relied upon the decision in *Amarjit Singh and Ors v. the State of Punjab and Ors* (2010) 10 SCC 43 where it was held that:

“Not only that in order that the scheme works effectively the authorities for whom acquisition is being made will have to take a broader initiative at the appropriate stage to make provision for allocation to the owners of what is due to them under the scheme. This can be done only when an acquisition is tailored according to the scheme. The scheme cannot be introduced after the acquisition and even allotment process is over. A mechanical extension of the scheme to acquisitions that have since become final cannot help. Any such attempt would be a potential recipe for considerable confusion and resultant

litigation.”

It was argued that if the Petitioners’ contentions were to be accepted, the authorities would be compelled to acquire lands afresh, whereas in those cases, covered by the Policy, adequate compensation to provide for rehabilitation through allotment of alternative plots or other measures, can be obtained.

Analysis

16. The preceding history of the relocation and rehabilitation Policy as stated above, is extracted from the impugned policy:

“Large scale acquisition of land had been resorted to, in Delhi, under provisions of the Land Acquisition Act, 1894, as per the policy of Large Scale Acquisition Development and Disposal of land in Delhi, 1961. In the event of agricultural lands being acquired, besides compensation as prescribed under the Act, alternative plots of prescribed size, at pre-determined rates; are allotted by the DDA to each eligible land owner whose agricultural land is acquired. However, in case of acquisition of urban properties there has been no formal scheme for rehabilitation/relocation barring a few specific cases and the recent policy announced in respect of acquisition for MRTS projects of the DMRC. To this end, the Rehabilitation Policy for Owners of Urban Properties whose land is acquired for public purpose (other than MRTS) (“the Policy”) was framed on the lines of the policy of rehabilitation and resettlement approved by the government of India in respect of MRTS’ PAP (Project Affected Persons).”

17. The significant contentious clauses in the proposed Policy are as follows:

“(xvii) A cut off date shall be set preferably at the project preparation stage so as to prevent the subsequent influx of encroachment or others who wish to take advantage of the scheme.

(xviii) Further, the full resettlement costs shall be included in the presentation of the project costs and benefits. This shall include the cost of compensation, projected enhanced compensation, relocation and rehabilitation etc.

This policy has been made effective from September 19, 2011 vide Government of India order No. O- 16021/3/2010-DDVA (909), Govt. of India, Ministry of Urban Development (Delhi Division) dated September 22, 2011.”

18. The Petitioners argue that this cut-off date is arbitrary and unreasonable as it precludes them from receiving the benefit of the Policy; whereas, it is the assertion of the Respondents that the allotment of alternative plots or properties is not a matter of right. In order to examine whether this cut off date was an arbitrary decision, it needs to be tested in the light of Article 14 of the Constitution. Article 14 strikes arbitrariness in state action and ensures fairness and equality in treatment, and necessarily requires that State action must not be arbitrary, but must be based on some rational and relevant principle which is non-discriminatory. The question here is whether the same position applies in respect of policies.

19. The Petitioners relied on *Nakara* (supra) where the decision of the Central Government not to apply the liberalized pension formula proposed by a Pay Commission recommendation to those who retired earlier, was held to be discriminatory. The Court proceeded to hold that there was no *rationale* for introducing such a cut off date for a liberalized pension formula and that all retired officers and employees formed one homogenous class. The *Nakara* principle, so to say, was considered in another Constitution bench decision in *Krishena Kumar And Anr. Etc. v. Union Of India & Ors* AIR 1990 SC 1782. The Court drew a distinction between those who retired as pensioners and those who retired and were entitled to benefits of contributory provident fund and held that granting benefit to one of them (i.e., the pensioners), and denying it to others, from a particular date was not arbitrary.

20. In *V. Kasturi v. Managing Director, State Bank of India. Bombay & Anr*, [1998] 8 SCC 30 the Supreme Court, reviewing its previous judgments, held that:

"However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such

extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep.”

The Supreme Court had earlier, in *All India Reserve Bank Retired Officers Association and others v. Union Of India* AIR 1992 SC 767 held that not all classifications based on cut off dates are invalid:

“14. Nakara's judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of

applicability of the scheme. That is why in Nakara's case this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cutoff date would ordinarily violate the principle of equality in treatment unless there is strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court in Nakara's case drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been

rightly emphasised by this Court in Krishena's case (supra). ”

Likewise, *State Of Punjab & ors v. Amar Nath Goyal* [2005] 6 SCC 754 held as follows:

“It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/ State Governments to limit the benefits only to employees, who retire or die on or after 1.4.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.”

21. It would also be useful to recollect the decision in *B. Prabhakar Rao v. State of Andhra Pradesh* AIR 1986 SC 210. The Supreme Court had to then decide whether the decision of the Government of Andhra Pradesh to reduce the age of superannuation of its employees from 58 to 55 years was correct. It was held that Article 14 does not forbid reasonable classification for the purpose of legislation for which two conditions are to be satisfied: (1) that the classification must be founded on intelligible *differentia* which distinguishes persons or things that are grouped together from those that are left out of the group (2) that the *differentia* must have a rational relation to the objects sought to be achieved. A significant paragraph from the decision in *Nakara (supra)* that was cited in this case is as follows:

“There is nothing immutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having no rationale for selecting it and having an undesirable effect of dividing homogeneous class and of introducing the discrimination, the same can be easily severed and set aside. While examining the case under Article 14, the approach is not : 'either take it or leave it', the approach is removal of arbitrariness and if that can be brought about by severing the mischievous portion the court ought to remove the discriminatory part retaining the beneficial portion. The pensioners do not challenge the liberalised pension scheme. They seek the benefit of it. Their grievance is of the denial to them of the same by arbitrary introduction of words of limitation and we find no difficulty in severing and quashing the same. This approach can be legitimised on the ground that every Government servant retires. State grants upward revision of pension undoubtedly from a date. Event has occurred revision has been earned. Date is merely to avoid payment of arrears which may impose a heavy burden. If the date is wholly removed, revised pensions will have to be paid from the actual date of retirement of each pensioner. That is impermissible. The State cannot be burdened with arrears commencing from the date of retirement of each pensioner. But effective from the specified date future pension of earlier retired Government servants can be computed and paid on the analogy of fitments in revised pay-scales becoming prospectively operative. That removes the nefarious unconstitutional part and retains the beneficial portion. It does not adversely affect future pensioners and their

presence in the petitions becomes irrelevant. But before we do so, we must look into the reasons assigned for eligibility criteria, namely, 'in service on the specified date and retiring after that date.'

22. Thus, the key to a finding that the cut off date in a policy or law is discriminatory is if it is "having no rationale for selecting it and having an undesirable effect of dividing homogeneous class and of introducing the discrimination". In the present case, the justification for the cut off date of 19.09.2011 was that it was the date of the decision, which was announced through a notification later. The State and the other respondents in the present case, assert that extending the retrospective application of the Policy to include the Petitioners would cause undue chaos and uncertainty; it is also stated that the entire rehabilitation scheme would be unworkable. Their argument further is that land is acquired through one law i.e. the Land Acquisition Act; yet the public agencies that need it are different, with different specifications. In the absence of a uniform policy, it would not be possible to expect every agency, for which land was acquired in the past (and who had fulfilled the financial demands as preconditions for land acquisition) to give additional amounts.

23. The Policy of rehabilitation adequately demonstrates positive action on the part of the Respondents towards consideration of allotment of alternative lands. No doubt, the Petitioners conducted demolition of their properties. This is borne out by letters dated 10.05.2007 and 30.05.2008 from the PWD to the

MCD, as well as various newspaper articles, and the Respondents' statements made. These could arguably be construed as assurances. However, the law is well settled that the Government is not bound by its promises or expectations from evolving a new policy. While doing so, its actions have to be rational and non-discriminatory. Can it therefore be held that the decision to confine the operation of the rehabilitation policy from a particular date is arbitrary? The answer in the opinion of this Court, is in the negative, for the following reasons.

24. When the government or an executive agency or department formulates a policy, myriad considerations- the effect of the policy on existing systems, the likely impact on stakeholders concerned, financial implications, etc. are to be taken into account and appropriately balanced. Often, aspirations and expectations of groups are to be accommodated. In carrying out a policy formulation exercise for rehabilitation of landowners and other occupants displaced from their holdings or properties on account of land acquisition, the government has to necessarily consider availability of such alternative lands, its cost (including cost of acquisition and cost of development, etc). If the power of eminent domain is exercised for a public purpose to be fulfilled by a third party executive agency, which funds the acquisition, the government would take or collect the requisite compensation amount (for disbursement) as well as additional sums to fund fresh land acquisition or purchase of property for development of alternative plots. These necessarily

involve detailed planning and financial forecasting. If the amounts are not forthcoming, the government has to budget for them. If a policy, is made effective from a particular date, the government is then better placed to assesses its own needs and collect the requisite sums from the third party agency, which needs lands. However, if the date of the policy is changed, or advanced by a few years, inevitably, the agency might well find it impossible to achieve its very objectives. The pressure on resources (availability of readily developed land, money or budget allocation for acquiring alternative land that is not provided for etc.) can be burdensome and beyond the Court's domain of expertise.

25. In the present case, there is a clear intelligible *differentia*, discernable to the Court between those landowners, whose properties were acquired earlier and those, whose properties were acquired subsequently after policy formulation. The government had the opportunity of factoring all rehabilitation costs, including the cost of alternative properties, in addition to the compensation collected, to be paid to landowners in the latter case. Furthermore all landowners subjected to acquisition cannot be treated as part of a homogenous class. In some cases, the lands acquired were for the purpose of setting up Metro infrastructure; in other cases, for planned development of the city and in yet others, for municipal corporations' need or those of utilities etc. Each of these expropriations was with a specific purpose; the compensation paid too, varied, depending upon the

nature, location, quality and potential future value of the land. To club all these diverse landowners in the broadest class of those losing their property and then demand that such enforced homogeneity should receive uniform treatment is not what Article 14 dictates. It is no doubt a truism that the provision mandates the rule of equality and not the rule of classification. Yet, to say that two individuals or articles are alike, it is open to the policy maker or the legislature to adopt clear criteria, which should be “intelligible” with the added condition that such criteria should have a rational nexus with the policy or legislative objective. As held in *Amarjit Singh and Ors (supra)* that “*The scheme cannot be introduced after the acquisition and even allotment process is over. A mechanical extension of the scheme to acquisitions that have since become final cannot help. Any such attempt would be a potential recipe for considerable confusion and resultant litigation.*”

26. The Court is mindful of the ruling in *K.S. Paripoornan v State of Kerala & Ors* 1994 (5) SCC 593 where the Supreme Court had to deal with a contention that the transition provision in the Land Acquisition Amendment Act, 1984 which enabled landowners whose lands were acquired earlier to the appointed date, could get the benefit of some additional solatium but not at the same rate, which was given to those whose lands were acquired later. The Court held that:

“Merely because Parliament has decided to give a limited retrospectivity so as to cover awards that were

made by the Collector during the period from 30-4-1982, when the original Bill was introduced in the Lok Sabha till the date of the commencement of the amending Act would not result in the said provisions being infected with the vice of arbitrariness. The choice of 30-4-1982, the date on which the original Bill was introduced in Parliament, cannot be said to be arbitrary and confining the ambit of retrospectivity so as to exclude awards made by Collector prior to 30-4-1982, would not render the provisions of Section 30 (1) of the amending Act unconstitutional. The question of expanding the field of retrospectivity so as to cover all the awards made by the Collector prior to the commencement of the amending Act irrespective of the date when they were made, therefore, does not arise.

it must be concluded that in respect of acquisition proceedings initiated prior to date of commencement of the amending Act the payment of the additional amount payable under Section 23 (1A) of the Act will be restricted to matters referred to in clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act."

27. Yet again, in *Government of A.P. v N. Subbarayudu* (2008) 14 SCC 702 the Supreme Court, speaking in its judgment, while considering a challenge to a cut off date held that:

"7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date.

The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical), vide State of Bihar v Ramjee Prasad, Union of India v Sudhir Kumar Jaiswal (vide SSC para 5), Ramrao v All India Backward Class Bank Employees Welfare Assn. (vide SCC para 31), University Grants Commission v Sadhana Chaudhary etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result."

In view of the above discussion, it is held that there is no invidious discrimination or arbitrariness in the matter of choice of date for making the impugned notification and the benefits spelt out therein, effective. The cut-off date was not "picked out from a hat" (to borrow the expression from *D.R. Nim v Union of India* AIR 1967 SC 1301). The date based classification was not irrational.

28. The last limb of this judgment is the argument to legitimate expectations. The Supreme Court, in some judgments, has ruled that judicial review can be exercised to interfere with change in

policy when denial of legitimate expectation amounts to denial of rights guaranteed or is arbitrary, discriminatory, caused abuse of power or violated principles of natural justice as was held in *Punjab Communications Ltd. v. Union of India*, AIR 1999 SC 1801. Thus, in *State of Haryana v Gurucharan Singh* (2004) 12 SCC 540 it was held that where the government has taken a policy decision to restore the land acquired by it as per standing orders and has also implemented the same in favour of some persons, refusal to restore the land to similarly situated persons was held to be arbitrary and discriminatory.

29. The question in this case, that would a change in policy from one where no rehabilitation measures existed into one containing such measures, where those entitled to the benefits under the new scheme, be characterized as denying legitimate expectations of those falling in the former category? No doubt, the courts have spoken about legitimate expectation being a facet of non arbitrariness, which law and policy makers are to take into account. Yet, here is a case, when the Petitioners, as landowners, knew that they were not entitled to allotment of any alternative plot, since there was no policy at the time of acquisition of their properties. The Government's assurance can only be construed as an expression that it would consider all aspects and frame a policy in due time. This did not, however, crystallize into an enforceable right. In *Ramanand v Union of India* AIR 1993 (26) DRJ 594, it was held that a landowner of acquired land is entitled only to compensation but not any right

to alternative plot, unless sanctioned by law or rules:

“Now, let us turn to the second question. It may be stated at the outset that individuals whose land has been acquired, are not given residential plots in lieu of acquisition of their land, for which they are paid full compensation, under the Land Acquisition Act . This is an additional benefit envisaged for resettlement of the displaced individuals, and premium is chargeable from such individuals at predetermined rates for allotment of alternative plots under the Nazul Rules.”

A case of legitimate expectation would arise when a body by representation or by past practice arouses expectations, which would be within its power to fulfill. In *Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries JT* (1992) 6 SC 259 it was observed, *inter alia*:

“to satisfy this requirement of non-arbitrariness in a State action, it is therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bonafides of the decision in a given case.”

30. In this case, the assurances made to the Petitioners could not have resulted in an enforceable right, because at the time such statements were made, no policy or even a policy framework was known. It has been held that *“The concept of legitimate expectation is "not the key which unlocks the treasury of natural*

justice and it ought not to unlock the gates which shuts the court out of review on the merits,"(See Union of India v. Hindustan Development Corporation (1993) 2 SCR 128). Since there was no enforceable right at the point of time, when the Petitioners claim their legitimate expectations arose, the question of giving retrospectivity to an executive policy cannot arise.

31. In view of the foregoing conclusions, these writ petitions have to fail; they are dismissed without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P. GARG
(JUDGE)**

AUGUST 25, 2017