2022 INSC 594

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4178-4197 OF 2022
[Arising out of Special Leave Petition (Civil) Nos.10015-10034 of 2020]

YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY ETC. ...APPELLANT(S)

VERSUS

SHAKUNTLA EDUCATION AND WELFARE SOCIETY & ORS. ETC. ...RESPONDENT(S)

WITH

CIVIL APPEAL NOS.4198-4217 OF 2022
[Arising out of Special Leave Petition (Civil) Nos.9891-9910 of 2020]

CIVIL APPEAL NO. 4218 OF 2022
[Arising out of Special Leave Petition (Civil) No.14141 of 2020]

CIVIL APPEAL NO. 4219 OF 2022
[Arising out of Special Leave Petition (Civil) No.300 of 2022]

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. This batch of appeals challenge the judgment and order dated 28th May, 2020, passed by the Allahabad High Court in various writ petitions filed by the allottees of plots of land. The writ petitions were filed challenging the demand of additional amount made by the appellant herein-Yamuna Expressway Industrial Development Authority (hereinafter referred to as "YEIDA") in respect of plots of land leased out to the allottees; the resolution of the Board of YEIDA dated 15th September, 2014, and the Government Order dated 29th August, 2014, vide which the State Government had permitted YEIDA to recover the additional amount from the allottees.

3. The facts in the present case are not in dispute. For the sake of convenience, we will refer to the factual details as are found in Writ Petition No.28968 of 2018, filed before the High

Court of Allahabad by M/s Shakuntla Education and Welfare Society (the respondent No.1 herein).

4. A vast area of land was acquired by the State of Uttar Pradesh in Gautam Budh Nagar district for public purposes. The said area of land was acquired for the benefit of YEIDA. After the land was acquired, YEIDA invited applications for the allotment of plots of land in the area developed by it. In response to the notice inviting applications for such allotment, various allottees including the respondent No.1 herein applied and were allotted plots admeasuring different sizes.

5. The respondent No.1 was informed by letter dated 14th September, 2009, that a plot of 50 acres of land has been reserved for it. Subsequently, a letter of allotment dated 10th December, 2009 was issued to the respondent No.1, allotting plot No.2 in Sector 7-A, having an area of 50 acres, i.e., equivalent to 2,02,350 sq. meter. In the allotment letter, it was stated that the premium of the land allotted was Rs.1,055/- per sq. meter. It was also mentioned that the respondent No.1 had

deposited 10% of the premium amount and the balance 90% of the premium amount was payable in monthly installments as specified in the chart contained therein. The allotment letter further stated that the lease deed shall be executed and the possession of the land shall be handed over after completion of the acquisition proceedings. It was stated that the land was already in possession of YEIDA.

6. It was the contention of the respondent No.1 that on the basis of the aforesaid allotment letter, a lease deed came to be executed in favour of the respondent No.1 on 22nd January, 2010 for a period of 90 years after the respondent No.1 had made substantial compliance with the terms and conditions of the allotment and had deposited the necessary amount. The lease deed provided that in addition to the amount payable by the respondent No.1, as mentioned in the allotment letter, a further amount, i.e., 2.5% of the total premium of the plot was payable as annual lease rent.

7. It was further the case of the respondent No.1 that during measurement, it was found that the plot allotted to it, had an excess area of about 2 acres. The said excess land was also leased out to it on the same terms and conditions. It was further the case of the respondent No.1 that it was thereafter given possession of the aforesaid land and on it, a University known as Galgotias University was developed.

8. It was further the case of the respondent No.1 that subsequently YEIDA came out with a policy and gave an option to the respondent No.1 to deposit the entire premium amount in lump-sum rather than in installments. This was subject to certain rebate. It was stated that in accordance with the said policy, a lump-sum amount was worked out by YEIDA and the same was also paid by the respondent No.1. An undertaking was also taken from the respondent No.1 on an affidavit on 7th June, 2012, that in the event there was any clerical error or miscalculation of the lump-sum amount, the respondent No.1 would make good the deficiency.

9. The State of Uttar Pradesh had also made large-scale acquisition of lands for the benefit of New Okhla Industrial Development Authority ("NOIDA" for short) and Greater NOIDA. A number of writ petitions came to be filed by farmers challenging the said acquisition on various grounds before the Allahabad High Court. The main ground of challenge was that there was no urgency for acquiring the land and as such, invoking Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as "the L.A. Act") was not warranted. It was contended that on account of invoking of Section 17 of the L.A. Act, a valuable right available to the writ petitioners under Section 5A of the L.A. Act was taken away. All the said writ petitions came to be decided vide the judgment and order dated 21st October, 2011. In the leading case, i.e., ***Gajraj and others vs. State of U.P. and others***[1], the Full Bench of the Allahabad High Court came to a finding that the urgency clause ought not to have been invoked and the farmers were unlawfully denied the benefit of Section 5A of the L.A. Act, wherein they could

1 2011 SCC OnLine All 1711

raise objections to the acquisition of the land. However, taking into consideration the subsequent developments that the lands had already been developed and third party rights had accrued, the Full Bench of the Allahabad High Court in the case of ***Gajraj*** (supra) considered it appropriate not to disturb the acquisition. In order to balance the equities, the Full Bench of the Allahabad High Court directed payment of additional compensation of 64.7% plus some other benefits to certain class of farmers. It also directed certain other benefits to be given to the farmers. The aforesaid additional compensation of 64.7% was worked out by the Court taking into consideration the fact that in respect of one of the villages, i.e., Patwari, NOIDA itself had entered into negotiations with the farmers and had extended the benefit of additional compensation at the aforesaid rate over and above the compensation awarded.

10. The aforesaid judgment and order of the Full Bench of the Allahabad High Court in the case of ***Gajraj*** (supra) came to be

confirmed by this Court in the case of ***Savitri Devi vs. State of Uttar Pradesh and others***[2].

11. Since the farmers, whose lands were acquired for the benefit of NOIDA and Greater NOIDA, were being paid additional compensation of 64.7%, there was unrest amongst the farmers whose lands were acquired for YEIDA. It appears that on account of agitation by the farmers, vast stretches of lands could not be developed. As such, the Chief Executive Officer (hereinafter referred to as "CEO") of YEIDA addressed a letter dated 10th April, 2013, to the State Government, requesting to find a solution. The State Government, acting on the said letter, instructed the Commissioner, Meerut Division, Meerut, vide its letter of the same day, i.e., dated 10th April, 2013, to meet various groups of farmers and submit a report.

12. Accordingly, the Commissioner held a meeting with various groups of farmers and the concerned District Magistrates, and submitted a report to the State Government

2 (2015) 7 SCC 21

on 16th July, 2013, recommending constitution of a High-Level Committee.

13. The State Government vide Office Memo dated 3rd September, 2013, constituted a High-Level Committee under the Chairmanship of Sri Rajendra Chaudhary, Minister of Prison, State of Uttar Pradesh (hereinafter referred to as "the Chaudhary Committee"). The Chaudhary Committee also consisted of the Divisional Commissioner of the concerned Division and the Collector of concerned District. The Chaudhary Committee submitted its recommendations to the State Government, *inter alia,* recommending for the payment of 64.7% additional amount as "no litigation incentive" to the farmers and for its reimbursement from the allottees in the appropriate proportion.

14. The State Government accepted the recommendations of the Chaudhary Committee and issued a Government Order dated 29th August, 2014 (hereinafter referred to as "the said G.O."). The said G.O. provided that the farmers should be

offered 64.7% additional amount on the condition that they withdraw their petitions challenging the acquisition proceedings and undertake not to institute any litigation and create any hindrance in the development work of YEIDA. It was clarified in the said G.O. that the Government would not bear the burden of the additional amount.

15. The said G.O. was placed before the Board of YEIDA in its meeting, held on 15th September, 2014, and the same was approved in the said meeting on the very same day, vide Resolution dated 15th September, 2014.

16. In pursuance to the said G.O. and the Resolution dated 15th September, 2014 of the Board of YEIDA, additional demand notices were issued to various allottees. In case of the respondent No.1, an additional premium at the rate of Rs.600/- per sq. meter, for the land allotted and leased out, came to be demanded, totaling to Rs.12,14,10,000/-.

17. It was in this background that various writ petitions came to be filed before the Allahabad High Court, including Writ Petition No.28968 of 2018, filed by the respondent No.1.

18. By the impugned judgment and order dated 28th May, 2020, the Allahabad High Court allowed the said writ petitions holding that:-

(i) the decision in the case of ***Gajraj*** (supra), as approved by this Court in the case of ***Savitri Devi*** (supra), was not a judgment *in rem* and could not have been applied to proceedings for acquiring the land under different notifications or for YEIDA;

(ii) the said G.O. and the Resolution of the Board of YEIDA dated 15th September, 2014 were violative of the provisions of the L.A. Act; and

(iii) the policy of the State Government was unfair, unreasonable, arbitrary and in violation of the provisions of the Transfer of Property Act, 1882.

19. Being aggrieved thereby, the present appeals by way of special leave have been filed on behalf of YEIDA, State of Uttar Pradesh and farmers whose lands were acquired.

20. We have heard Shri C.A. Sundaram, Shri C.U. Singh and Shri Maninder Singh, learned Senior Counsel appearing on behalf of YEIDA, Shri Vinod Diwakar, learned Additional Advocate General appearing on behalf of the State of Uttar Pradesh, Shri Rakesh U. Upadhyay and Dr. Surat Singh, learned counsel appearing on behalf of the farmers whose lands were acquired, Shri Nakul Dewan, Shri Sunil Gupta, Shri Ravindra Srivastava and Shri Sanjiv Sen, learned Senior Counsel appearing on behalf of the respondents-original allottees of land.

21. The main contention of the appellants in the present appeals is that the said G.O. was a policy decision of the State Government, taken in public interest. It is submitted that the said policy decision was taken after taking into consideration the farmers' agitation, the report of the Chaudhary Committee

and all other relevant factors. It is submitted that in order to avoid acquisitions from being declared illegal, the Cabinet of Ministers of the State Government had taken a considered decision to adopt a formula, which was carved out by the judgment of the Full Bench of the Allahabad High Court in the case of ***Gajraj*** (supra) and approved by this Court in the case of ***Savitri Devi*** (supra).

22. It is also the contention on behalf of the appellants that the policy of the State Government was in consonance with the decision of this Court in the case of ***Centre for Public Interest Litigation and others vs. Union of India and others***[3], wherein this Court has held that it is obligatory on the State to ensure that people are adequately compensated for the transfer of resource to the private domain. Relying on the judgment of this Court in the case of ***Narmada Bachao Andolan vs. Union of India and others***[4], it is submitted that the policy of the State Government was formulated by looking at the welfare of

3 (2012) 3 SCC 1
4 (2000) 10 SCC 664

the people at large rather than restricting the benefit to a small section of the society. Relying on various judgments of this Court, it is submitted that when the change in the policy of the State is in public interest, it will override all private agreements entered into by the State.

23. It is further submitted on behalf of the appellants that, as a matter of fact, on account of agitation of the farmers, development could not take place in the concerned area. It is submitted that various plot owners had approached the State Government and its authorities for finding out a solution to these problems, so that the development could proceed further. It is submitted that the proceedings of the Chaudhary Committee would itself reveal that all the stakeholders including the representatives of allottees were heard by the Chaudhary Committee. Not only that, but various allottees had, in writing, agreed that they are willing to pay the additional compensation so that the hindrance in the development is removed. It is therefore submitted that it does

not lie in the mouth of the respondents to question the said G.O. and oppose the payment of additional compensation.

24. Relying on various judgments of this Court, it is further submitted on behalf of the appellants that the lease deed itself permitted additions, alterations or modifications in the terms and conditions of the lease. As such, even as per the lease deed, the appellants were entitled to modify or alter the terms and conditions of the lease. It is submitted that the word "modify" has to be used in a broader sense and not in a narrower sense.

25. Learned counsel for the appellants further submitted that the High Court fell in great error in holding that no writ petitions were pending. It is submitted that, as a matter of fact, more than 600 writ petitions were pending when the policy decision was taken by the State Government. It is submitted that the policy decision was taken so as to save the acquisition, which was otherwise liable to be quashed and set aside. It is submitted that it is, in fact, the respondents, who are the

beneficiaries of the said measure and as such, having taken benefit of the said measure, they cannot be permitted to refuse to pay the additional compensation.

26. It is also submitted on behalf of the appellants that the allotees had an option, either to make additional payment or to take refund with interest. Having opted not to seek refund with interest, it does not lie in the mouth of the respondents to refuse to pay the additional compensation.

27. It is also submitted on behalf of appellant-YEIDA that it had specifically submitted that stay orders passed by the High Court were in force in most of the cases related to residential plots, due to which the development work could not be completed.

28. Learned counsel appearing on behalf of the farmers also support the stand of YEIDA. It is submitted that the builders had already recovered additional compensation from the homebuyers. As such, the additional compensation was already passed on by the builders to the homebuyers. It is

submitted that if the contention of the respondents is accepted, it will amount to nothing else but allowing of unjust enrichment.

29. It is further submitted that the respondents were not entitled to the discretionary relief under Article 226 of the Constitution of India. The writ petitions filed by them before the Allahabad High Court were filed without impleading the farmers who were necessary parties as respondents to the writ petitions.

30. Elaborate arguments have been advanced on behalf of the respondents. To summarize, they are as under:

(i) The respondents had not given any undertaking to pay additional compensation, as stated;

(ii) The term "modification/addition" with regard to payment was restricted only to any clerical or technical error;

(iii) The High Court has rightly held that ***Gajraj*** (supra) and ***Savitri Devi*** (supra) applied only to the peculiar facts and circumstances of those cases. In the case of ***Gajraj*** (supra), the High Court had done elaborate exercise of categorizing the cases into three types. In any case, it is submitted that the State itself was aggrieved by the decision in ***Gajraj*** (supra), which has been challenged by it before this Court;

(iv) In the present case, many of the acquisitions were by private negotiations and as such, there is no question of applicability of either Section 17 or Section 5A of the L.A. Act;

(v) There were concluded contracts entered between the allottees and YEIDA. As such, it was not open for YEIDA to unilaterally change the terms and conditions of the contract and enhance the lease premium;

(vi) The High Court has rightly held that the so-called policy of the State Government was arbitrary, irrational and therefore not sustainable in law;

(vii) On behalf of the respondent No.19-Supertech Limited, an additional submission was made that the appropriate authority has already passed an order admitting the petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016;

(viii) On behalf of the individual plot owners, it is submitted that the said plot owners, who belong to the middle class section of the society cannot be burdened with the additional amount.

(ix) The respondents also placed reliance on the judgment of this Court in the case of ***ITC Limited vs. State of Uttar Pradesh and others***[5] to support the proposition that concluded contracts cannot be interfered with or reopened.

5 (2011) 7 SCC 493

31. With the assistance of the learned counsel for the parties, we have perused the material on record.

32. The main reasons that weighed with the High Court while allowing the writ petitions are thus:

(i) That the lands which were acquired for YEIDA in the present case were under different notification than the notification which fell for consideration in the case of ***Gajraj*** (supra);

(ii) That this Court in the case of ***Savitri Devi*** (supra) has categorically held that the directions given in the case of ***Gajraj*** (supra) were issued by the High Court in the peculiar facts and circumstances of the case and therefore, the same could not have been applied to the facts of the present case;

(iii) That some other petitions filed before the High Court claiming the benefit on the basis of ***Gajraj*** (supra) were ultimately rejected by the High Court;

(iv) That the State Government has to strictly act in accordance with the law or statutory provisions. It cannot act arbitrarily or in an unfair manner in breach of specific provisions of law;

(v) That it is only for the Courts to grant equitable relief and the Government is not entitled to pass order on equitable ground of law.

33. We are called upon to examine the correctness of these findings.

34. The relevant portion of the judgment of the Full Bench of the High Court in the case of ***Gajraj*** (supra) is reproduced by this Court in the case of ***Savitri Devi*** (supra). It will be apposite to refer to following observations in the case of ***Savitri Devi*** (supra):

> "**20.** In a nutshell, relief was categorised in three compartments. In the first instance, those writ petitions which were filed belatedly were dismissed. In the second category, three villages, namely, Devala (Group 40), Village

Yusufpur Chak Sahberi (Group 38) and Village Asdullapur (Group 42) the acquisition was set aside. Land acquisition in respect of remaining 61 villages is concerned, the acquisition was allowed to remain but the additional compensation was increased to 64.7%with further entitlement for allotment of development *abadi* plot to the extent of 10%of the acquired land of those landowners subject to maximum of 2500 sq m.

21. We now reproduce the exact nature of direction [2011 SCC OnLine All 1711] given by the High Court, which reads as follows: (*Gajraj case* [2011 SCC OnLine All 1711] , SCC OnLine All)

> "In view of the foregoing conclusions we order as follows:
>
> *1.* Writ Petition No. 45933 of 2011, Writ Petition No. 47545 of 2011 relating to Village Nithari, Writ Petition No. 47522 of 2011 relating to Village Sadarpur, Writ Petition No. 45196 of 2011, Writ Petition No. 45208 of 2011, Writ Petition No. 45211 of 2011, Writ Petition No. 45213 of 2011, Writ Petition No. 45216 of 2011, Writ Petitions Nos. 45223-24 of 2011, Writ Petition No. 45226 of 2011, Writ Petitions Nos. 45229-30 of 2011, Writ Petition No. 45235 of 2011, Writ Petition No. 45238 of 2011, Writ Petition No. 45283 of 2011 relating to Village Khoda, Writ Petition No. 46764 of 2011, Writ Petition No. 46785 of 2011 relating to

Village Sultanpur, Writ Petition No. 46407 of 2011 relating to Village Chaura Sadatpur and Writ Petition No. 46470 of 2011 relating to Village Alaverdipur which have been filed with inordinate delay and laches are dismissed.

2. (*i*) The writ petitions of *Group 40* (Village Devla) being Writ Petition No. 31126 of 2011, Writ Petition No. 59131 of 2009, Writ Petition No. 22800 of 2010, Writ Petition No. 37118 of 2011, Writ Petition No. 42812 of 2009, Writ Petition No. 50417 of 2009, Writ Petition No. 54424 of 2009, Writ Petition No. 54652 of 2009, Writ Petition No. 55650 of 2009, Writ Petition No. 57032 of 2009, Writ Petition No. 58318 of 2009, Writ Petition No. 22798 of 2010, Writ Petition No. 37784 of 2010, Writ Petition No. 37787 of 2010, Writ Petitions Nos. 31124-25 of 2011, Writ Petition No. 32234 of 2011, Writ Petition No. 32987 of 2011, Writ Petition No. 35648 of 2011, Writ Petition No. 38059 of 2011, Writ Petition No. 41339 of 2011, Writ Petition No. 47427 of 2011 and Writ Petition No. 47412 of 2011 are allowed and Notifications dated 26-5-2009 and 22-6-2009 and all consequential actions are quashed. The petitioners shall be entitled for restoration of their land subject to deposit of compensation which they had received under agreement/award before the Authority/Collector.

(*ii*) Writ Petition No. 17725 of 2010 *Omveer* v. *State of U.P.* (*Group 38*) relating to Village Yusufpur Chak Sahberi is allowed. Notifications dated 10-4-2006 and 6-9-2007 and all consequential actions are quashed. The petitioners shall be entitled for restoration of their land subject to return of compensation received by them under agreement/award to the Collector.

(*iii*) Writ Petition No. 47486 of 2011 (*Rajee* v. *State of U.P.*) of Group 42 relating to Village Asdullapur is allowed. Notifications dated 27-1-2010 and 4-2-2010 as well as all subsequent proceedings are quashed. The petitioners shall be entitled to restoration of their land.

3. All other writ petitions except as mentioned above at (1) and (2) are disposed of with the following directions:

(*a*) The petitioners shall be entitled for payment of additional compensation to the extent of same ratio (i.e. 64.70%) as paid for Village Patwari in addition to the compensation received by them under the 1997 Rules/award which payment shall be ensured by the Authority at an early date. It may be open for the Authority to take a decision as to what proportion of additional compensation be asked to be paid by the allottees. Those petitioners who have not yet

been paid compensation may be paid the compensation as well as additional compensation as ordered above. The payment of additional compensation shall be without any prejudice to rights of landowners under Section 18 of the Act, if any.

(*b*) All the petitioners shall be entitled for allotment of developed *abadi* plot to the extent of 10%of their acquired land subject to maximum of 2500 sq m. We however, leave it open to the Authority in cases where allotment of *abadi* plot to the extent of 6%or 8%has already been made either to make allotment of the balance of the area or may compensate the landowners by payment of the amount equivalent to balance area as per average rate of allotment made of developed residential plots.

4. The Authority may also take a decision as to whether benefit of additional compensation and allotment of *abadi* plot to the extent of 10%be also given to:

(*a*) those landholders whose earlier writ petition challenging the notifications has been dismissed upholding the notifications; and

(*b*) those landholders who have not come to the Court, relating to the notifications which are the subject-

matter of challenge in the writ petitions mentioned at Direction 3.

5. Greater Noida and its allottees are directed not to carry on development and not to implement the Master Plan 2021 till the observations and directions of the National Capital Regional Planning Board are incorporated in Master Plan 2021 to the satisfaction of the National Capital Regional Planning Board. We make it clear that this direction shall not be applicable in those cases where the development is being carried on in accordance with the earlier Master Plan of Greater Noida duly approved by the National Capital Regional Planning Board.

6. We direct the Chief Secretary of the State to appoint officers not below the level of Principal Secretary (except the officers of Industrial Development Department who have dealt with the relevant files) to conduct a thorough inquiry regarding the acts of Greater Noida (*a*) in proceeding to implement Master Plan 2021 without approval of NCRP Board, (*b*) decisions taken to change the land use, (*c*) allotment made to the builders, and (*d*) indiscriminate proposals for acquisition of land, and thereafter the State Government shall take appropriate action in the matter."

(emphasis in original)

> **22.** We may point out at this stage that in respect of all these three categories, the High Court has provided its justification for granting relief in the aforesaid nature. We shall be referring to the same while discussing the cases of the appellants belonging to one or the other category."

35. After considering various judgments, this Court in the case of ***Savitri Devi*** (supra) observed thus:

> "**46.** Thus, we have a scenario where, on the one hand, invocation of urgency provisions under Section 17 of the Act and dispensing with the right to file objection under Section 5-A of the Act, is found to be illegal. On the other hand, we have a situation where because of delay in challenging these acquisitions by the landowners, developments have taken place in these villages and in most of the cases, third-party rights have been created. Faced with this situation, the High Court going by the spirit behind the judgment of this Court in *Bondu Ramaswamy* [(2010) 7 SCC 129 : (2010) 3 SCC (Civ) 1] came out with the solution which is equitable to both sides. We are, thus, of the view that the High Court considered the ground realities of the matter and arrived at a more practical and workable solution by adequately compensating the landowners in the form of compensation as well as allotment of

> developed *abadi* land at a higher rate i.e. 10%of the land acquired of each of the landowners against the eligibility and to (*sic* under) the policy to the extent of 5%and 6%of Noida and Greater Noida land respectively.

36. It could thus be seen that this Court in the said case has found that a peculiar situation arose, where on one hand invocation of urgency provisions under Section 17 of the L.A. Act and dispensing with the right to file objections under Section 5A of the L.A. Act, were found to be illegal, while on the other hand, the developments had already taken place in the villages and in most of the cases, third-party rights were created. Faced with this situation, the High Court came out with the solution which was equitable to both sides. This Court found that the High Court considered the ground realities of the matter and arrived at a more practical and workable solution by adequately compensating the landowners in the form of compensation as well as allotment of developed *abadi* land at a higher rate.

37. No doubt that this Court in paragraph 50 of the judgment in the case of ***Savitri Devi*** (supra) makes it clear that the directions of the High Court were given in the unique and peculiar/specific background and therefore, it would not form precedent for future cases.

38. It is to be noted that in the case of ***Greater Noida Industrial Development Authority vs. Savitri Mohan (Dead) Through Legal Representatives and others***[6], this Court was considering the judgment of the Allahabad High Court, wherein it had quashed and set aside the Notification under Section 4(1) and Section 17(4) of the L.A. Act as well as the Notification under Section 6 read with Section 17(1) of the L.A. Act. A specific question was framed by this Court in the said case in paragraph 10, which reads thus:

> "**10.** The only question for consideration is whether the matter is covered by the judgment of this Court in *Savitri Devi* [*Savitri Devi* v. *State of U.P.*, (2015) 7 SCC 21 : (2015) 3 SCC (Civ) 473] , as claimed by the appellant in which case

6 (2016) 13 SCC 210

> the respondents will be entitled to relief of higher compensation and allotment of land instead of quashing of acquisition proceedings."

39. Answering the aforesaid question, this Court in the said case observed thus:

> "**13.** A perusal of the above shows that compensation had already been disbursed to the extent of 76%. Thereafter, for the entire land of Village Chhapraula falling in Group 18, the relief granted is payment of additional compensation and allotment of land. As already noted, the part of the order where relief of quashing of notification has been given is not of the category of the present case. In these circumstances, we find merit in the contention raised on behalf of the appellant that the Division Bench was in error in distinguishing the present case from the judgment in *Gajraj* [*Gajraj* v. *State of U.P.*, (2011) 11 ADJ 1 : 2011 SCC OnLine All 1711] .
>
> **14.** As observed by this Court in *Savitri Devi* [*Savitri Devi* v. *State of U.P.*, (2015) 7 SCC 21 : (2015) 3 SCC (Civ) 473] , in spite of the finding that invocation of urgency clause was uncalled for, the relief of setting aside the acquisition was not granted having regard to the

> development that had already been undertaken on substantial part of the land. However, to balance the equities higher compensation and allotment of land was ordered to meet the ends of justice. [*Savitri Devi* v. *State of U.P.*, (2015) 7 SCC 21, para 17]"

40. It could thus clearly be seen that though this Court in the case of ***Savitri Devi*** (supra) observed that the judgment in the case of ***Gajraj*** (supra) has to be construed particularly in the unique and peculiar/specific background, in the case of ***Savitri Mohan (Dead)*** (supra), this Court had followed the principle laid down in the cases of ***Gajraj*** (supra) and ***Savitri Devi*** (supra) and held that to balance the equities, it was appropriate to issue directions for payment of higher compensation and allotment of additional land. It was observed that it was necessary to do so to meet the ends of justice.

41. At this juncture, we will have to consider the policy decision of the State Government as formulated in the said

G.O. in the peculiar facts and circumstances of the present case.

42. After the decision of this Court in the cases of ***Gajraj*** (supra) and ***Savitri Devi*** (supra), 64.7% additional compensation and 10% of the land acquired of each of the land owners, instead of 5% and 6% was made available to the farmers whose lands were acquired for the benefit of NOIDA as well as Greater NOIDA. The lands acquired for the benefit of YEIDA were also for the development of adjoining areas. Feeling discriminated that they were being paid compensation at much lesser rate as compared to the farmers whose lands were acquired for NOIDA and Greater NOIDA, various farmers' organizations started agitations. It is some of the allottees who made representations to the CEO of YEIDA. One of such representations was made by the respondent No.19-Supertech Private Limited to the CEO of YEIDA on 22nd November, 2013, stating therein that on account of agitation by the Bhartiya Kisan Union, they had to stop their work with effect from 20th

November, 2013. The said letter/representation stated that that the main grievance of the office-holders of the Bhartiya Kisan Union was that they want increased compensation and for compensating the same, the Authority wants money from the Builders. The said representation states that:

> ""the Authority is not resolving the problems of the Farmers. The main issue of farmers is that they want increased compensation, and for compensating the same, the Authority wants money from the Builders. Builders are not ready to pay this amount, due to which, we are stopping the construction works of Builders." During the discussion, it was said by the Company that "We are not against the farmers or against their rights and company gives it's consent on this fact that whatever the consent would be made out between the Authority and Government on the compensation amount of farmers, that would be accepted by the company."

43. The said letter/representation categorically states that the Company was not against the farmers or against their rights and that it was willing to abide by whatever decision was

arrived at between the Authority and the Government on the compensation amount of farmers.

44. Similar representations were made by Orris Greenbay Golf Village on the same day, by Sunworld City Pvt. Ltd. on 26th November, 2013, and by Gaursons Realtech Pvt. Ltd. on 4th December, 2013.

45. It could thus be seen that on account of farmers' resistance and their agitation, the development work of the projects was stalled. When this was brought to the notice of the State Government, the State Government nominated the Commissioner, Meerut Division, Meerut vide order dated 10th April, 2013, for looking into the issue. The Commissioner after holding various meetings with the farmers' organization/representatives submitted his report on 16th July, 2013, stating therein that the lands have been acquired by YEIDA at large scale and taking into consideration the nature of demands having wide implications, it was necessary that a High-Level Committee at the State Government level for

examining the demands of farmers be constituted. In this background, the State Government vide order dated 3rd September, 2013 constituted a Committee under the Chairmanship of Shri Rajendra Chaudhary, Minister of Prison, State of Uttar Pradesh. The Divisional Commissioner of the concerned Division and the Collector of the concerned District were also the members of the Chaudhary Committee. The Chaudhary Committee was constituted for the purpose of resolving the problems of the villagers/farmers and the problems related to the industries. The Chaudhary Committee considered the following issues:

> "a. Demands raised by the Farmers/ Farmers' Organizations/ Representatives and Memorandums/ Demand Letters produced by them and the favour put forth by them during the personal hearing.
>
> b. Favour put forth by the Industrialists/ Builders/ Allottees during personal hearing.

c. Favour and opinion of Yamuna Expressway Authority."

46. The Chaudhary Committee conducted its proceedings on 30th September, 2013 with the representatives of the farmers. The said Committee thereafter held deliberations with the representatives of the allottees on 29th October, 2013. It will be apposite to refer to the relevant part of the discussion that took place in the meeting held with the representatives of the allottees on 29th October,2013, which reads thus:

"2. It was informed by the representative of M/s. SDIL that due to the agitation of local farmers on the issues of their problems/demands, at present, we are not available to carry out any work on the spot, therefore, whatever the decision will be taken by the Committee/ Government for disposal of the problems of farmers, we will cooperate in the same.

3. It was informed by the representative of M/s. Supertech Pvt. Ltd. that the farmers are agitating in the entire area and they are interrupting the development work. It is necessary to solve the problems of farmers. It was also informed by him that he will

cooperate in the decision to be taken by the Government/Committee for disposal of the problems.

4. It was informed by the representatives of M/s. Silverline and other Units/Institutions that due to interrupting their development works as a result of the demands being raised by the farmers of the area, the project cost is getting escalated. Due to solving the problems of farmers, the investment will be increased in the area and in disposal of the same, they will provide their assistance.

5. Regarding the demand of giving 10% abadi land in place of 7% abadi land to be given to the ancestral farmers, it was said by the representative of M/s. J.P. Infratech Pvt. Ltd. namely Sh. Sameer Gaur that earlier, they have been paid value of 7% abadi land and development charges, now, if any other cost is imposed, then, company is not in position to bear the same."

47. It could thus be seen that even the representatives of the allottees were of the opinion that on account of the agitation of the local farmers, the developers were not in a position to carry

out any work on the spot. It was also impressed upon that on account of this, the cost of the project was getting escalated. As such, it was urged to solve the problem.

48. The Chaudhary Committee also considered the submissions made on behalf of the appellant-YEIDA. It was submitted on behalf of the appellant-YEIDA that on account of the judgment delivered in a similar case, i.e., in the case of ***Gajraj*** (supra), the farmers, whose lands were acquired, were also demanding the compensation on similar lines.

49. After considering the rival submissions, the Chaudhary Committee gave its recommendation as under:

> "Recommendation of Committee:-
>
> The opinion of Authority as well as the demands of the Farmers' Organizations were carefully considered by the Committee. In the common order passed in the different Writ Petitions filed by Noida and Greater Noida Authorities, the Hon'ble High Court by not finding the proceedings conducted under Section 17 of Land Acquisition Act, 1894 to be proper,

had directed that the Authority shall pay 64.7% additional compensation to the farmers and return them 10% developed land. Also in the Yamuna Expressway Authority, around 700 Writ Petitions have been filed by the farmers by challenging the different notifications, wherein, stay orders have been passed in the most of the Petitions, the circumstances which were existing in the acquisition made by Noida and Greater Noida Authority, same circumstances are also existed in the most of the cases of acquisition of Yamuna Expressway. The lands acquired by the Authority, have been allotted to the different allottees for different projects, due to which, the third party rights have been created in this acquired land and if order is passed against the Authority in the Petitioners filed against the Acquisition Proceedings, then, many difficulties would arise. Therefore, keeping in view the legal expected legal complications, it is required to do the out of court settlement with the affected farmers. At the time of discussion, it was assured by the farmers' representatives that if the Government/ Authority agrees to give 64.7% additional compensation, then, the farmers will withdraw the Petitions filed in the Court. Therefore, Committee recommends that:-

I .(a) If, all the farmers/ Petitioners of a village related to the land acquired/ purchased by the Yamuna Expressway Authority, withdraw their

Petitions filed in the Hon'ble High Court or in any other Court and if they give written assurance for future that they will not file any claim against the Authority or it's allottees in any Court and will not cause any obstruction in the Development Works, then, like the Greater Noida Authority, the Authority may consider to give amount equivalent to 64.7% additional compensation in the form of No Litigation Incentive/ Additional Compensation, which may be compensated proportionally from the concerned allottees and same may also be imposed proportionally in the costing of allotment of land available with the Authority.

These benefits shall be allowed also to those farmers, whose' lands have been purchased by the Authority vide Sale Deed on mutual consent basis.

(b) The process of payment of additional compensation, be completed villagewise in accordance with the Schemes/ Priorities of Authority after obtaining physical possession of on the spot and after withdrawal of all the Writ petitions/ Cases of concerned village after doing settlement with the farmers. In view of the financial condition of Authority, if the payment of additional compensation is not

possible in lumpsum, then, the consideration could also be made regarding payment in installments or in the form of developed land.

2. Regarding allotment of 10% developed land in place of 7% developed land, the proceedings be conducted according to the order of Appeal/SLP filed by the Noida/Greater Noida Authorities.

3. The proceedings of amendment proposed by the Authority in Abadi Rules, are at final stage of approval, the proceedings be conducted as per the decision of Government.

4. Regarding abolishing the distinction between ancestral and non-ancestral, this decision has been taken in the 48th meeting dated 08.01.2014 of Yamuna Expressway Authority Board, that such land owners of the lands acquired or to be acquired/purchased by the Authority, whose' names have remained recorded in Six Yearly Register/ Khatauni on the acquired land prior to the date of establishment of Authority i.e. 24.04.2001, and the landowners are residents of any village related to any District lying within the notified area of Yamuna Expressway Authority, then, the benefit of 7% abadi land be granted to him against his acquired land. In the decision of Authority

Board, this facility has also been allowed to the successors of eligible land owners, who fulfill the aforesaid conditions. The further proceedings be conducted as per the decision of Authority Board.

5. In view of the demands of farmers organizations and local public of District Mathura, after taking into consideration the proposal submitted by Concessionaire namely M/s. J.P. Infratech Ltd., in the 48th meeting dated 08.01.2014 of Yamuna Expressway Authority Board, a decision in principle has been taken for construction of Exist & Entry Ramps at Bajna-Nauhjheel Road at Yamuna Expressway and by making necessary amendments in DPR accordingly, a letter has been sent to the Concessionaire namely M/s. J,P. Infratech for necessary action. The further proceedings be conducted as per the decision of Authority Board.

It is recommended by the Committee that the aforementioned additional benefits be granted to the landowners only in that case when they will handover the physical possession of land to the Authority and withdraw Writ Petition/Case pending in Hon'ble High Court or any other Court and agreement for not causing any obstruction in future in the development works of allottees and for not filing any claim in any Court against the acquisition of land in future. Regarding the other demands, the

> Committee will give it's recommendation after further consideration."

50. It could thus be seen that the recommendations of the Chaudhary Committee were principally intended to resolve the issue between the farmers and the allottees, and to find out a workable solution to the problem. The Chaudhary Committee recommended similar treatment to be given to the farmers whose lands were acquired for YEIDA, as was given to the farmers whose lands were acquired for the benefit of NOIDA and Greater NOIDA. The Chaudhary Committee found that the same benefits as were given to the farmers whose lands were acquired for the benefit of NOIDA and Greater NOIDA in view of the judgment of the High Court in the case of ***Gajraj*** (supra), as affirmed by this Court in the case of ***Savitri Devi*** (supra) should also be given to the farmers whose lands were acquired for the benefit of YEIDA. However, this was made conditional. Additional benefit was granted to the landowners on the condition that they would handover the physical possession of

land to YEIDA and withdraw the writ petitions/cases filed by them pending before the High Court.

51. The State Government vide the said G.O. gave effect to the recommendations of the Chaudhary Committee. YEIDA too, in its Board meeting dated 15th September, 2014, resolved to implement the decision of the State Government. Accordingly, demand notices came to be issued to the allottees.

52. It could thus be seen that the policy decision of the State Government is preceded by various factors. Firstly, the farmers' agitation, after they were denied the benefits which were granted to the farmers whose lands were acquired for the benefit of NOIDA and Greater NOIDA; the report of the Commissioner, the appointment of the Chaudhary Committee, the deliberations of the Chaudhary Committee with various stakeholders, and thereafter the recommendations of the Chaudhary Committee.

53. It will be relevant to refer to the judgment of this Court in the case of the ***Kasinka Trading and another vs. Union of***

India and another[7], wherein this Court has referred to various earlier pronouncements and the treatise of Prof. S.A. de Smith on "*Judicial Review of Administrative Action*". The relevant paragraphs of the said judgment read thus:

> "**12.** It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory

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estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

13. The ambit, scope and amplitude of the doctrine of promissory estoppel has been evolved in this country over the last quarter of a century through successive decisions of this Court starting with *Union of India* v. *Indo-Afghan Agencies Ltd.* [(1968) 2 SCR 366 : AIR 1968 SC 718] Reference in this connection may be made with advantage to *Century Spg. & Mfg. Co. Ltd.* v. *Ulhasnagar Municipal Council* [(1970) 1 SCC 582 : (1970) 3 SCR 854] ; *Motilal Padampat Sugar Mills Co. Ltd.* v. *State of U.P.* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] ; *Jit Ram Shiv Kumar* v. *State of Haryana* [(1981) 1 SCC 11 : (1980) 3 SCR 689] ; *Union of India* v. *Godfrey Philips*

India Ltd. [(1985) 4 SCC 369 : 1986 SCC (Tax) 11] ; *Indian Express Newspapers (Bom) (P) Ltd.* v. *Union of India* [(1985) 1 SCC 641 : 1985 SCC (Tax) 121] ; *Pournami Oil Mills* v. *State of Kerala* [1986 Supp SCC 728 : 1987 SCC (Tax) 134] ; *Shri Bakul Oil Industries* v. *State of Gujarat* [(1987) 1 SCC 31 : 1987 SCC (Tax) 74 : (1987) 1 SCR 185] ; *Asstt. CCT* v. *Dharmendra Trading Co.* [(1988) 3 SCC 570 : 1988 SCC (Tax) 432] ; *Amrit Banaspati Co. Ltd.* v. *State of Punjab* [(1992) 2 SCC 411] and *Union of India* v. *Hindustan Development Corpn.* [(1993) 3 SCC 499 : JT (1993) 3 SC 15] In *Godfrey Philips India Ltd.* [(1985) 4 SCC 369 : 1986 SCC (Tax) 11] this Court opined: (SCC p. 388, para 13)

> "We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on

the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it."

14. In *Excise Commissioner, U.P.* v. *Ram Kumar* [(1976) 3 SCC 540 : 1976 SCC (Tax) 360 : AIR 1976 SC 2237] four learned Judges of this Court observed: (SCC p. 545, para 19)

> "The fact that sales of country liquor had been exempted from sales tax vide Notification No. ST-1149/X-802 (33)-51 dated 6-4-1959 could not operate as an estoppel against the State Government and preclude it from subjecting the sales to tax if it felt impelled to do so in the interest of the revenues of the State which are required for execution of the plans designed to meet the ever-increasing pressing needs of the developing society. It is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers."

15. Prof. S.A. de Smith in his celebrated treatise *Judicial Review of Administrative Action*, 3rd Edn., at p. 279 sums up the position thus:

"Contracts and covenants entered into by the Crown are not to be construed as being subject to implied terms that would exclude the exercise of general discretionary powers for the public good. On the contrary they are to be construed as incorporating an implied term that such powers remain exercisable. This is broadly true of other public authorities also. But the status and functions of the Crown in this regard are of a higher order. The Crown cannot be allowed to tie its hands completely by prior undertakings is as clear as the proposition that the Courts cannot allow the Crown to evade compliance with ostensibly binding obligations whenever it thinks fit. If a public authority lawfully repudiates or departs from the terms of a binding contract in order to have been bound in law by an ostensibly binding contract because the undertakings would improperly fetter its general discretionary powers the other party to the agreement has no right whatsoever to damages or compensation under the general law, no matter how serious the damages that party may have suffered."

54. It has been held by this Court that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large. It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. It has been held that the doctrine being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or Public Authority that having regard to the facts and circumstances as they have transpired, it would be inequitable to hold the Government or the Public Authority to the promise, assurance or representation made by it. The judgment of this Court in the case of ***Kasinka Trading*** (supra) has been consistently followed.

55. If we apply the principle as laid down in the case of ***Kasinka Trading*** (supra) to the facts of the present case, it

will be clear that the policy decision of the State Government was not only in the larger public interest but also in the interest of the respondents. The projects were stalled on account of the farmers' agitation. The farmers felt discriminated as they found that the compensation paid to them was much lesser than the one being paid to the equally circumstanced farmers in NOIDA and Greater NOIDA. It was the allottees of the land who had approached the State Government for redressal of the problem. In these circumstances, the Government took cognizance of the problem and appointed the Commissioner to look into the issue. Since the Commissioner recommended appointment of a High-Level Committee, the Chaudhary Committee was appointed. The Chaudhary Committee had threadbare discussions with all the stakeholders. It also took into consideration that on account of stay orders passed by the High Court in various writ petitions, the development of the project was stalled. On account of pendency of the writ petitions, there was always a hanging sword over the entire acquisition of it

being declared unlawful. In this premise, in order to find out a workable solution and that too, on the basis of the law laid down by the High Court in the case of ***Gajraj*** (supra) as affirmed by this Court in the case of ***Savitri Devi*** (supra) and followed by this Court in the case of ***Savitri Mohan (Dead)*** (supra), recommendations were made by the Chaudhary Committee. The Chaudhary Committee specifically recommended that the additional compensation and other incentives would be paid only if the landowners agree to handover physical possession of the land to YEIDA and withdraw all the litigations.

56. It could thus be seen that the recommendations, which were accepted by the State Government and formulated in the policy, were made taking into consideration the interests of all the stakeholders. As held by this Court, it is not only the interest of a small section of the allottees which should weigh with the Government, but the Government should also give due

weightage to the interest of the large section of farmers, whose lands were acquired.

57. We further find that the High Court fell in error in observing that no writ petitions were filed challenging the acquisition for YEIDA. The report of the Chaudhary Committee itself would clarify that YEIDA had itself submitted that insofar as the residential plots are concerned, there were stay orders operating in majority of the writ petitions due to which the development of the project work was stalled.

58. We are therefore of the considered view that the policy decision of the State Government was in the larger public interest. It was taken considering entire material collected by the Chaudhary Committee after due deliberations with all the stakeholders. The factors which were taken into consideration by the State Government were relevant, rational and founded on ground realities. In this view of the matter, the finding of the High Court that the policy decision of the State Government was arbitrary, irrational and unfair, is totally incorrect.

59. The law with regard to interference in the policy decision of the State is by now very well crystalized. This Court in the case of ***Essar Steel Limited* vs *Union of India and others***[8] had an occasion to consider the scope of interference in the policy decision of the State. After referring to various decisions of this Court, the Court observed thus:

> "**43.** Before we can examine the validity of the impugned policy decision dated 6-3-2007, it is crucial to understand the extent of the power vested with this Court to review policy decisions.
>
> **44.** In *DDA* [*DDA* v. *Allottee of SFS Flats*, (2008) 2 SCC 672 : (2008) 1 SCC (Civ) 684] on issue of judicial review of policy decisions, the power of the Court is examined and observed as under: (SCC pp. 697-98, paras 64-65)
>
> > "*64.* An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy

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decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

65. Broadly, a policy decision is subject to judicial review on the following grounds:

(*a*) if it is unconstitutional;

(*b*) if it is dehors the provisions of the Act and the Regulations;

(*c*) if the delegatee has acted beyond its power of delegation;

(*d*) if the executive policy is contrary to the statutory or a larger policy."

45. Thus, we will test the impugned policy on the above grounds to determine whether it warrants our interference under Article 136 or not. Further, this Court neither has the jurisdiction nor the competence to judge the viability of such policy decisions of the Government in exercise of its appellate jurisdiction under Article 136 of the Constitution of India. In *Arun Kumar Agrawal* v. *Union of India* [*Arun Kumar Agrawal* v. *Union of India*, (2013) 7 SCC 1] , this Court has further held as under: (SCC p. 17, para 41)

"*41.* ... This Court sitting in the jurisdiction cannot sit in judgment over the commercial or business decision taken by parties to the agreement, after evaluating and assessing its monetary

and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or taken for extraneous considerations or improper motives. States and its instrumentalities can enter into various contracts which may involve complex economic factors. State or the State undertaking being a party to a contract, have to make various decisions which they deem just and proper. There is always an element of risk in such decisions, ultimately it may turn out to be a correct decision or a wrong one. *But if the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be wrong, that itself is not a ground to hold that the decision was mala fide or taken with ulterior motives*."

(emphasis supplied)

46. In *Villianur Iyarkkai Padukappu Maiyam* v. *Union of India* [*Villianur Iyarkkai Padukappu Maiyam* v. *Union of India*, (2009) 7 SCC 561] , it was held as under: (SCC p. 605, para 169)

"*169.* It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a

petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. *Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority*. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts."

(emphasis supplied)

47. A three-Judge Bench of this Court in *Narmada Bachao Andolan* v. *Union of India* [*Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664] cautioned against courts sitting in appeal against policy decisions. It was held as under: (SCC p. 763, para 234)

"*234.* In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. *Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been*

taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

(emphasis supplied)

48. A similar sentiment was echoed by a Constitution Bench of this Court in *Peerless General Finance & Investment Co. Ltd.* v. *RBI* [*Peerless General Finance & Investment Co. Ltd.* v. *RBI*, (1992) 2 SCC 343] , wherein it was observed as under: (SCC p. 375, para 31)

"*31.* ... Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over

> matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."
>
> **49.** A perusal of the abovementioned judgments of this Court would show that this Court should exercise great caution and restraint when confronted with matters related to the policy regarding commercial matters of the country. Executive policies are usually enacted after much deliberation by the Government. Therefore, it would not be appropriate for this Court to question the wisdom of the same, unless it is demonstrated by the aggrieved persons that the said policy has been enacted in an arbitrary, unreasonable or mala fide manner, or that it offends the provisions of the Constitution of India."

60. It is trite law that an interference with the policy decision would not be warranted unless it is found that the policy decision is palpably arbitrary, *mala fide*, irrational or violative of the statutory provisions. We are therefore of the considered view that the High Court was also not right in interfering with

the policy decision of the State Government, which is in the larger public interest.

61. It will also be apposite to refer to the following observations of this Court in the case of ***APM Terminals B.V. vs. Union of India and another***[9]:

> "**67.** It has been the consistent view of this Court that a change in policy by the Government can have an overriding effect over private treaties between the Government and a private party, if the same was in the general public interest and provided such change in policy was guided by reason. Several decisions have been cited by the parties in this regard in the context of preventing private monopolisation of port activities to an extent where such private player would assume a dominant position which would enable them to control not only the berthing of ships but the tariff for use of the port facilities."

62. It could thus be seen that it is more than settled that a change in policy by the Government can have an overriding effect over private treaties between the Government and a

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private party, if the same was in the general public interest. The additional requirement is that such change in policy is required to be guided by reason.

63. Insofar as the reliance placed by the respondents on the judgment of this Court in the case of ***ITC Limited*** (supra) is concerned, in our considered view, the said judgment would not be of any assistance to the case of the respondents. This Court in the said case in paragraph 107.1 has clearly observed that in the case of conflict between public interest and personal interest, public interest should prevail.

64. A number of judgments of this Court have been cited at the Bar by the respondents in support of the proposition that in view of concluded contracts, it was not permissible for the appellants to unilaterally increase the premium by framing a policy.

65. We have hereinabove elaborately discussed that when a policy is changed by the State, which is in the general public interest, such policy would prevail over the individual

rights/interests. In that view of the matter, we do not find it necessary to refer to the said judgments. The policy of the State Government as reflected in the said G.O. was not only in the larger public interest but also in the interest of the respondents.

66. We further find that the respondents have indulged into the conduct of approbate and reprobate. They have changed their stance as per their convenience. When their projects were stalled on account of the farmers' agitation, it is they who approached the State Authorities for finding out a solution. When the State Government responded to their representations and came up with a policy which was equitable and in the interest of both, the farmers and the allottees and when the said policy paved the way for development, when called upon to pay the additional compensation, the respondents-allottees somersaulted and challenged the very same policy before the High Court, which benefitted them. We have already hereinabove made reference to the various communications

made by the allottees of the land for intervention of the State Government.

67. Insofar as the individual plot owners are concerned, it will be worthwhile to mention that the residential plot owners in Sectors 18 and 20 of Yamuna Expressway city have formed an association, viz., Yamuna Expressway Residential-Plot-Owners Welfare Association (hereinafter referred to as "the YERWA"). The communication addressed by the president of the YERWA to the CEO of YEIDA would reveal that 98.5% of the allottees/owners have voted in favour of paying the additional premium demanded by the Authority. The only request made by the YERWA is with regard to making a provision for paying additional premium in installments.

68. It can thus be seen that even insofar as the individual residential plot owners are concerned, more than 98% of the plot owners do not have any objection to the payment of the additional compensation.

69. With respect to the contention of the respondent No.19-Supertech with regard to initiation of CIRP, we are not concerned with the said issue in the present proceedings. The law will take its own course.

70. In conclusion, we are of the considered view that the policy decision of the State Government as reflected in the said G.O. dated 29th August, 2014 and the Resolution of the Board of YEIDA dated 15th September, 2014 were in the larger public interest, taking care of the concerns of the allottees as well as the farmers. As already discussed hereinabove, had the said decision not been taken, there was a hanging sword of the acquisition being declared unlawful. The development of the entire project was stalled on account of farmers' agitation. Before taking the policy decision, the State Government, through the Chaudhary Committee, had done a wide range of deliberations with all the stakeholders including the allottees, farmers and YEIDA. The policy decision was taken after taking into consideration all relevant factors and was guided by

reasons. In any case, it is a settled position of law that in case of a conflict between public interest and personal interest, public interest will outweigh the personal interest. The High Court was therefore not justified in holding that the policy decision of the State was unfair, unreasonable and arbitrary. We are of the considered view that the High Court has erred in allowing the writ petitions. The present appeals, therefore, deserve to be allowed.

71. In the result, we pass the following order:

(i) The appeals are allowed;

(ii) The impugned judgment and order dated 28th May, 2020, passed by the Allahabad High Court in Writ Petition No. 28968 of 2018 and companion matters is quashed and set aside;

(iii) The writ petitions filed by the respondents covered by the impugned judgment and order dated 28th May, 2020 passed by the Allahabad High Court are dismissed;

72. Applications for Intervention are allowed. Pending applications, including the applications for directions, shall stand disposed of in the above terms. There shall be no order as to costs.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

NEW DELHI;
MAY 19, 2022.