**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Date of Decision: 30.05.2024.

(1) CWP No.22636 of 2013 (O&M)

Phool Kumar Saini and others ....Petitioners.

Versus

Chandigarh Housing Board and others ....Respondents.

(2) CWP No.18701 of 2019 (O&M)

Rajan Nanda and others ....Petitioners.

Versus

Union of India and others ....Respondents.

(3) CWP No.18927 of 2019 (O&M)

Barhm Parkash Yadav and others ....Petitioners.

Versus

Union of India and others ....Respondents.

(4) CWP No.19564 of 2019 (O&M)

Gurmukh Singh and others ....Petitioners.

Versus

Union of India and others ....Respondents.

(5) CWP No.21500 of 2019 (O&M)

Abdul Namid and others ....Petitioners.

Versus

Union of India and others ....Respondents.

(6) CWP No.6595 of 2020 (O&M)

Channa Ram and others ....Petitioners.

Versus

Union of India and others ....Respondents.

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CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Vijay Kumar Jindal, Senior Advocate assisted by
Mr. Pankaj Gautam, Advocate;
Mr. Abhishek Shukla, Advocate;
Mr. Naveen S. Bhardwaj, Advocate;
Mr. J.S. Rana, Advocate; and
Ms. Mehak Sawhney, Advocate for the petitioner(s)
(in CWP-22636-2013, CWP-18927-2019 & CWP-19564-2019)

Mr. Anil Rana, Advocate, for
Mr. Puneet Gupta, Advocate for the petitioner(s)
(in CWP-21500-2019).

Mr. Anupam Gupta, Senior Advocate, with
Mr. Sukhpal Singh, Advocate;
Mr. Gautam Pathania, Advocate;
Mr. Tushar Sharma, Advocate; and
Mr. Bhavnik Mehta, Advocate for the petitioner(s)
(in CWP-6595-2020).
Mr. Sanjiv Gupta, Advocate;
Mr. Tushar Wadhawa, Advocate; and
Mr. Gaurav Singla, Advocate for the petitioner(s)
(in CWP-22636-2013 and CWP-18701-2019).

Mr. Amit Jhanji, Senior Standing Counsel, with
Mr. Jaivir S. Chandail, Addl. Standing Counsel;

Mr. Himanshu Arora, Advocate (Panel Counsel);
for respondent-U.T., Chandigarh.

Mr. Suman Jain, Advocate;
Mr. Rishabh Jain, Advocate;
for respondent-U.T., Chandigarh.
(in CWP-18701-2019 and CWP-6595-2020).

Mr. G.S.Wasu, Senior Standing Counsel, with
Ms. Deepali Puri, Advocate
for respondent-Chandigarh Housing Board.

Ms. Puneeta Sethi, Senior Panel Counsel;
Mr. Shobit Phutela, Advocate; and
Mr. Armaan Singh, Advocate for respondent -UOI.

Mr. Prateek Rathee, Advocate for U.T., Chandigarh
(in CWP-21500-2019).

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Lalit Batra, J.

By this common judgment, we propose to dispose of above titled six writ petitions as common questions of law and facts are involved in the same.

2. For facility of reference, the facts are being taken from **CWP No.22636 of 2013** titled **'Phool Kumar Saini and others Vs. Chandigarh Housing Board and others'**.

3. This petition under Articles 226/227 of the Constitution of India, has been filed by petitioners, for issuance of an appropriate writ, order or direction in the nature of mandamus directing the respondents to implement the Self Financing Housing Scheme-2008 on Lease Hold Basis for 99 years

for Employees of Chandigarh Administration (hereinafter to be referred as 'Scheme, 2008'), in true letter and spirit and to co-ordinate with each other and to issue Acceptance-cum-Demand Letter (ACDL) to the successful applicants like the petitioners and complete the houses/flats allotted to the petitioners in a time bound manner and to deliver possession thereof under the Scheme, 2008, with further direction to the respondents to initiate action against officers/officials of Chandigarh Administration and respondent-Chandigarh Housing Board (hereinafter to be referred as 'Board'), for delaying execution of Scheme, 2008 for such long period while allotments made to other General Self Financing Schemes launched during the same time, have already ended up in completion of the projects and delivery of possession being on the verge of offer while the scheme for the employees has failed to take off and further restraining the respondents from using the land earmarked/allocated in Sectors 52, 53 and 56 for the purpose other than for which it was allotted i.e. for construction of flats of different categories under Scheme, 2008 for the employees of U.T. Administration.

4. Petitioners' case in brief is that they are retired employees of the Chandigarh Administration from various departments and they are aggrieved of the inordinate delay caused by the Board in the initiation of Scheme, 2008, which has even failed to start despite lapse of more than five and a half years while the allotment of flats made at the same time under the General Housing Schemes have already culminated in completion of the projects and

possession is on the verge of being offered. The clauses of the Scheme, 2008 imposed various restrictions upon the employees and despite severe restrictions on the employees, the Board has still to commence work at the site. Facing acute hardships and seeing no immediate relief, the petitioners have approached this Court through the instant writ petition. The grievance of the petitioners is that despite having been allotted the land earmarked for Scheme, 2008, successful draw of lots and further after having accepted the installment in terms of earnest money towards costs of the flats from the successful applicants, the Board has failed to proceed further in the matter. The correspondence being exchanged within the department shows that the Board is still non-committal about the time frame within which the scheme shall be implemented and the possession of the house would be delivered.

5. In the year 1996, a special scheme for employees of U.T. Administration was launched and thereafter except for some General Housing Schemes, no scheme for the benefits of the employees was launched. As such, U.T. Administration, while realizing the genuine need and requirement of its employees to own their houses in Chandigarh, as rates of properties in Chandigarh have shot up and rents of private accommodations have gone beyond the reach of employees, launched Scheme, 2008. Deliberations regarding the said scheme were started in the year 2005 and it took around three years to give final shape to the Scheme, 2008. Consequently, the matter was forwarded to the Board, being Nodal Agency of Chandigarh

Administration, for execution of scheme. For the said purpose, twenty eight (28) acres of land in Sector-52, Chandigarh and seventeen and half (17.5) acres of land in Sector-56, Chandigarh were earmarked. Vide letter dated 10.01.2008 (Annexure P-1), addressed to Administrative Secretaries of all the Boards/Corporations of Chandigarh Administration, the Board conveyed that flats shall be constructed in Sectors 52 and 56, Chandigarh. Further, vide letter bearing No.1226-M/1138/G6/2008, dated 10.01.2008, Chandigarh Administration decided to allot land measuring twenty eight (28) acres in Sector-52, Chandigarh, to the Board, for utilization in the scheme, on freehold basis at the rate of Rs.7920/- per square yard. The tentative premium of said site worked out to Rs.1,07,35,87,743/- and 25% of tentative premium was Rs.26.83 Crores approximately. Further, vide letter bearing memo No.1216/M-1139/G6/2008 dated 10.01.2008, Chandigarh Administration also decided to allot land measuring seventeen and half (17.5) acres in Sector-56, Chandigarh for the Housing Scheme pursuant to decision of Finance Secretary, conveyed vide memo dated 16.11.2007. The tentative premium of said site worked out to Rs.67,09,16,002/- at the rate of Rs.7920/- per square yard and 25% of the tentative premium was Rs.16.77 Crores approximately. Thus, it is evident that as on the date when the Board floated the scheme and invited applications from the employees, the Board had already been allocated/allotted land by the Chandigarh Administration in Sectors 52 and 56, Chandigarh, for the said purpose. Even at a later stage, land measuring

100549.93 square yards (11.79 acres) in Sector-53, Chandigarh, was also earmarked and allotted to the Board for utilization in the Scheme, 2008.

6. On 14.01.2008, the Board floated Scheme, 2008 (Annexure P-3) and as per brochure, the object of the scheme was to provide their own houses to the employees of Chandigarh Administration in lieu of the flats as there is a huge shortage of Government accommodation and the rents in Chandigarh are beyond their reach. The main feature of scheme is that it was based on self financing as expenditure on construction of flats and cost of land is to be borne by the successful applicants and not by the Chandigarh Administration or the Board. Though scheme was closed on 29.01.2008, however, lateron it was extended till March, 2008. Further, as per brochure, Group-A employees were eligible for three bedrooms' flat, Group-B employees were eligible for two bedrooms' flat, Group-C employees were eligible for one bedroom flat, whereas Group-D employees were eligible for one room flat. The eligibility conditions mentioned in the Scheme, 2008, were as under:-

> (i) The applicant should be a regular employee of Chandigarh Administration or its Board/Corporation or Punjab & Haryana High Court or on deputation with the Chandigarh Administration on the date of the opening of the scheme or should have retired in last three years from the date of opening of the scheme.
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> (ii) The applicant will be eligible for allotment of a dwelling unit in case he/she or his/her spouse or any of his/her minor children does not own any free hold or lease hold or on hire-purchase basis a residential plot/house in the Union Territory of Chandigarh or in either of the Urban Estates of Mohali or Panchkula.
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> (iii) However, an applicant who has ever been allotted a

> residential plot/dwelling unit in the Union Territory of Chandigarh or in any of the Urban Estates of Mohali or Panchkula through Govt./Semi-Government/ Statutory/ Corporation/ Board/ Municipal Committee/ Corporation/ Registered Society like A.W.H.O. or a Co-operative House Building Society, in his/her name or in the name of his/her spouse or any minor child, shall not be eligible for allotment.
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> (iv) Similarly, an applicant who is holding a residential plot/dwelling unit in the U.T., Chandigarh or in any of the Urban Estates of Mohali or Panchkula on the basis of an agreement to Sell and G.P.A. etc. executed in his/her favour or in favour of his/her spouse or any of his/her minor children, shall not be eligible.
>
> (v) The applicant shall further be required to continue to fulfill the eligibility conditions at (ii) to (iv) above, from the date of opening of the scheme to the date of delivery of possession of the dwelling unit by the Chandigarh Housing Board.
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> (vi) In case both the husband and wife are eligible under the scheme, both of them can apply. However, in case both of them are successful, only one will be eligible for allotment.

7. However, at a later stage, this Court while disposing of certain writ petitions, filed by some persons, in respect of the Scheme, 2008, directed some changes in the scheme regarding inclusion of employees of other departments and their entitlement to apply under a particular category and the said decision attained finality upto the Hon'ble Supreme Court.

8. Further, as per Brochure of Scheme, 2008, tentative price of a flat was Rs.34.70 Lakhs for Ground Floor in category 'A'; Rs.24.30 Lakhs for Ground Floor in category 'B'; Rs.13.53 Lakhs for Ground Floor in category 'C' and Rs.5.76 Lakhs for Ground Floor in category 'D'. The rates went on reducing in accordance with the rise in the floor of the flat. Group-A employee

was required to deposit earnest money of Rs.1,75,000/-; Group-B employee was required to deposit earnest money of Rs.1,22,000/-; Group-C employee was required to deposit earnest money of Rs.70,000/- and Group-D employee was required to deposit earnest money of Rs.30,000/- and the remaining payment schedule by way of installments was also provided in the brochure.

9. In response to the above said advertisement of Scheme, 2008, the Board had received total 7811 applications in respect of all the four categories. The Scheme, 2008, opened on 14.01.2008 i.e. within four days of the communication of the allotment of land to the Board. In response to the Right to Information sought by one of the petitioners, the Board, vide letter bearing No.HB/CAO/RTI/2012/14253 dated 01.11.2012 conveyed that the Board had received a total amount under the Scheme, 2008, from all the applicants of different categories to the tune of Rs.57,82,30,400/-. The Board was under an obligation to make a total payment of Rs.43,61,25,942/- i.e. 25% of the tentative premium consequent upon the allotment of land measuring twenty eight (28) acres in Sector-52, Chandigarh, and seventeen and half (17.5) acres in Sector-56, Chandigarh, for the above said Scheme, as against the said liability, the Board had received a sum of Rs.57,82,30,400/- from the applicants. Thus, it is apparent that the Board had received much more money than its liability and it had invested an amount of Rs.27.33 Crores out of the earnest money received in respect of Scheme, 2008, in a fixed deposit for 46 days carrying interest @ 5.75% while the balance amount of Rs.28.67 Crores

was invested on 31.03.2008 carrying interest @ 10.50% for one year. Hence, it is clear that the Board had collected money from the employees for the purpose of Scheme, 2008, which exceeded the liability to be discharged by the Board for the purpose of 25% of the tentative premium for the land so allotted for Scheme, 2008, to the Board by the Chandigarh Administration and enjoyed that amount and is still enjoying the interest on the amount so deposited by the petitioners and other successful applicants.

10. On 04.11.2010, the draw of lots was held by the Board, in which total 3930 applicants succeeded in getting allotment of flats in their favour as per their entitled categories. The break up of successful applicants in the draw of lots is as under:-

Group-A	:	252 applicants
Group-B	:	168 applicants
Group-C	:	3066 applicants
Group-D	:	444 applicants

11. The names, status, category, application form number and registration number of petitioners have been detailed in Para 4 of this petition and copy of one such letter of registration is Annexure P-5. Similar letters have been issued to all the successful applicants. Jasbir Singh, Jaswant Singh and Gurdeep Singh, who were the successful allottees, have since expired with un-cherished dream of having their own house and petitioners No.17 to 19 are their widows.

12. The Board, despite lapse of more than 5½ years from the launching of Scheme, 2008, and about three years from the date of draw of lots, in total deviance to the aim and object for which the Scheme, 2008, was launched, has failed to lay out any time schedule for completion of the scheme in a time bound manner and has remained non-committal despite the onerous terms of the scheme. The Board has even failed to issue acceptance-cum-demand letters to the successful applicants till date and the bureaucrats of Chandigarh Administration and the Board at high level are sleeping over the matter. The petitioners have served U.T. Chandigarh Administration for whole of their life and remained successful in the draw of lots. The petitioners had raised loans from the banks for submission of the earnest money. They have since then retired and have already vacated the Government accommodations which had been allotted to them and have taken the suitable accommodations on rent because as per eligibility clause they cannot own any house/property in Tricity since the date of opening of scheme till the delivery of possession of flats. The petitioners have no other source except their pensions to survive upon and taking into consideration the high rates of rent, the petitioners have serious issues of a decent survival.

13. Petitioners are being prejudiced severely as they cannot apply or buy any other property in the Tricity till such time the possession of the flats is offered to them and the delay of the project would significantly escalate the cost of construction. Thus, the petitioners apprehend that they would have to

pay much more for the same construction as against what they would have been required to pay in case the construction had been initiated timely by the Board. The petitioners have to pay heavy rent for the accommodations since they have vacated the Government accommodations allotted to them. Petitioners have to pay the interest for the money which they had borrowed from the bank for the purpose of applying and paying the earnest money. The Board, on the other hand, is sleeping over the matter and is earning handsome amount as interest on the amount deposited by the applicants. Petitioners had always desired to finally shift in their own house which such desire has become more and more distant since the Board does not seem to have any road map for proceeding with the scheme in a time bound manner and the construction is yet to commence. Even the petitioners have not been able to avail of any other scheme which have been launched by the respective Governments/Agencies of the States of Punjab and Haryana with a view to buy the flats under the said scheme and for the reason that acquisition of such property would render them ineligible under the Scheme, 2008. Further, in response to information furnished to the petitioners under the Right to Information Act, the Board has conveyed that the minimum time which is required for completion of the project upon commencement of work is 42 months.

14. The Board has also floated General Self Financing Housing Scheme, 2008, in Sector 63, Chandigarh (Annexure P-6) on lease hold basis.

Even thereafter, a similar scheme was floated in Sector-51, Chandigarh. Housing Scheme of Sector-63, Chandigarh, was opened on 31.03.2008 and closed on 30.04.2008. The petitioners are making a reference to the said scheme only to lay emphasis upon the delay which has been caused by the Board in execution of the Scheme, 2008. While the General Self Financing Housing Scheme, 2008, which was floated simultaneously and in fact after the Scheme, 2008, applicable to petitioners, the houses under the General Self Financing Housing Scheme, 2008, have already been constructed and the final possession is to be handed over in the first quarter of 2014. To the contrary, the Board has not yet initiated the work at the site and the same remains deserted in respect of Scheme, 2008.

15. The petitioners and number of other successful applicants have submitted numerous representations (Annexure P-7 colly) to the Board and other officers of Chandigarh Administration seeking expeditious action in the matter. Along with the application forms, the petitioners including about four thousand successful applicants had deposited earnest money with the Board, as demanded, which is still lying with the Board and interest is being earned thereupon. Along with the said representations, the petitioners also requested the Board to initiate the construction of the flats as per the Scheme, 2008, in an expeditious manner, but no action has been taken pursuant to their representations.

16. Issue of inordinate delay in the matter has been taken into

consideration by the Chairman of the Board and other Higher Officers of the Chandigarh Administration. The Chairman of the Board asked the "Reasons for the delay and also directed to fix responsibility for the same on the erring officials for such a serious lapse of not sending any letter from 25.01.2008 to 04.08.2012 and to take necessary action for keeping the files unattended". Thereafter, the file was again put up before the officers without disclosing the details of the delay. It was, however, brought out in the various notings of the Board that drawings for the Scheme, 2008, have already been approved by the competent authority and the same were also approved by the Chief Architect of Union Territory, Chandigarh. The boundary wall has also been earmarked. As the drawings for the scheme had been prepared by the Architectural Wing, hence, the plot in area and the chargeable covered area were to be supplied by the Senior Architect. In the notings, it is borne out that Chairman of the Board directed the officials to prepare the sequence of events and time chart explaining the date of each event etc. and where the letters kept pending, and who is responsible. It was further directed that the responsibility should be fixed without fail. In response thereto, it was admitted that the matter remained neglected and uncoordinated. The delay in the matter was attributed to the Engineering Wing. On the other hand, the departments were passing on the responsibility from one Branch to the another. The senior functionaries of the Administration of U.T. Chandigarh and the Board though had done some paper-work, but all this exercise seems to be an eyewash because neither any action against the erring officers/officials has been taken nor any steps seem to have been taken to execute the scheme in an expeditious and time bound manner. Despite being fully aware of the fact that there has been an inordinate delay in the matter, the officials have even till date failed to finalize any action plan and the manner/the time frame within which the schedule of the scheme shall be implemented. They are now shifting the burden from one to another. But the fact remains that the petitioners and around 4000 employees are made to suffer financially, mentally and physically for their no fault.

17. Further, in the notings dated 10.01.2012 (Annexure P-8), it was recorded by the department that the construction has to be carried out at the earliest and without any further delay. It was also apprised that the drawings had already been approved and perusal of the same clearly shows that the Board has specifically noticed the factum of passing of order dated 14.11.2011 by a Division Bench of this Court and difficulties of the employees. The order passed by Division Bench of this Court reads as under:-

> "The dispute in these petitions is pertaining to the flats to be constructed for the categories of 'B' and 'C'. As far as other categories i.e. 'A' and 'D' are concerned, there is no dispute with regard to those categories. It would be open for the Chandigarh Housing Board to proceed further with the allotment of flats in accordance with 'Draw of Lot' to those categories."

18. However, despite above said specific observations, there is no headway in the Scheme, 2008, and no substantive progress has been carried out in the matter. The building plan has been approved but thereafter no action is being initiated. As a matter of fact, it transpired that the Board as well as

the Chandigarh Administration are exchanging notes and pleas between themselves in a bid to fix responsibility and failed to take further action without determining the liability as such. The authorities have neglected and even failed to consider that the execution of the scheme is of prime significance. Chandigarh Administration and the Board, for extraneous consideration, seem to be more interested in providing houses to encroachers, who firstly make encroachments over Government land and then they are getting houses/tenements free of costs. Though the petitioners have no ill-will towards them, but the successful applicants of draw of lots, like the petitioners who have a legitimate right in preference over and above those persons to get a house have been left in doldrums. The Board had conveyed to the Finance Secretary, vide letter dated 04.09.2012 (Annexure P-9), that the environmental clearances of the project were likely to be received in a short while and all the issues that had been raised by the Board have been settled by the Chief Architect, Union Territory, Chandigarh. It was conveyed to the Finance Secretary that the work in the scheme shall commence shortly in respect of land earmarked in Sectors 52, 53 and 56, Chandigarh, for construction of flats under the Union Territory Employees Scheme, but despite that there is no headway in the implementation of the Scheme.

19. As per the lay out plans of Sectors 52, 53 and 56, Chandigarh, the sites proposed for the Employees Housing Scheme of Chandigarh Administration have been clearly earmarked. The photographs of the lay out

plan as affixed by the Chandigarh Administration as well as the actual site photographs (Annexure P-10 colly) reflect that no work has been carried out by the Chandigarh Administration. The information sent by the Board for construction and possession of the flats under the Employees Scheme vide letter dated 10.10.2012 is Annexure P-11.

20. The Housing Boards were created so as to ensure implementation of the affordable housing projects for the people on no profit no loss basis. The Housing Board being the statutory body is, thus, an agency and instrumentality of the State and is, thus, amenable to the writ jurisdiction of this Court. The provisions of the Haryana Housing Board Act, 1971 (hereinafter to be referred to 'Act, 1971'), were extended to Chandigarh, by virtue of the Notification published under Section 87 of the Punjab Re-organisation Act, 1966 (hereinafter to be referred to 'Act, 1966'). The constitutional validity of the extension Act was upheld in the matter of **Ramesh Birch and others** vs. **Union of India and others**, **1989 HRR 399 SC**. The Chairman, Chief Executive Officer and other members of the Board are appointed by the Administrator and they hold office at his pleasure. Besides, the Administrator has the power to give directions to the Board, as in its opinion, are necessary for carrying out the purposes of the Act, 1971, and further as per Section 72 of the Act, 1971, the Administrator exercises superintendence and control over the Board and its officers. Hence, the Board falls within the meaning of State as enshrined under Article 12 of the

Constitution of India.

21. As per Section 20 of Act, 1971, it is the duty ascribed to the Board to undertake housing scheme subject to the provisions of the Act and to the overall control of the Administrator. Section 21 of the Act, 1971, states about the matters to be provided for by Housing Scheme and it includes the matters as regards acquisition of the property for the execution of the scheme. It is further provided under the Act, 1971, that once the scheme has been sanctioned, the same has to be executed. The provision of Section 27 of the Act, 1971, authorizes the Board to vary the scheme and that too subject to a maximum increase of 10% of the amount originally sanctioned for the execution of any housing scheme. The scheme so framed is to be finally published under Section 29 of Act, 1971 and the publication of the notification under Section 29(3) is a conclusive evidence that the scheme has been duly framed. The provisions of the Act, 1971, do not contemplate cancellation of the scheme which has once been notified. In the present case, the Board has not only floated the scheme but has also carried out draw of lots and the list of the successful applicants had been finalized in the year 2010.

22. There is statutory obligation to execute the scheme and the basic objective to provide speedy and expeditious execution of the projects relating to Housing is that the same remains affordable. Though, it has been held in **Kanpur Development Authority** vs. **Smt. Sheela Devi and others**, **2004(1) HRR 1 (SC)**, **Major General Ram Singh (Retd.)** vs. **Chandigarh Housing**

Board, **1991 HRR 375** and **Krishan Lal** vs. **Housing Board Haryana**, **1994 HRR 207**, that escalation beyond 10% and lame excuses of non-completion of project in time by the contractor cannot be made basis for arbitrary increase, but the apprehension of the petitioners is that the Board, in violation of principle of promissory estoppel, wants to take undue advantage by adopting the delaying tactics, so that there is increase in the cost of construction to such an extent that the flats shall become out of reach of the employees or that they may be delayed in such a manner that the distraught employees may suffer disqualification under the scheme. On the other hand, the Board has to meet out the additional liability of escalations at its own level instead of burdening the allottees for the lapses committed by the respondents and delay which has occurred on account of inaction on the part of the Board.

23. The Chandigarh Administration and the Board seemingly want to use the land earmarked for Scheme, 2008, for other General Housing Scheme at a higher rates contrary to the objective for which it has been created. The flats which appeared as an early reality have become a distant dream and are now becoming an illusion which is far away from reality. The whole object behind the delay is that the Board wants to render the scheme futile by indefinitely delaying the scheme so that the eligible and successful applicants would be compelled to look out for the alternatives and make alternative arrangements for shelter rendering them ineligible under the scheme which can then be scrapped. The inaction on the part of the Board is

contrary to the objectives for which the Board has been established. More than 3900 successful applicants are waiting for the completion of the project. A number of employees have already retired, a larger number is likely to retire in the near future. Their aspirations of shifting to their own houses has been jolted as the Board shows no inclination to complete the project and the wait seems endless. The compulsions have become harsh and petitioners are living in rented accommodations by paying huge rent, paying installments for the amounts raised by them as loan to pay the earnest money. Whatever capital which the petitioners have, may also deplete with the passage of time and eventually the petitioners may not even ever have the satisfaction of having moved to their own houses. The step motherly treatment of Chandigarh Administration and the Board with its employees, who have devoted whole of their life in serving the Administration, is also liable to be condemned. The inaction on the part of the Board is indicative of the fact that it has forgotten the aim and objects for which it was created. Rather, in the case of successful applicants of Scheme, 2008, it has acted like a property dealer and not as a Nodal Agency meant for providing houses at an affordable and cheaper rates. The principle of legitimate expectation is tilted in favour of the petitioners who have been made to part away with their hard earned money.

24. The Housing Scheme floated by the Board wherein the petitioners have been the successful applicants confers certain fundamental rights in their favour. Needless to mention that Right of Life as enshrined in

the Article 21 of the Constitution of India also confers the Right of Life with dignity. Housing is one of the essential requirements. The State being a Welfare State has to act in a model way and must reflect sensitivity towards the needs of its employees from whom it had already received earnest money of the tentative cost of the houses to be built. The Board cannot be permitted to delay the project indefinitely without assigning any satisfactory reasons. In this manner, petitioners have prayed for implementation of Scheme, 2008, in letter and spirit.

25. In its written statement, respondent No.1 – the Board has raised preliminary submissions that on 01.12.2005, the Finance Secretary, Chandigarh Administration, communicated to the Chairman of the Board, a proposal to introduce a housing scheme exclusively for the employees of Chandigarh Administration and for this purpose, twenty eight (28) acres of land in Sector-52 and seventeen and half (17.5) acres of land in Sector-56, Chandigarh, was identified and the Board was directed to work out the modalities and eligibility criteria for the said Scheme. After series of deliberations, the Scheme was approved on 28.12.2007 by the Administrator, Chandigarh Administration. On 10.01.2008, the Estate Officer issued Letter of Intent in favour of the Board, for twenty eight (28) acres of land in Sector-52, Chandigarh and seventeen and half (17.5) acres of land in Sector-56, Chandigarh, totaling to forty five and half (45.5) acres of land and same was offered for allotment without any clear demarcation. *Inter alia*, vide letter of

intent, the Board was called upon to pay price of land @ Rs.7920/- per square yard. In pursuance to the aforesaid direction given by the Chandigarh Administration/Administrator to the U.T., Chandigarh, under Section 38 read with Section 20 of Act, 1971, to carry out the Housing Scheme, on 14.01.2008, the Board advertised a proposal to float Scheme, 2008. The said Housing Scheme was advertised with following specific conditions:-

> **"XIV GENERAL**
>
> (i) Chandigarh Housing Board reserves the right to determine the number of units depending upon the actual feasibility at site during the course of construction and total availability of land. The Board also reserves the right to make variation in the size of the individual rooms and overall covered area as per actual construction.
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> (ii) The plan as given in the brochure is tentative and meant for the general information and guidance of the intending purchasers of the units. The Board further reserves the right to make modification in the design, scope of work, specifications and price without assigning any reasons.
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> (iii) No interest to the unsuccessful applicants shall be allowed on the amount of initial deposit except in the case of delayed refunds as specified under clause (v) under the heading 'Mode of Allotment'. No interest shall be allowed in the case of any other kinds of refunds claimed by an allottee or made by the Board.
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> (iv) Mere submission of an application form alongwith initial deposit and/or being successful in the draw of lots shall not entitle the applicant to the allotment of a unit. Inadvertent inclusion of the name of an ineligible applicant in the draw of lots shall not vest any right of allotment in the applicant and in case an applicant is found ineligible at any stage, the registration as well as allotment of the unit shall be cancelled.
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> (v) All payments will be accepted through draft (PAYEES ACCOUNT ONLY) drawn on any Scheduled Bank, and payable

> at CHANDIGARH, in favour of Chandigarh Housing Board, Chandigarh.
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> (vi) All disputes concerning allotment of dwelling units under scheme shall be subject to Chandigarh Jurisdiction only.
>
> (vii) The Board reserves the right to withdraw/amend the scheme due to circumstances beyond its control.
>
> (viii) Additions/over writings/cutting in the application form must be initialed and dated by the applicant. Failure to do so shall render the application invalid".

26. In response to the aforesaid Housing Scheme, as many as 7811 applications were received by the Board. In order to ensure that the aforesaid Housing Scheme becomes more cost effective, a decision was taken to make a formal request to the Chandigarh Administration to allot a duly demarcated plotted area, which could have been possible only after finalization of the layout plan. The relevant part of the noting portion dated 29.01.2008 reads as under:-

> "The entire land need not be allotted to CHB. We will ask for allotment of exact area as needed by CHB after the layout plan has been finalized. We may intimate the Estate Officer. Accordingly."

27. In the meanwhile, on 16.05.2008, another piece of land measuring 20.77 acres was offered by Chandigarh Administration in Sector-53, Chandigarh for General Housing Scheme(s) and on 20.04.2009, additional land measuring sixteen (16) acres was earmarked for the aforesaid scheme.

28. Therefore, pending finalization of the modalities regarding

allotment of land, the terms and conditions of the aforesaid Letter(s) of Intent dated 10.01.2008, could not be fulfilled by the Board. The layout plan was finalized by the Chandigarh Administration only on 28.09.2011 taking into consideration forty five and half (45.5) acres of land offered vide Letter(s) of Intent dated 10.01.2008, 11.795 acres out of 20.77 acres allocated for General Housing Schemes offered, vide Letter of Intent dated 16.05.2008 and also sixteen (16) acres of additional land earmarked by the Chandigarh Administration on 20.04.2009, for the aforesaid scheme. Thus, layout plan for 73.17 acres of land was finalized by the Chandigarh Administration for the purpose of the Scheme, 2008. On parallel side, various eligibility conditions of the aforesaid Housing Scheme were challenged by the interested persons/ applicants before this Court, vide numerous writ petitions, which caused considerable delay in finalization of the scheme. Draw of lots for various categories were delayed on account of interim directions passed by this Court.

29. Previously issued Letter(s) of Intent were rendered invalid on account of non-compliance of their terms and conditions for the reasons beyond the control of the Board, firstly on 04.08.2010 followed by various reminders dated 02.05.2012, 05.06.2012 and thereafter finally on 04.09.2012, the Board made formal requests to Chandigarh Administration for allotment/revival of offer to allot 73.17 acres of land. However, in the meantime, on 05.10.2012, a communication was received from Ministry of Home Affairs, Government of India, vide which a serious objection as to

mode of disposal of the acquired land by Chandigarh Administration was taken and vide same communication, a direction was passed by the Government of India that acquired land should not be disposed of below market rate and without following the auction process.

30. Accordingly, the Chandigarh Administration has taken a decision that allotment of seventy five (75) acres of land exclusively for the employees of Chandigarh Administration is not in public interest. In this regard, further directions are yet to be received by the Board, from the Chandigarh Administration. There is no delay or negligence on the part of the Board in the implementation of the Housing Scheme as alleged by the petitioners.

31. On merits, denying the other averments of the petitions, it is contended that price of land could not be paid by the Board to Chandigarh Administration for the reasons mentioned above. The draw of lots for Group-B and C was challenged before this Court, vide CWP No.21804 of 2010 titled 'Narinder Kumar Patney and others vs. Chandigarh Housing Board and others' and two other connected writ petitions, which were decided by this Court, vide order dated 25.01.2012. Similarly, CWP No.3469 of 2012 titled 'Manoj Kumar and others vs. Chandigarh Housing Board and others' and two other writ petitions were filed, wherein allotment of flats in Group-A was challenged by waiting list applicants, which were decided on 04.03.2013. Till date the petitioners have paid only earnest/application money alongwith application forms and as such there is no binding contract between the Board

and the applicants. The Board has not issued allotment letters in favour of the applicants. Mere issuance of registration letters would not confer any enforceable right in favour of petitioners. No fault can be attributed to the Board for the alleged delay in the implementation of the scheme. Thus, denying the claim of petitioners, dismissal of petition has been prayed for.

32. In its short reply, respondent No.2-Chandigarh Administration has contended that respondent No.2 has dealt with the matter regarding allotment of land for Employees Housing Scheme to the Board in recent times. In the instant case, only Letter of Intent (Annexure-I) had been issued and a firm letter of allotment was yet to be issued only after deposit of 25% amount of the quoted price of land and it was clearly stipulated in the Letter of Intent as under:-

> "The allotment letter will be issued on the receipt of 25% earnest money, the requisite undertaking, non-encumbrance certificate and area-list etc. from the Engineering Department."

33. As per Rule 4 of the Chandigarh Estate Rules, 2007 (hereinafter to be referred as 'Rules, 2007'), governing the allotment of property, the 25% of the amount was to be deposited within 30 days by the Board with the Estate Office towards the consideration for allotment of land, whereas not a single rupee has been deposited so far. Therefore, the allotment stood lapsed.

34. Since the Board did not deposit the required amount for the land, thus, the Letter of Intent lapsed. The Chandigarh Administration further examined the matter and opinion of the Law Department was taken and it was

opined as under:-

> "A bare perusal of Rule 4(ii) would make it crystal clear that on account of the non fulfillment of the condition of depositing 25% of the consideration money, the offer made by the Estate Officer to the Chandigarh Housing Board stand automatically cancelled. The word used in Section 4(ii) is "shall" and it would necessarily mean that the deposit of the 25% of the consideration money is a "condition precedent", failing which, the offer would stand automatically cancelled. Otherwise also, there is no provision for the issuance of any revised letter of intent or extending the stipulation of 30 days as requested by CHB in the said Rules".

35. It was observed by the Legal Remembrancer that now if land has to be allotted it has to be a fresh allotment. That meanwhile a letter dated 05.10.2012 has been received from Ministry of Home Affairs, wherein it has been stated as under:-

> "that land, for any purpose must not be disposed of below the market value and without auction. If any Union Territory Administration intends to dispose of any piece of land below the market value and without holding auction, prior approval of this Ministry must be obtained".

36. The matter of allocation of scarce public resources has been debated extensively in recent times and even Hon'ble Supreme Court has also decided that Government has to undertake a transparent and non-discriminatory process for allocation of public resources. The Hon'ble Supreme Court in **Ramana Dayaram Shetty** vs. **The International Airport Authority of India and others**., **AIR 1979 SC 1628**, observed as under: -

> "The powers or discretion of the government in the matter of grant of largess including award of jobs, contract quotas, licenses etc. must be confined and structured by rational, relevant and

> non-discriminatory standard or norms and if the government departs from such standard or norm in any particular case, the action of the government would be liable to be struck down, unless it can be shown by the government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

In the same judgment, Hon'ble Supreme Court further observed that the Government must act in public interest and it cannot act arbitrarily or without reason and if it does so, its action would be liable to be invalidated. Although it is the discretion of the Government to dispose of its property in the way it likes to do, yet such discretion cannot be used arbitrarily. The Government is bound to take care of the public interest which is likely to be served or affected on account of such disposal of its property.

37. A question may be asked as to what is the relevance of public interest with allotment of land to a group of UT employees. Since the land prices in Chandigarh have gone so high, its allocation to any set of individuals appears to be largess. At the same time, due to scarcity of land projects of public interest such as establishment of Schools and Hospitals, for expansion of Punjab University and PGI and for the setting up offices of various departments of Punjab, Haryana, UT and Government of India, sufficient land is not available. Land is also required for the use of Legislators and Judiciary.

38. After detailed examination of the scheme, it has been found that because of scarcity of land, allotment of about seventy five (75) acres of land in Chandigarh for an exclusive scheme for employees is not in best public interest and, therefore, it has been decided at the level of competent authority

that effort should be made to locate land in Tricity area, where it might be available at lower and affordable price. U.T. Administration is also planning to provide better connectivity for easy commuting of the allottees. Denying other averments of the petition, dismissal of the same has been prayed for.

39. Replications to the written statement/reply of respondents were filed by the petitioners controverting the stand taken by respondents and reasserting the claim of petitioners as set up in the petition.

40. Learned counsel for petitioners *inter alia* contended that Scheme, 2008, was floated by the Board to provide residential accommodation on leasehold basis for 99 years for employees of Chandigarh Administration with the sole object as there is a huge shortage of Government accommodation and rents in Chandigarh were beyond their reach. In pursuant to Scheme, 2008, respondent No.2 offered dwelling units to employees of Chandigarh Administration, collected money from them and instead of depositing the same with Chandigarh Administration utilized the amount for its own use. There was no default on the part of employees-prospective allottees in terms of payment but default had occurred at the instance of the Board as well as Chandigarh Administration. Though Chandigarh Administration has made an attempt to show that it was a individual transaction between prospective allottees and the Board, but it was not so as the Board was working under the aegis of Chandigarh Administration and it was never a case of individual transaction. As a matter of fact, Scheme, 2008, was created by Chandigarh

Administration and it is required to be executed by the Board. Land earmarked for Scheme, 2008, is lying vacant till date and the title of the said land remains with Chandigarh Administration. In the meantime, there was no intervening superior work of national importance such as defence (creation of cantonment) and health (creation of institutions like PGI) and that too of public interest by which allotment of land under the Scheme, 2008, could have been cancelled. Mere escalation of cost of land cannot create any obstacle or abandonment of Scheme, 2008. Land though earmarked for Scheme, 2008, was not put on disposal, rather it was mere transfer from one instrumentality of Chandigarh Administration to another. Failure on the part of the Board to implement and execute the Scheme, 2008, has led to unnecessary burdening the poor employees, who after wait of about fifteen (15) years, are yet to get any positive response regarding implementation of said scheme. It is a case not only based on the principle of equity but on legal right as well and, thus, in terms of promissory estoppel, the Board under the aegis of Chandigarh Administration is bound to implement the Scheme, 2008. Once the Scheme, 2008, was enacted with the sole object to curtail the sufferings of employees of Chandigarh Administration as they have to come at their work place (Chandigarh) from Mohali, Panchkula, and other nearby areas and especially the fact that there is huge shortage of Government accommodation in Chandigarh and rents in Chandigarh have skyrocketed, thus, on the principle of legitimate expectation, petitioners are well entitled for implementation of

Scheme, 2008.

41. On the other hand, learned counsel for respondent No.1-Board *inter alia* contended that in terms of Scheme, 2008, cost of flat was tentative one and no vested right had accrued in favour of applicants merely on submission of applications and payment of earnest money. The Board is the Nodal Agency of Chandigarh Administration and after repeated requests made by the Board to Chandigarh Administration, layout plan was approved in the year 2011, whereas environmental clearance came in the year 2013, but the land for implementation of Scheme, 2008, was not allotted till the year 2017 and ultimately the price which were quoted, were not acceptable to the allottees and as such no legal enforceable right has accrued in favour of petitioners. Pricing is not required to be made in terms of draw of lots and in fact it is to be made in terms of current price of the land, which has increased to Rs.74,000/- per square yard and the said escalation of price of land is not acceptable to the petitioners. In this scenario, principle of promissory estoppel does not come to the rescue of petitioners as the Board has not resiled from its promise but in view of terms and conditions in the Scheme, 2008, latter is within its rights to increase the price of flat in terms of prevailing market price. Apart from above, there is no legitimate expectation for the petitioners to seek redressal of their grievance for the implementation of Scheme, 2008, on the basis of price of land as it existed in the year 2008 and even otherwise no allotment letter was ever issued to any of the petitioners.

42. Learned counsel for respondent No.2-Chandigarh Administration *inter alia* contended that U.T. Chandigarh, is administered through the President of India through an Administrator appointed by him. All the instructions issued in this behalf by the Central Government are binding on the Chandigarh Administration. Further, the Ministry of Home Affairs is the exclusive face of the Union to act as the appropriate face for U.T. Chandigarh. The Board is a creation of statute under the provisions of Act, 1971. As per provisions of Section 20 of Act, 1971, the Board has a duty to undertake housing schemes and it is a distinct statutory body and not a mere Nodal Agency/Department of the Chandigarh Administration. Scheme, 2008, is the scheme of the Board. Though land was offered by the Chandigarh Administration to the Board in Sectors 52 and 56, Chandigarh, vide Letter(s) of Intent both dated 10.01.2008, for the purpose of Scheme, 2008, but the Board failed to deposit 25% of the consideration money within the stipulated period of 30 days and, thus, as per Rule-4 of the Rules, 2007, said allotment stood cancelled. Despite the fact that several reminders were sent to the Board for making requisite payments, but to no avail and, therefore, the allotment of land never went through and till date the land stands in the name of Chandigarh Administration. Though draw of lots was held, but mere participation in draw of lots does not confer any vested right in favour of petitioners. In this scenario, principle of promissory estoppel does not come to the support of petitioners as no vested right had accrued in their favour.

Meanwhile, a letter dated 05.10.2012 was received from Ministry of Home Affairs, which is binding upon Chandigarh Administration and in terms of said letter, no land could be disposed of by the Chandigarh Administration below the market value and that too without auction. Since the prices of land in Chandigarh have gone so high, its allocation to any set of individuals appears to be largess. Even otherwise, due to scarcity of land, allotment of about 75 acres of land in Chandigarh for an exclusive scheme for employees is not in best public interest. Though in terms of letter dated 05.10.2012, approval @ Rs.74,131/- per square yard for the project land was obtained from Government of India, but in view of said cost of land, employees were given options to take the houses at higher rates, which options were not accepted by the employees and as such it was decided by the competent authority that Scheme, 2008, is not viable and the same is to be closed and the employees would be refunded their money by the Board.

43. We have heard learned counsel for the parties at length and have carefully gone through the record of the cases.

44. The present writ petition (CWP-22636-2013) has been filed to direct the respondents to implement the Self Financing Housing Scheme, 2008, on leasehold basis for 99 years for employees of Chandigarh Administration and to issue Acceptance-cum-Demand Letter to the successful applicants. Lateron five other writ petitions (CWP-18701-2019, CWP-18927-2019, CWP-19564-2019, CWP-21500-2019 and CWP-6596-2020) have been

filed reiterating above said relief. Apart from that, legality of letter dated 05.10.2012 as well as the order of 2019, in terms of which, dwelling units are to be given in terms of market value of the land, have been challenged.

45. Genesis of Scheme, 2008, relates back to the letter dated 01.12.2005 issued by the Finance Secretary, Chandigarh Administration, vide memo No.3218-UTFI(4)-2005/8394, whereby it was informed that it has been decided by the Chandigarh Administration to introduce a Housing Scheme for its Officers/Officials, who do not own/could not construct houses so far. To initiate above said scheme, the Chairman of the Board was requested to work out the modalities and criteria for allotment of dwelling units and to apprise the Chandigarh Administration with further details including number of dwelling units of each category, number of storey etc. to enable final transfer of the land to the Board for implementation of the scheme. Above said scheme was proposed in view of the dire demand for construction of different types of dwelling units for employees of the Chandigarh Administration. On 28.12.2007, approval was accorded to the above said scheme by the U.T. Administrator and thereafter the matter was forwarded to the Board being the Nodal Agency of Chandigarh Administration, for execution of the scheme. Vide letter dated 10.01.2008 (Annexure P-1), issued by the Board to all the Administrative Secretaries/ Head of Departments/ Officers/ Boards/ Corporation in Chandigarh Administration and Registrar of Punjab and Haryana High Court, Chandigarh, it was informed to them about floating of

Scheme, 2008, for the employees of Chandigarh Administration, its Board and Corporations and Punjab and Haryana High Court, Chandigarh, on leasehold basis for a period of 99 years. Above said scheme was to open on 14.01.2008 and to be closed on 29.02.2008. Land in Sectors 52 and 56, Chandigarh, or any other place, was earmarked by the Chandigarh Administration. Four categories of allotment of dwelling units were envisaged. Group-A employee was eligible for three bedrooms' flat; Group-B employee was eligible to two bedrooms' flat; Group-C employee was eligible for one bedroom flat and Group-D employee was eligible for one room flat. The regular employees of Chandigarh Administration, its Boards and Corporations and those who were on deputation with the Chandigarh Administration and regular employees of Punjab and Haryana High Court on the date of opening of the scheme or who have retired in last three years from the date of opening of the scheme, were eligible for the Scheme, 2008. In terms of letter dated 10.01.2008 (Annexure P-2 colly), Chandigarh Administration had informed the Chairman of the Board that it was decided to allot land measuring twenty eight (28) acres in Sector 52, Chandigarh, for the Scheme, 2008, for the employees of Chandigarh Administration, on freehold basis @ Rs.7920/- per square yard and the said allotment was required to be governed by the provisions of Rules, 2007. The tentative premium of the above said site was worked out to Rs.1,07,35,87,743/-. The building on the site was required to be constructed and completed according to the approved plan within a period of three years. Further, the Board was required to remit a sum of Rs.26,83,96,936/- to cover 25% tentative premium within 30 days from the date of issuance of the letter. Apart from above, on the same day (10.01.2008), vide another letter dated 10.01.2008, Chandigarh Administration had informed the Chairman of the Board that it was decided to allot land measuring 17.5 acres in Sector 56, Chandigarh, for the Scheme, 2008, for the employees of Chandigarh Administration, on freehold basis @ Rs.7920/- per square yard and the said allotment was required to be governed by the provisions of Rules, 2007. The tentative premium of the above said site was worked out to Rs.67,09,16,022/-. The other terms of said allotment were the same as that of letter (Annexure P-2 colly) above. Further, the Board was required to remit a sum of Rs.16,77,29,006/- to cover 25% tentative premium within 30 days from the date of issuance of the letter.

46. In pursuant to above said letters, on 14.01.2008, the Board floated Scheme, 2008 (Annexure P-3), after seeking concurrence of Administrator, U.T. Chandigarh, as there was a long pending demand of U.T. employees for formulation of special housing scheme for them as there was a huge shortage of Government accommodation and the rents in Chandigarh were beyond their reach. Scheme was formulated and it was forwarded to the Board, a Nodal Agency of Chandigarh Administration, for its execution. Eligibility conditions to apply for the said Housing Scheme were made stringent in the manner that applicant was required that he/she or his/her

spouse or any of his/her minor children did not own on freehold or leasehold or on hire-purchase basis a residential plot/ house in the Union Territory of Chandigarh or either of the Urban Estates of Mohali or Panchkula. Even an applicant who was holding a residential plot/ dwelling unit in the U.T. Chandigarh, or in any of the Urban Estates of Mohali or Panchkula, on the basis of an agreement to sell and G.P.A. etc. executed in his/her favour or in favour of his/her spouse or any of his/her minor children, was not eligible to apply. Apart from above, applicant was further required to continue to fulfill the eligibility conditions from the date of opening of the scheme till the date of delivery of possession of the dwelling unit by the Board. In case both husband and wife were eligible under the scheme, both of them could apply, however, in case both of them were successful in draw of lots, only one of them would be eligible for allotment. Violation of above said conditions will attract cancellation of allotment. Tentative price of three bedrooms' flat (Ground Floor) was fixed @ Rs.34,70,000/-, whereas tentative price of said category flat on First Floor/Second Floor and Third Floor was assessed @ Rs.24,80,000/-. Tentative price of two bedrooms' flat (Ground Floor) was fixed @ Rs.24,30,000/-, whereas tentative price of said category flat on First Floor/ Second Floor and Third Floor was assessed @ Rs.17,36,000/-. Tentative price of one bedroom flat (Ground Floor) was fixed @ Rs.13,53,000/-, whereas tentative price of said category flat on First Floor/ Second Floor and Third Floor was assessed @ Rs.10,96,000/-. Tentative price of one room flat (Ground Floor/ First Floor/Second Floor/ Third Floor) was fixed @ Rs.5,76,000/-. Mode of allotment of flats was on the basis of draw of lots in which names of eligible persons were required to be included. Allotment was subject to provisions of Act, 1971, the Board (Allotment, Management and Sale of Tenements) Regulations, 1979, and the Capital of Punjab (Development and Regulation) Act, 1952, (hereinafter to be referred to as 'Act, 1952') and the rules and regulations made thereunder. In terms of general term and conditions, the plan as given in the brochure was tentative and further the Board reserved its right to make modification in the design, scope of work, specifications and price and that too without assigning any reason. Apart from above, the Board had reserved its right to withdraw/ amend the scheme due to circumstances beyond its control.

47. In pursuant to above said Scheme, 2008, the Board while taking recourse to Section 38 read with Section 20 of Act, 1971, advertised a proposal to float the Self Financing Housing Scheme exclusively for the employees of Chandigarh Administration. Total 7811 applications were received in all the categories. The Board had collected more than Rs.57 Crores from the employees at the time of submission of applications. On 04.11.2010, draw of lots was conducted by the Board and 3930 employees of all categories were declared successful. On 03.09.2012, successful applicants were issued registration letters qua allotment of dwelling units in the scheme. Senior bureaucrats of Chandigarh Administration were unsuccessful in the draw of

lots in the Scheme, 2008. Mr. Pardeep Mehra, the then Adviser to the Administrator, U.T. Chandigarh, Mr. Sanjay Kumar, the then Finance Secretary and Mr. Amar Nath, the then C.E.O. of the Board, who had also applied for allotment of flats under the Scheme, 2008, were unsuccessful, as is evident from the reply by the Board to the query raised by one of the applicants, in the application under the Right to Information Act, 2005. Apart from above, in the above said reply, it was mentioned that Mr. Raj Kumar Rao, the then Deputy Commissioner, had withdrawn his application for allotment of flat under the scheme. In terms of above said information, it appears that since senior bureaucrats of Chandigarh Administration were unsuccessful in the draw of lots, as having lost interest in the scheme, they did not pursue the above said scheme wholeheartedly.

48. As mentioned earlier, at the time of draw of lots, a sum of Rs.57 Crores was collected by the Board from the applicants and further the fact that the Board was having requisite amount at its resources, despite that not even a single penny was deposited by the Board with the Chandigarh Administration in compliance of Letter(s) of Intent both dated 10.01.2008 (Annexure P-2 colly). Once above said amount was collected by the Board from the applicants, it was incumbent upon the Board to deposit the same with Chandigarh Administration. At the relevant time, the Board was having sufficient consolidated funds at its resources, but did not prefer to deposit the required amount with Chandigarh Administration. It will not be out of place

to mention here that though vide order dated 09.07.2010, sanction was accorded by the Chairman of the Board to make payment of Rs.26,83,96,936/- favouring Estate Officer, U.T. Chandigarh, on account of 25% payment of land measuring 28 acres allotted to the Board in Sector-52, Chandigarh, in respect of Self Financing Housing Scheme for U.T. employees but despite that sanction, above said money was not released. At the same time, earnest money amounting to Rs.57 Crores, as received by the Board from the applicants/ employees, was also invested by the Board in Fixed Deposits instead of depositing the same with Chandigarh Administration. It is categorical stand of the Board that since previously issued Letter(s) of Intent were rendered invalid on account of non-compliance of terms and conditions for the reasons beyond the control of the Board, letter dated 04.08.2010 was sent to Estate Officer, U.T. Chandigarh, with a request for allotment/revival of Letter(s) of Intent followed by various reminders dated 02.05.2012, 05.06.2012, 04.09.2012, 27.09.2012, 31.10.2012 and 31.07.2014. In the meantime, in pursuant to letter dated 04.08.2010 of the Board, the Estate Officer, U.T. Chandigarh, referred the matter to the Finance Secretary for want of clarification regarding the rates of land.

49. Lateron seventy two (72) acres of land (28 acres in Sector 52, Chandigarh, 17.5 acres and 16.05 acres in Sector 56, Chandigarh and 11.79 acres in Sector 53, Chandigarh), was asked for earmarking/allottment for the implementation of Scheme, 2008, as is evident from letter dated 04.09.2012

(Annexure P-9) issued by Chief Executive Officer of the Board to the Finance Secretary, Chandigarh Administration. Total 7811 applications in different categories were received. Most of the employees took loans from Banks to pay earnest money at the at the time of submission of applications. The Board collected more than Rs.57 Crores from the aspirant employees. In all the four categories of flats, rates were fixed. On 04.11.2010, draw of lots was conducted by the Board, wherein 3930 employees were declared successful and registration letters were issued to them. Officers/officials, who remained associated with formulation of Scheme, 2008, and its execution, were not declared successful in draw of lots, made vain attempt to get the said scheme implemented for all the applicants so that flats would be allotted to all of them and when their request was not acceded to by competent authority, it appears that as they had lost interest, they even tried to get the Scheme, 2008, scrapped. Successful employees were under the legitimate belief that they will be allotted dwelling unit(s) by the Board and kept on waiting. They could not purchase any other property or apply in any other schemes launched by the Board, Housing Authorities of Punjab and Haryana during that period only on account of rider imposed upon them in the Brochure of Scheme, 2008, that in case they acquire any other property, their allotment shall be cancelled.

50. Under the compelling circumstances, some of the successful employees filed these writ petitions seeking direction to the Board and Chandigarh Administration to go ahead with the Scheme and to allot the

dwelling unit(s) as promised by them in the Brochure.

51. It came to light that Chandigarh Administration had allotted land to the Board for execution of Scheme, 2008, on 10.01.2008 @ Rs.7920/- per square yard, vide two different Letter(s) of Intent and the Board had to deposit Rs.43,61,25,942/- (Rs.26,83,96,936/- and Rs.16,77,29,006/-) i.e. 25% of the total cost of land within one month. However, the Board had failed to pay the said 25% of cost of land despite the fact that much more than that amount of Rs.57,82,30,400/- was collected by it from the employees as earnest money in respect of Scheme, 2008. It is pertinent to mention here that at the relevant time, the Board was having approximately Rs.300 Crores in its consolidated funds including Rs.57 Crores, received as earnest money from the employees and the Board had invested that amount in Fixed Deposits instead of depositing 25% cost of land in terms of Scheme, 2008, with the Chandigarh Administration.

52. The Board not only utilized/converted the funds as received from the employees for its own use/benefit and further misled the employees by issuing them Registration Letters dated 03.09.2012 of having been declared successful in draw of lots and being registered for allotment of flat(s) knowing full well that it (Board) had not even deposited the 25% of cost of land with Chandigarh Administration.

53. The Board kept on conveying the employees that it is actively working on Scheme, 2008, and an agency has been hired to look into

pollution/environmental issues; soil testing and reports from Electricity Department and other branches of Administration have been taken.

54. A perusal of reply filed by Chandigarh Administration in the instant writ petition reveals that Letter(s) of Intent dated 10.01.2008 issued by Chandigarh Administration favouring Board had lapsed on account of non-deposit of 25% cost of land within one month of issuance by the Board with the Chandigarh Administration as the said condition was requisite one. There is no provision for issuance of any revised Letter of Intent or extending the stipulation of one month as requested by the Board in the Rules, 2007.

55. Thereafter, it was conveyed to the Board by the Chandigarh Administration that allotment of land has to be made afresh as the previous one had lapsed. Apart from above, on account of instructions of Ministry of Home Affairs issued, vide letter dated 05.10.2012, no land for any purpose can be disposed of below the market value and without auction.

56. Matter pertaining to issuance of fresh Letter of Intent remained pending for almost five years. In case there was any sincere approach at the instance of the Board with the active assistance of Chandigarh Administration, then any procedural intricacy could not have put on hold the issuance of fresh Letter of Intent but it appears that both were trying to frustrate the Scheme, 2008.

57. In case of General Housing Scheme of the year 2004, land was allotted, however, land more than the land allotted was utilized. In that case,

after seven years i.e. in the year 2011, revised letter of allotment was sought to be issued by the Estate Office and that too on rates on which original allotment was made in the year 2004.

58. A perusal of letter dated 06.05.2011 (Annexure P-12 colly), depicts that in case of allotment of additional land to effectuate General Housing Scheme, 2004, rate of land was not changed despite the fact that said additional land was allotted after about seven years of initiation of Scheme (2004). In another matter pertaining to allotment of site to Tech Mahindra in I.T Park, Chandigarh, the Chandigarh Administration had allotted additional five acres of land @ Rs.40 lakhs per acre at which rate land was allotted in the year 2010, as is evident from Annexure P-9 attached with CWP-18701-2019. Though Chandigarh Administration has taken rigid stand that stipulation of 30 days in terms of Rule 4 of Rules, 2007, cannot be extended but at the same time, vide letter dated 17.03.2016 (Annexure P-17, attached with CWP-18927-2019), the Chandigarh Administration had granted extension in time limit to deposit 25% of the total consideration money by the lessee, in exercise of powers conferred under Rule 4 of the Rules, 2007. However, in the instant case, approach of the Chandigarh Administration and the Board was discriminatory as different yardstick was adopted. It will not be out of place to mention here that as a matter of fact default had occurred at the instance of the Board on its failure to deposit 25% of the cost of land with the Chandigarh Administration within stipulated period of 30 days. It is

pertinent to mention here that though the Board was having sufficient resources to the tune of Rs.300 Crores at the relevant time but despite that it (Board) had failed to deposit 25% of cost of land with the Chandigarh Administration so as to avoid the implementation of the Scheme, 2008.

59. Though the Board in its written statement has categorically pleaded that deposit of 25% of cost of land could not be made on account of pending finalization of modalities of Scheme, 2008, however, in a given scenario, it is quite evident that default had occurred at the instance of the Board which led to the non-implementation of the Scheme, 2008.

60. Previously issued Letter(s) of Intent were rendered invalid on account of non-compliance of terms and conditions (non deposit of 25% of cost of land) by the Board. Now in terms of letter dated 05.10.2012 issued by Ministry of Home Affairs, land was required to be allotted at the prevailing market rate and further by way of auction.

61. Scheme, 2008, for the employees was floated in the year 2008 and the market rate of land prevalent in the subsequent years cannot be applied or taken into consideration while taking recourse to Ministry of Home Affair's letter dated 05.10.2012 retrospectively, which was issued in general. In terms of Scheme, 2008, land was to be transferred from one entity of U.T. Chandigarh i.e. Chandigarh Administration to its Nodal Agency Chandigarh Housing Board and that too on lease for 99 years.

62. Entire controversy has arisen on account of inaction on the part

of the Board i.e. due to non deposit of 25% of cost of land by the Board with the Chandigarh Administration, within stipulated time despite the fact that Board was having sufficient resources to pay that amount. Even Sanction Order dated 14.07.2010 for payment of Rs.26,83,96,936/- was issued by the Chairman of the Board, but surprisingly, no amount was paid.

63. The Board slept over the matter, as is evident from the fact that though Chandigarh Administration, vide letters dated 09.12.2010, 13.01.2011, 25.06.2012, 28.06.2012, 05.07.2012 and 17.07.2012 (Annexure P-21 colly), intended to issue fresh letters of allotment, but the Board never responded to those letters/reminders. Though much hue and cry was made by the Board qua delay in execution of Scheme, 2008, and to fix the responsibility of Officers/Officials at fault, but a fact cannot be lost the sight that the said action on the part of the Board was mere eyewash especially on account of non deposit of 25% of cost of land within stipulated time and not responding to letters/reminders of Chandigarh Administration and further the fact that for General Housing Scheme, 2004, allotment of additional land was got facilitated in the year 2011 and that too on the previous rates.

64. Subsequent events are to be looked into which took place after institution of writ petition (CWP-22636-2013) especially impact of Ministry of Home Affair’s letter dated 05.10.2012.

(i) Letter(s) of Intent for allotment of land were issued on 10.01.2008 i.e. much prior to the issuance of letter dated

05.10.2012 of Ministry of Home Affairs.

(ii) Admission on the part of Chandigarh Administration before Ministry of Home Affairs for proper allotment of land to the Board for the Scheme, 2008, as the Board had failed to deposit 25% cost of land with Chandigarh Administration for no fault of employees.

(iii) Physical possession of land measuring 20.77 acres situated in Sector-53, Chandigarh, was handed over to the Board on 12.01.2017, out of which land measuring 11.795 acres was meant for Scheme, 2008. A bare perusal of status report dated 23.05.2018 filed by Mr. Virat, the then, Secretary of the Board, in this Court, depicts that land measuring 11.795 acres in Sector-53, Chandigarh, has been approved by Finance Secretary for U.T. Employees Housing Scheme out of 20.77 acres of land allotted to the Board for various housing schemes. Further, it was informed to this Court that respondent – Board has initiated development works over the land measuring 11.795 acres for execution of works of housing units under U.T. Employees Housing Scheme in Sector-53, Chandigarh. It was also informed to this Court that as per earlier approved drawings, total 73.175 acres of land was required for construction of 3930 dwelling units.

(iv) Time-line to construct 564 flats over the land measuring 11.795 acres in Sector-53, Chandigarh, was finalized, as is evident from status reports dated 30.10.2018 and 14.12.2018 filed in this Court by Mr. Ajoy Kumar Sinha, the then, Chairman of the Board. In terms of above said status reports, target date of completion of project over the land measuring 11.795 acres was 20.02.2022.

(v) Chandigarh Administration had filed status report by way of affidavit dated 18.03.2019 of Mr. Uma Shankar Gupta, the then, Additional Secretary, Estates, U.T. Chandigarh, along with Annexures R/1 to R/4, in terms of which, approval was accorded for allotment of 61.5 acres of land (28 acres in Sector-52, 16.05 acres in Sector-56 and 17.50 acres in Sector-56) @ Rs.74,131/- per square yard i.e. Rs.35.88 Crores per acre, on lease hold basis for 99 years, as per existing terms and conditions of Rules, 2007, for construction of apartments under the Scheme, 2008, subject to the condition that the Board will take up the matter with all concerned departments for getting requisite NECs/Area List/Feasibility report at its level. Further approval to relax Rule 4 of Rules, 2007, was also accorded for allowing the Board to defer the payment of land cost in five equated installments (each of six months) spanning over 30 months, as requested by the Board.

(vi) Lateron, vide affidavit dated 25.03.2019, filed by Ruchi Singh, the then, Secretary of the Board, informed this Court that 564 flats comprising of 252 flats of 3BHK category, 168 flats of 2BHK category and 144 flats of one room category have been planned over the land measuring 11.795 acres situated in Sector-53, Chandigarh, meant for U.T. Employees Housing Scheme. Further, in terms of above said affidavit, it was also informed to this Court that in order to construct remaining 3366 flats pertaining to 1BHK and one room categories, Government of India has approved allotment of 61.55 acres of land in Sector-52 (28 acres) and Sector-56 (33.55 acres), Chandigarh. It was also informed to this Court that the Government of India has approved cost of land @ Rs.74,131/- per square yard and accordingly, allotment price for all categories shall be worked out taking into consideration the aforesaid approved rate of land. Apart from above, it was also informed to this Court that since U.T. Employees Housing Scheme is a self-financing scheme, relaxation in Rule 4 of Rules, 2007, has been obtained from Chandigarh Administration, in terms of which the land cost would be payable in six equated installments spanning over 30 months, subject to payment of 12% interest.

(vii) During the course of hearing, affidavit dated 01.07.2019 was filed by Ruchi Singh Bedi, the then, Secretary of the Board, whereby, it was informed to this Court that in terms of approved cost of land @ Rs.74131/- per square yard, the tentative cost of the dwelling units on the land cost and estimated construction cost would be as under:

S.	Category of flat	Sector	Approx. covered areas including circulation area	Tentative Accommodation	Tentative cost
1.	Three Bed Room flat with Servant quarter	Sec-53	207.389 sqm. (2231.50 Sft.)	Drawing dinning, three Bed Rooms with attached three toilets, servant room with attached toilet, kitchen, store, longue, four balconies	Rs.1.76 Crore
2.	Two Bed Room flat with Servant quarter	Sec-53	158.16 sqm. (1701.80 Sft.)	Drawing dinning, two Bed Rooms with attached two toilets, servant room with attached toilet, kitchen, store, three balconies	Rs.1.35 Crore
3.	One Bed Room flat	Sec-52 & 56	99.628 sqm. (1072.00 Sft.)	Drawing dinning, one Bed Room with attached toilet, common toilet & kitchen, two balconies	Rs.0.99 Crore
4.	One Room flat (EWS)	Sec-53 & 56	68.20 sqm. (733.83 Sft.)	Drawing room, Bed room, WC, bath, kitchen and balcony	Rs.58.07 Lakh

Note:

1. The flats would be constructed as upto 7 storeyed flats with stilt/basement.
2. CHB would furnish all the flats including all bathrooms in all respects excluding wood work of cub-board and kitchen cabinets.
3. There is possibility of variation in the tentative cost due to change in layout/concept plan at the approval stage.
4. The tentative cost is exclusive of the applicable GST and interest for payment of land cost in installment and the same shall be payable extra.

All the successful applicants of the U.T. Employees Self Finance Housing Scheme, 2008, were required to give their consent within 21 days of this public notice for the above mentioned tentative cost and payment of land cost in five equated installments with applicable interest.

(viii) In compliance of order dated 26.11.2020 of this Court, status report dated 31.12.2020 was filed by the Board, and the relevant extracts thereof are as under:-

> "In compliance to the orders of Hon'ble Punjab and Haryana High Court, a meeting was held on 09.12.2020 under the Chairmanship of the Union Home Secretary Government of India through video conferencing wherein three representatives of the beneficiaries of UT Employees Housing Scheme were also present. The Adviser to the Administrator informed the Chair that a meeting was held by him on 17.11.2020 with the representative of employees. The Employees were given the following two options:
>
> (1) In the first option the price of houses would have been in the range of Rs.45 Lakhs to Rs.151 Lakhs (subject to the approval of Union Cabinet) after charging of land cost on plotted area basis instead of chunk basis. Though total 65.96 acre of land will be utilized but only 38.02 acre will be charged @35.88 Crore per acre i.e. total Rs.1364.16 Crores. By not charging 27.94 acres of land, the financial benefit to the allottees will be Rs.1002.49 Crores which will be at variance with the existing decision of Union Cabinet and hence fresh approval would be needed.
>
> (2) Under Option-II, the house prices would have been in the range of Rs.54 Lakhs to Rs.169 Lakhs (subject to permission by Ministry of Home

> Affairs to increase the FAR by relaxing Master Plan). As per Option-II, land cost can be charged on chunk basis, however, to reduce the land requirement, extra FAR and extra height may be allowed in relaxation of the Master Plan. Total 48.33 acres of land will be charged @Rs.35.88 Crores per acre i.e. total Rs.1734.08 Crores. This will require MHA approval for relaxation in Master Plan.
>
> The Adviser to the Administrator apprised the Chair that in their view both options were reasonable and either could have been accepted by the employees representatives. However, vide letter dated 24.11.2020; the representatives informed that rates are not viable and not acceptable to them."

(ix) Similarly, Chandigarh Administration, filed status report by way of affidavit dated 03.02.2021 of Mr. Uma Shankar Gupta, the then, Additional Secretary Estates, U.T. Chandigarh, in this Court, reiterating the minutes of meeting held on 17.11.2020 and the options given to the employees either to opt land cost on plotted area basis or on chunk basis and since none of the options was acceptable to the employees, the Chandigarh Administration had no objection, if the Court orders, return of money to the employees.

(x) Status report by way of affidavit dated 05.01.2024 of Mr. Sorabh Kumar Arora, the then, Joint Secretary Estates, Chandigarh Administration, was filed in this Court, reiterating the background depicting floating of Scheme, 2008, implication of letter dated 05.10.2012 issued by Ministry of Home Affairs, approval of allotment of 61.50 acres of land @ Rs.74,131/- per square yard i.e. Rs.35.88 Crores per acre i.e. total amount of Rs.2206.62 Crores, and the fact that since total projected requirement of land was 73.295 acres as the balance 11.795 acres of land that was already available with the Board in Sector-53, Chandigarh, is to be utilized for the project at the rate approved by Union Cabinet and hence the total land cost for 73.295 acres comes to Rs.2629.82 Crores. Further, options (I and II), as discussed above, in the status report dated 31.12.2020, were reiterated and further brought to the notice of the Court as representatives of employees had informed that rates of flats being offered were not viable and as such the proposal was not acceptable to them. Lastly, it has been mentioned that as the Scheme, 2008, is not viable in public interest, option of returning the amount to the depositors (employees) has been approved by the Ministry of Home Affairs and as such Scheme, 2008, would be closed and the employees would be refunded their money by the Board.

(xi) Faced with above situation, in terms of supervening circumstances especially in view of status report by way of affidavit dated 05.01.2024 on behalf of Chandigarh

Administration, stating therein that Scheme, 2008, would be closed being unviable, thus, on the oral averments made by learned counsel for the parties to seek leave of the Court to make fresh averments in the writ petition(s), in terms of supervening circumstances, this Court passed the order on 02.02.2024, and the relevant extract thereof reads as under:

> "In the meantime and till further orders, in the larger interest of justice to ensure that the equities, do not become disturbed during the pendency of the *lis* that *Status quo*, as of today, in all respects, shall be maintained by all the parties concerned."

(xii) Civil Writ Petitions (18701-2019; 18927-2019; 19564-2019; 21500-2019 and 6595-2020), were instituted in the years 2019 and 2020, wherein letter dated 05.10.2012 issued by Ministry of Home Affairs, Government of India, was challenged on the ground that the same is not binding upon the petitioners-employees since the allotment of land in question had already been approved @ Rs.7920/- per square yard and that too in the year 2007, for implementation of Scheme, 2008. Further, action of Chandigarh Administration of allotment of land @ Rs.74,131/- per square yard, in the year 2019, was also challenged and direction was sought to be issued to the Chandigarh Administration and the Board to adhere to the promise made to employees and to allot the dwelling unit(s) on the basis of prices quoted in the Brochure instead of charging exorbitant prices which are beyond the reach of employees.

(xiii) Rule 19 of the Rules, 2007, empowers the Administrator, U.T. Chandigarh, to relax any provision of Rules, 2007. Proviso to Rule 4 (iii) provides for extension of time in case of allotments to Government or Semi-Government or its autonomous bodies, organizations. In this manner, extension of time to deposit the earnest amount/money, as enshrined in proviso to Rule 4 (iii) could have been sought by relaxing the stipulated period.

(xiv) It was merely a case of issuance of fresh Letter of Intent. In case fresh Letter of Intent was issued in the years 2008 to 2012 i.e. before the issuance of Ministry of Home Affair's letter dated 05.10.2012, there would have been no hurdle in the execution of Scheme, 2008. The Board could have made a request to the Chandigarh Administration to relax the provisions of Rule 4 (ii) of Rules, 2007, by relaxing the stipulated period, while taking recourse to the Rule 19 of the Rules, 2007.

(xv) Scheme, 2008, was floated in the year 2008 and the Ministry of Home Affair's letter dated 05.10.2012 has no application in respect of Scheme, 2008. Still, it was given retrospective effect. Land is not put on disposal, rather it was a mere transfer from one instrumentality of Chandigarh Administration to another (The Board). As a matter of fact, letter dated 05.10.2012 has prospective application. Chandigarh Administration has taken the stand that the land was not actually transferred to the Board and the ownership of the land is still with the Chandigarh Administration. As such, the allotment of land to the Board will have to be considered afresh and, therefore, conditions stipulated in letter dated 05.10.2012 will prevail on fresh allotment of land to the Board.

65. Before proceeding further, a careful scrutiny of relevant provisions of the Act, 1952; Act, 1966; Article 239 of Constitution of India; Chandigarh (Sale of Sites and Buildings) Rules, 1960 (hereinafter to be referred to 'Rules, 1960); Chandigarh Lease Hold of Sites and Building Rules, 1973 (hereinafter to be referred to 'Rules, 1973); Act, 1971 (as extended to Chandigarh) and Rules, 2007, is quite relevant.

66. Act, 1952, was enacted to re-enact and modify the law in relation to the development and regulation of the new Capital of Punjab. Above said Act was enacted as the construction of new Capital of Punjab at Chandigarh was in progress and it was considered necessary to vest the State Government with legal authority to regulate the sale of building sites and to promulgate building rules on the lines of Municipal Bye-laws so long as a properly constituted local body does not take over the administration of the city.

67. Section 2 (d), (e) and (j) of Act, 1952, defines the terms "Chandigarh", "Chief Administrator" and "Site" as under:-

> (d) "Chandigarh" means the area to which this Act, extends.
> (e) "Chief Administrator" means an officer appointed as such by the Central Government by notification in the official Gazette, to perform the functions of the Chief Administrator under this Act.
> (j) "site" means any land which is transferred by the Central Government under Section 3.
>
> Section 3 of Act, 1952, reads as under:-
> "**3. Power of Central Government in respect of transfer of land and building in Chandigarh**.
> (1) Subject to the provisions of this Section, the Central Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may subject to any rules that may be made under this Act, think fit to impose.
>
> (2) The consideration money for any transfer under sub-Section (1) shall be paid to the Central Government in such manner and in such installments and at such rate of interest as may be prescribed.
>
> (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 (1) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government."

68. The State of Punjab was reorganized with the enactment of Act, 1966, so as to carve out a separate State of Haryana, State of Himachal Pradesh, Union Territory of Chandigarh. Section 2(a) defines the term 'Administrator'. Section 4 deals with the formation of Union Territory of Chandigarh. Further, Sections 87 to 89 of Act, 1966, deal with power to

extend enactments to Chandigarh and powers to adopt laws. Above said provisions are reproduced hereunder:-

> **2. Definitions**.— In this Act, unless the context otherwise requires,—
>
> (a) "Administrator" means the administrator of a Union Territory appointed by the President under Article 239 of the Constitution.
>
> **4. Formation of Union Territory of Chandigarh-**
>
> On and from the appointed day, there shall be formed a new Union Territory to be known as the Union Territory of Chandigarh comprising such of the territories of Manimajra and Manauli Kanungo circles of Kharar tehsil of Ambala district in the existing State of Punjab as are specified in the Second Schedule and thereupon the territories so specified shall cease to form part of the existing State of Punjab.
>
> **87. Power to extend enactments to Chandigarh. —** The Central Government may, by notification in the Official Gazette, extend with such restrictions or modifications as it thinks fit, to the Union Territory of Chandigarh any enactment which is in force in a State at the date of the notification.
>
> **88. Territorial extent of laws.** — The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.
>
> **89. Power to adapt laws.** — For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union Territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient,

and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority.

Explanation. — In this section, the expression "appropriate Government" means—

(a) as respects any law relating to a matter enumerated in the Union List, the Central Government; and

(b) as respects any other law; —

(i) in its application to a State, the State Government, and

(ii) in its application to a Union Territory, the Central Government.

69. Article 239 of the Constitution of India provides that every Union Territory shall be administered by the President through an Administrator appointed by him. Article 239 of the Constitution of India is reproduced as under:-

Article 239 : Administration of Union Territories

(1) Save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union Territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

70. Rules, 1960, have been enacted under the provisions of Act, 1952. Rule 3 of Rules, 1960, reads as under:-

> "**3. Sale by auction or allotment.** – The sites or buildings at Chandigarh shall be sold by the Central Government by auction or allotment. For the purpose of proper planning and development of Chandigarh, the Chief Administrator may reserve sites or buildings for displaced persons, groups of individuals or for persons practising any profession or carrying on any occupation, trade or business."

71. Rules, 1973, have been enacted under the provisions of Act, 1952. Rule 4 of Rules, 1973, reads as under:-

> "**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."

72. In exercise of the powers conferred by Section 87 of Act, 1966, the Central Government has extended to the Union Territory of Chandigarh, Act, 1971, subject to modifications. "Administrator" has been defined in Section 2 (aa) of the Act, 1971, as under:-

> **(aa) "Administrator"** means the Administrator of the Union Territory of Chandigarh appointed by the President under Article 239 of the Constitution.

Relevant provisions of Act, 1971, are reproduced as under:-

> **15. Meetings of the Board. –** The Board shall meet and shall from time to time make such bye-laws with respect to the day, time, place, notice, management and adjournment of its meetings as it thinks fit, subject to the following provisions, namely: -
>
> (a) xx xx xx
> (b) xx xx xx
> (c) xx xx xx
> (d) xx xx xx
> (e) xx xx xx
>
> (f) the minutes of the proceedings of each meeting

shall be recorded in a book to be provided for the purpose and a copy of such minutes shall be forwarded to the Administrator in the department concerned.

18. Execution of contracts. - (1) Every contract shall be made in the name of the Board by the Chief Executive Officer or such other officer of the Board as may be authorised by it:

Provided that no contract involving an expenditure of twenty lakhs rupees or more shall be made without the previous sanction of the Administrator.

(2) xx xx xx
(3) xx xx xx
(4) xx xx xx

"**20. Duty of Board to undertake Housing Schemes. -** Subject to the provisions of this Act and subject to the control of the Administrator, the Board may incur expenditure and undertake works in any area for the framing and execution of such housing schemes as may consider necessary from time to time or as may be entrusted to it by the Administrator.

21. Matters to be provided for by Housing Scheme. - Notwithstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely:-

(a) to (l) xx xx xx

(m) accommodation for any class of inhabitants, industries, institutions, offices, local authorities, Co-operatives or Corporate bodies;

(n) advance of money for the purpose of the scheme;

(o) to (q) xx xx xx

Explanation. - For the purposes of this section the Administrator may, on the recommendation of the Board, by notification, specify area surrounding or adjoining the area included in a housing scheme to be the adjoining area.

23. Preparation and submission of annual housing

programme, budget and establishment schedule.

(1) Before the first day of December in each year the Board shall prepare and forward to the Administrator in such form as may be prescribed -

(i) a programme

(ii) a budget for the next year; and

(iii) a schedule of the staff of officers and servants already employed and to be employed during the next year,

(2) The programme shall contain,-

(i) such particulars of housing schemes which the Board proposes to execute whether in part or whole during the next year as may be prescribed;

(ii) the particulars of any undertaking which the Board propose to organise or execute during the next year for the purpose of production of building materials; and

(iii) such other particulars as may be prescribed.

(3) The budget shall contain a statement showing the estimated receipts and expenditure on capital and revenue accounts for the next year.

24. Sanction to programme, budget and establishment schedule. - The Administrator may sanction the programme, budget and the schedule of the staff of officers and servants forwarded to it with such modification as it deems fit.

25. Publication of sanctioned programme.- The Administrator shall publish the programme sanctioned by it under Section 24 in the Chandigarh Gazette.

26. Supplementary programme and budget.- The Board may, at any time, during the year, in respect of which a programme has been sanctioned under Section 24 submit a supplementary programme and budget and the additional schedule of the staff, if any, to the Administrator and the provisions of Sections 24 and 25 shall apply to such supplementary programme.

28. Sanctioned housing scheme to be executed. - After the programme has been sanctioned and published by the Administrator under sections 24 and 25, the Board shall, subject to the provisions of section 27, proceed to execute the housing schemes included in the programme.

36. Board to assume management of requisitioned lands. - The Board shall, if the Administrator so directs, and subject to the general control of the Administrator, assume management of all or any of the lands requisitioned by or under authority of the Administrator.

39. Power to purchase, lease or acquire land. –

(1) The Board may enter into an agreement with any person or the Administrator for the acquisition from him by purchase, lease or exchange, of any land which is needed for the purposes of a housing scheme or any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith:

Provided that the previous approval of the Administrator shall be obtained in case of purchase or exchange involving land worth more than fifty lakhs rupees or lease for more than five years.

(2) The Board may, from such date as the Administrator may appoint by notification in this behalf, also take steps for the compulsory acquisition of any land or any interest therein required for the execution of a housing scheme in the manner provided in the Land Acquisition Act, 1894, as modified by this Act; and the acquisition of any land or any interest therein for the purpose of this Act shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894.

63. Transfer of assets and liabilities. –

(1) The Administrator may transfer to the Board building, land or any other property movable or immovable, for use and management by the Board on such conditions and limitations as

the Administrator may deem fit, for the purposes of this Act.

(2) The Administrator may transfer to the Board such schemes or works in progress, with all their assets and liabilities as are run or managed by the Administrator, subject to such conditions and limitations as the Administrator may deem fit to impose for the purposes of this Act.

65. Statements and returns. - The Board shall submit to the Administrator such statistics, returns, particulars or statements in regard to any proposed or existing housing schemes at such times and in such form and manner as be prescribed or as the Administrator may from time to time direct.

71. Power of Government to give direction to Board. – The Administrator may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act, after giving an opportunity to the Board to state its objections, if any, to such directions and after considering the said objections and it shall be the duty of the Board to comply with such directions.

72. Control of Administrator over Board. –

(1) The Administrator shall exercise superintendence and control over the Board and its officers and may call for such information as it may deem necessary and, in the event of his being satisfied that the Board is not functioning properly or is abusing its powers or is guilty of corruption or mismanagement, he may, by notification, suspend the Board:

Provided that the Board shall be reconstituted, within a period of one year from the date of its suspension in the prescribed manner.

(2) When the Board is suspended under sub-section (1), the following consequences shall ensue, namely: -

(a) all members of the Board and its committees, including the Chairman of the Board, shall, from the date of the notification, vacate their officers;

(b) all powers, duties and functions, which under the provisions of this Act or any regulation made thereunder, are to be exercised by the Board or any committee thereof or by the Chairman of the Board, or by any other officer of the Board, shall, during the period of suspension, be exercised and performed by such person (to be called the Special Officer) as may be appointed by the Administrator in this behalf:

Provided that the Special Officer may, subject to the approval of the Administrator, delegate any of his powers, duties or functions to such other person as he may think fit :

(c) all properties, including the Board Fund, vested in the Board shall, until it is, re-constituted, vest in the Central Government.

73. In exercise of the powers conferred by Sections 3 and 22 of the Act, 1952, as adapted by the Punjab Reorganisation (Chandigarh) Adaptation of Laws (on State and Concurrent Subjects) Order, 1968 and all other powers enabling him in this behalf, the Administrator, Union Territory of Chandigarh had enacted the Rules, 2007. Relevant provisions of Rules 3, 4 and 19 of Rules, 2007, are reproduced as under:-

3. Sale/Lease by auction or allotment.

The sites/buildings at Chandigarh shall be sold by the Central Government by way of auction or allotment, either on free hold basis or leasehold basis. The sites meant for commercial and residential use shall be sold through an open auction or by way of allotment.

The sites meant for other purposes to be sold under some Scheme or specific rules shall be sold through allotment only. For the purpose of proper planning and development of Chandigarh, the Chief Administrator may reserve sites or building for displaced persons, oustees, group(s) of individuals or persons practicing any profession or carrying on any occupation trade or business, various bodies/Association/Trust/Organisations or autonomous bodies or for the implementation of any Scheme framed by the Chandigarh Administration:

Provided that the Central Government may allow use of any Site/Building to any Department of Chandigarh Administration or Public Sector Undertaking of Chandigarh Administration on profit sharing basis or on rent basis.

4. Allotment by Sale/ Lease.

(i) In case of sale/lease of any site/building by allotment, the applicant shall make an application to the Estate Officer in Form 'A' who shall alongwith his observations and recommendations forward the same to the Chief Administrator.

(ii) The Estate Officer shall, subject to such directions as may be issued by the Chief Administrator in this behalf; offer a site of the size applied for or of different size and shall intimate by registered post the number, approximate area and consideration money of the site/building and other terms and conditions of the allotment to the applicant enabling him to deposit 25% of the consideration money through demand draft, drawn on any Scheduled Bank situated at Chandigarh in favour of Estate Officer U.T. Chandigarh, and call upon him/her to execute an Agreement to Sell in **Form 'B'** or **Form 'B-I'**, as the case may be, in respect of the offered site/building within 30 days from the date of issue of the said communication. Failure on the part of the applicant to respond to the offer shall result in cancellation of the allotment of site/building. In case, the applicant fails to execute an Agreement to Sell as per the prescribed *pro forma*, in the stipulated period then the amount of the consideration money deposited by the applicant shall be forfeited which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the site or building or both.

(iii) The remaining 75 % of the consideration money shall be deposited by the intending purchaser, either in lump sum within 90 days of the date of issue of the aforesaid communication by the Estate Officer by way of prescribed mode of payment or within such time and in such installments, as may be notified by the Chandigarh Administration under any specific rules or Scheme, failing which the offer of allotment shall be deemed to have been cancelled and the payment made under Sub-Rule (ii) shall be forfeited and the intending purchaser shall have no claim to any damages;

> Provided further that in case of allotments to Government(s) or Semi-Government(s) or its autonomous bodies/organizations, the period for the above said payment may be extended by the Chief Administrator on a written request by the organization/Department justifying the delay to the satisfaction of the Chief Administrator, subject to payment of interest @ 12% per annum for the period of delayed payment, provided that such delay shall in no case exceed one year or 12 months in the whole.
>
> (iv) to (vi) xx xx xx
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> **19. Power to Relax:**
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> **The Administrator, Union Territory, Chandigarh, may relax all or any provisions of these rules for reasons to be recorded in writing, in public interest and in exceptional circumstances.**

74. The State of Punjab was reorganized with the enactment of Act, 1966. In pursuance of Article 239 of the Constitution of India read with Sections 4 and 88 of Act, 1966, Ministry of Home Affairs, vide notification dated 01.11.1966, directed that the Administrator of Chandigarh shall discharge powers and functions of the "State Government". The said notification was modified and the word 'State Government' was substituted by 'Central Government', vide Notification dated 30.10.1968. Relevant extract of notification dated 01.11.1966 is reproduced hereunder:-

> "Now, therefore, in pursuance of clause (1) of Article 239 of the Constitution, and all other powers enabling him in this behalf, the President hereby directs that, subject to his control and until further orders, the Administrator of the Union Territory of Chandigarh shall in relation to the said territory, exercise and discharge, with effect from the 1st day of November, 1966, the powers and functions of the State Government under any such law."

75. Subsequently, in exercise of powers conferred under Section 89 of the Act, 1966, the President of India, vide The Punjab Reorganisation (Chandigarh) (Adaptation of Laws on the State and Concurrent Subjects) Order, 1968, adopted the Act, 1952.

76. In exercise of the powers conferred by clause (3) of Article 77 of the Constitution of India, the President has made “The Government of India (Allocation of Business) Rules, 1961”. That under the said Rules “Department of States” is one of the constituent Department of the Ministry of Home Affairs, Union of India. As per the said Rules; as clarified by the Memo No.A-43020/42/2005-Ad.I dated 03.03.2008, issued by Ministry of Home Affairs, the matters of Union Territories are to be dealt with by Ministry of Home Affairs in its 'Department of States'. That under Article 239 of the Constitution; in administration of Union Territory the President is to be subject to the law made by the Parliament. 'Union' Executive has authorized the Ministry of Home Affairs, Union of India, exclusively, to manage the governance of the Union Territories, including the Union Territories without legislature, qua the State Subjects. A conspectus of the above would go on to show that the Union Territory Chandigarh is to be administered through the President of India through an Administrator appointed by him. Ministry of Home Affairs is the exclusive face of the Union to act as the appropriate face for the U.T. Chandigarh.

77. A bare perusal of Section 3 of Act, 1952, coupled with Rules,

1960, and Rules, 1973, as framed under the said Act, reveals that the Central Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may subject to any rules that may be made under this Act, think fit to impose.

78. Next to food and clothing, housing is the basic necessity of mankind. The housing problem has become serious on account of the phenomenal increase in population. Rapid industrialisation has led to the congestions in urban areas. The concentration of almost all industries in urban areas and the comparative high wages paid to the factory workers coupled with the lack of sufficient opportunities in the rural areas have resulted in a large scale shift of population from village. With the object of easing the housing problem by constructing more houses and raise standards in the types of houses, the State Governments have been implementing various housing schemes sponsored by the Government of India. Under these schemes, financial assistance in the shape of loans as well as grants is given to the employers, local bodies, individuals and co-operative societies of individuals and industrial workers. With a view to achieve the aforesaid object, the matter was considered in the conference of ministers for housing, urban development and town planning held on 18th to 20th June, 1969. The consensus of opinion was that the statutory State Housing Boards are the best agencies for tentative and speedy implementation of the housing programmes. Accordingly, it was

proposed to constitute a Haryana State Housing Board and as such Act, 1971, came into being and in exercise of powers conferred by Section 87 of Act, 1966, the Central Government has extended Act, 1971, to Chandigarh, vide notification dated 13.03.1975. A bare perusal of above-mentioned provisions of Act, 1971 (as extended to Chandigarh), clearly reveals that in each and every aspect of the working of the Board, Administrator of the Union Territory of Chandigarh, appointed by the President under Article 239 of the Constitution, is the deciding factor. As a matter of fact, the Board, being instrumentality of State, is a Nodal Agency of Chandigarh Administration to undertake housing schemes. Above said fact gets impetus from Letter(s) of Intent dated 10.01.2008 (Annexure P-2 colly), in terms of which, in pursuance of decision of the Finance Secretary, Chandigarh Administration, conveyed vide memo No.31/1/432-UT FI(4)/7147 dated 16.11.2007, it was decided to allot land measuring 28 acres in Sector-52, Chandigarh and land measuring 17.5 acres in Sector-56, Chandigarh, for the housing scheme for the employees of Chandigarh Administration on free hold basis @ Rs.7920/- per square yard and it was desired by the Union Territory, Chandigarh, asking the Board to raise construction thereon to effectuate above said Scheme within a period of three years. The Board was required to deposit 25% (Rs.26,83,96,936/- + Rs.16,77,29,006/-) of cost of land, within 30 days from the date of issuance of above said Letter(s) of Intent dated 10.01.2008. On the same day i.e. on 10.01.2008, The Board floated the Scheme, 2008, (Annexure

P-3), for employees of Chandigarh Administration and the said Scheme opened on 14.01.2008 and closed on 29.02.2008. As mentioned earlier, the Board despite having sufficient resources to the tune of Rs.300 Crores including Rs.57 Crores of earnest money as received from the employees in terms of Scheme, 2008, did not bother to deposit 25% of cost of land with the Chandigarh Administration and instead of that deposited the entire amount including above said amount of Rs.57 Crores in Fixed Deposits. In this manner, default if any, had occurred at the instance of the Board, a Nodal Agency of Chandigarh Administration. Once Administrator of Chandigarh Administration is having control on the overall working of the Board especially execution of contracts, and further the fact that Chandigarh Administration had written numerous letters dated 09.12.2010, 13.01.2011, 25.06.2012, 28.06.2012, 05.07.2012 and 17.07.2012 (Annexure P-21 colly), asking the Board, to issue fresh letters of allotment on the rates fixed by the Chandigarh Administration and subject to the completion of necessary formalities as provided in the relevant rules, but the Board never responded to those letters. In this scenario, since Scheme, 2008, was enunciated at the instance of Chandigarh Administration and that too for the welfare of its employees, execution of said Scheme was entrusted to the Board, Nodal Agency of Chandigarh Administration and, thus, failure on the part of the Board to execute Scheme, 2008, it was incumbent upon the Administrator, having control over the Board, to initiate action as envisaged under Section

72 of Act, 1971. However, it appears that as senior officers/officials of Chandigarh Administration were not successful in draw of lots, they lost interest in the Scheme, 2008, and, thus, inaction on the part of the Board to comply with terms and conditions of Letter(s) of Intent dated 10.01.2008, coupled with lack of exercise of superintendence and control over the said Board, by Administrator of Chandigarh Administration, all these factors led to non-implementation of Scheme, 2008.

79. It is categorical stand of the Chandigarh Administration that on account of non deposit of 25% of cost of land by the Board with the Chandigarh Administration and that too within stipulated period of 30 days, allotment, if any, of land stood cancelled and that too in the year 2010. For allotment of land afresh, Chandigarh Administration is relying upon letter dated 05.10.2012, whereby Government of India, Ministry of Home Affairs had decided that the land acquired by U.T. Administration must not be disposed of below the market value and without auction. If any Union Territory Administration intends to dispose of any piece of land below the market value and without holding auction, prior approval of above said Ministry must be obtained. Above said letter has no retrospective operation. Further, vide letter dated 26.08.2015 issued by Under Secretary to the Government of India, Ministry of Home Affairs, it was brought to the notice of this Court that the conditions stipulated in Ministry's letter dated 05.10.2012 are applicable with prospective effect. Once finalization of

allotment of land for the execution of Scheme, 2008, could not materialize due to default occurred at the instance of the Board, an instrumentality and Nodal Agency of Chandigarh Administration, in this scenario, allotment of land, if any, required to be made afresh, would be deemed to have been made prior to issuance of letter dated 05.10.2012. Even otherwise, letter dated 05.10.2012 (Annexure R-2), issued by Government of India, Ministry of Home Affairs, regarding acquisition of land and its subsequent disposal, limits the disposal of land through auction only, whereas provisions of Section 3 of Act, 1952, and Rules framed thereunder in terms of Rules, 1960, and Rules, 1973, provide that the Central Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may subject to any rules that may be made under the Act, 1952.

80. Hon'ble Supreme Court in case **Natural Resources Allocation In RE, Special Reference No.1 of 2012**, **(2012) 10 SCC 1**, while dealing with aspect of auction in natural resources observed as under: -

> **"Whether "auction" a constitutional mandate**
>
> 108. Such being the constitutional intent and effect of Article 14, the question arises - can auction as a method of disposal of natural resources be declared a constitutional mandate under Article 14 of the Constitution of India? We would unhesitatingly answer it in the negative since any other answer would be completely contrary to the scheme of Article 14. Firstly, Article 14 may imply positive and negative rights for an individual, but with respect to the State, it is only couched in negative terms; like an admonition against the State which prohibits the State from taking up actions that may be arbitrary,

unreasonable, capricious or discriminatory. Article 14, therefore, is an injunction to the State against taking certain type of actions rather than commanding it to take particular steps. Reading the mandate of auction into its scheme would thus, be completely contrary to the intent of the Article apparent from its plain language.

109. Secondly, a constitutional mandate is an absolute principle that has to be applied in all situations; it cannot be applied in some and not tested in others. The absolute principle is then applied on a case by case basis to see which actions fulfill the requirements of the constitutional principle and which do not.

111. Similar sentiments were expressed by Justice K. K. Mathew in series of lectures incorporated in the form of a book titled "Democracy, Equality and Freedom" in which it is stated that "the strength of judicial review lies in case to case adjudication." This is precisely why this Court in *Kesavananda Bharti* v. *State of Kerala, (1973) 4 SCC 225,* quoting from an American decision, observed as follows:

> "1695…The reason why the expression "due process" has never been defined is that it embodies a concept of fairness which has to be decided with reference to the facts and circumstances of each case and also according to the mores for the time being in force in a society to which the concept has to be applied. As Frankfurter J. said, "due process" is not a technical conception with a fixed content unrelated to time, place and circumstances [*See Joint Anti-Fascist Refugee Committee v. McGrath, 96 L Ed 817*".

112. Equality, therefore, cannot be limited to mean only auction, without testing it in every scenario. In *State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75,* this Court, quoting from *Kotch v. River Port Pilot Commissioners, 91 L Ed 1093,* had held that:

> "10. … 'The constitutional command for a State to afford equal protection of the laws sets a goal not attainable by the invention and application of a precise formula. This Court has never attempted that impossible task'".

One cannot test the validity of a law with reference to the essential elements of ideal democracy, actually incorporated in the Constitution. (See: *Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1)*. The Courts are not at liberty to declare a statute void, because in their opinion it is opposed to the spirit of the Constitution. The Courts cannot declare a limitation or constitutional requirement under the notion of having discovered some ideal norm. Further, a constitutional principle must not be limited to a precise formula but ought to be an abstract principle applied to precise situations. The repercussion of holding auction as a constitutional mandate would be the voiding of every action that deviates from it, including social endeavours, welfare schemes and promotional policies, even though CPIL itself has argued against the same, and asked for making auction mandatory only in the alienation of scarce natural resources meant for private and commercial business ventures. It would be odd to derive auction as a constitutional principle only for a limited set of situations from the wide and generic declaration of Article 14. The strength of constitutional adjudication lies in case to case adjudication and therefore auction cannot be elevated to a constitutional mandate.

113. Finally, reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). The said article enumerating certain principles of policy, to be followed by the State, reads as follows:

"39. Certain principles of policy to be followed by the State.—

The State shall, in particular, direct its policy towards securing –

(a) x x x x

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"

The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any Court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on 'distribution' built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing 'distribution' is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word 'distribution'. Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the "common good".

114. In *State of T.N. v. L. Abu Kavur, (1984) 1 SCC 515,* this Court explained the broad-based concept of 'distribution' as follows:

> "89. …The word 'distribution' used in Article 39(b) must be broadly construed so that a court may give full and comprehensive effect to the statutory intent contained in Article 39 (b). A narrow construction of the word 'distribution' might defeat or frustrate the very object which the Article seeks to subserve…"

After noting definitions of 'distribution' from different dictionaries, this Court held:

> "92. It is obvious, therefore, that in view of the vast range of transactions contemplated by the word 'distribution' as mentioned in the dictionaries referred to above, it will not be correct to construe the word 'distribution' in a purely literal sense so as to mean only division of a particular kind or to particular persons. The words, apportionment, allotment, allocation, classification, clearly fall within the broad sweep of the word 'distribution'. So construed, the word 'distribution' as used in Article 39(b) will include various facets, aspects, methods and terminology of a broad-based concept of distribution…"

116. The learned counsel for CPIL argued that revenue maximization during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be channelized to welfare policies and controlling the burgeoning deficit. According to the learned counsel, since the best way to maximize revenue is

through the route of auction, it becomes a constitutional principle even under Article 39 (b). However, we are not persuaded to hold so. Auctions may be the best way of maximizing revenue but revenue maximization may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39 (b) for distribution of natural resources. It is the touchstone of testing whether any policy subserves the "common good" and if it does, irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39(b).

119. The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick - it would depend on the economic and political philosophy of the government. Revenue maximization is not the only way in which the common good can be subserved. Where revenue maximization is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. Where revenue maximization is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations.

121. As a result, this Court has, on a number of occasions, delivered judgments directing means for disposal of natural resources other than auction for different resources in different circumstances. It would be profitable to refer to a few cases and appreciate the reasons this Court has adopted for deviating from the method of auction.

129. **Hence, it is manifest that there is no constitutional mandate in favour of auction under Article 14.** The Government has repeatedly deviated from the course of auction and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. Essentially whenever the object of policy is anything but revenue maximization, the Executive is seen to adopt methods other than auction.

135. Therefore, a potential for abuse cannot be the basis

for striking down a method as *ultra vires* the Constitution. It is the actual abuse itself that must be brought before the Court for being tested on the anvil of constitutional provisions. In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelization, "winners curse" (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licenses for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called *ultra vires* for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximization is a priority. Therefore, neither auction, nor any other method of disposal can be held *ultra vires* the Constitution, merely because of a potential abuse."

81. As mentioned earlier, in terms of statement of objects and reasons of Act, 1952, special statute was enacted for providing overall development of Chandigarh. In terms of Central Legislation, as contained in Section 88 of Act, 1966, sanctity of provisions of Section 3 of Act, 1952, has been maintained. The Hon'ble Supreme Court in case **State of Punjab and others** vs. **Balbir Singh and others**, **(1976) 3 SCC 242**, while interpreting provisions of Section 88 of Act, 1966, held as under: -

"Section 88 appears to have been introduced as a matter of abundant caution. In my opinion, mere splitting up of the territories of Punjab into four successor States would not ipso facto result in the abrogation or repeal of the laws which were immediately in force before the appointed day in those territories. There is nothing in the 1966 Act, not even in Section 88, which expressly or by necessary intendment repeals the laws which were in force immediately before the appointed day in the territories of the former Punjab. Those laws derived their force *de hors* the 1966 Act. The first part of Section 88 is merely

> clarificatory of any doubts which might arise as a result of the reorganization of Punjab, while the latter part of this section is merely an adaptative provision, to the effect, that the territorial references in any such law to the State of Punjab shall continue to mean the territories within that State immediately before the appointed day. Thus, read as a whole Section 88 merely dispels doubts as to the continuity of the laws which were in force before the appointed day in the former State of Punjab, until the competent legislature or authority of the successor States effects any change in those laws.
>
> If this could be the position in the continuance of the law in the successor States, on what principles one can say that the administrative order made by the erstwhile State of Punjab automatically lapsed and came to an end on and from the appointed day on the coming into existence of the successor States. Is it possible to take the view that the Legislature when it made so many provisions in the Act in its various parts in regard to the matters already referred to, did not think it appropriate to make a provision for the continuance of the effect of the administrative orders passed by the Government of the erstwhile State of Punjab until the Governments of the successor States modified or changed it ? or, is it, as a matter of law and propriety, reasonable to think that the Legislature did not consider it necessary at all to make such an express provision, as the continuance of the effect of such orders was so obvious even without such a provision ? In our judgment when there is no change of sovereignty and it is merely an adjustment of territories by the reorganization of a particular State, the administrative orders made by the Government of the erstwhile State continue to be in force and effective and binding on the successor States until and unless they are modified, changed or repudiated by the Governments of the successor States. No other view is possible to be taken. The other view will merely bring about chaos in the administration of the new States. We find no principle in support of the stand that administrative orders made by the Government of the erstwhile State automatically lapsed and were rendered ineffective on the coming into existence of the new successor States."

82. In terms of Article 239 of Constitution of India, there is no change in the Act, 1952. It is relevant to point out here that Scheme, 2008,

was initiated by Chandigarh Administration as there was a long pending demand of U.T. employees for the framing of a Special Housing Scheme for them as there is a huge shortage of Government accommodation and the rents in Chandigarh were beyond their reach. Apart from that, payment of market rate of land is beyond the reach of employees, who are salaried one. Eligibility of employee to apply for the Scheme, 2008, was even more stringent, as applicant/employee was required not owning any property in the Tricity of Chandigarh in his/her name or in the name of his/her spouse or minor children at the time of applying for Scheme, 2008, and till delivery of actual possession of flat. Scheme, 2008, was initiated for 'common good' of employees of Chandigarh Administration in terms of 'Allotment of Land to Various Bodies/ Associations/Trust/Organizations of Religious, Charitable, Cultural, Social Nature and Governments/Semi-Government Organization and its Autonomous Bodies, on Lease-hold Basis in Chandigarh Scheme, 2005'. Above said Scheme of 2005 was formulated by virtue of provisions of Sections 3 and 22 of Act, 1952. Clause 6 of Scheme, 2005, provides for in what manner pricing of land meant for residential purposes to Central Government and the Governments of Punjab, Haryana and Himachal Pradesh including its Autonomous Bodies/Semi-Government Organizations, Boards and Corporations owned and promoted by the respective Governments will be allotted. It has been specifically enshrined in the above said Clause of Scheme, 2005, that the price would be 48% of average auction price fetched in the auctions held in the last three auction years for the like category of land in the locality. In this view of the matter, allotment of land measuring 28 acres and 17.5 acres in Sectors 52 and 56 respectively for formulating a housing scheme for the employees of Chandigarh Administration @ Rs.7920/- per square yards on free hold basis under the Rules, 2007, was made on 10.01.2008 by Chandigarh Administration in favour of the Board to implement the Scheme, 2008. In this manner, object of the Scheme, 2008, is for the benefit of U.T. employees. Employer-Chandigarh Administration is the main authority from where the land was provided to effectuate the Scheme, 2008. The Board, being Nodal Agency of Chandigarh Administration, has been asked to implement the said Scheme. At this juncture, it is relevant to point out here that while floating Scheme, 2008, especially for employees of Chandigarh Administration, for the objects and reasons, as discussed above, reasonable classification has been sought to be achieved. It is now well established that while Article 14 of Constitution forbids class legislation, it does not forbid reasonable classification for the purposes of Legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of the Hon'ble Supreme Court that Article 14 condemns discrimination not only by substantive law but also by a law of procedure. It was so observed by Hon'ble Supreme Court in cases **Budhan Chaudhary** vs. **State of Bihar, AIR 1955 Supreme Court 191** and **Ram Krishna Dalmia** vs. **Justice S.R. Tendolkar, AIR 1958 Supreme Court 538.** Further, the Hon'ble Supreme Court in case **Natural Resources Allocation** (supra), while dealing with Article 14 of Constitution of India, has observed as under: -

> "From a scrutiny of the trend of decisions, it is clearly perceivable that the action of the State, whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be tested on the touchstone of Article 14 of the Constitution. A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity as McDowells case (State of A.P. vs. McDowell & Co. (1996) 3 SCC 709) has said. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. The action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism, nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This the mandate of Article 14 of the Constitution of India."

83. In the instant case, while making reasonable classification in respect of employees of Chandigarh Administration, its Boards/Corporations and employees of Punjab and Haryana High Court, as Government

accommodation in Chandigarh was not sufficient to house them, the fact that number of above said employees have to come from far off places to serve in Chandigarh, the fact that prices of land or rentals in Chandigarh cannot be afforded by employees being salaried persons, thus, there would be a well resolution of their housing problems by initiating Scheme, 2008, whereby but obviously public good would ensue. The class of employees who were successful in draw of lots, thus, form a homogeneous class of employees and thereby they constitute a very distinct class, to which the salutary constitutional principle of non-arbitrariness can become well bestowed. The reason being that the said classification is founded upon an intelligible differentia from the other sections of society, besides the said class of employees has a close nexus with the objective sought to be achieved from the said made classification, inasmuch as, their housing problems becoming resolved. The resolution of their housing problems is imperative, as there is but a dire shortage of Government accommodation in Chandigarh, thus, for the same becoming allotted to the employees. Moreover, when in the face of non-providing of Government accommodation to the employees concerned, thereby they are required to acquire tenanted premises located remotely in Chandigarh, whereby immense time in commuting from their abodes to their place of service would be consumed. Resultantly, there would be a telling effect upon their efficiency, besides may be owing to traffic jams there may be situations of their arriving late for performing their duties. In sequel thereby the public administration, and, public good would also becoming casualities. Conspicuously also when because of high rentals in the part of Chandigarh which are unaffordable, they are led to acquire tenancies outside but with the above constrains. Therefore, this Court is of the view that the employees are a different class from other sections of society, besides also this Court concludes, that the said created classification of employees is founded, upon an intelligible differentia, and, the said intelligible differentia, thus, having a close nexus with the objective of ensuring efficiency in public administration, and, thereby but obviously, public good would become subserved. Significantly also, the resolving of the housing problems is a dire necessity which makes them to be a distinct class, inasmuch as, they belong to different classes of employees respectively from the low strata of employees upto the categories higher theretos. In this view of the matter, Scheme, 2008, conforms to the norms which are rational, informed with reasons and guided by public interest and these principles are inherent in the fundamental conception of Article 14 of the Constitution.

84. In pursuant to advertisement of Scheme, 2008, applicants/ employees applied for flats and on deposit of earnest money draw of lots were held and as many as 3930 applicants/employees were declared successful in the said draw of lots. Though it was incumbent upon the Board to deposit 25% of the cost of land with the Chandigarh Administration within stipulated time, but default had occurred at the instance of Board, as it had failed to deposit

25% of the cost of land with the Chandigarh Administration within stipulated time. No fault can be found at the instance of applicants/employees as they had deposited a sum of Rs.57 Crores as earnest money with the Board, whereas latter was required to deposit approximately Rs.43 Crores with the Chandigarh Administration to comply with the Letter(s) of Intent dated 10.01.2008. It is pertinent to mention here that cost of the land (28 acres and 17.5 acres in Sectors 52 and 56 respectively) meant for implementation of Scheme, 2008, was ascertained @ Rs.7920/- per square yard and that too well prior to the initiation of said Scheme, as is evident from Letter(s) of Intent dated 10.01.2008 (Annexure P/2 colly). Even after initiation of Scheme, 2008, but prior to the draw of lots as some more land measuring 16 acres situated in Sector 56, Chandigarh, was necessitated for implementation of above said Scheme, it was decided by Chandigarh Administration to allot additional 16 acres of land situated in Sector 56, Chandigarh, as is evident from letter dated 20.04.2009 (Annexure P/13), issued by Finance Secretary, Chandigarh Administration to the Board for formulating Scheme, 2008. In this view of the matter, once above said pocket of land measuring 16 acres situated in Sector 56, Chandigarh, was earmarked by the Chandigarh Administration on 20.04.2009 to implement the Scheme, 2008, in letter and spirit, and that too prior to the draw of lots, in this scenario, price of said land (16 acres) is required to be made at par i.e. @ Rs.7920/- per square yard, which price of land was fixed in respect of land measuring 45.5 acres, initially allotted for implementation of Scheme, 2008. It is pertinent to mention here that as more land was necessitated by the Board to implement the Scheme, 2008, then Chandigarh Administration allocated 11.795 acres of land situated in Sector 53, Chandigarh, for the said scheme. As a matter of fact, land measuring 11.795 acres was part of total land measuring 20.77 acres, which was allocated for General Housing Scheme, 2008, vide Letter of Intent dated 16.05.2008 but lateron, in the year 2017, as there was deficiency of land to implement the Scheme, 2008, above said land measuring 11.795 acres was released by the Chandigarh Administration as well as the Board to favour the cause of Scheme, 2008, as is evident from affidavit dated 15.05.2017 of Mr. Parimal Rai, IAS, the then, Adviser to the Administrator, U.T. Chandigarh. However, a fact cannot be lost the sight that land measuring 11.795 acres situated in Sector 53, Chandigarh, was allocated by the Chandigarh Administration to the Board in the year 2008, for General Housing Scheme, 2008, and as such, once said land (11.795 acres) has been allotted for Scheme, 2008, by no stretch of imagination, either the Chandigarh Administration or the Board can ask for higher price of said land as its price is to be determined in terms of rates prevalent in the year 2008 especially in view of the fact that above said land was allocated for General Housing Scheme, vide Letter of Intent dated 16.05.2008. It will not be out of place to mention here that prevalent price of similar land was fixed @ Rs.7920/- per square yard and as such, demand of Chandigarh Administration and the Board to allot above said lands @

Rs.74,131/- per square yard, is totally unjustifiable. It is relevant to point out here that lands allotted/earmarked for Scheme, 2008, are lying vacant till date and the title of said lands vests in Chandigarh Administration/Board. The salaried employees, who after making savings from their salaries and further obtaining loans, have expended such savings/loan amount on resolving their housing problems. Consequently, they were led to believe the representations made to them, in consequence whereof through draw of lots, as many as 3930 employees were declared successful to get flats from the pool of land under the control of the Administrator, Chandigarh Administration. Apart from declaration of result of draw of lots, successful employees were given registration number to be registered for the allotment of flats in terms of Scheme, 2008, as is evident from letter dated 03.09.2012 (Annexure P-5). In sequel, they also believed, that in terms of the said promise, prompt construction activities would be undertaken on the subject lands, so that thereby, the right to life, enshrined in Article 21 of the Constitution becomes ensured to be fully enlivened. Contrarily, the said assurances become reneged, and, thereby the said constitutional protection bestowed, upon the successful applicants/employees in the draw of lots concerned has been completely frustrated. The above belief which became instilled in the successful employees in the draw of lots, but arose a legitimate expectation entrenched in their mind that the said belief would be forwarded, rather than the same becoming rendered negated by certain ill-renegings being made rather on the basis of certain pretextual correspondences, whereby their legitimate expectation for theirs owning dwelling units in terms of their income has been ill-whittled down. The said pretextual promises are evident from the fact that though Chandigarh Administration, vide letters dated 09.12.2010, 13.01.2011, 25.06.2012, 28.06.2012, 05.07.2012 and 17.07.2012 (Annexure P-21 colly), intended to issue fresh letter of allotment but the Board never replied those letters/reminders and as such latter slept over the matter to frustrate the cause of employees. Apart from that, the Board wasted substantial time while making correspondence with Chandigarh Administration to resolve as to whether the land is to be allotted on chunk basis or on plotted area basis. In this scenario, as the entire modalities of use of land in a particular manner were to be resolved prior to allotment of land, in view of above-mentioned correspondence initiated at the instance of the Board leads to conclude that the above pretexts are completely flimsy, just as a measure of avoidance to make compliance with the legitimate expectations, which became both generated, besides became endowed upon the successful employees. Once Government employees under the Self-Financing Scheme of 2008, opted for flat, made payment of earnest money and declared successful in the draw of lots and further the fact that even name of successful employees in the draw of lots were registered for allotment, in terms of principle of 'promissory estoppel', Chandigarh Administration as well as the Board cannot wriggle out of that situation. The present case is not only based on the principle of equity but on legal right as well.

85. Hon'ble Supreme Court while discussing origins and evolution of principle of promissory estoppel, from estoppel to expectation and further the doctrine of legitimate expectation, in case **State of Jharkhand and others** v. **Brahmputra Metallics Limited, Ranchi and another**, **(2023) 10 Supreme Court Cases 634**, held as under: -

> "28. In order to analyse the contentions relating to the doctrine of promissory estoppel in the present case, it is necessary to discuss the origin of the doctrine and the evolution of its application. The common law recognizes various kinds of equitable estoppel, one of which is promissory estoppel. In **Crabb** v. **Arun District Council, 1976 Ch 179: (1975) 3 WLR 847 (CA),** Lord Denning, speaking for the Court of Appeal, traced the genesis of promissory estoppel in equity, and observed: (Ch pp. 187-88).
>
> "The basis of this proprietary estoppel – as indeed of promissory estoppel – is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as "estoppel". They spoke of it as "raising an equity". If I may expand what, Lord Cairns said: (Hughes vs. Metropolitan Railway Co. (1877) LR 2 AC 439 (HL):"It is the first principle upon which all Courts of Equity proceed", that it will prevent a person from insisting on his strict legal rights – whether arising under a contract or on his title deed, or by statute – when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties."
>
> 29. The requirements of the doctrine of promissory estoppel have also been formulated in **Chitty on Contracts (Hugh Beale, Chitty on Contracts, (32nd Edn., Sweet & Maxwell 2017))**:
>
> "4.086. For the equitable doctrine to operate there must be a legal relationship giving rise to rights and duties between the parties; a promise or a representation by one party that he will not enforce against the other his strict legal rights

arising out of that relationship; an intention on the part of the former party that the latter will rely on the representation; and such reliance by the latter party. Even if these requirements are satisfied, the operation of the doctrine may be excluded if it is, nevertheless, not "inequitable" for the first party to go back on his promise. The doctrine most commonly applies to promises not to enforce contractual rights, but it also extends to certain other relationships.

* * *

4.088…..The doctrine can also apply where the relationship giving rise to rights and correlative duties is non-contractual: e.g. to prevent the enforcement of a liability imposed by statute on a company director for signing a bill of exchange on which the company's name is not correctly given; or to prevent a man from ejecting a woman, with whom he has been cohabitating, from the family home."

Chitty (supra) clarifies that the doctrine of promissory estoppel may be enforced even in the absence of a legal relationship. However, it is argued that this would be an incorrect application of the doctrine since it gives rise to new rights between the parties, when the intent of the doctrine is to restrict the enforcement of previously existing rights:

"4.089. It has, indeed, been suggested that the doctrine can apply where, before the making of the promise or representation, there is no legal relationship giving rise to rights and duties between the parties, or where there is only a putative contract between them: e.g. where the promisee is induced to believe that a contract into which he had undoubtedly entered was between him and the promisor, when in fact it was between the promisee and another person. But it is submitted that these suggestions mistake the nature of the doctrine, which is to restrict the enforcement by the promisor of previously existing rights against the promisee. Such rights can arise only out of a legal relationship existing between these parties before the making of the promise or representation. To apply doctrine where there was no such relationship would contravene the rule (to be discussed in para.4.099 below) that the doctrine creates no new rights."

30. Generally speaking under English law, judicial decisions have in the past postulated that the doctrine of promissory estoppel cannot be used as a 'sword', to give rise to a cause of action for the enforcement of a promise lacking any

consideration. Its use in those decisions has been limited as a 'shield', where the promisor is estopped from claiming enforcement of its strict legal rights, when a representation by words or conduct has been made to suspend such rights. In **Combe** v. **Combe**, **(1951) 2 KB 215 (CA)**, the Court of Appeal held that consideration is an essential element of the cause of action: (KB p. 220).

"… It [promissory estoppel] may be part of a cause of action, but not a cause of action in itself.

* * *

… the principle [promissory estoppel] never stands alone as giving a cause of action in itself, it can never do away with the necessity of consideration when that is an essential part of the cause of action. The doctrine of consideration is too firmly fixed to be overthrown by a side-wind."

31. Even within English Law, the application of the rule laid down in **Combe** (supra) has been noticed to be inconsistent. (Wyvern Development, In re, (1974) 1 WLR 1097 cited in Susan M. Morgan, "A Comparative Analysis of the Doctrine of Promissory Estoppel in Australia, Great Britain and the United States", (1985) 15 Melbourne University Law Review 134, 139-141). The scope of the rule has also been doubted on the ground that it has been widely framed. (Tool Metal Mfg. Co. Ltd. v. Tungsten Electric Co. Ltd., (1955) 1 WLR 761 (HL) Lord Simonds states: (slr P.764) … "I do not wish to lend the authority of this House to the statement of principle which is to be found in *Combe* v. *Combe*, (1951) 2 KB 215 (CA) and may well be far too widely stated."). Hence, in the absence of a definitive pronouncement by the House of Lords holding that promissory estoppel can be a cause of action, a difficulty was expressed in stating with certainty that English Law has evolved from the traditional approach of treating promissory estoppel as a 'shield' instead of a 'sword'. (*Baird Textiles Holdings Ltd.* v. *Marks & Spencer Plc., (2022) 1 All ER (Comm) 737 (CA), Court of Appeal stated that "there is no real prospect of the claim (estoppel) succeeding unless and until law is developed, or corrected, by the House of Lords").* By contrast, the law in the United States. (*American Law Institute, Restatement of the Law (2d), Contracts (1981), para 90)* and Australia (*Waltons Stores (Interstate) Ltd.* v. *Maher, (1988) 164 CLR 387 (Aust))* is less restrictive in this regard.

32. India, as we shall explore shortly, adopted a more expansive statement of the doctrine. Comparative law enables countries which apply a doctrine from across international frontiers to have the benefit of hindsight.

33. This Court has given an expansive interpretation to the doctrine of promissory estoppel in order to remedy the injustice being done to a party who has relied on a promise. In Motilal Padampat Sagar Mills Co. Ltd. V. State of U.P. (1979) 2 SCC 409: this Court viewed promissory estoppel as a principle in equity, which was not hampered by the doctrine of consideration as was the case under the English Law. This Court speaking through P.N.Bhagwati, J., (as he was then), held thus: (SCC p. 430, para 12)

"12. … having regard to the general opprobrium to which the doctrine of consideration has been subjected by eminent jurists, we need not be unduly anxious to project this doctrine against assault or erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a justice device for preventing injustice…We do not see any valid reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so."

H.4 From estoppel to expectations

34. Under English Law, the doctrine of promissory estoppel has developed parallel to the doctrine of legitimate expectations. The doctrine of legitimate expectations is founded on the principles of fairness in government dealings. It comes into play if a public body leads an individual to believe that they will be a recipient of a substantive benefit. The doctrine of substantive legitimate expectation has been explained in **R** v. **North & East Devon Health Authority, ex p Coughlan**, **2001 QB 213** in the following terms: (QB pp.241-42, paras 56-57)

"56. ... But what was their legitimate expectation?" Where there is a dispute as to this, the dispute has to be determined by the court, as happened in Findlay In re 1985 AC 318. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion.

57. …. Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy."

35. Under English Law, the doctrine of legitimate expectation initially developed in the context of public law as an analogy to the doctrine of promissory estoppel found in private law. However, since then, English Law has distinguished between the doctrines of promissory estoppel and legitimate expectation as distinct remedies under private law and public law, respectively. De Smith's Judicial Review (Harry Woolf, De Smith's Judicial Review (8th Edn., Thomson Reuters 2018) notes the contrast between the public law approach of the doctrine of legitimate expectation and the private law approach of the doctrine of promissory estoppel :

"despite dicta to the contrary (Rootkin v. Kent County Council (1981) 1 WLR 1186 (CA), "R v. Jockey Club ex p RAM Racecourses (1993) 2 All ER 225 (DC), "R v. IRC ex p Camacq Corpn. (1990) 1 WLR 191 (CA), it is not normally necessary for a person to have changed his position or to have acted to his detriment in order to qualify as the holder of a legitimate expectation R. v Ministry for Agriculture, Fisheries & Foods, ex p Hamble (Offshore) Fisheries Ltd, (1995) 2 All ER 714 . . . Private law analogies from the field of estoppel are, we have seen, of limited relevance where a public law principle requires public officials to honour their undertakings and respect legal certainty, irrespective of whether the loss has been incurred by the individual concerned [Simon Atrill, 'The End of Estoppel in Public Law?' (2003) 62 Cambridge Law Journal 3]."

36. Another difference between the doctrines of promissory estoppel and legitimate expectation under English Law is that the latter can constitute a cause of action (Rebecca Williams, "The Multiple Doctrines of Legitimate Expectations",

(2016) 132 (Oct) Law Quarterly Review 639, 645). The scope of the doctrine of legitimate expectation is wider than promissory estoppel because it not only takes into consideration a promise made by a public body but also official practice, as well. Further, under the doctrine of promissory estoppel, there may be a requirement to show a detriment suffered by a party due to the reliance placed on the promise. Although typically it is sufficient to show that the promisee has altered its position by placing reliance on the promise, the fact that no prejudice has been caused to the promisee may be relevant to hold that it would not be "inequitable" for the promisor to go back on their promise (American Law Institute, Restatement of the Law (2d), Contracts (1981), para 4-095). However, no such requirement is present under the doctrine of legitimate expectation. In R. vs Newham London Borough Council, (2002) 1 WLR 237 (CA), the Court of Appeal held: (Newham London Borough Council case, WLR p. 250 para 55)

> "55. The present case is one of reliance without concrete detriment. We use this phrase because there is moral detriment, which should not be dismissed lightly, in the prolonged disappointment which has ensued; and potential detriment in the deflection of the possibility, for a refugee family, of seeking at the start to settle somewhere in the United Kingdom where secure housing was less hard to come by. In our view these things matter in public law, even though they might not found an estoppel or actionable misrepresentation in private law, because they go to fairness and through fairness to possible abuse of power. To disregard the legitimate expectation because no concrete detriment can be shown would be to place the weakest in society at a particular disadvantage. It would mean that those who have a choice and the means to exercise it in reliance on some official practice or promise would gain a legal toehold inaccessible to those who, lacking any means of escape, are compelled simply to place their trust in what has been represented to them."

37. Consequently, while the basis of the doctrine of promissory estoppel in private law is a promise made between two parties, the basis of the doctrine of legitimate expectation in public law is premised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities. This is not to suggest that the doctrine of promissory estoppel has no application in circumstances when a State entity has entered into

a private contract with another private party. Rather, in English law, it is inapplicable in circumstances when the State has made representation to a private party, in furtherance of its public functions. (Nicholas Bamforth, "Legitimate Expectations and Estoppel", (1998) 3 Jud Rev 196).

H.5 Indian Law and the doctrine of legitimate expectations

38. Under Indian Law, there is often a conflation between the doctrines of promissory estoppel and legitimate expectation. This has been described in Jain and Jain's well known treatise, Principles of Administrative Law. (M.P. Jain and S.N. Jain, Principles of Administrative Law, 7th Edn., 2013) :

"At times, the expressions 'legitimate expectation' and 'promissory estoppel' are used interchangeably, but that is not a correct usage because 'legitimate expectation' is a concept much broader in scope than 'promissory estoppel'.

* * *

A reading of the relevant Indian cases, however, exhibit some confusion of ideas. It seems that the judicial thinking has not as yet crystallised as regards the nature and scope of the doctrine. At times, it has been referred to as merely a procedural doctrine; at times, it has been treated interchangeably as promissory estoppel. However both these ideas are incorrect. As stated above, legitimate expectation is a substantive doctrine as well and has much broader scope than promissory estoppel.

* * *

In *Punjab Communications Ltd.* v. *Union of India*, (1999) 4 SCC 727 the Supreme Court has observed in relation to the doctrine of legitimate expectation: (SCC pp.747-48, para 37)

> "37…. the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way Reliance must have been placed on the said representation and the representee must have thereby suffered detriment."

It is suggested that this formulation of the doctrine of legitimate expectation is not correct as it makes "legitimate expectation" practically synonymous with promissory estoppel. Legitimate expectation may arise from conduct of the authority; a promise is not always necessary for the purpose."

39. While this doctrinal confusion has the unfortunate consequence of making the law unclear, citizens have been the victims. Representations by public authorities need to be held to scrupulous standards, since citizens continue to live their lives based on the trust they repose in the State. In the commercial world also, certainty and consistency are essential to planning the affairs of business. When public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the trust reposed by citizens in the State. The generation of a business friendly climate for investment and trade is conditioned by the faith which can be reposed in government to fulfil the expectations which it generates. Professors Jain and Deshpande characterize the consequences of this doctrinal confusion in the following terms:

"Thus, in India, the characterization of legitimate expectations is on a weaker footing, than in jurisdictions like UK where the courts are now willing to recognize the capacity of public law to absorb the moral values underlying the notion of estoppel in the light of the evolution of doctrines like LE [Legitimate Expectations] and abuse of power. If the Supreme Court of India has shown its creativity in transforming the notion of promissory estoppel from the limitations of private law, then it does not stand to reason as to why it should also not articulate and evolve the doctrine of LE for judicial review of resilement of administrative authorities from policies and long-standing practices. If such a notion of LE is adopted, then not only would the Court be able to do away with the artificial hierarchy between promissory estoppel and legitimate expectation, but, it would also be able to hold the administrative authorities to account on the footing of public law outside the zone of promises on a stronger and principled anvil. Presently, in the absence of a like doctrine to that of promissory estoppel outside the promissory zone, the administrative law adjudication of resilement of policies stands on a shaky public law foundation."

40. We shall therefore attempt to provide a cogent basis for the doctrine of legitimate expectation, which is not merely

grounded on analogy with the doctrine of promissory estoppel. The need for this doctrine to have an independent existence was articulated by Justice Frankfurter of the United State Supreme Court in Vitarelli vs Seton (1959 SCC OnLine US SC 87): (SCC OnLine US SC para 16)

> "16. An executive agency must be rigorously held to the standards by which it professes its action to be judged…. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed…… This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

41. However, before we do this, it is important to clarify the understanding of the doctrine of legitimate expectation in previous judgements of this Court. In ***National Buildings Construction Corporation v. S. Raghunathan, (1998) 7 SCC 66***, a three Judge bench of this Court, speaking through Justice S. Saghir Ahmad, held that: (SCC p.75 para 18)

"18. The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel."

42. However, it is important to note that this observation was made by this Court while discussing the ambit of the doctrine of legitimate expectation under English Law, as it stood then. As we have discussed earlier, there was a substantial conflation or overlap between the doctrines of legitimate expectation and promissory estoppel even under English Law since the former

was often invoked as being analogous to the latter. However, since then and since the judgment of this Court in National Buildings Construction Corporation (supra), the English Law in relation to the doctrine of legitimate expectation has evolved. More specifically, it has actively tried to separate the two doctrines and to situate the doctrine of legitimate expectations on a broader footing.

43. In *R.* ***(Reprotech (Pebsham) Ltd) v. East Sussex County Council, [2003] 1 WLR 348 (HL)*** the House of Lords has held thus:

"33. In any case, ***I think*** that it is unhelpful to introduce private law concepts of estoppel into planning law. As Lord Scarman pointed out in ***Newbury District Council v. Secretary of State for the Environment [1981] AC 578 , (AC at p. 616),*** estoppels bind individuals on the ground that it would be unconscionable for them to deny what they have represented or agreed. But these concepts of private law should not be extended into "the public law of planning control, which binds everyone". (See also Dyson J in ***R v. Leicester City Council, Ex p Powergen UK Ltd [2000] JPL 629).***

34. There is of course an analogy between a private law estoppel and the public law concept of a legitimate expectation created by a public authority, the denial of which may amount to an abuse of power... But it is no more than an analogy because remedies against public authorities also have to take into account the interests of the general public which the authority exists to promote. Public law can also take into account the hierarchy of individual rights which exist under the Human Rights Act 1998, so that, for example, the individual's right to a home is accorded a high degree of protection (see Coughlan's case, (R. v. North and East Devon Health Authority, ex p Coughlan, 2001 QB 213) at pp 254-255) while ordinary property rights are in general far more limited by considerations of public interest: see ***R (Alconbury Developments Ltd) v. Secretary of State for the Environment, Transport and the Regions [2001] 2 WLR 1389 (HL).***

35. It is true that in early cases such as the Wells case (Wells v. Minister of Housing and Local Govt. (1967) 1 WLR 1000 and ***Lever Finance Ltd v. Westminster (City) London Borough Council [1971] 1 QB 222,*** Lord Denning MR

used the language of estoppel in relation to planning law. At that time the public law concepts of abuse of power and legitimate expectation were very undeveloped and no doubt the analogy of estoppel seemed useful.....It seems to me that in this area, public law has already absorbed whatever is useful from the moral values which underlie the private law concept of estoppel and the time has come for it to stand upon its own two feet."

44. In a concurring opinion in ***Monnet Ispat and Energy Ltd. v. Union of India, (2012) 11 SCC 156*** Justice H L Gokhale highlighted the different considerations that underlie the doctrines of promissory estoppel and legitimate expectation. The learned judge held that for the application of the doctrine of promissory estoppel, there has to be a promise, based on which the promisee has acted to its prejudice. In contrast, while applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the State action. He observed thus: (SCC p. 153. Paras 289-290)

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289. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification.

290.....In any case, in the absence of any promise, the Appellants including Aadhunik cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. Alternatively, the Appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest."

45. In *Union of India* v. *Lt. Col. P.K. Choudhary, (2016) 4 SCC 236*, this Court discussed the decision in Monnet Ispat (supra) and noted its reliance on the judgment in *Attorney General for New South Wales* v. *Quinn,* (1990) 64 Aust LJR 327.

It then observed: (P.K.Chaudhary case (supra) SCC p.267, para 56)

"56. … This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

Thus, the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

46. As regards the relationship between Article 14 and the doctrine of legitimate expectation, a three judge Bench of this Court in *Food Corpn. of India* v. *Kamdhenu Cattle Feed Industries*, (1993) 1 SCC 71, speaking through J.S. Verma J., held thus: (SCC p.76 paras 7-8)

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision- making process in all State actions. 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 bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

47. More recently, in ***NOIDA Entrepreneurs Assn. v. Noida, (2011) 6 SCC 508*** a two-judge bench of this Court, speaking through Justice B. S. Chauhan, elaborated on this relationship in the following terms: (SCC pp.524-25, paras 39 & 41)

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

* * *

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in

> larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other...]"
>
> As such, we can see that the doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness enshrined under Article 14 finds concrete expression."

Expectations breached by the Chandigarh Administration and Chandigarh Housing Board.

86. Circular dated 05.10.2012 (Annexure R-2), having been issued in colourable exercise of power by executive cannot restrict/curtail the intent of provisions of Section 3 of Act, 1952 and Rules, 1960 and Rules, 1973 framed thereunder, whereby transfer of land can be effected by allotment, auction or otherwise. In the instant case, transfer of land by Chandigarh Administration favouring the Board by allotment to effectuate the Scheme, 2008, since initiated in the year 2008 and any default occurring at the instance of the Board cannot create any obstacle in the implementation of said Scheme and further the fact that even otherwise Circular dated 05.10.2012 (Annexure R-2) is having its prospective operation, whereas allocation(s) of land for Scheme, 2008, were finalized well prior to 05.10.2012.

87. The Administrator of Chandigarh Administration is having overall superintendence and control over the working of the Board.

Resultantly, in terms of Article 239 of Constitution of India, he is the representative of the Union Government, and, thereby in respect of Union Territory of Chandigarh, he is endowed with all the powers to administer the territories falling within the territorial domain of Union Territory of Chandigarh. If so, the representations, as were made in the said capacity by the Administrator, thus, are deemed to be made by him as the agent of Union of India. In the said capacity, the Administrator proceeded to resolve the housing problems faced by the employees serving in the Chandigarh Administration, besides those serving in the Boards, Corporations and of all the employees concerned of Punjab and Haryana High Court. In the said process, the Chandigarh Administration issued Letter(s) of Intent dated 10.01.2008 (Annexure P-2 colly), and immediately thereafter the Board being instrumentality and Nodal Agency of Chandigarh Administration floated the Scheme, 2008. In the said process, applications alongwith earnest money were invited from the aspirants to seek undeveloped plots for their subsequently being developed, as housing units for therein the aspirants concerned being housed. The said housing units on the subject land were to be raised by the Board, a Nodal Agency of Chandigarh Administration and that too headed by Administrator, who is none else the Administrator of Union Territory Administration as well. In pursuance to the said issued advertisement, the aspirants concerned made their responses leading to draw of lots and as a sequel to draw of lots, the petitioners were successful in the said draw of lots.

It is pertinent to mention here that from the said draw of lots, the Board had received earnest money to the tune of Rs.57 Crores and instead of depositing 25% cost of land, which was approximately Rs.43 Crores, with the Chandigarh Administration, got deposited the entire amount in Fixed Deposits.

88. Though, this Court has hereinbove concluded, that the present petitioners (successful employees) are to be endowed with the beneficent grace of the principle of legitimate expectation. Moreover, though this Court has also concluded, that the Chandigarh Administration as well as the Board are estopped from resiling or breaching the assurance, meted to the petitioners (successful employees). Further, since the happenings of the draw of lots in the year 2010 upto now, there is but naturally escalation in the prices of construction material. Therefore, irrespective of the above, it would be extremely unjust and oppressive, that this Court entails an obligation, upon the Board to construct the dwelling units, at a price detailed in the brochure. For ensuring, that thereby no injustice is done to the Board, this Court is of the view that only expenses incurred by the Board, on the purchase of construction material be, in terms of the completed areas of constructions, besides given the nature of construction, thus, be proportionately shared by the allottees concerned. However, it is further clarified, that since the market value of the lands, is to remain static since 2008 upto now, but because of the reason, that there has been an immense delay and, for no well advanced

reasons on the part of the Chandigarh Administration as well as the Board, to resile from the promises made to the allottees (successful employees), thereby it would be grossly unjust, and, harsh to yet ask to the allottees that the Chandigarh Administration, and/or the Board are yet permitted to, on account of their own elongated delay since 2008 upto now, claim escalations in the lands prices, and, the said escalations becoming proportionately incumbent upon the allottees (successful employees).

89. Consequently, a direction is passed upon the Chandigarh Administration as well as the Board to commence constructions in terms of Scheme, 2008, within a period of two months from today, and, also a direction is passed upon the Board to, through its agent or contractor, complete the said constructions within a year. Furthermore, a mandamus is also passed, upon the Board to ensure that encumbrance free delivery of possession of flats is made to the petitioners (successful employees) within two months thereafter along with all the amenities being provided to all the dwelling units, subject to deposit of remainder of amount by petitioners (successful employees) in terms of Scheme, 2008, as well as proportionate escalation of cost of construction, as indicated above. Needless to mention here that cost of the entire land meant for implementation of Scheme, 2008, would remain @ Rs.7920/- per square yard.

90. As a sequel to above findings, all the six petitions are allowed accordingly.

91. Pending application, if any, also stands disposed of.

(SURESHWAR THAKUR) **JUDGE**	**(LALIT BATRA)** **JUDGE**

30.05.2024
jitender

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No